THIS PROPOSED DISCLOSURE STATEMENT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT AS CONTAINING ADEQUATE INFORMATION WITHIN THE MEANING OF SECTION 1125(a) OF THE BANKRUPTCY CODE. THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS WILL NOT BE SOLICITED UNTIL THE BANKRUPTCY COURT HAS APPROVED THIS PROPOSED DISCLOSURE STATEMENT. THE DEBTORS RESERVE THE RIGHT TO AMEND OR SUPPLEMENT THIS PROPOSED DISCLOSURE STATEMENT.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
SALEM HARBOR POWER DEVELOPMENT LP (f/k/a Footprint Power Salem Harbor Development LP), *et al.*,[1]	Case No. 22-10239 (MFW)
Debtors.	(Jointly Administered)

DISCLOSURE STATEMENT FOR JOINT CHAPTER 11 PLAN OF SALEM HARBOR POWER DEVELOPMENT LP AND ITS DEBTOR AFFILIATES

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Counsel to the Debtors and Debtors in Possession

Dated April 20, 2022

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Salem Harbor Power Development LP (f/k/a Footprint Power Salem Harbor Development LP) (1360); Highstar Salem Harbor Holdings GP, LLC (f/k/a Highstar Footprint Holdings GP, LLC) (2253); Highstar Salem Harbor Power Holdings L.P. (f/k/a Highstar Footprint Power Holdings L.P.) (9509); Salem Harbor Power FinCo GP, LLC (f/k/a Footprint Power Salem Harbor FinCo GP, LLC) (N/A); Salem Harbor Power FinCo, LP (f/k/a Footprint Power Salem Harbor FinCo, LP) (9219); and SH Power DevCo GP LLC (f/k/a Footprint Power SH DevCo GP LLC) (9008). The location of the Debtors' service address is: c/o Tateswood Energy Company, LLC, 480 Wildwood Forest Drive, Suite 475, Spring, Texas 77380.

IMPORTANT INFORMATION REGARDING THIS DISCLOSURE STATEMENT

DISCLOSURE STATEMENT, DATED APRIL 20, 2022

SOLICITATION OF VOTES ON THE JOINT CHAPTER 11 PLAN OF SALEM HARBOR POWER DEVELOPMENT LP AND ITS DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE FROM THE HOLDERS OF OUTSTANDING:

VOTING CLASS	NAME OF CLASS UNDER THE PLAN
CLASS 3	CREDIT FACILITY SECURED CLAIMS
CLASS 4	GENERAL UNSECURED CLAIMS

IF YOU ARE IN CLASS 3 OR CLASS 4, YOU ARE RECEIVING THIS DOCUMENT AND THE ACCOMPANYING MATERIALS BECAUSE YOU ARE ENTITLED TO VOTE ON THE PLAN

DELIVERY OF BALLOTS

BALLOTS MUST BE ACTUALLY RECEIVED BY THE SOLICITATION AGENT BY THE VOTING DEADLINE, WHICH IS 4:00 P.M. (PREVAILING EASTERN TIME) ON JULY 6, 2022, VIA THE ENCLOSED PRE-PAID, PRE-ADDRESSED RETURN ENVELOPE

OR

AT ONLY ONE OF THE FOLLOWING ADDRESSES:

VIA FIRST-CLASS MAIL, OVERNIGHT COURIER, OR HAND DELIVERY TO:

SALEM HARBOR POWER DEVELOPMENT LP
BALLOT PROCESSING CENTER
C/O KROLL RESTRUCTURING ADMINISTRATION LLC (F/K/A PRIME CLERK LLC)
850 3RD AVENUE, SUITE 412
BROOKLYN, NY 11232

OR

VIA "E-BALLOT" SUBMISSION AT:

HTTPS://CASES.RA.KROLL.COM/SALEMHARBOR

PLEASE CHOOSE ONLY ONE METHOD TO RETURN YOUR BALLOT. BALLOTS RECEIVED VIA FACSIMILE OR EMAIL WILL NOT BE COUNTED.

IF YOU HAVE ANY QUESTIONS ON THE PROCEDURE FOR VOTING ON THE PLAN, PLEASE EMAIL THE SOLICITATION AGENT AT: SALEMHARBORINFO@RA.KROLL.COM WITH A REFERENCE TO "SALEM HARBOR SOLICITATION" IN THE SUBJECT LINE.

This disclosure statement (as may be amended, supplemented, or otherwise modified from time to time, this "Disclosure Statement") provides information regarding the *Joint Chapter 11 Plan of Salem Harbor Power Development LP and Its Debtor Affiliates* (as may be amended, supplemented, or otherwise modified from time to time, the "Plan"),[2] which the Debtors are seeking to have confirmed by the Bankruptcy Court. A copy of the Plan is attached hereto as Exhibit A. The Debtors are providing the information in this Disclosure Statement to certain holders of Claims for purposes of soliciting votes to accept or reject the Plan.

The consummation and effectiveness of the Plan are subject to certain material conditions precedent described herein and set forth in Article X.A of the Plan. There is no assurance that the Bankruptcy Court will confirm the Plan or, if the Bankruptcy Court does confirm the Plan, that the conditions necessary for the Plan to become effective will be satisfied or in the alternative waived.

The Debtors urge each holder of a Claim or Interest to consult with its own advisors with respect to any legal, financial, securities, tax, or business advice in reviewing this Disclosure Statement, the Plan, and each proposed transaction contemplated by the Plan.

The Debtors strongly encourage holders of Claims in Class 3 and Class 4 to read this Disclosure Statement (including the Risk Factors described in Article X hereof) and the Plan in their entirety before voting to accept or reject the Plan. Assuming the requisite acceptances to the Plan are obtained, the Debtors will seek the Bankruptcy Court's approval of the Plan at the Confirmation Hearing.

[2] Capitalized terms used but not otherwise defined in this Disclosure Statement will have the meaning ascribed to such terms in the Plan. The summary of the Plan provided herein is qualified in its entirety by reference to the Plan. In the case of any inconsistency between this Disclosure Statement and the Plan, the Plan will govern.

RECOMMENDATION BY THE DEBTORS

ON BEHALF OF THE DEBTORS, THE SPECIAL COMMITTEE OF EACH OF THE BOARDS OF MANAGERS OF HIGHSTAR SALEM HARBOR HOLDINGS GP, LLC AND SH POWER DEVCO GP LLC (TOGETHER, THE "SPECIAL COMMITTEE"), HAS APPROVED THE TRANSACTIONS CONTEMPLATED BY THE PLAN AND DESCRIBED IN THIS DISCLOSURE STATEMENT AND RECOMMENDS THAT ALL HOLDERS OF CLAIMS WHOSE VOTES ARE BEING SOLICITED SUBMIT BALLOTS TO ACCEPT THE PLAN BY RETURNING THEIR BALLOTS SO AS TO BE ACTUALLY RECEIVED BY THE SOLICITATION AGENT NO LATER THAN JULY 6, 2022, AT 4:00 P.M. (PREVAILING EASTERN TIME) (PREVAILING EASTERN TIME) PURSUANT TO THE INSTRUCTIONS SET FORTH HEREIN AND ON THE BALLOTS.

AS OF THE DATE HEREOF, HOLDERS OF OVER 94% OF CREDIT FACILITY CLAIMS HAVE AGREED, SUBJECT TO THE TERMS AND CONDITIONS OF THE RSA (DEFINED BELOW), TO VOTE IN FAVOR OF AND OTHERWISE SUPPORT THE PLAN.

DISCLAIMERS

THE DEBTORS ARE PROVIDING THE INFORMATION IN THIS DISCLOSURE STATEMENT TO HOLDERS OF CLAIMS FOR THE PURPOSE OF SOLICITING VOTES TO ACCEPT OR REJECT THE PLAN. NOTHING IN THIS DISCLOSURE STATEMENT MAY BE RELIED UPON OR USED BY ANY ENTITY FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN. BEFORE DECIDING WHETHER TO VOTE FOR OR AGAINST THE PLAN, EACH HOLDER ENTITLED TO VOTE SHOULD CAREFULLY CONSIDER ALL OF THE INFORMATION IN THIS DISCLOSURE STATEMENT, INCLUDING ALL ATTACHED EXHIBITS AND DOCUMENTS INCORPORATED INTO THIS DISCLOSURE STATEMENT, AS WELL AS THE RISK FACTORS DESCRIBED IN ARTICLE X OF THIS DISCLOSURE STATEMENT.

UPON CONFIRMATION OF THE PLAN, IN THE EVENT THE STANDALONE RESTRUCTURING IS CONSUMMATED, CERTAIN OF THE SECURITIES DESCRIBED IN THIS DISCLOSURE STATEMENT, INCLUDING THE NEW COMMON EQUITY, WILL BE ISSUED WITHOUT REGISTRATION UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED, TOGETHER WITH THE RULES AND REGULATIONS PROMULGATED THEREUNDER (THE "SECURITIES ACT"), OR SIMILAR U.S. FEDERAL, STATE, OR LOCAL LAWS TO PERSONS RESIDENT OR OTHERWISE LOCATED IN THE UNITED STATES IN RELIANCE ON THE EXEMPTION SET FORTH IN SECTION 1145 OF TITLE 11 OF THE UNITED STATES CODE (THE "BANKRUPTCY CODE"). IF NECESSARY, CERTAIN OTHER SECURITIES WILL BE ISSUED PURSUANT TO OTHER APPLICABLE EXEMPTIONS UNDER THE U.S. FEDERAL AND APPLICABLE STATE AND LOCAL SECURITIES LAWS AND THE LAWS OF FOREIGN JURISDICTIONS, AS APPLICABLE. TO THE EXTENT EXEMPTIONS FROM REGISTRATION UNDER SECTION 1145 OF THE BANKRUPTCY CODE DO NOT APPLY, THE SECURITIES MAY NOT BE OFFERED OR ISSUED TO PERSONS RESIDENT OR OTHERWISE LOCATED IN THE UNITED STATES EXCEPT PURSUANT TO (I) AN EFFECTIVE REGISTRATION STATEMENT OR (II) AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

NO SECURITIES TO BE ISSUED PURSUANT TO THE PLAN HAVE BEEN APPROVED OR DISAPPROVED BY THE U.S. SECURITIES AND EXCHANGE COMMISSION (THE "SEC") OR BY ANY STATE SECURITIES COMMISSION OR SIMILAR PUBLIC, GOVERNMENTAL, OR REGULATORY AUTHORITY WHETHER IN THE UNITED STATES OR ELSEWHERE. THIS DISCLOSURE STATEMENT HAS NOT BEEN FILED FOR APPROVAL WITH THE SEC OR ANY STATE AUTHORITY AND NEITHER THE SEC NOR ANY STATE AUTHORITY HAS PASSED UPON THE ACCURACY OR ADEQUACY OF THIS DISCLOSURE STATEMENT OR UPON THE MERITS OF THE PLAN. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE IN THE UNITED STATES. NEITHER THIS SOLICITATION NOR THIS DISCLOSURE STATEMENT CONSTITUTES AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY SECURITIES IN ANY STATE OR JURISDICTION IN WHICH SUCH OFFER OR SOLICITATION IS NOT AUTHORIZED.

THIS DISCLOSURE STATEMENT CONTAINS "FORWARD-LOOKING STATEMENTS." SUCH STATEMENTS CONSIST OF ANY STATEMENT OTHER THAN A RECITATION OF HISTORICAL FACT AND CAN BE IDENTIFIED BY THE USE OF FORWARD LOOKING TERMINOLOGY SUCH AS "MAY," "EXPECT," "ANTICIPATE," "ESTIMATE," "FORECAST," "OUTLOOK," "BUDGET," OR "CONTINUE" OR THE NEGATIVE THEREOF OR OTHER VARIATIONS THEREON OR COMPARABLE TERMINOLOGY. THE DEBTORS CONSIDER ALL STATEMENTS REGARDING ANTICIPATED OR FUTURE MATTERS TO BE FORWARD-LOOKING STATEMENTS.

Forward-looking statements may include statements about:

- general economic and business conditions and industry trends;
- the Debtors' cash flows and liquidity;
- the Debtors' business strategy and prospect for growth;
- levels and volatility of natural gas prices and the Debtors' ability to procure competitively-priced natural gas;
- the continued demand for energy, capacity, and ancillary services in the geographic areas where the Debtors (as defined herein) operate;
- the highly-competitive nature of the Debtors' business and industry;
- technological advancements and trends in the Debtors' industry, and improvements in the Debtors' competitors' equipment;
- the Debtors' ability to acquire and profitably integrate attractive technology, or develop and market new technology;
- the Debtors' ability to maintain their material contracts to meet the Debtors' operational requirements;
- the impact of applicable regulatory regimes and conditions (and changes with respect thereto) under which the Debtors operate;
- the design and structure of the wholesale electricity market in which the Debtors operate;
- the Debtors' ability to maintain performance of their power generation equipment;
- the Debtors' financial capabilities of meeting collateral requirements to operate efficiently in wholesale power markets;
- the implementation of the Restructuring Transactions (as defined herein); and
- the factors as set out in Article X of this Disclosure Statement—"Certain Risk Factors To Be Considered," and other factors that are not known to the Debtors at this time.

STATEMENTS CONCERNING THESE AND OTHER MATTERS ARE NOT GUARANTEES OF THE REORGANIZED DEBTORS' FUTURE PERFORMANCE. THERE ARE RISKS, UNCERTAINTIES, AND OTHER IMPORTANT FACTORS THAT COULD CAUSE THE REORGANIZED DEBTORS' ACTUAL PERFORMANCE OR ACHIEVEMENTS TO BE DIFFERENT FROM THOSE THEY MAY PROJECT, AND THE DEBTORS UNDERTAKE NO OBLIGATION TO UPDATE THE PROJECTIONS SET FORTH HEREIN, EXCEPT AS MAY BE REQUIRED BY APPLICABLE LAW. THE READER IS CAUTIONED THAT ALL FORWARD-LOOKING STATEMENTS ARE NECESSARILY SPECULATIVE AND THERE ARE CERTAIN RISKS AND UNCERTAINTIES THAT COULD CAUSE ACTUAL EVENTS OR RESULTS TO DIFFER MATERIALLY FROM

THOSE PRESENTED IN SUCH FORWARD-LOOKING STATEMENTS. THE LIQUIDATION ANALYSIS, PROJECTIONS, AND OTHER INFORMATION CONTAINED HEREIN AND ATTACHED HERETO, OR THAT MAY BE FILED LATER WITH THE PLAN SUPPLEMENT, ARE ESTIMATES ONLY, AND THE VALUE OF THE PROPERTY DISTRIBUTED TO HOLDERS OF ALLOWED CLAIMS MAY BE AFFECTED BY MANY FACTORS THAT CANNOT BE PREDICTED. THEREFORE, ANY ANALYSES, ESTIMATES, OR RECOVERY PROJECTIONS MAY OR MAY NOT TURN OUT TO BE ACCURATE. FOR MORE INFORMATION REGARDING THE FACTORS THAT MAY CAUSE ACTUAL RESULTS TO DIFFER FROM THOSE PRESENTED IN THE FORWARD-LOOKING STATEMENTS, PLEASE REFER TO ARTICLE X OF THIS DISCLOSURE STATEMENT—"CERTAIN RISK FACTORS TO BE CONSIDERED."

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3016 AND IS NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER SIMILAR LAWS.

THE DEBTORS BELIEVE THAT THE SOLICITATION OF VOTES ON THE PLAN MADE BY THIS DISCLOSURE STATEMENT, AND THE OFFER OF CERTAIN NEW SECURITIES THAT MAY BE DEEMED TO BE MADE PURSUANT TO THE SOLICITATION, ARE EXEMPT FROM REGISTRATION UNDER THE SECURITIES ACT AND RELATED STATE STATUTES BY REASON OF THE EXEMPTION PROVIDED BY SECTION 1145(a)(1) OF THE BANKRUPTCY CODE AND IT IS EXPECTED THAT THE OFFER AND ISSUANCE OF THE SECURITIES UNDER THE PLAN WILL BE EXEMPT FROM REGISTRATION UNDER THE SECURITIES ACT AND RELATED STATE STATUTES BY REASON OF THE APPLICABILITY OF SECTION 1145(a)(1) OF THE BANKRUPTCY CODE.

ALL SECURITIES DESCRIBED HEREIN ARE EXPECTED TO BE ISSUED WITHOUT REGISTRATION UNDER THE SECURITIES ACT OR ANY STATE SECURITIES LAWS ("BLUE SKY LAWS").

THE DEBTORS RECOMMEND THAT POTENTIAL RECIPIENTS OF ANY SECURITIES PURSUANT TO THE CHAPTER 11 CASES CONSULT THEIR OWN LEGAL COUNSEL CONCERNING THE SECURITIES LAWS GOVERNING THE TRANSFERABILITY OF ANY SUCH SECURITIES.

NEITHER THE SOLICITATION NOR THIS DISCLOSURE STATEMENT CONSTITUTES AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY SECURITIES IN ANY STATE OR JURISDICTION IN WHICH SUCH OFFER OR SOLICITATION IS NOT AUTHORIZED.

NO LEGAL OR TAX ADVICE IS PROVIDED TO YOU BY THIS DISCLOSURE STATEMENT. THE DEBTORS URGE EACH HOLDER OF A CLAIM OR INTEREST TO CONSULT WITH ITS OWN ADVISORS WITH RESPECT TO ANY LEGAL, FINANCIAL, SECURITIES, TAX, OR BUSINESS ADVICE IN REVIEWING THIS DISCLOSURE STATEMENT, THE PLAN, AND EACH OF THE PROPOSED TRANSACTIONS

CONTEMPLATED THEREBY. FURTHERMORE, THE BANKRUPTCY COURT'S APPROVAL OF THE ADEQUACY OF DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL OF THE MERITS OF THE PLAN OR A GUARANTEE BY THE BANKRUPTCY COURT OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN.

THIS DISCLOSURE STATEMENT CONTAINS, AMONG OTHER THINGS, A SUMMARY OF THE PLAN, CERTAIN EVENTS LEADING UP TO, DURING, AND EXPECTED TO OCCUR IN THE DEBTORS' CHAPTER 11 CASES, AND CERTAIN DOCUMENTS RELATED TO THE PLAN THAT ARE ATTACHED HERETO AND THERETO, WHICH ARE INCORPORATED HEREIN BY REFERENCE, OR THAT MAY BE FILED LATER WITH THE PLAN SUPPLEMENT. ALTHOUGH THE DEBTORS BELIEVE THAT THESE SUMMARIES ARE FAIR AND ACCURATE, THESE SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY TO THE EXTENT THAT THE SUMMARIES DO NOT SET FORTH THE ENTIRE TEXT OF SUCH DOCUMENTS OR RELEVANT STATUTORY PROVISIONS OR EVERY DETAIL OF SUCH EVENTS, BY REFERENCE TO SUCH DOCUMENTS OR STATUTORY PROVISIONS. IN THE EVENT OF ANY CONFLICT, INCONSISTENCY, OR DISCREPANCY BETWEEN A DESCRIPTION IN THIS DISCLOSURE STATEMENT AND THE TERMS AND PROVISIONS OF THE PLAN OR ANY OTHER DOCUMENTS, THE PLAN OR SUCH OTHER DOCUMENTS WILL GOVERN AND CONTROL FOR ALL PURPOSES. EXCEPT AS OTHERWISE SPECIFICALLY NOTED, FACTUAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN PROVIDED BY THE DEBTORS' ASSET MANAGER. THE DEBTORS DO NOT REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED HEREIN OR ATTACHED HERETO IS WITHOUT ANY INACCURACY OR OMISSION.

IN PREPARING THIS DISCLOSURE STATEMENT, THE DEBTORS RELIED ON FINANCIAL DATA DERIVED FROM THE DEBTORS' BOOKS AND RECORDS AND ON VARIOUS ASSUMPTIONS REGARDING THE DEBTORS' BUSINESS. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF UNLESS OTHERWISE SPECIFIED. THE DEBTORS' ASSET MANAGER HAS REVIEWED THE FINANCIAL INFORMATION PROVIDED IN THIS DISCLOSURE STATEMENT. ALTHOUGH THE DEBTORS HAVE USED THEIR REASONABLE BUSINESS JUDGMENT TO ENSURE THE ACCURACY OF THIS FINANCIAL INFORMATION AND THE LIQUIDATION ANALYSIS, THE FINANCIAL INFORMATION AND LIQUIDATION ANALYSIS CONTAINED IN, OR INCORPORATED BY REFERENCE INTO, THIS DISCLOSURE STATEMENT HAS NOT BEEN AUDITED (UNLESS OTHERWISE EXPRESSLY PROVIDED HEREIN) AND NO REPRESENTATIONS OR WARRANTIES ARE MADE AS TO THE ACCURACY OF THE FINANCIAL INFORMATION CONTAINED HEREIN OR ASSUMPTIONS REGARDING THE DEBTORS' BUSINESS AND ITS FUTURE RESULTS AND OPERATIONS. THE DEBTORS EXPRESSLY CAUTION READERS NOT TO PLACE UNDUE RELIANCE ON ANY FORWARD-LOOKING STATEMENTS CONTAINED HEREIN.

NEITHER THIS DISCLOSURE STATEMENT, THE PLAN, THE CONFIRMATION ORDER, NOR THE PLAN SUPPLEMENT WAIVE ANY RIGHTS OF THE DEBTORS WITH

RESPECT TO THE HOLDERS OF CLAIMS OR INTERESTS BEFORE THE EFFECTIVE DATE. RATHER, THIS DISCLOSURE STATEMENT SHALL CONSTITUTE A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS RELATED TO POTENTIAL CONTESTED MATTERS, POTENTIAL ADVERSARY PROCEEDINGS, AND OTHER PENDING OR THREATENED LITIGATION OR ACTIONS.

NO RELIANCE SHOULD BE PLACED ON THE FACT THAT A PARTICULAR LITIGATION CLAIM OR PROJECTED OBJECTION TO A PARTICULAR CLAIM IS OR IS NOT IDENTIFIED IN THIS DISCLOSURE STATEMENT. EXCEPT AS PROVIDED UNDER THE PLAN, THE DEBTORS, THE REORGANIZED DEBTORS, OR THE PLAN ADMINISTRATOR, AS APPLICABLE, MAY SEEK TO INVESTIGATE, FILE, AND PROSECUTE CLAIMS AND CAUSES OF ACTION AND MAY OBJECT TO CLAIMS AFTER CONFIRMATION OR THE EFFECTIVE DATE OF THE PLAN IRRESPECTIVE OF WHETHER THIS DISCLOSURE STATEMENT IDENTIFIES ANY SUCH CLAIMS OR OBJECTIONS TO CLAIMS ON THE TERMS SPECIFIED IN THE PLAN.

THE DEBTORS ARE GENERALLY MAKING THE STATEMENTS AND PROVIDING THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT AS OF THE DATE HEREOF WHERE FEASIBLE, UNLESS OTHERWISE SPECIFICALLY NOTED. ALTHOUGH THE DEBTORS MAY SUBSEQUENTLY UPDATE THE INFORMATION IN THIS DISCLOSURE STATEMENT, THE DEBTORS HAVE NO AFFIRMATIVE DUTY TO DO SO. HOLDERS OF CLAIMS OR INTERESTS REVIEWING THIS DISCLOSURE STATEMENT SHOULD NOT INFER THAT, AT THE TIME OF THEIR REVIEW, THE FACTS SET FORTH HEREIN HAVE NOT CHANGED SINCE THIS DISCLOSURE STATEMENT WAS SENT. INFORMATION CONTAINED HEREIN IS SUBJECT TO COMPLETION, MODIFICATION, OR AMENDMENT. THE DEBTORS RESERVE THE RIGHT TO FILE AN AMENDED OR MODIFIED PLAN AND RELATED DISCLOSURE STATEMENT FROM TIME TO TIME.

THE DEBTORS HAVE NOT AUTHORIZED ANY ENTITY TO GIVE ANY INFORMATION ABOUT OR CONCERNING THE PLAN OTHER THAN THAT WHICH IS CONTAINED IN THIS DISCLOSURE STATEMENT. THE DEBTORS HAVE NOT AUTHORIZED ANY REPRESENTATIONS CONCERNING THE DEBTORS OR THE VALUE OF THEIR PROPERTY OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT.

HOLDERS OF CLAIMS ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN MUST RELY ON THEIR OWN EVALUATION OF THE DEBTORS AND THEIR OWN ANALYSES OF THE TERMS OF THE PLAN IN DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN. IMPORTANTLY, BEFORE DECIDING WHETHER AND HOW TO VOTE ON THE PLAN, EACH HOLDER OF A CLAIM IN A VOTING CLASS SHOULD REVIEW THE PLAN IN ITS ENTIRETY, INCLUDING THE PLAN SUPPLEMENT, AND CONSIDER CAREFULLY ALL OF THE INFORMATION IN THIS DISCLOSURE STATEMENT AND ANY EXHIBITS HERETO.

IF THE PLAN IS CONFIRMED BY THE BANKRUPTCY COURT AND THE EFFECTIVE DATE OCCURS, ALL HOLDERS OF CLAIMS AGAINST OR INTERESTS IN

THE DEBTORS (INCLUDING THOSE HOLDERS OF CLAIMS WHO DO NOT SUBMIT BALLOTS TO ACCEPT OR REJECT THE PLAN, WHO VOTE TO REJECT THE PLAN, OR WHO ARE NOT ENTITLED TO VOTE ON THE PLAN) WILL BE BOUND BY THE TERMS OF THE PLAN AND THE TRANSACTIONS CONTEMPLATED THEREBY.

NOTWITHSTANDING ANY RIGHTS OF APPROVAL PURSUANT TO THE RSA OR OTHERWISE AS TO THE FORM OR SUBSTANCE OF THIS DISCLOSURE STATEMENT, THE PLAN, OR ANY OTHER DOCUMENT RELATING TO THE RESTRUCTURING TRANSACTIONS CONTEMPLATED THEREUNDER, NONE OF THE CONSENTING STAKEHOLDERS OR THEIR RESPECTIVE REPRESENTATIVES, MEMBERS, FINANCIAL OR LEGAL ADVISORS OR AGENTS, HAVE INDEPENDENTLY VERIFIED THE INFORMATION CONTAINED HEREIN OR TAKES ANY RESPONSIBILITY THEREFOR AND NONE OF THE FOREGOING ENTITIES OR PERSONS MAKES ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER CONCERNING THE INFORMATION CONTAINED HEREIN.

THE CONFIRMATION AND EFFECTIVENESS OF THE PLAN ARE SUBJECT TO CERTAIN MATERIAL CONDITIONS PRECEDENT DESCRIBED HEREIN AND SET FORTH IN ARTICLE X.A OF THE PLAN. THERE IS NO ASSURANCE THAT THE PLAN WILL BE CONFIRMED OR, IF CONFIRMED, THAT THE CONDITIONS REQUIRED TO BE SATISFIED FOR THE PLAN TO BECOME EFFECTIVE WILL BE SATISFIED (OR WAIVED).

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EXHIBITS

EXHIBIT A: Joint Chapter 11 Plan of Salem Harbor Power Development LP and Its Debtor Affiliates

EXHIBIT B: Restructuring Support Agreement

EXHIBIT C: Corporate Structure Chart

EXHIBIT D: Valuation Analysis

EXHIBIT E: Liquidation Analysis

EXHIBIT F: Financial Projections

THE DEBTORS HEREBY ADOPT AND INCORPORATE INTO THIS DISCLOSURE STATEMENT EACH EXHIBIT ATTACHED HERETO BY REFERENCE AS THOUGH FULLY SET FORTH HEREIN.

ARTICLE I.
INTRODUCTION

Salem Harbor Power Development LP (f/k/a Footprint Power Salem Harbor Development LP) ("DevCo") and its debtor affiliates (collectively, the "Debtors") submit this Disclosure Statement in connection with the solicitation of votes on the *Joint Chapter 11 Plan of Salem Harbor Power Development LP and Its Debtor Affiliates*, dated April 20, 2022 (the "Plan"), a copy of which is attached hereto as **Exhibit A**. The Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") on March 23, 2022 (the "Petition Date"). The Debtors' chapter 11 cases (the "Chapter 11 Cases") are jointly administered under Case No. 22-10239 (MFW).

The purpose of this Disclosure Statement, including the exhibits annexed hereto, is to provide information of a kind, and in sufficient detail, to enable creditors of the Debtors that are entitled to vote on the Plan to make an informed decision on whether to vote to accept or reject the Plan. This Disclosure Statement contains summaries of the Plan, certain statutory provisions, events contemplated in the Chapter 11 Cases, and certain documents related to the Plan. The votes for acceptance of the Plan are being solicited from holders of Claims in Class 3 (Credit Facility Secured Claims) and Class 4 (General Unsecured Claims).

Prior to the Petition Date, the Debtors and their advisors sought to engage in good faith, arm's-length discussions with their key stakeholders regarding the terms of a fully consensual out-of-court restructuring transaction. While the Debtors sought to reach consensus among all of their key stakeholders, the parties were collectively unable to reach mutually acceptable terms regarding the terms of a consensual restructuring transaction. As a result of these discussions, however, on March 23, 2022, the Debtors, the Consenting Lenders (which hold approximately 94% in amount of the Credit Facility Claims), and the Consenting Equity Parties executed a restructuring support agreement (as amended, modified, restated, or supplemented from time to time, the "RSA"), a copy of which is annexed hereto as **Exhibit B**. Under the terms of the RSA, the Consenting Stakeholders have agreed, subject to the terms and conditions of the RSA, to support the restructuring transactions reflected in the Plan.

By virtue of the RSA, the Debtors commenced the Chapter 11 Cases with a clear path to a confirmable chapter 11 plan. The Plan contemplates implementation of either (a) a standalone restructuring transaction (the "Standalone Restructuring") through which holders of Secured Credit Facility Claims would receive, among other things, 100% of the equity of the Reorganized Debtors on account of their Secured Credit Facility Claims or (b) a sale transaction (the "Sale Transaction") through which all, or substantially all, of the Debtors' assets would be sold and proceeds generated therefrom would be distributed to the Debtors' creditors in accordance with the absolute priority rule. The Plan contemplates a "toggle" structure, whereby the Debtors will pursue consummation of the Standalone Restructuring simultaneously with the Sale Transaction, in consultation with the Consultation Parties (as defined in the Bidding Procedures), to ultimately determine the outcome that would maximize value for the Debtors' estates, and therefore should be consummated (such election between the Standalone Restructuring and the

Sale Transaction, the "Transaction Election").[3] The Debtors will make the Transaction Election in connection with filing the initial Plan Supplement, which the Debtors propose shall be no later than ten (10) days prior to the Voting Deadline. If the Debtors obtain a Successful Bid (as defined in the Bidding Procedures) that the Debtors, in consultation with the Required Consenting Lenders, determine in good faith and in an exercise of their business judgment will maximize value for the Debtors' estates as compared to the Standalone Restructuring, the Debtors will elect to consummate the Sale Transaction. Although the Debtors are currently pursuing and will continue to pursue the Sale Process in earnest, the Standalone Restructuring will serve as a backstop in the event a value-maximizing Sale Transaction does not materialize.

The Plan contemplates the below treatment for certain Classes of Claims and Interests under the Standalone Restructuring. As part of the Standalone Restructuring, the Debtors will issue New Common Equity to holders of Credit Facility Secured Claims and, if necessary, enter into a new first-lien term loan credit facility in the aggregate amount of $[●] and a letter of credit facility whereby each of the Letters of Credit shall either be renewed in its entirety or replaced with a new letter of credit on substantially similar terms to those existing as of the Petition Date such that the Letters of Credit shall continue in full force and effect following the Effective Date (the "Exit Facility").[4]

- Credit Facility Secured Claims. On the Effective Date, each holder of an Allowed Credit Facility Secured Claim will receive its Pro Rata share of (i) one hundred percent (100%) of the New Common Equity and (ii) the loans and obligations incurred by the Reorganized Debtors under the Exit Facility Documents, if applicable.

- General Unsecured Claims. On the Effective Date, each holder of an Allowed General Unsecured Claim will receive (i) solely to the extent such holder votes to accept the Plan, a complete waiver and release of any and all claims, Causes of Action, and other rights against the holders of Allowed General Unsecured Claims based on claims pursuant to chapter 5 of the Bankruptcy Code or under similar or related state or federal statutes and common law including fraudulent transfer laws from the Debtors and their Estates, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other entities who may purport to assert any Cause of Action, directly or derivatively, by, through, for, or because of the foregoing entities (the "General Unsecured Treatment") and (ii) its Pro Rata share of Cash in an amount of $175,000, which is equal to the value of the Debtors' unencumbered assets as of the Petition Date (the "Unencumbered Assets Cash"), subject to the rights of the Prepetition Lenders

[3] Additional information regarding the Sale Process is set forth in the *Debtors' Motion for Entry of an Order (A) Approving Bidding Procedures for the Sale of All or Substantially All of the Debtors' Assets, (B) Scheduling Certain Dates Related Thereto, (C) Approving the Form and Manner of Notice Thereof, (D) Approving Contract Assumption and Assignment Procedures, and (E) Granting Related Relief* [D.I. 69] seeking entry of the order attached as Exhibit A thereto (the "Bidding Procedures Order").

[4] The Debtors intend to disclose the terms of the Exit Facility, if any, prior to the hearing to consider approval of this Disclosure Statement.

and the Prepetition Agent to assert adequate protection claims pursuant to the Cash Collateral Orders.

- Interests in TopCo. On the Effective Date, all Interests in TopCo will be cancelled, released, and extinguished without any distribution.

The Plan also contemplates the below treatment for certain Classes of Claims and Interests under the Sale Transaction:

- Credit Facility Secured Claims. On the Effective Date, each holder of an Allowed Credit Facility Secured Claim will receive its Pro Rata share of the Cash proceeds of the Sale Transaction, less the Unencumbered Assets Cash, available following: (i) satisfaction in full on the Effective Date of the Administrative Claims, Priority Tax Claims, Other Secured Claims, and Other Priority Claims; and (ii) the funding of (a) the Administrative Claim Reserve Account, (b) the Priority Tax Reserve Account, (c) the Professional Fee Escrow Account, and (d) the Wind Down Amount (the "Net Sale Proceeds") until all Allowed Credit Facility Secured Claims are satisfied in full in Cash.[5]

- General Unsecured Claims. On the Effective Date, each holder of an Allowed General Unsecured Claim will receive (i) its Pro Rata share of the Unencumbered Assets Cash, subject to the rights of the Prepetition Agent and the holders of Credit Facility Secured Claims (collectively the "Prepetition Secured Parties") to assert adequate protection claims pursuant to the Cash Collateral Orders, and (ii) solely to the extent the Credit Facility Secured Claims are satisfied in full in Cash on the Effective Date, its Pro Rata share of the Net Sale Proceeds remaining until all Allowed General Unsecured Claims are satisfied in full in Cash.

- Interests in TopCo. On the Effective Date, all Interests in TopCo will be cancelled, released, and extinguished without any distribution.

WHO IS ENTITLED TO VOTE: Under the Bankruptcy Code, only holders of claims or interests in "impaired" classes are entitled to vote on a chapter 11 plan (unless, for reasons discussed in more detail below, such holders are deemed to reject the plan pursuant to section 1126(g) of the Bankruptcy Code). Under section 1124 of the Bankruptcy Code, a class of claims or interests is deemed to be "impaired" under a plan unless: (i) the plan leaves unaltered the legal, equitable, and contractual rights of the holder of such claim or interest; or (ii) notwithstanding any legal right to an accelerated payment of such claim or interest, the plan, among other things, cures all existing defaults (other than defaults resulting from the occurrence of events of bankruptcy) and reinstates the maturity of such claim or interest as it existed before the default.

[5] The portion of the Net Sale Proceeds paid to any Class of Claims shall not exceed the amount required for such Class of Claims to be satisfied in full.

There are two (2) Classes entitled to vote on the Plan whose acceptances thereof are being solicited: (i) holders of Credit Facility Secured Claims (Class 3) and (ii) holders of General Unsecured Claims (Class 4).

THE PLAN PROVIDES THAT HOLDERS OF IMPAIRED CLAIMS WHO ARE ENTITLED TO VOTE ON THE PLAN BUT WHO DO NOT SUBMIT A BALLOT TO ACCEPT OR REJECT THE PLAN OR WHO REJECT THE PLAN BUT DO NOT OPT OUT OF THE RELEASE PROVISIONS OF THE PLAN ARE DEEMED TO HAVE GRANTED THE RELEASES THEREIN. ADDITIONALLY, THE PLAN PROVIDES THAT HOLDERS OF IMPAIRED CLAIMS WHO ARE ENTITLED TO VOTE ON THE PLAN AND WHO VOTE TO ACCEPT THE PLAN ARE DEEMED TO HAVE GRANTED THE RELEASES CONTEMPLATED BY THE RELEASE PROVISIONS OF THE PLAN.

The following table summarizes: (i) the treatment of Claims and Interests under the Plan; (ii) which Classes are Impaired by the Plan; (iii) which Classes are entitled to vote on the Plan; and (iv) the estimated recoveries for holders of Claims and Interests if the Standalone Restructuring is consummated.[6] The Debtors will file, no later than the date the initial Plan Supplement is filed, which the Debtors propose shall be no later than ten (10) days prior to the Voting Deadline, the estimated recoveries for holders of Claims and Interests if the Sale Transaction is consummated and will serve notice thereof on holders of Claims in the Voting Class as promptly as practicable upon filing. The estimated recoveries in a Sale Transaction, if any, will be determined by the Sale Process, which remains ongoing at this time. As set forth above, the Debtors will only make the Transaction Election if the Sale Transaction would maximize value for the Debtors' estates as compared to the Standalone Restructuring. Accordingly, the estimated recoveries for holders of Claims and Interests if the Standalone Restructuring is consummated, which are set forth below, constitute a baseline for any Sale Transaction that the Debtors may seek to consummate in accordance with the Plan. The table is qualified in its entirety by reference to the full text of the Plan. A more detailed summary of the terms and provisions of the Plan is provided in the Summary of the Plan set forth in Article VI of this Disclosure Statement.

Class	Claim or Interest	Treatment	Impaired or Unimpaired	Entitlement to Vote	Approx. Percentage Recovery in Standalone Restructuring[7]
1	Other Secured Claims	Each holder of an Allowed Other Secured Claim shall receive, at the option of the Debtors, the Reorganized Debtors, or the Plan Administrator on behalf of the Wind Down Debtors, as applicable: (i) payment in full in Cash of such	Unimpaired	Not Entitled to Vote (Presumed to Accept)	100%

[6] Under Article III.H of the Plan, any Class of Claims that does not have a Holder of an Allowed Claim as of the date of the Confirmation Hearing shall be 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.

[7] The Debtors intend to disclose the estimated recoveries for holders of Claims in Class 3 (Credit Facility Secured Claims) and Class 4 (General Unsecured Claims) with respect to the Standalone Restructuring prior to the hearing to consider approval of this Disclosure Statement.

Class	Claim or Interest	Treatment	Impaired or Unimpaired	Entitlement to Vote	Approx. Percentage Recovery in Standalone Restructuring[7]
		holder's Allowed Other Secured Claim; (ii) the collateral securing such holder's Allowed Other Secured Claim; (iii) Reinstatement of such holder's Allowed Other Secured Claim; or (iv) such other treatment rendering such holder's Allowed Other Secured Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code.			
2	Other Priority Claims	Each holder of an Allowed Other Priority Claim shall receive payment in full in Cash of such holder's Allowed Other Priority Claim or such other treatment in a manner consistent with section 1129(a)(9) of the Bankruptcy Code.	Unimpaired	Not Entitled to Vote (Presumed to Accept)	100%
3	Credit Facility Secured Claims	Except to the extent the holder of an Allowed Credit Facility Secured Claim agrees to less favorable treatment, each holder of an Allowed Credit Facility Secured Claim shall receive: (i) **if the Standalone Restructuring is consummated**, its Pro Rata share of (a) 100 percent (100%) of the New Common Equity and (b) the Exit Facility Loans, if applicable; or (ii) **if the Sale Transaction is consummated**, its Pro Rata share of the Net Sale Proceeds until all Allowed Credit Facility Secured Claims are satisfied in full in Cash.	Impaired	Entitled to Vote	[TBD]%
4	General Unsecured Claims	Except to the extent the holder of an Allowed General Unsecured Claim agrees to less favorable treatment, each holder of an Allowed General Unsecured Claim shall receive:	Impaired	Entitled to Vote	[TBD]%

Class	Claim or Interest	Treatment	Impaired or Unimpaired	Entitlement to Vote	Approx. Percentage Recovery in Standalone Restructuring[7]
		(i) **if the Standalone Restructuring is consummated**, (a) solely to the extent such holder votes to accept the Plan, the General Unsecured Claims Treatment and (b) its Pro Rata share of the Unencumbered Assets Cash, subject to the rights of the Prepetition Secured Parties to assert adequate protection claims pursuant to the Cash Collateral Orders; or (ii) **if the Sale Transaction is consummated**, (a) its Pro Rata share of the Unencumbered Assets Cash, subject to the rights of the Prepetition Secured Parties to assert adequate protection claims pursuant to the Cash Collateral Orders, and (b) solely to the extent the Credit Facility Secured Claims are satisfied in full in Cash on the Effective Date, its Pro Rata share of the Net Sale Proceeds remaining until all Allowed General Unsecured Claims are satisfied in full in Cash.			
5	Intercompany Claims	On the Effective Date, at the Debtors' election, in consultation with the Required Consenting Lenders, each holder of an Allowed Intercompany Claim shall have its Claim Reinstated or cancelled, released, and extinguished and without any distribution.	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept or Deemed to Reject)	N/A
6	Intercompany Interests	On the Effective Date, at the Debtors' election in consultation with the Required Consenting Lenders, each holder of an Allowed Intercompany Interest shall have its Interest Reinstated in accordance with Article VI.B.9 of the Plan or cancelled, released, and extinguished and without any distribution.	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept or Deemed to Reject)	N/A
7	Interests in TopCo	On the Effective Date, each holder of an Interest in TopCo shall have such Interest cancelled, released, and extinguished and without any distribution.	Impaired	Not Entitled to Vote (Deemed to Reject)	0%

ARTICLE II.
GENERAL BACKGROUND

A. Introduction

The Debtors own and operate a 674 MW natural gas-fired combined-cycle electric power plant (the "Facility") located in Salem, Massachusetts. The Facility, which became operational in 2018, provides an efficient and environmentally responsible replacement to the coal-fired plant that was previously located on the same site. To construct the Facility, DevCo entered into a turnkey, fixed-price, date-certain contract, dated as of December 2, 2014 (the "EPC Contract"), with Iberdrola Energy Projects, Inc. ("IEP"), pursuant to which IEP agreed to construct the Facility for a lump sum price. During the construction of the Facility, a series of disputes arose between DevCo and IEP concerning changes, added costs, delays, and inefficiencies, which ultimately resulted in DevCo's termination of the EPC Contract and the commencement of arbitration proceedings. Following three (3) years of arbitration, the International Centre for Dispute Resolution rendered its final arbitration award on October 15, 2021 (the "Arbitration Award"), awarding approximately $236.4 million, plus interest thereon, to IEP and directing DevCo to pay such amount to IEP. On December 23, 2021, a New York State court entered an order confirming the Arbitration Award. The issuance of the Arbitration Award and entry of the order confirming the Arbitration Award constituted separate events of default under the Debtors' existing secured credit facility (the "Credit Facility").[8]

Prior to the Petition Date, and as a result of the above events, which are more fully described below, the Debtors and their advisors sought to engage in discussions with the Debtors' key stakeholders regarding the terms of a fully consensual out-of-court restructuring transaction. While the Debtors sought to reach consensus among all of their key stakeholders, the parties were collectively unable to reach mutually acceptable terms regarding a consensual restructuring transaction prior to the Petition Date.

B. The Debtors' Organizational Structure

As reflected in the Corporate Structure Chart attached hereto as **Exhibit C**, DevCo and five (5) of its affiliates are Debtors in these Chapter 11 Cases. The Debtors are:

1. **DevCo**: DevCo, a Delaware limited partnership that was formed to develop, own, and operate the Facility, and is the borrower under the Credit Agreement;

2. **DevCo GP**: SH Power DevCo GP LLC ("DevCo GP"), a Delaware limited liability company, that owns 100% of the general partnership interests in DevCo and is a pledgor under the Credit Facility;

[8] On January 24, 2022, a New York state court entered a judgment against DevCo in the amount of $237,105,080.01. On March 23, 2022, prior to the commencement of these Chapter 11 Cases, IEP recorded a judicial lien in the land records with the Southern Essex District Registry of Deeds in Massachusetts with respect to its judgment claim against Debtor DevCo.

3. **FinCo**: Salem Harbor Power FinCo, LP ("FinCo"), a Delaware limited partnership, that owns 100% of the limited partnership interests in DevCo and 100% of the membership interests in DevCo GP, and is a pledgor under the Credit Facility;

4. **FinCo GP**: Salem Harbor Power FinCo GP, LLC ("FinCo GP"), a Delaware limited liability company, that owns 100% of the general partnership interests in FinCo;

5. **TopCo**: Highstar Salem Harbor Power Holdings L.P. ("TopCo"), a Delaware limited partnership, that owns 100% of the limited partnership interests in FinCo and 100% of the membership interests in FinCo GP; and

6. **TopCo GP**: Highstar Salem Harbor Holdings GP, LLC ("TopCo GP"), a Delaware limited liability company, that owns 100% of the general partnership interests in TopCo.

Currently, the same board of managers resides at each of TopCo GP and DevCo GP and is referred to herein as the "Board". The business and affairs of each of TopCo GP and DevCo GP are generally managed by or under the direction of the Board. Each of the other Debtors is managed by its general partner or its sole member, as applicable.

C. Overview of the Debtors' Business

DevCo owns and operates the Facility, a 674 MW natural gas-fired combined-cycle electric power plant located in Salem, Massachusetts. The Facility, located along Salem Harbor, is a more efficient and environmentally responsible replacement of a previous coal-fired power plant located at the same site.

DevCo generates revenue by selling energy, capacity, and ancillary services from the Facility through ISO New England Inc. ("ISO-NE"), the not-for-profit organization that manages New England's electrical grid and its competitive wholesale market. DevCo sells its electricity into the ISO-NE wholesale electricity market through scheduling services offered by its energy manager, EDF Trading North America, LLC ("EDF"). DevCo receives so-called "capacity revenues" pursuant to ISO-NE Forward Capacity Auctions. Capacity revenue consists of payments from ISO-NE in exchange for keeping the Facility available to produce energy (regardless of whether or not energy is actually needed or produced). For the year ended December 31, 2021, DevCo recognized energy revenues of approximately $47.5 million and capacity revenues of approximately $147.7 million.

DevCo's ability to procure competitively-priced natural gas for the Facility is essential for its electrical energy production. DevCo purchases natural gas primarily through EDF, most of which is delivered to the Facility through a pipeline owned and operated by Algonquin Gas Transmission, LLC ("Algonquin") pursuant to a firm transportation service agreement. DevCo also purchases natural gas from other suppliers. As of the Petition Date, the Debtors maintained two letters of credit, the CSA LC described above and the Gas Lateral Letter of Credit (as defined in the Credit Agreement) issued by BNP Paribas in the amount of $41.6 million to support the Debtors' obligations to Algonquin with respect to the firm transportation services agreement.

DevCo's principal assets consist of the real property, including the fixtures and improvements thereon, and the equipment, in each case, comprising the Facility. In addition to its operational contracts, as of the Petition Date, DevCo also has a lease agreement with Philson LP to lease certain warehouse space and loading docks located near the Facility in Salem, Massachusetts, where DevCo stores essential materials and replacement parts utilized in connection with the operation of the Facility.

In connection with its ownership and operation of the Facility, DevCo is a party to that certain Payment In Lieu of Tax Agreement (the "PILOT Agreement"), dated as of December 16, 2014, with the City of Salem, Massachusetts. Pursuant to the PILOT Agreement, the Debtors pay scheduled amounts to the City of Salem on a quarterly basis in lieu of regular real and personal property taxes related to the Facility. The term of the PILOT Agreement runs through June 30, 2032. In 2021, the Debtors paid the City of Salem approximately $5.1 million pursuant to the PILOT Agreement.

In addition to the PILOT Agreement, DevCo is a party to that certain Community Benefits Agreement (the "Community Benefits Agreement"), dated as of December 16, 2014, by and among DevCo, Footprint Power Salem Harbor Real Estate LP, and the City of Salem, Massachusetts. Pursuant to the Community Benefits Agreement, the Debtors make scheduled payments to the City of Salem to support community programs and initiatives, including, among other things, infrastructure improvements, environmental initiatives, and educational programs for local schools. The term of the Community Benefits Agreement runs through June 30, 2032. In 2021, the Debtors paid approximately $335,000 pursuant to the Community Benefits Agreement.

DevCo is the only Debtor with day-to-day business operations. Other than DevCo, each Debtor's assets consist solely of its membership or partnership interests, as applicable, in its subsidiaries.

D. Management and Operation of the Debtors' Business

The Debtors have no employees, and the Facility operates through arm's-length executory contracts with independent third-party service providers, including, without limitation:

1. **AMA**: The Asset Management Agreement dated as of December 14, 2020 (as amended from time to time, the "AMA"), by and among DevCo and Tateswood Energy Company, LLC ("Tateswood"). Management, accounting, operational and financial reporting, and administrative services are provided by Tateswood pursuant to the AMA. Tateswood personnel providing management services to the Debtors are located primarily in Houston, Texas. Pursuant to the AMA, DevCo pays Tateswood a fee of approximately $85,000 per month (escalated annually) for its services.

2. **NAES Agreement**: Day-to-day operations and maintenance services at the Facility are provided by NAES Corporation ("NAES") pursuant to an O&M Services Agreement, dated as of May 12, 2016 (as amended from time to time, the "NAES Agreement"). Pursuant to the NAES Agreement, DevCo pays NAES an annual fee of approximately $325,000 (escalated annually) for its services, as well as

additional amounts on a monthly basis. Such amounts include reimbursement of wages paid by NAES to personnel who manage and operate the Facility on a day-to-day basis. During the year ended December 31, 2021, DevCo paid NAES approximately $7.2 million pursuant to the NAES Agreement (inclusive of the annual fee).

3. **EMA**: EDF Trading North America, LLC ("EDF") provides the Debtors with energy management services pursuant to an Energy Management Agreement dated as of August 22, 2019 (as amended from time to time, the "EMA"), including power management, fuel management, scheduling, capacity management, emission management, and related administrative and reporting services. Pursuant to the EMA, EDF also assists the Debtors in bidding into the ISO-NE capacity markets and developing bid strategies. During the year ended December 31, 2021, DevCo paid EDF approximately $359,000 in fees pursuant to the EMA.

4. **CMA**: DevCo obtains commercial management services from Clone Capital LLC ("Clone Capital") pursuant to a Commercial Management Services Agreement, dated as of December 15, 2020 (as amended from time to time, the "CMA"). DevCo pays a fee of $20,000 per month plus certain reimbursable expenses for such services. Clone Capital's services include contract negotiation and procurement, including in connection with natural gas arrangements, commodity hedging, swaps, and other commercial services that are essential to DevCo's operations. To properly incentivize Clone Capital, success fees may also be earned by Clone Capital under the CMA based on successful execution of certain commercial transactions that increase the Facility's revenue generation and energy margin. Such success fees, if any, are measured and computed following the end of the applicable performance period and paid in arrears.

5. **CSA**: DevCo is party to a Contractual Service Agreement, dated as of January 6, 2015, (as amended from time to time, the "CSA") with General Electric International Inc. ("GE") pursuant to which GE provides major maintenance services, including refurbishment and replacement of parts for the Facility's gas and steam turbine generators and related equipment. During the year ended December 31, 2021, DevCo paid GE approximately $2.8 million pursuant to the CSA. DevCo's obligations under the CSA are secured by a $4.75 million cash collateralized letter of credit (the "CSA LC") issued by the Prepetition Agent for the benefit of GE.

6. **WSA**: DevCo is party to a Water Solutions Agreement dated as of May 16, 2016 (as amended from time to time, the "WSA") with GE Mobile Water, Inc. ("GE Mobile") pursuant to which GE Mobile provides water treatment equipment, operation and maintenance services, including provisioning of labor and materials. DevCo currently pays GE Mobile approximately $28,000 per month (escalating annually) pursuant to the WSA.

E. The Prepetition Credit Agreement

As of the Petition Date, the Debtors had outstanding funded debt obligations in the aggregate principal amount of approximately $290 million under the Credit Facility documented pursuant to that certain Credit Agreement (as amended, supplemented, restated, or otherwise modified from time to time, the "Credit Agreement," and collectively, with any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, amended and restated, supplemented, or otherwise modified prior to the Petition Date, the "Loan Documents"), dated as of January 9, 2015, by and among DevCo, as Borrower, MUFG Union Bank, N.A., as Administrative Agent, Collateral Agent, and Depositary Bank ("MUFG" or the "Prepetition Agent"), the lenders party thereto (collectively, the "Lenders"), and the other parties thereto. The stated maturity date under the Credit Agreement is December 31, 2022.

The Credit Facility originally provided for a $600 million term loan facility (the "Term Loans"), a $120 million letter of credit facility, and a $10 million working capital facility. In December 2019, the Credit Agreement was amended to, among other things, terminate the working capital facility commitment, terminate the letter of credit commitments in excess of $49.92 million, convert the loans thereunder from construction loans to term loans, and waive certain existing events of default (such amendment, the "Term Conversion Amendment").[9] As of the Petition Date, the total outstanding principal amount of the Term Loans (inclusive of capitalized interest) was approximately $290 million. In addition, as of the Petition Date, the aggregate face amount of the Debtors' two undrawn outstanding letters of credit totals $46.35 million (collectively, with the Term Loans and any accrued and unpaid fees, expenses, interest, swap termination payments, and other obligations under the Credit Agreement, the "Secured Obligations").[10]

Pursuant to that certain Security Agreement (as amended, supplemented, restated, or otherwise modified from time to time, the "Security Agreement"), dated as of January 9, 2015, by and among DevCo and the Prepetition Agent, DevCo pledged substantially all of DevCo's assets as collateral under the Credit Facility, and granted the Prepetition Agent a mortgage covering the real property where the Facility is located, including all fixtures and improvements thereon. In addition, pursuant to that certain Pledge Agreement (as amended, supplemented, restated, or otherwise modified from time to time, the "Pledge Agreement"), dated as of January 9, 2015, by and among DevCo, DevCo GP, FinCo, and the Prepetition Agent, as additional collateral supporting the Secured Obligations, (1) DevCo GP pledged its 100% general partnership interest in DevCo as collateral, (2) FinCo pledged its 100% limited partnership interest in DevCo as collateral, and (3) FinCo pledged its 100% membership interest in DevCo GP as collateral.

DevCo is also party to that certain Depositary Agreement (as amended, supplemented, restated, or otherwise modified from time to time, the "Depositary Agreement"), dated as of

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[9] In project finance parlance, this transaction is referred to as a "term conversion." Generally, term conversion of a project finance facility occurs following achievement of substantial completion of a project.

[10] As of the Petition Date, the Debtors maintained two letters of credit, the CSA LC described above and the Gas Lateral Letter of Credit (as defined in the Credit Agreement) issued by BNP Paribas in the amount of $41.6 million to support the Debtors' obligations to Algonquin with respect to a firm transportation services agreement.

January 9, 2015, by and among DevCo and the Prepetition Agent, pursuant to which DevCo is required to maintain substantially all of its bank accounts with MUFG. The Depositary Agreement governs contributions to and withdrawals from such bank accounts, including requiring substantially all of the Debtors' cash receipts to be deposited into specified accounts held at MUFG and subject to the terms of the Depositary Agreement.

The Prepetition Secured Parties' and other parties' rights and remedies with respect to the collateral pledged under the Credit Facility (collectively, the "Credit Facility Collateral") are set forth in that certain Collateral Agency and Intercreditor Agreement (as amended, supplemented, restated, or otherwise modified from time to time, the "Intercreditor Agreement"), dated as January 9, 2015, by and among DevCo, the Prepetition Agent, and the swap representatives party thereto.[11]

Additionally, in connection with the Credit Facility, DevCo is also party to that certain Completion Equity Contribution Agreement (as amended, supplemented, restated, or otherwise modified from time to time, the "CECA"), dated as of November 30, 2018, by and among DevCo, OCM-HighStar Footprint Aggregator LLC ("OCM-Aggregator"), and the Prepetition Agent. OCM-Aggregator is a non-Debtor affiliate that holds 100% of the membership interests in TopCo GP and 100% of the Class A limited partnership interests in TopCo. The equity interests in OCM-Aggregator are indirectly wholly-owned by certain funds that are managed and/or advised by Oaktree Capital Management L.P. Pursuant to the CECA, OCM-Aggregator agreed to provide up to approximately $23 million in equity contributions to DevCo, subject to certain conditions as set forth in the CECA.

F. History and Development of the Facility

DevCo was formed to develop, own, finance, construct, operate, and maintain the Facility. To construct the Facility, DevCo entered into that certain EPC Contract dated as of December 2, 2014, with IEP. The EPC Contract was a turnkey, fixed-price, date-certain contract. Pursuant to the EPC Contract, IEP agreed to construct the Facility and meet a guaranteed substantial completion date of May 31, 2017 for a lump sum price of approximately $702.1 million. In connection with the EPC Contract, a performance letter of credit (the "Performance LC") in the amount of approximately $140.9 million was arranged for by IEP and issued in favor of DevCo.

The acquisition, construction, and development of the Facility was funded by the secured debt financing provided under the Credit Agreement and by over $376 million of equity financing from the Debtors' equity holders. Importantly, in connection with the development of this Facility, the ISO-NE provided the Debtors with a capacity award under the ISO-NE's tariff (the "Capacity Award"), pursuant to which the ISO-NE would pay the Debtors certain rates from June 1, 2017 through and including May 31, 2022 (the "Capacity Award Period") for the Debtors standing ready

[11] As set forth above and in the Plan, the Credit Facility Collateral includes the applicable Debtors' assets, as more fully described in the Credit Agreement and other Financing Documents (as defined therein), including (i) all of DevCo's right, title, and interest in all or substantially all of DevCo's property, including real property, personal property, and fixtures, (ii) all of DevCo GP's interests in DevCo, and (iii) all of FinCo's interests in DevCo and DevCo GP.

to deliver a certain level of capacity to the New England electrical grid when needed during the Capacity Award Period. Specifically, the Facility's 674 MW of capacity cleared ISO-NE's FCA Number 7 at $14.99 per kilowatt-month, escalated annually, for the Capacity Award Period. As of the Petition Date, the current capacity award rate is $18.69 per kilowatt-month. In contrast, the current market capacity rates are approximately $4.63 per kilowatt-month.[12] During the first four years of the Capacity Award Period, the capacity payments thereunder have been materially larger than the energy revenue the Debtors have been able to generate from selling electricity into the ISO-NE wholesale electricity market at prevailing market rates. For example, in 2021, the Debtors generated approximately $147.7 million in revenues from capacity payments and $47.5 million in revenues from electricity sales. Obtaining the Capacity Award was a key incentive for the development of the Facility. In order to remain eligible for the Capacity Award, the Facility was required to be online by no later than May 31, 2017.

During construction of the Facility, numerous disputes arose between DevCo and IEP concerning changes, added costs, delays, and inefficiencies. On April 15, 2018, DevCo terminated the EPC Contract pursuant to and in accordance with its terms. DevCo subsequently entered into a contract with a third-party to complete construction of the Facility on a time-and-materials basis for actual costs and expenses reasonably incurred. The Facility began commercial operations on May 31, 2018.

In connection with the termination of the EPC Contract, DevCo sought to draw down the Performance LC. Before payment was made to DevCo by the issuing bank under the Performance LC, however, IEP commenced arbitration proceedings pursuant to the dispute resolution provisions of the EPC Contract. DevCo's entitlement to draw down the Performance LC was subsequently litigated during the arbitration proceedings. Ultimately, the arbitration panel (the "Arbitration Panel") ruled that DevCo could draw down the Performance LC and, on February 20, 2019, DevCo drew on the Performance LC in the amount of approximately $140.9 million. As required under the terms of the Depositary Agreement, such funds were deposited into an account held by DevCo at MUFG.

G. Initial Events of Default Under the Credit Agreement

The delays in completing construction of the Facility in accordance with the EPC Contract and ensuing arbitration between DevCo and IEP resulted in the occurrence of certain Events of Default (as defined in the Credit Agreement) under the Credit Agreement, and amendments to the Credit Agreement over the course of several years.

First, prior to termination of the EPC Contract, on April 3, 2018, IEP recorded a Notice of Contract with the registry of deeds in Southern Essex County in Massachusetts asserting a mechanic's lien (the "IEP Asserted Lien") in the amount of approximately $327.7 million related

[12] The $4.63 per kilowatt-month figure is based on the clearing price for ISO-NE's FCA Number 12, which covers the period from July 1, 2021 through June 30, 2022. The clearing price for each of ISO-NE's FCA Numbers 13 through 16, which cover the one-year periods from 2022 through 2026, respectively, was between $2.00 per kilowatt-month and $3.98 per kilowatt-month.

to amounts IEP asserted were due from the Debtors to IEP under the EPC Contract.[13] The recording of the IEP Asserted Lien constituted an Event of Default under the Credit Agreement.

In addition, beginning in late 2017 and over the course of 2018, the Prepetition Secured Parties and DevCo entered into a series of amendments to extend deadlines under the Credit Agreement tied to the completion of the Facility. For example, on December 22, 2017, the parties entered into an amendment to extend the original definition of "Date Certain" from December 31, 2017 to April 30, 2018. Absent such amendment, an Event of Default would have occurred under the Credit Agreement due to the failure to achieve term conversion by December 31, 2017. Similarly, on April 30, 2018, the parties entered into an amendment to extend the definition of "Date Certain" from April 30, 2018 to May 31, 2018, which date would be automatically extended to June 30, 2018, subject to the occurrence of certain conditions. Absent such amendment, an Event of Default would have occurred under the Credit Agreement due to the failure to achieve term conversion by April 30, 2018.

In December 2019, in connection with the Term Conversion Amendment, the Prepetition Secured Parties agreed to waive the Event of Default resulting from the IEP Asserted Lien and all other then-existing Events of Default.

Following the Term Conversion Amendment, in 2020, several additional Events of Default occurred under the Credit Agreement. On December 20, 2020, the Prepetition Agent delivered a notice of default to the Debtors related to certain covenant defaults under the Credit Agreement. Thereafter, the Prepetition Agent delivered additional notices of default to the Debtors on June 18, 2021 and October 7, 2021, respectively, related to subsequent covenant defaults that had ripened into Events of Default (the Events of Default not otherwise cured or waived prior to October 7, 2021, the "Initial Events of Default"). Notwithstanding the occurrence of the Initial Events of Default, the Debtors continued to make timely payment to the Prepetition Agent with respect to all accrued interest, amortization amounts, and fees when due under the Credit Agreement. While the Prepetition Agent did not take any immediate action to exercise remedies against the Debtors related to the Initial Events of Default, the Prepetition Agent did expressly reserve, and did not waive, its rights and remedies under the Loan Documents with respect to such Initial Events of Default.

H. IEP Arbitration and Related Litigation

Following termination of the EPC Contract, in April 2018, IEP filed a Notice of Arbitration with the International Centre for Dispute Resolution of the American Arbitration Association of New York (the "Arbitration Panel" and the arbitration, the "IEP Arbitration"). IEP asserted claims for wrongful termination in excess of $574.9 million and also sought to recover the full amount of the Performance LC proceeds from DevCo. DevCo asserted damage claims in excess of $149.7 million against IEP, including liquidated damages of $73 million due to IEP's failure to

[13] The Debtors reserve all rights to challenge what amounts owing to IEP, if any, may properly be within the scope of any mechanic's lien asserted by IEP against the Facility under Massachusetts law.

achieve substantial completion by May 31, 2017, pursuant to the terms of the EPC Contract.[14] While the IEP Arbitration was pending, IEP commenced an action in Massachusetts state court seeking to enforce its mechanic's lien rights (the "Massachusetts Action"). By agreement of the parties, the Massachusetts Action was stayed pending conclusion of the IEP Arbitration.

Arbitration hearings began in January 2021, and on October 15, 2021 the Arbitration Panel rendered the Arbitration Award. The Arbitration Panel found that DevCo lacked sufficient grounds to terminate the EPC Contract and awarded IEP approximately $236.4 million, plus interest thereon.

Immediately following the Arbitration Award, IEP commenced an action in New York state court seeking confirmation of the Arbitration Award (the "Award Confirmation Action"), and sought to lift the stay in the Massachusetts Action (the "Lift Stay Request") and also have the Massachusetts state court confirm the Arbitration Award. Additionally, IEP sought a form of post-judgment relief from the New York state court under N.Y. C.P.L.R. § 5229, specifically a court order restricting DevCo's ability to use its assets and directing certain discovery from DevCo regarding the extent and location of its assets (the "5229 Action"). DevCo opposed IEP's efforts in each of the Award Confirmation Action, the Lift Stay Request, and the 5229 Action, and requested that the New York state court vacate the Arbitration Award on several grounds. On December 23, 2021, the New York state court rendered an order granting IEP's motion to confirm the Arbitration Award, denying DevCo's motion to vacate, and denying the relief requested in the 5229 Action. On January 24, 2022, the New York state court entered a judgment against DevCo in the amount of $237,105,080.01 (the "NY Judgment").[15]

ARTICLE III.
KEY EVENTS LEADING TO COMMENCEMENT OF CHAPTER 11 CASES

A. The October 22 Notice of Default and Acceleration

Following the Arbitration Panel's issuance of the Arbitration Award on October 15, 2021, on October 22, 2021, the Prepetition Agent delivered a Notice of Events of Default, Acceleration, Exercise of Certain Remedies and Reservations of Rights (the "Acceleration Notice") to DevCo. In addition to asserting the occurrence and continuation of numerous Events of Defaults under the Credit Agreement, pursuant to the Acceleration Notice, the Prepetition Agent declared all loans outstanding under the Credit Agreement to be due and payable in full, together with accrued interest and all fees and other obligations of DevCo under the Credit Agreement. The

[14] After offsetting the proceeds of the Performance LC, the net amount of DevCo's asserted claims against IEP was approximately $8.8 million.

[15] In addition to pursuing litigation against the Debtors in multiple forums, IEP also commenced separate state court actions in New York against (i) the Prepetition Secured Parties (the "IEP/Lender Action") and (ii) OCM-Aggregator and certain of its affiliates (the "IEP/OCM-Aggregator Action"). On April 1, 2022, the Supreme Court of the State of New York issued an order in the IEP/OCM-Aggregator Action granting the defendants' motion to dismiss IEP's amended complaint with prejudice against all defendants except Debtors TopCo and TopCo GP (against which the action had been stayed by the automatic stay upon the filing of the Chapter 11 Cases). As of the date hereof, the IEP/Lender Action remains pending and the IEP/OCM-Aggregator Action remains stayed with respect to Debtors TopCo and TopCo GP.

Acceleration Notice also provided that the Prepetition Agent had been directed to exercise certain rights and remedies pursuant to the Intercreditor Agreement and Depositary Agreement.

On the same date, the Prepetition Agent transferred approximately $89.5 million of cash from DevCo's accounts held at MUFG and applied approximately $78.7 million of such amount to pay down outstanding principal on the Term Loans and approximately $10.7 million to pay down accrued interest and fees and to cash collateralize a portion of the Gas Lateral Letter of Credit. Following this cash sweep (the "October Sweep"), DevCo was left with approximately $27.5 million in available cash.

Also on October 22, 2021, the Prepetition Agent delivered a Notice of Acceleration Event to OCM-Aggregator in connection with the CECA, exercising rights afforded to the Prepetition Agent under the Financing Documents (as defined in the Credit Agreement) directing OCM-Aggregator to fund the approximately $23 million of equity contributions contemplated under the CECA for the sole purpose of payment of the Secured Obligations.

Following the Acceleration Notice and the October Sweep, each of the interest rate swap parties terminated their respective swap agreements with DevCo. As of the Petition Date, the Debtors were not party to any outstanding interest rate swap agreements.

B. Retention of Professionals and Entry into Forbearance Agreement

In light of the approximately $337 million[16] of Secured Obligations and the $236.4 million Arbitration Award, the Debtors were confronted with the significant risk of an inability to satisfy their debts. Accordingly, the Debtors determined that it was prudent to engage restructuring advisors to assess all potential strategic alternatives. Shortly before the Prepetition Agent's delivery of the Acceleration Notice, in mid-October 2021, the Debtors retained Paul, Weiss, Rifkind, Wharton & Garrison, LLP ("Paul, Weiss") as restructuring counsel to assist the Debtors in assessing and implementing their strategic alternatives. The Debtors also engaged Houlihan Lokey Capital, Inc. ("Houlihan") as their investment banker. Subsequently, the Debtors engaged Young Conaway Stargatt & Taylor, LLP ("Young Conaway"), as their co-counsel, and AP Services, LLC ("APS" and, collectively with Paul, Weiss, Young Conaway, and Houlihan, the "Advisors"), as their financial advisor. In connection with the Debtors' engagement of APS, Mr. John R. Castellano was appointed as Chief Restructuring Officer of each of the Debtors on December 10, 2021.

Immediately following the delivery of the Acceleration Notice and the October Sweep, the Debtors and the Advisors engaged in negotiations with the Prepetition Agent, on behalf of the Prepetition Secured Parties, seeking a forbearance agreement with respect to the Prepetition Agent's exercise of any further remedies against the Debtors. These constructive negotiations ultimately led to the execution of (1) that certain Forbearance Agreement (as amended, modified, or otherwise supplemented from time to time, the "Forbearance Agreement"), dated as of November 4, 2021, by and among certain Debtors and the Prepetition Secured Parties, and (2) that certain letter agreement by and among certain Debtors, OCM-Aggregator, and the Prepetition

[16] Figure includes aggregate principal amount of outstanding Term Loans and undrawn letters of credit as of the Petition Date.

Agent, dated as of November 4, 2021, providing for a forbearance by the Prepetition Agent from further exercising remedies to collect any amount from OCM-Aggregator related to the CECA.

Pursuant to the Forbearance Agreement, the Prepetition Secured Parties agreed to forbear from exercising any rights of remedies with respect to specified events of default. In return, DevCo agreed, among other things, to (1) deliver cash flow forecasts, budget variance reporting, and certain related reporting obligations to the Prepetition Secured Parties, (2) hold weekly calls with the Prepetition Secured Parties, (3) facilitate ongoing diligence by the Prepetition Agent's financial advisor, and (4) develop a go-forward business plan. The purpose of the forbearance and the delivery of the materials above to the Prepetition Secured Parties was to allow the Debtors and Prepetition Secured Parties breathing room to assess and develop a comprehensive solution to address the Debtors' outstanding indebtedness and maximize value for the benefit of all the Debtors' stakeholders.

The Forbearance Agreement contemplated an initial forbearance period through December 10, 2021, with automatic additional 30-day extensions thereafter, subject to the Prepetition Agent's termination rights. Among other events, the Prepetition Agent could terminate the Forbearance Agreement to the extent IEP obtained the ability to enforce the Arbitration Award against the Debtors' assets.

C. Appointment of the Special Committee

As the Debtors' focus turned toward evaluating potential strategic alternatives, the Board determined that it was appropriate and in the Debtors' best interests to appoint two independent and disinterested directors and for an independent special committee of the Board to be formed to evaluate paths forward to maximize the value of the Debtors' business. On November 11, 2021, the Board formed mirror special committees at each of TopCo GP and DevCo GP, comprised of two independent and disinterested Board members with significant restructuring experience, Messrs. D. Jan Baker and William Transier.

Pursuant to the Board's resolutions establishing the Special Committee (the "Special Committee Resolutions"), approved on November 11, 2021, the Special Committee was vested with the power and authority of the Board to, among other things: (1) plan for and evaluate potential strategic alternatives and contingency planning, which may include a potential sale, the refinancing of the Debtors' existing indebtedness, a restructuring and/or a reorganization of the Debtors' indebtedness (the "Restructuring Matters"); and (2) make recommendations to the Board regarding what actions should be taken with respect to any Restructuring Matters. Additionally, the Special Committee Resolutions vested the Special Committee with the full and exclusive power and authority of the Board to: (1) oversee, and engage professionals to undertake, an independent investigation of any potential claims and causes of action the Debtors may have against their insiders (collectively, the "Potential Causes of Action"); and (2) determine what actions, if any, should be taken on account of any such Potential Causes of Action.

Subsequently, on March 17, 2022, pursuant to a written consent, the Board delegated to the Special Committee the full and exclusive authority to consider, negotiate, approve, authorize, and act upon any conflict matter, including any Restructuring Matters that the Special Committee determines to constitute conflict matters.

D. Special Committee Investigation

As discussed above, the Board delegated full authority to the Special Committee to assess and investigate any Potential Causes of Action. Accordingly, while the Debtors pursued their strategic alternatives, the Special Committee also undertook an independent investigation of any Potential Causes of Action (the "Investigation").

The Special Committee interviewed Young Conaway to determine its experience and approach in conducting investigations in similar situations, both in and out of court, and to confirm Young Conaway's availability and available resources to undertake the Investigation. After interviewing Young Conaway, the Special Committee met and determined that, because of Young Conaway's experience in such matters, and its ability to commit a dedicated team to the Investigation in an efficient and thorough manner, it would be in the best interests of the Debtors to retain Young Conaway to assist and advise the Special Committee in connection with the Investigation and to undertake a thorough review of any Potential Causes of Action. The Special Committee retained Young Conaway as its counsel on November 23, 2021 and began the Investigation immediately thereafter. On February 24, 2022, the Special Committee, together with its counsel, met with the Board and summarized the Special Committee's inquiry and conclusions.

E. Prepetition Engagement with IEP

Recognizing that any fully-consensual solution to address the Debtors' outstanding indebtedness on an out-of-court basis would require the engagement and participation of IEP, the Debtors and the Advisors sought to develop a framework that would facilitate constructive engagement by and among the Debtors, the Prepetition Secured Parties, and IEP. From the Debtors' perspective, a key first step in developing this framework was pausing the ongoing litigation with IEP.

Accordingly, on November 12, 2021, at the Board's direction, the Advisors engaged with IEP's counsel to propose that the parties enter into a standstill with respect to the Lift Stay Request and the 5229 Action, as well as agree that if the Arbitration Award were confirmed by the New York state court, IEP may take action to perfect the IEP Asserted Lien, but would not take actions during the term of the standstill to enforce or collect on any judgment against the Debtors or the Facility. Paul, Weiss circulated an initial draft standstill agreement to IEP's counsel on November 16, 2021. Such standstill was contemplated to be coterminous with the Prepetition Secured Parties' Forbearance Agreement. In exchange for IEP's agreement to such a standstill, the Debtors would agree not to engage in any material asset sales or transactions outside of the ordinary course of business, and the Debtors would provide IEP with the same information and access that the Debtors agreed to provide to the Prepetition Secured Parties pursuant to the Forbearance Agreement. This framework was meant to maintain the status quo and put the Debtors, the Prepetition Secured Parties, and IEP on the same informational footing so that the parties could engage on an informed basis around a potential consensual restructuring transaction. Importantly, to the extent such engagement proved unproductive, all parties' rights were to be preserved.

Unfortunately, through November and December 2021, IEP continued to pursue its litigation strategy in multiple forums. As noted above, the rendering of the Award Confirmation

Order on December 23, 2021 constituted a termination event under the Forbearance Agreement (the "Forbearance Termination Event"). Following entry of the Award Confirmation Order, the Debtors continued to attempt to negotiate a standstill agreement with IEP. The Debtors also immediately entered into negotiations with the Prepetition Secured Parties with respect to a waiver of the Forbearance Termination Event. The Prepetition Secured Parties ultimately agreed to waive the Forbearance Termination Event through the earlier of (1) the time at which a form of judgment related to the Award Confirmation Order was submitted to the New York state court and (2) January 3, 2022, *i.e.*, the deadline under the Award Confirmation Order to submit a form of judgment to the New York state court as it may be extended from time to time (the "Form of Judgment Deadline"). The Prepetition Secured Parties also agreed to further extend such limited waiver of the Forbearance Termination Event through January 18, 2022 to the extent the Debtors and IEP entered into a standstill agreement on or prior to the earlier of (1) the time at which a form of judgment related to the Award Confirmation Order was submitted to the New York state court and (2) the Form of Judgment Deadline.

On December 30, 2021, IEP and the Debtors agreed to extend the Form of Judgment Deadline from January 3, 2022 to January 13, 2022. In connection with such extension, the Debtors agreed to provide IEP with certain information about their business even in the absence of a standstill agreement with IEP, subject only to entry into a confidentiality agreement. The parties executed the confidentiality agreement on January 5, 2022 and the Debtors promptly provided IEP with the requested information, which included, among other things, financial statements, operating reports, financial projections, and documents related to the Debtors' Credit Facility. On January 12, 2021, IEP and the Debtors agreed to further extend the Form of Judgment Deadline from January 13, 2022 to January 18, 2022.

On January 18, 2022, the Debtors entered into (1) that certain Standstill and Coordination Agreement (the "Standstill Agreement") with IEP and (2) an amendment to the Forbearance Agreement with the Prepetition Secured Parties. The Standstill Agreement and the Forbearance Agreement, as amended, were structured to be coterminous and contemplated a standstill period (the "Standstill Period") under the Standstill Agreement and a Forbearance Period under the Forbearance Agreement through February 21, 2022, with automatic additional 30-day extensions thereafter, subject to IEP's termination rights under the Standstill Agreement and the Prepetition Agent's termination rights under the Forbearance Agreement.

Pursuant to the Standstill Agreement, among other things, IEP and the Debtors submitted a form of judgment on January 18, 2022, and agreed not to appeal the Award Confirmation Order or the NY Judgment. The Debtors also agreed (1) to allow the Massachusetts Action to proceed to determine the value of any mechanic's lien IEP may hold over the Facility, (2) not to oppose or otherwise interfere with IEP pursuing registration of the NY Judgment in Massachusetts to obtain a judgment lien on the Debtors' property located in Massachusetts, and (3) to permit IEP to perfect any such mechanic's lien or judgment lien, provided that IEP refrain from levying on or enforcing any such lien against the Debtors' property during the Standstill Period. In addition, similar to the information reporting provided to the Prepetition Secured Parties pursuant to the Forbearance Agreement, the Debtors agreed to: (1) deliver cash flow forecasts, budget variance reporting, and other reports to IEP, (2) hold bi-weekly calls with IEP, and (iii) otherwise facilitate diligence by IEP and its advisors.

In addition, pursuant to the Standstill Agreement, IEP agreed, to the extent it obtained a lien (or purported to obtain a lien) on any of the Debtors' property, including Cash Collateral, not to object to, oppose, or seek to modify the Debtors' use of Cash Collateral, in its purported capacity as a secured creditor, if such use is otherwise consented to by the Required Lenders (as defined in the Credit Agreement) or object to, oppose, or seek to modify the adequate protection provided in connection therewith to the Prepetition Secured Parties or IEP as set forth in the Standstill Agreement and the Interim Cash Collateral Order, in each case, consistent with the priority attributable to the IEP Lien as compared to the Prepetition First Priority Liens; *provided* that, notwithstanding the foregoing, nothing in the Standstill Agreement limited or otherwise prevented IEP, solely in any unsecured creditor capacity, from objecting to or otherwise contesting any aspect of the Debtors' use of Cash Collateral in this Chapter 11 Case, or limited or prevented IEP, in any capacity, from contesting the validity or priority of any claims, liens or security interests maintained by the Prepetition Agents for the benefit of the Prepetition Secured Lenders, other than as provided as adequate protection as set forth therein (collectively, the "IEP Adequate Protection Provisions").

Prior to and following entry into the Standstill Agreement, the Debtors and the Advisors made numerous attempts to engage IEP and its advisors in discussions regarding potential structures for a consensual resolution of IEP's claims against the Debtors. In addition to providing financial information, responding to IEP's diligence requests, and otherwise keeping IEP apprised of developments in the Debtors' ongoing business operations and a potential marketing and sale process for the sale of all or substantially all of the Debtors' assets, the Debtors and the Advisors proposed several potential transaction structures to IEP and its advisors beginning in January 2022. The Debtors, including the Special Committee, and the Advisors made repeated attempts to engage IEP and its advisors in substantive discussions regarding the terms of a potential restructuring transaction throughout January, February, and into March 2022. During this time, the Advisors also attempted to facilitate discussions among the Prepetition Secured Parties and their advisors and IEP and its advisors.

Notwithstanding the Debtors' and the Advisors' diligent efforts over the preceding months, on March 18, 2022, IEP delivered a termination notice to the Debtors, notifying the Debtors that IEP was electing to terminate the Standstill Agreement effective March 23, 2022. Because the Forbearance Agreement and Standstill Agreement were structured to be coterminous, as a result of IEP's election, the Forbearance Agreement would also terminate on March 23, 2022.

The Debtors recognized that without any engagement or support from IEP around a consensual restructuring framework, and with the specter of a judgment enforcement, foreclosure, or other imminent adverse action, the protection of chapter 11 would be necessary. As such, the Debtors, in consultation with the Advisors, determined that commencing the Chapter 11 Cases was in the best interests of the Debtors and all stakeholders.

F. Negotiations Regarding RSA and Use of Cash Collateral

In addition to the discussions regarding a potential fully consensual out-of-court restructuring transaction described above, the Debtors simultaneously engaged in discussions with the Prepetition Secured Parties regarding the consensual use of cash collateral to fund an in-court restructuring process in the event a consensual out-of-court solution could not be reached. Over

time, such discussions expanded to include the terms of a potential pre-arranged chapter 11 plan, which were ultimately memorialized in the RSA. As negotiations progressed on the RSA, the Debtors also engaged with certain holders of equity interests in the Debtors regarding their willingness to support such a pre-arranged chapter 11 plan. Such discussions ultimately resulted in execution of the RSA on March 23, 2022 by the Debtors and the Consenting Stakeholders.

The Debtors had been having and resumed discussions regarding consensual access to cash collateral with the Prepetition Secured Parties because they viewed access to cash collateral as critical to any in-court process. Without access to cash collateral, the Debtors would not have the means to continue operating the Facility or to fund the administrative costs of the Chapter 11 Cases.

The Debtors and the Prepetition Secured Parties exchanged numerous term sheets regarding the consensual use of cash collateral, and engaged in extensive, good faith, arm's-length negotiations around a workable and reasonable adequate protection package that would provide the Prepetition Secured Parties the protections they believed necessary, while also providing the Debtors the means to (1) continue generating revenues by operating the Facility, (2) fund the administrative costs of the Chapter 11 Cases, and (3) pursue a comprehensive restructuring transaction. These negotiations culminated in the form of cash collateral order entered by the Bankruptcy Court on an interim basis on March 25, 2022 and on a final basis on April [●], 2022 [D.I. 54, [●]] (together, the "Cash Collateral Orders").

On March 23, 2022, prior to the commencement of these Chapter 11 Cases, IEP recorded a judicial lien in the land records with the Southern Essex District Registry of Deeds in Massachusetts with respect to its judgment claim against Debtor DevCo (the "IEP Lien" and the property subject to such lien, the "IEP Prepetition Collateral"). As discussed above, IEP and the Debtors agreed to the IEP Adequate Protection Provisions, which agreements and provisions survive the termination of the Standstill Agreement. Accordingly, consistent with the terms of the Standstill Agreement, the Cash Collateral Orders provide IEP with adequate protection consistent with the Standstill Agreement. Pursuant to the Standstill Agreement, all parties' rights are reserved to contest the validity or priority of such adequate protection or the validity or priority of any liens and security interests maintained by IEP.

The IEP Lien recordation constitutes an involuntary transfer of an interest in property of the Debtors within ninety (90) days prior to the Petition Date, which the Debtors believe may be avoidable as a preference under section 547(b) of the Bankruptcy Code. Accordingly, for that reason, and alternatively, because the IEP Claims are entirely undersecured, the IEP Claims are classified within Class 4 (General Unsecured Claims) under the Plan. The Debtors will seek to engage with IEP on a consensual basis regarding the avoidability of the IEP Lien and the classification of the IEP Claims under the Plan or otherwise pursue alternatives, including, but not limited to, the commencement of an adversary proceeding against IEP to avoid the IEP Lien as a preferential transfer pursuant to section 547(b) of the Bankruptcy Code. The Plan also expressly reserves the Debtors' rights under section 502(d) of the Bankruptcy Code with respect to any distributions to IEP.

As set forth more fully in the Cash Collateral Orders, the Prepetition Secured Parties agreed to the Debtors' consensual use of cash collateral in compliance with an approved initial budget

(the "Budget"). The Debtors' consensual use of cash collateral in accordance with the approved Budget provides the Debtors sufficient means to continue operations, pursue and implement a value-maximizing restructuring transaction pursuant to the Plan, and fund the administrative costs of the Chapter 11 Cases.

G. Marketing and Sale Process

Prior to the Petition Date, on or about March 7, 2022, the Debtors, with the assistance of Houlihan, formally commenced a marketing process to sell all or substantially all of the Debtors' assets (the "Assets"). Prior to the Petition Date, Houlihan reached out to 100 potential acquiring parties to solicit initial non-binding indications of interest. In accordance with the RSA, the Debtors have continued the marketing process on a postpetition basis and are currently soliciting binding bids for the Debtors' Assets (such prepetition and postpetition process, the "Sale Process"). In connection therewith, on March 31, 2022, the Debtors filed a motion [D.I. 69] (the "Bidding Procedures Motion") seeking approval of certain bidding procedures (the "Bidding Procedures"). On April 20, 2022, the Bankruptcy Court entered an order approving the Bidding Procedures [D.I. 127].

The Bidding Procedures are designed to promote a competitive and expedient bidding process and are intended to generate the greatest level of interest in the Debtors' Assets. The Bidding Procedures are also intended to provide the Debtors with flexibility to solicit proposals, negotiate transactions, provide stalking horse protections (if necessary and appropriate), hold an auction (if necessary and appropriate), and consummate a Sale Transaction pursuant to the Plan for the highest or best value, all while protecting the due process rights of all interested parties and ensuring that there is a full and fair opportunity to review and consider proposed transactions.

H. Termination of Trademark License

Prior to the Petition Date, the Debtors used the words "Footprint Power" and its associated logo in their names pursuant to a license (the "License") granted by the trademark owner Footprint Power Holdings, LLC (the "Trademark Licensor").[17] However, shortly prior to the commencement of these Chapter 11 Cases, the Trademark Licensor terminated the License in accordance with the governing agreement. Accordingly, to avoid and/or mitigate any claims the Licensor may assert against the estates, the Debtors determined to no longer utilize the "Footprint" logo. The Debtors were unable to complete the name change process prior to the Petition Date. Following termination of the License by the Trademark Licensor, the Debtors informed the Trademark Licensor that the Debtors would be commencing the chapter 11 cases under their current names to avoid potential confusion from third parties that deal with the Debtors in the ordinary course of business and to mitigate any harm resulting to the Debtors' estates. In order to avoid wasteful first-day litigation before the Bankruptcy Court that the Trademark Licensor might have otherwise commenced to enjoin any alleged postpetition infringement, the Debtors consulted

[17] The Trademark Licensor is not an affiliate (as such term is defined in section 101(2) of the Bankruptcy Code) of the Debtors and is not under common control of the Debtors. The Debtors neither control nor have a basis to contest the Trademark Licensor's termination of the License.

with the Trademark Licensor and assured it that the Debtors would take the necessary steps to change the Debtors' names as soon as practicable.

On the Petition Date, the Debtors filed a motion with the Bankruptcy Court requesting, among other things, authority to change each of the Debtor's names to eliminate references to "Footprint" and "Footprint Power," consistent with the chart set forth below (collectively, the "Name Changes"), and approval of a case caption reflecting the Name Changes [D.I. 2] (the "Joint Administration Motion"). On March 25, 2022, the Bankruptcy Court entered an order approving the Joint Administration Motion [D.I. 45] and, shortly thereafter, each Debtor filed a Certificate of Amendment with the Secretary of State of the State of Delaware formally changing its name.

Debtor Names as of Petition Date	Current Debtor Names
Footprint Power Salem Harbor Development LP	Salem Harbor Power Development LP
Highstar Footprint Holdings GP, LLC	Highstar Salem Harbor Holdings GP, LLC
Highstar Footprint Power Holdings L.P.	Highstar Salem Harbor Power Holdings L.P.
Footprint Power Salem Harbor FinCo GP, LLC	Salem Harbor Power FinCo GP, LLC
Footprint Power Salem Harbor FinCo, LP	Salem Harbor Power FinCo, LP
Footprint Power SH DevCo GP LLC	SH Power DevCo GP LLC

I. Federal Energy Regulation Commission

In October 2017, the Office of Enforcement (the "OE") of the Federal Energy Regulatory Commission ("FERC") commenced a non-public investigation into the Facility's participation in the Forward Capacity Market operated by ISO-NE.

On August 27, 2020, the OE presented its preliminary findings to DevCo regarding its investigation. Among other things, the OE alleged that DevCo violated the ISO-NE Transmission, Markets, and Services Tariff ("Tariff") and FERC's Market Behavior Rules due to its alleged failure to provide accurate and complete critical path schedule updates to ISO-NE. The OE's preliminary findings alleged that the Facility's critical path schedule updates did not include all information relevant to ISO-NE's evaluation of the feasibility of the Facility and its ability to meet the May 31, 2017 commercial operation date (the "COD"). The OE also alleged that the Facility engaged in a fraudulent scheme to deceive ISO-NE and the market into believing that the Facility would meet the COD and to ensure that the Facility would receive the Capacity Award. The OE further alleged that this "scheme" violated FERC's Anti-Manipulation Rule.

On February 8, 2021, DevCo provided a comprehensive response to the OE, which rebutted each of the OE's preliminary findings. Among other things, DevCo argued that its actions, decisions, communications, and notifications concerning the development of the Facility were at all times compliant with the FERC's regulations and applicable ISO-NE Tariff provisions.

In November 2021, the OE notified DevCo that the OE has received authority from FERC to enter into settlement discussions with DevCo in an effort to resolve the investigation. FERC has not issued a show cause order against DevCo. Discussions with the OE regarding a potential settlement remain ongoing at this time.

DevCo fully contests all allegations raised by the OE against DevCo and has reserved all rights to formally contest those allegations in litigation, if necessary.

ARTICLE IV.
THE CHAPTER 11 CASES

A. Commencement of the Chapter 11 Cases

The Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on March 23, 2022. The filing of the petitions commenced the Chapter 11 Cases, at which time the Debtors were afforded the protections of and became subject to the limitations of the Bankruptcy Code. Since the Petition Date, the Debtors have continued to operate their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. First Day Motions

On the Petition Date, the Debtors filed several motions requesting that the Bankruptcy Court grant various relief designed to ensure a seamless transition between the Debtors' prepetition and postpetition business operations, facilitate a smooth reorganization through the Chapter 11 Cases, and minimize any disruptions to the Debtors' operations (the "First Day Motions"). The Bankruptcy Court granted all of the First Day Motions. The following is a brief overview of the granted relief:[18]

1. **Joint Administration.** The Debtors sought, and the Bankruptcy Court granted, an order (i) approving the joint administration of these Chapter 11 Cases for procedural purposes only, (ii) authorizing each of the Debtors to change its name in accordance with the Name Changes, and (iii) approving a case caption reflecting the Name Changes.

2. **Utilities.** The Debtors rely upon certain utility services to operate their business. In order to ensure minimal disruption to the Debtors' business operations, the Debtors sought, and the Bankruptcy Court granted, interim and final orders (i) prohibiting the Debtors' utility service providers from altering, refusing, or discontinuing utility service on account of unpaid prepetition invoices, (ii) deeming the Debtors' utility service providers to be adequately assured of future payment, and (iii) establishing procedures for determining additional adequate assurance of future payment to the utility service providers.

3. **Taxes.** In the ordinary course of business, the Debtors incur certain taxes and fees payable to various federal, state, and local taxing authorities. In order to ensure continued good standing with such authorities, the Debtors sought, and the Bankruptcy Court granted, interim and final orders authorizing payment of such taxes in fees, including prepetition obligations that arose in the ordinary course of business.

[18] This Disclosure Statement's summary of the First Day Motions and related orders is qualified in its entirety by reference to First Day Motions and related orders themselves. In the case of any inconsistency between this Disclosure Statement and the First Day Motions and related orders, the First Day Motions and related orders shall govern.

4. **Cash Management.** In accordance with the Depositary Agreement, the Debtors maintain an integrated cash management and disbursement system in the ordinary course of their operations. In order to avoid unnecessary disruption, the Debtors sought, and the Bankruptcy Court granted, interim and final orders (i) authorizing the use of this system and (ii) granting administrative priority to postpetition intercompany claims.

5. **Cash Collateral.** In order to ensure that the Debtors have the means to continue operating the Facility and to fund the administrative costs of the Chapter 11 Cases, the Debtors sought, and the Bankruptcy Court granted, interim [and final] orders authorizing the Debtors' use of cash collateral on a consensual basis.

C. Other First Day Motions and Applications

The Debtors also filed certain procedural First Day Motions and applications, including (1) the Joint Administration Motion described in Article IV.B.1 above, (2) a motion seeking authority to file a consolidated list of the Debtors' thirty (30) largest unsecured creditors and consolidated creditor matrix, and (3) an application to retain Kroll Restructuring Administration LLC (f/k/a Prime Clerk LLC) as claims and noticing agent. The relief requested in each of these motions or applications, as applicable, was granted by the Bankruptcy Court.

D. Bar Date Motion

On March 31, 2022, the Debtors filed a motion [D.I. 66] to establish bar dates for holders of Claims to file such Claims against the Debtors (the "Bar Date Motion"). Pursuant to the Bar Date Motion, the Debtors seek to establish (1) a date that shall be no earlier than the first business day that is at least thirty (30) days after the date on which the Debtors actually serve the bar date notice and Proof of Claim form (the "Service Date") at 4:00 p.m. (prevailing Eastern Time), as the deadline for all non-governmental units (as defined in section 101(27) of the Bankruptcy Code) to file Proofs of Claim in the Chapter 11 Cases (the "General Bar Date"); (2) September 19, 2022, at 4:00 p.m., prevailing Eastern Time, as the deadline for all governmental units (as defined in section 101(27) of the Bankruptcy Code) to file Proofs of Claim in the Chapter 11 Cases; (3) except where a claim has been included in the Debtors' schedules of assets and liabilities and statements of financial affairs (collectively, the "Schedules") as disputed, contingent, or unliquidated, the later of (i) the applicable Bar Date or (ii) 4:00 p.m. (prevailing Eastern time) on the date that is twenty-one (21) days after service of a notice on an affected claimant of an amendment or supplement to the Schedules that is filed after the Service Date and that (a) changes the amount, nature or characterization of such claimant's claim, or (b) adds a new claim with respect to such claimant to the Schedules, as the deadline for filing a Proof of Claim with respect to such amended claim; and (4) except as otherwise set forth in any order authorizing rejection of an Executory Contract or Unexpired Lease, the later of (i) the General Bar Date or (ii) thirty (30) days after the later of (a) the date of service of a Bankruptcy Court order authorizing such rejection or (b) the effective date of such rejection, as the deadline by which a Proof of Claim relating to the Debtors' rejection of such contract or lease must be filed. The Bankruptcy Court granted the Bar Date Motion on April 19, 2022 [D.I. 120].

E. Other Second Day Motions and Applications

In addition to the Bar Date Motion and the Bidding Procedures Motion described above, the Debtors also filed certain second day motions and applications seeking, among other things, (1) the retention of the Debtors' professionals [D.I. 59–64], (2) the establishment of certain interim compensation and reimbursement procedures with respect to the Debtors' professionals [D.I. 67], and (3) a brief extension of the time to file the Debtors' Schedules of Assets and Liabilities and Statements of Financial Affairs [D.I. 68]. The Debtors also filed a motion requesting authority to continue to maintain and administer their prepetition insurance policies and pay or honor certain obligations arising thereunder [D.I. 65]. The Bankruptcy Court granted these motions on April 19, 2022 [D.I. 114–119, 121–123].

F. Schedules and Statements

The Debtors filed their Schedules of Assets and Liabilities and Statements of Financial Affairs on April 15, 2022.

G. Official Committee of Unsecured Creditors

On April 5, 2022, the Office of the U.S. Trustee filed a notice [D.I. 71] indicating that an official committee of unsecured creditors would not be appointed at that time. As of the date hereof, an official committee of unsecured creditors has not been appointed in these Chapter 11 Cases.

ARTICLE V.
RESTRUCTURING SUPPORT AGREEMENT[19]

On March 23, 2022, prior to the commencement of these Chapter 11 Cases, the Debtors, the Consenting Lenders, and the Consenting Equity Parties entered into the RSA attached hereto as **Exhibit B**. The RSA sets forth the material terms of the Plan and, by virtue of the RSA, the Consenting Stakeholders agreed to support the Restructuring Transactions set forth in the Plan. As a result of the Debtors' extensive prepetition efforts to engage their key constituencies, which culminated in the execution of the RSA, the Debtors believe they have taken a significant step that provides the Debtors a defined path to exit chapter 11.

Consistent with the Plan, the RSA contemplates that the Debtors will pursue consummation of the Standalone Restructuring in parallel with the Sale Transaction (if any) to ultimately determine the outcome that would maximize value for the Debtors' estates, and therefore should be consummated. In furtherance of the proposed "toggle" structure, the RSA contemplates the continuation of the Sale Process on a postpetition basis in accordance with the Bidding Procedures. In addition, the RSA provides that the Debtors and the Consenting Lenders will (a) negotiate in good faith regarding the sizing and terms of the Exit Facility, if any, that would be entered into if the Standalone Restructuring is consummated, and (b) agree upon the sizing of the Exit Facility,

[19] The following summary is provided for illustrative purposes only and is qualified in its entirety by reference to the RSA. In the event of any inconsistency between this summary and the RSA, the RSA will control in all respects.

if any, by no later than forty-five (45) days after the Petition Date. Consistent with the RSA, the Debtors will file an updated Plan and Disclosure Statement setting forth the sizing of the Exit Facility, if any, following that determination.

Pursuant to the RSA, the Debtors agreed to implement the Restructuring Transactions in accordance with the following milestones (the "Milestones"):[20]

- No later than March 23, 2022 at 11:59 p.m. (prevailing Eastern Time), the Petition Date shall occur.
- No later than three (3) business days following the Petition Date, the Bankruptcy Court shall have entered the Interim Cash Collateral Order.
- No later than nine (9) days following the Petition Date, the Debtors shall have filed the Bidding Procedures Motion.
- No later than twenty-eight (28) days following the Petition Date, the Debtors shall have filed the Plan, this Disclosure Statement, and a motion seeking approval of the Debtors' solicitation materials.
- No later than thirty (30) days following the Petition Date, the Bankruptcy Court shall have entered the Final Cash Collateral Order.
- No later than thirty (30) days following the Petition Date, the Bankruptcy Court shall have entered the Bidding Procedures Order.
- No later than seventy (70) days following the Petition Date, the Bankruptcy Court shall have entered an order approving this disclosure statement and the Debtors' solicitation materials.
- No later than fourteen (14) days prior to the Confirmation Hearing, the Debtors shall make the Transaction Election.
- No later than 112 days following the Petition Date, the Bankruptcy Court shall have entered the Confirmation Order.
- No later than 150 days following the Petition Date, the Effective Date shall have occurred; *provided, however*, to the extent additional time is required for obtaining approval from the Federal Energy Regulatory Commission, this Milestone shall be automatically extended to no later than 185 days following the Petition Date.

[20] Following the Petition Date, certain of the Milestones were modified in accordance with the terms of the RSA, which modifications are reflected herein.

ARTICLE VI.
SUMMARY OF PLAN

THE FOLLOWING SUMMARIZES CERTAIN OF THE SIGNIFICANT ELEMENTS OF THE PLAN. THIS DISCLOSURE STATEMENT IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE MORE DETAILED INFORMATION SET FORTH IN THE PLAN. IN THE CASE OF ANY INCONSISTENCY BETWEEN THIS DISCLOSURE STATEMENT AND THE PLAN, THE PLAN SHALL GOVERN IN ALL RESPECTS.

A. Administrative Claims and Priority Tax Claims

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, including 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 **Error! Reference source not found.** of the Plan.

1. Administrative Claims

Unless otherwise agreed to by the holder of an Allowed Administrative Claim and the Debtors, the Reorganized Debtors, or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, to the extent an Allowed Administrative Claim has not already been paid in full or otherwise satisfied during the Chapter 11 Cases, each holder of an Allowed Administrative Claim (other than holders of Professional Fee Claims, Claims subject to subject to 11 U.S.C. § 503(b)(1)(D), 11 U.S.C. § 503(b)(9), 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 Allowed Administrative Claim an amount of Cash equal to the amount of the unpaid portion of such Allowed Administrative Claim in accordance with the following: (i) if such 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 Administrative Claim is due or as soon as reasonably practicable thereafter); (ii) if such Administrative Claim is not Allowed as of the Effective Date, no later than 30 days after the date on which an order Allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; (iii) if such Allowed 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 or course of business giving rise to such Allowed Administrative Claim, without any further action by the holder of such Allowed Administrative Claim; (iv) at such time and upon such terms as may be agreed upon by the holder of such Allowed Administrative Claim and the Debtors, the Reorganized Debtors, or the Plan Administrator on behalf of the Wind Down Debtors, as applicable; or (v) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court.

Except for Claims subject to 11 U.S.C. § 503(b)(1)(D), 11 U.S.C. § 503(b)(9) (for which the general Bar Date applies) and Claims for fees and expenses pursuant to section 1930 of chapter 123 of the Judicial Code, and Professional Fee Claims, and unless previously Filed, requests for payment of Administrative Claims must be Filed and served no later than the Administrative Claim Bar Date pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order; *provided* that the Administrative Claim Bar Date does not apply to

Administrative Claims incurred by the Debtors in the ordinary course of their business as conducted prior to the Petition Date. Objections to such requests must be Filed and served on the Reorganized Debtors or the Wind Down Debtors, as applicable, and the requesting party by the Administrative Claim Objection Bar Date. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code, the Bankruptcy Rules, and prior Bankruptcy Court orders, the Allowed amounts, if any, of Administrative Claims shall be determined by, and satisfied in accordance with an order that becomes a Final Order of, the Bankruptcy Court.

HOLDERS OF ADMINISTRATIVE CLAIMS THAT ARE REQUIRED TO FILE AND SERVE A REQUEST FOR PAYMENT OF SUCH ADMINISTRATIVE CLAIMS THAT DO NOT FILE AND SERVE SUCH A REQUEST BY THE ADMINISTRATIVE CLAIM BAR DATE SHALL BE FOREVER BARRED, ESTOPPED, AND ENJOINED FROM ASSERTING SUCH ADMINISTRATIVE CLAIMS AGAINST THE DEBTORS, THE REORGANIZED DEBTORS, THE WIND DOWN DEBTORS, THE PLAN ADMINISTRATOR, THE PURCHASER, OR THE PROPERTY OF ANY OF THE FOREGOING, AND SUCH ADMINISTRATIVE CLAIMS SHALL BE DEEMED DISCHARGED AS OF THE EFFECTIVE DATE WITHOUT THE NEED FOR ANY OBJECTION FROM THE REORGANIZED DEBTORS OR THE PLAN ADMINISTRATOR ON BEHALF OF THE WIND DOWN DEBTORS OR ANY NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT OR ANY OTHER ENTITY.

In the event the Transaction Election for the Sale Transaction is made and the Sale Transaction is consummated, on or prior to the Effective Date, the Debtors and Required Consenting Lenders shall agree upon an amount of Cash to be included as part of the Wind Down Amount, which shall be held in a segregated account (the "Administrative Claim Reserve Account"), that is sufficient for the Plan Administrator on behalf of the Wind Down Debtors to satisfy in Cash, in full, the anticipated Administrative Claims that are not paid on the Effective Date, or otherwise assumed by the Purchaser under the Sale Transaction Documents (the "Administrative Claim Reserve Amount"). To the extent the Administrative Claim Reserve Amount exceeds the amount of Allowed Administrative Claims payable by the Plan Administrator pursuant to Article VI.A.1 of the Plan in connection with the Wind Down, following satisfaction of such Allowed Administrative Claims, the Plan Administrator shall distribute such excess Cash from the Administrative Claim Reserve Account to the Prepetition Agent for distribution to holders of Credit Facility Secured Claims.

2. Professional Fee Claims

i. Final Fee Applications and Payment of Professional Fee Claims

All final requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred through and including the Effective Date must be Filed no later than thirty (30) days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code, Bankruptcy Rules, and prior Bankruptcy Court orders. The Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, shall pay the amount of the Allowed Professional Fee Claims

owing to the Professionals in Cash to such Professionals, including from funds held in the Professional Fee Escrow Account when such Professional Fee Claims are Allowed by entry of an order of the Bankruptcy Court.

ii. Professional Fee Escrow Account

As soon as is reasonably practicable after the Confirmation Date and no later than the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Escrow Amount. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals and for no other Entities until all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the Professionals pursuant to one or more Final Orders of the Bankruptcy Court. No Liens, Claims, or Interests shall encumber the Professional Fee Escrow Account or Cash held in the Professional Fee Escrow Account in any way. Funds held in the Professional Fee Escrow Account shall not be considered property of the Estates of the Debtors, the Reorganized Debtors, or the Wind Down Debtors.

The amount of Professional Fee Claims owing to the Professionals shall be paid in Cash to the applicable Professionals from the funds held in the Professional Fee Escrow Account as soon as reasonably practicable after such Professional Fee Claims are Allowed by an order of the Bankruptcy Court. To the extent the funds held in the Professional Fee Escrow Account are insufficient to satisfy the Allowed amount of Professional Fee Claims owing to the Professionals, such Professionals shall have an Allowed Administrative Claim for any such deficiency, which shall be satisfied in accordance with Article VI.A.1 of the Plan. When all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the Professionals or Disallowed pursuant to one or more Final Orders of the Bankruptcy Court, any remaining funds held in the Professional Fee Escrow Account shall promptly be paid to the Reorganized Debtors or the Wind Down Debtors, as applicable, without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity; *provided* that if the Sale Transaction is consummated, and any excess funds from the Professional Fee Escrow Account are remitted to the Wind Down Debtors in accordance with Article I.A.i.ii of the Plan, the Plan Administrator shall distribute such excess Cash to the Prepetition Agent for distribution to holders of Credit Facility Secured Claims.

iii. Professional Fee Escrow Amount

The Professionals shall provide a reasonable and good-faith estimate of their unpaid Professional Fee Claims incurred in rendering services to the Debtors before and as of the Effective Date projected to be outstanding as of the Effective Date, and shall deliver such estimate to the Debtors no later than five (5) days before the anticipated Effective Date; *provided, however*, that such estimate shall not be considered or deemed an admission or limitation with respect to the amount of the fees and expenses that are the subject of the Professional's final request for payment of Professional Fee Claims and such Professionals are not bound to any extent by the estimates. If a Professional does not provide an estimate, the Debtors may estimate the unpaid and unbilled fees and expenses of such Professional. The total aggregate amount so estimated as of the Effective Date shall be utilized by the Debtors to determine the amount to be funded to the Professional Fee Escrow Account.

iv. Post-Effective Date Fees and Expenses

After the Effective Date, the Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses incurred by the Reorganized Debtors or the Plan Administrator, as applicable. 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 the Reorganized Debtors or the Wind Down Debtors, as applicable, 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.

3. 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, compromise, settlement, release, and discharge of, and in exchange for, each Allowed Priority Tax Claim, each holder of such Allowed Priority Tax Claim shall receive treatment in a manner consistent with section 1129(a)(9)(C) of the Bankruptcy Code. To the extent any Allowed Priority Tax Claim is not due and owing on the Effective Date, such Claim shall be paid 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 by the Reorganized Debtors or the Wind Down Debtors, as applicable.

In the event the Transaction Election is made and the Sale Transaction is consummated, on or prior to the Effective Date, the Debtors and Required Consenting Lenders shall agree upon an amount of Cash to be included as part of the Wind Down Amount, which shall be held in a segregated account (the "Priority Tax Reserve Account"), that is sufficient for the Plan Administrator to satisfy in Cash, in full, the anticipated Priority Tax Claims that are not paid on the Effective Date, or otherwise assumed by the Purchaser under the Sale Transaction Documents (the "Priority Tax Reserve Amount"). To the extent the Priority Tax Reserve Amount exceeds the amount of Allowed Priority Tax Claims payable by the Plan Administrator pursuant to Article **Error! Reference source not found.**.C of the Plan in connection with the Wind Down, the Plan Administrator shall distribute such excess Cash from the Priority Tax Reserve Account to the Prepetition Agent for distribution to holders of Credit Facility Secured Claims.

B. Classification and Treatment of Claims and Interests

1. Classification in General

Except for the Claims addressed in Article **Error! Reference source not found.** of the Plan, all Claims and Interests are classified in the Classes set forth in Article **Error! Reference source not found.** of the Plan for all purposes, including voting, Confirmation, and distributions pursuant to the Plan and in accordance with sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that such Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent

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

2. Formation of Debtor Groups for Convenience Only

The Plan (including, but not limited to, Article **Error! Reference source not found.** and Article **Error! Reference source not found.** of the Plan) groups the Debtors together solely for the purpose of describing treatment under the Plan and distributions to be made in respect of Claims against and Interests in the Debtors under the Plan. Such groupings shall not affect each Debtor's status as a separate legal entity, change the organizational structure of the Debtors' business enterprise, constitute a change of control of any Debtor for any purpose, cause a merger of consolidation of any legal entities, or cause the transfer of any assets. Except as otherwise provided by or permitted under the Plan, all Debtors shall continue to exist as separate legal entities. The Plan is not premised on, and does not provide for, the substantive consolidation of the Debtors with respect to the Classes of Claims or Interests set forth in the Plan, or otherwise.

The Plan constitutes a separate chapter 11 plan for each Debtor, and the classifications set forth in Classes 1 through 7 shall be deemed to apply to each Debtor, as may be applicable. For voting purposes, each Class of Claims against or Interests in the Debtors shall be deemed to constitute separate sub-Classes of Claims against and Interests in each of the Debtors, as applicable. Each such sub-Class shall vote as a single separate Class for each of the Debtors, as applicable.

3. Summary of Classification

The following table designates the Classes of Claims against and Interests in each of the Debtors and specifies which of those Classes are (i) Impaired or Unimpaired by the Plan, and (ii) entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims (including 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 **Error! Reference source not found.** of the Plan. All of the potential Classes for the Debtors are set forth herein. Certain of the Debtors may not have holders of Claims or Interests in a particular Class or Classes, and such Classes shall be treated as set forth in Article VI.B.8 of the Plan.

Class	Claim/Interest	Status	Voting Rights
1	Other Secured Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
2	Other Priority Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
3	Credit Facility Secured Claims	Impaired	Entitled to Vote
4	General Unsecured Claims	Impaired	Entitled to Vote

5	Intercompany Claims	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept or Deemed to Reject)
6	Intercompany Interests	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept or Deemed to Reject)
7	Interests in TopCo	Impaired	Not Entitled to Vote (Deemed to Reject)

4. Treatment of Claims and Interests

Subject to Article **Error! Reference source not found.** of the Plan, each holder of an Allowed Claim or Allowed Interest, as applicable, shall receive under the Plan the treatment described below in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for, such holder's Allowed Claim or Allowed Interest, except to the extent different treatment is agreed to by the Debtors and the holder of such Allowed Claim or Allowed Interest, as applicable. Unless otherwise indicated, the holder of an Allowed Claim or Allowed Interest, as applicable, shall receive such treatment on the later of the Effective Date and the date such holder's Claim or Interest becomes an Allowed Claim or Allowed Interest or as soon as reasonably practicable thereafter.

i. Class 1 – Other Secured Claims

a) *Classification:* Class 1 consists of all Other Secured Claims.

b) *Treatment:* Each holder of an Allowed Other Secured Claim shall receive, at the option of the Debtors, the Reorganized Debtors, or the Plan Administrator on behalf of the Wind Down Debtors, as applicable:

1. payment in full in Cash of such holder's Allowed Other Secured Claim;

2. the collateral securing such holder's Allowed Other Secured Claim;

3. Reinstatement of such holder's Allowed Other Secured Claim; or

4. such other treatment rendering such holder's Allowed Other Secured Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code.

c) *Voting:* Class 1 is Unimpaired under the Plan. Holders of Other Secured Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

ii. Class 2 – Other Priority Claims

a) *Classification*: Class 2 consists of all Other Priority Claims.

b) *Treatment*: Each holder of an Allowed Other Priority Claim shall receive payment in full in Cash of such holder's Allowed Other Priority Claim or such other treatment in a manner consistent with section 1129(a)(9) of the Bankruptcy Code.

c) *Voting*: Class 2 is Unimpaired under the Plan. Holders of Other Priority Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

iii. Class 3 – Credit Facility Secured Claims

a) *Classification*: Class 3 consists of all Credit Facility Secured Claims.

b) *Allowance*: On the Effective Date, the Credit Facility Secured Claims shall be Allowed in an aggregate amount of not less than $290 million, representing the aggregate principal amount outstanding under the Credit Facility, plus any accrued and unpaid interest, and all accrued and unpaid fees and other expenses payable under the Credit Facility.

c) *Treatment*: Except to the extent the holder of an Allowed Credit Facility Secured Claim agrees to less favorable treatment, each holder of an Allowed Credit Facility Secured Claim shall receive:

1. **if the Standalone Restructuring is consummated**, its Pro Rata share of (A) 100 percent (100%) of the New Common Equity and (B) the Exit Facility Loans, if applicable; or

2. **if the Sale Transaction is consummated**, its Pro Rata share of the Net Sale Proceeds until all Allowed Credit Facility Secured Claims are satisfied in full in Cash.

d) *Voting*: Class 3 is Impaired under the Plan. Holders of Credit Facility Secured Claims are entitled to vote to accept or reject the Plan.

iv. Class 4 – General Unsecured Claims

a) *Classification:* Class 4 consists of all General Unsecured Claims.

b) *Treatment:* Except to the extent the holder of an Allowed General Unsecured Claim agrees to less favorable treatment, each holder of an Allowed General Unsecured Claim shall receive:

1. **if the Standalone Restructuring is consummated**, (i) solely to the extent such holder votes to accept the Plan, the General Unsecured Claims Treatment and (ii) its Pro Rata share of the Unencumbered Assets Cash, subject to the rights of the Prepetition Secured Parties

to assert adequate protection claims pursuant to the Cash Collateral Orders; or

2. **if the Sale Transaction is consummated**, (i) its Pro Rata share of the Unencumbered Assets Cash, subject to the rights of the Prepetition Secured Parties to assert adequate protection claims pursuant to the Cash Collateral Orders, and (ii) solely to the extent the Credit Facility Claims are satisfied in full in Cash on the Effective Date, its Pro Rata share of the Net Sale Proceeds remaining until all Allowed General Unsecured Claims are satisfied in full in Cash.

c) *Voting:* Class 4 is Impaired under the Plan. Holders of General Unsecured Claims are entitled to vote to accept or reject the Plan.

v. Class 5 – Intercompany Claims

a) *Classification*: Class 5 consists of all Intercompany Claims.

b) *Treatment*: On the Effective Date, at the Debtors' election, in consultation with the Required Consenting Lenders, each holder of an Allowed Intercompany Claim shall have its Claim Reinstated or cancelled, released, and extinguished and without any distribution.

c) *Voting*: Class 5 is either Unimpaired, and such holders of Intercompany Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f), or Impaired, and such holders of Intercompany Claims are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

vi. Class 6 – Intercompany Interests

a) *Classification:* Class 6 consists of all Intercompany Interests.

b) *Treatment*: On the Effective Date, at the Debtors' election in consultation with the Required Consenting Lenders, each holder of an Allowed Intercompany Interest shall have its Interest Reinstated in accordance with Article VI.B.9 of the Plan or cancelled, released, and extinguished and without any distribution.

c) *Voting*: Class 6 is either Unimpaired, and such holders of Intercompany Interests are conclusively presumed to have accepted the Plan pursuant to section 1126(f), or Impaired, and such holders of Intercompany Interests are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

vii. Class 7 – Interests in TopCo

a) *Classification:* Class 7 consists of all Interests in TopCo.

b) *Treatment:* On the Effective Date, each holder of an Interest in TopCo shall have such Interest cancelled, released, and extinguished and without any distribution.

c) *Voting:* Class 7 is Impaired under the Plan. Holders of Interests in TopCo are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

5. Special Provision Governing Unimpaired Claims

Except as otherwise specifically provided in the Plan, nothing in the Plan shall be deemed to affect, diminish, or impair, as applicable, the Debtors', the Reorganized Debtors', or the Plan Administrator's rights and defenses, both legal and equitable, with respect to any Reinstated Claim or Unimpaired Claim, including, but not limited to, legal and equitable defenses to setoff or recoup against Reinstated Claims or Unimpaired Claims; and, except as otherwise specifically provided in the Plan, nothing therein shall be deemed to be a waiver or relinquishment of any Claim, Cause of Action, right of setoff or recoupment, or other legal or equitable defense which the Debtors had immediately prior to the Petition Date, against or with respect to any Claim left Unimpaired or Reinstated by the Plan. Except as otherwise specifically provided in the Plan, the Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, shall have, retain, reserve, and be entitled to assert all such Claims, Causes of Action, rights of setoff or recoupment, and other legal or equitable defenses which they had immediately prior to the Petition Date fully as if the Chapter 11 Cases had not been commenced, and all of the Reorganized Debtors' or Wind Down Debtors' legal and equitable rights with respect to any Reinstated Claim or Unimpaired Claim may be asserted after the Confirmation Date and the Effective Date to the same extent as if the Chapter 11 Cases had not been commenced.

6. 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 at least one Impaired Class of Claims. 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 **Error! Reference source not found.** of the Plan to the extent, if any, 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 to the extent permitted by the RSA, the Bankruptcy Code, and the Bankruptcy Rules and (ii) withdrawing the Plan as to any Debtor at any time before the Confirmation Date upon filing notice with the Bankruptcy Court.

7. Subordinated Claims

Except as expressly provided herein, the allowance, classification, and treatment of all Allowed Claims and Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors, the Reorganized Debtors, and the Plan Administrator on behalf of the Wind Down Debtors, as applicable, reserve the right to reclassify any Allowed Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

8. Elimination of Vacant Classes; Presumed Acceptance by Non-Voting Classes

Any Class of Claims or Interests that does not have a holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court 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. 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.

9. Intercompany Interests

To the extent Reinstated under the Plan, distributions on account of 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, for the ultimate benefit of the holders of New Common Equity, and in exchange for the Debtors' and Reorganized Debtors' agreement under the Plan to use certain funds and assets as set forth in the Plan to make certain distributions to holders of Allowed Claims. 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 or Wind Down Debtor, as applicable, that corresponds with the Debtor that owned such Intercompany Interests prior to the Effective Date.

C. Means for Implementation of the Plan

1. Restructuring Transactions

On the Effective Date, the Debtors, Reorganized Debtors, or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, shall enter into any transaction and shall take any actions as may be necessary or appropriate to effectuate the Standalone Restructuring or the Sale Transaction, including, as applicable, entry into the Exit Facility Documents (if applicable), consummation of the transactions contemplated by the Sale Transaction Documents (if applicable), the issuance of all securities, notes, instruments, certificates, and other documents required to be issued pursuant to the Plan, and one or more intercompany mergers, consolidations, amalgamations, arrangements, continuances, restructurings, conversions, dispositions, dissolutions, transfers, liquidations, spinoffs, intercompany sales, purchases, or other corporate transactions (collectively, the "Restructuring Transactions"). The actions to implement the

Restructuring Transactions may include: (i) the execution and delivery of appropriate agreements or other documents of merger, consolidation, amalgamation, arrangement, continuance, restructuring, conversion, disposition, dissolution, transfer, liquidation, spinoff, sale, or purchase containing terms that are consistent with the terms of the Plan and that satisfy the applicable requirements of applicable law and any other terms to which the applicable Entities may agree; (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption, 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, formation, merger, consolidation, conversion, amalgamation, arrangement, continuance, or dissolution pursuant to applicable state or provincial law; and (iv) 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 in connection with the Plan. The Confirmation Order shall, and shall be deemed to, pursuant to sections 363 and 1123 of the Bankruptcy Code, authorize, among other things, all actions as may be necessary to effect any transaction described in, contemplated by, or necessary to effectuate the Plan.

2. The Standalone Restructuring

Unless the Transaction Election is made, the Debtors shall effectuate the Standalone Restructuring pursuant to the Plan. If the Standalone Restructuring is consummated, the following provisions shall govern:

i. Sources of Consideration for Plan Distributions

The Reorganized Debtors will fund distributions under the Plan with Cash held on the Effective Date by or for the benefit of the Debtors or Reorganized Debtors, including Cash from operations, proceeds from all Causes of Action not settled, released, discharged, enjoined, or exculpated under the Plan or otherwise on or prior to the Effective Date, the New Common Equity, and the Exit Facility Loans, if applicable.

ii. Issuance and Distribution of New Common Equity

All Interests in TopCo shall be automatically cancelled on the Effective Date and Reorganized Parent shall issue the New Common Equity to Entities entitled to receive the New Common Equity pursuant to the Plan. The issuance of the New Common Equity is authorized without the need for any further corporate action and without any further action by the holders of Claims or Interests or the Debtors or the Reorganized Debtors, as applicable. The New Organizational Documents, as applicable, shall authorize the issuance and distribution on the Effective Date of the New Common Equity to the Disbursing Agent for the benefit of Entities entitled to receive the New Common Equity pursuant to the Plan. All of the New Common Equity issued under the Plan shall be duly authorized, validly issued, fully paid, and non-assessable. Each distribution and issuance of the New Common Equity under the Plan shall be governed by the terms and conditions set forth in the Plan applicable to such distribution or issuance and by the terms and conditions of the instruments evidencing or relating to such distribution or issuance, which terms and conditions shall bind each Entity receiving such distribution or issuance.

iii. Exit Facility

On the Effective Date, the Reorganized Debtors shall enter into the Exit Facility, if applicable, the terms of which will be set forth in the Exit Facility Documents. To the extent undrawn as of the Effective Date, each of the Letters of Credit shall either be renewed in its entirety or replaced with a new letter of credit on substantially similar terms to those existing as of the Petition Date such that the Letters of Credit shall continue in full force and effect following the Effective Date under the Exit Facility and the Exit Facility Documents. On and after the Effective Date, the Exit Facility Documents shall constitute legal, valid, and binding obligations of the Reorganized Debtors and be enforceable in accordance with their respective terms.

Confirmation shall be deemed approval of the Exit Facility and the Exit Facility Documents (including the transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations and guarantees to be incurred and fees paid in connection therewith), and, to the extent not approved by the Bankruptcy Court previously, the Reorganized Debtors will be authorized to execute and deliver those documents necessary or appropriate to obtain the Exit Facility, including the Exit Facility Documents, as applicable, without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order or rule or vote, consent, authorization, or approval of any Person, subject to such modifications as the Debtors or Reorganized Debtors, as applicable, may deem to be necessary to consummate the Exit Facility.

On the Effective Date, all of the Claims, Liens, and security interests to be granted in accordance with the terms of the Exit Facility Documents, if any, (a) shall be deemed to be granted, (b) shall be legal, binding, and enforceable liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the Exit Facility Documents, (c) shall be deemed automatically attached and perfected on the Effective Date, subject only to such liens and security interests as may be permitted under the Exit Facility Documents, and (d) shall not be subject to avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever and shall not constitute preferential transfers, fraudulent conveyances, or other voidable transfers under the Bankruptcy Code or any applicable non bankruptcy law.

iv. Corporate Existence

Except as otherwise provided in the Plan, each Debtor shall continue to exist after the Effective Date as a separate corporation, limited liability company, limited partnership, or other form of entity, as the case may be, with all the powers of a corporation, limited liability company, limited 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 bylaws (or other similar formation and governance documents) in effect prior to the Effective Date, except to the extent such certificate of incorporation and bylaws (or other similar formation and governance documents) are amended under the Plan or otherwise, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval (other than any requisite filings required under applicable state, provincial, or federal law).

v. Vesting of Assets in the Reorganized Debtors

Except as otherwise provided in the Plan or any agreement, instrument, or other document incorporated in the Plan, on the Effective Date, all property in each Estate, all Causes of Action, and any property acquired by any of the Debtors pursuant to the Plan 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 in the Plan, each Reorganized Debtor may operate its business and may use, acquire, or dispose of property and 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.

vi. Corporate Action

Upon the Effective Date, all actions contemplated under the Plan, regardless of whether taken before, on or after the Effective Date, shall be deemed authorized and approved in all respects, including: (a) selection of the officers and directors or managers for the Reorganized Debtors; (b) the issuance and distribution of the New Common Equity; (c) implementation of the Restructuring Transactions; (d) if applicable, execution of the Exit Facility Documents and any and all other agreements, documents, securities, and instruments relating thereto; and (e) all other actions contemplated under the Plan (whether to occur before, on, or after the Effective Date). All matters provided for in the Plan or deemed necessary or desirable by the Debtors before, on, or after the Effective Date involving the corporate structure of the Debtors or the Reorganized Debtors, and any corporate action required by the Debtors or the Reorganized Debtors in connection with the Plan or corporate structure of the Debtors or Reorganized Debtors shall be deemed to have occurred and shall be in effect on the Effective Date, without any requirement of further action by the security holders, directors, managers, or officers of the Debtors or the Reorganized Debtors. Before, on, or after the Effective Date, the appropriate managers or officers of the Debtors or the Reorganized Debtors, as applicable, shall be authorized to issue, execute, and deliver the agreements, documents, securities, and instruments contemplated under the Plan (or necessary or desirable to effect the transactions contemplated under the Plan) in the name of and on behalf of the Reorganized Debtors, including, if applicable, the Exit Facility Documents and any and all other agreements, documents, securities, and instruments relating to the foregoing. The authorizations and approvals contemplated by Article VI.C.2.vi of the Plan shall be effective notwithstanding any requirements under non-bankruptcy law.

vii. New Organizational Documents

On the Effective Date, the New Organizational Documents shall be adopted automatically by the applicable Reorganized Debtors, and Reorganized Parent shall deliver the applicable New Organizational Documents for Reorganized Parent to each holder of New Common Equity, and such parties shall be bound thereby, in each case, without the need for execution by any party thereto other than Reorganized Parent, and the certificates of incorporation, bylaws, limited liability company agreements, limited partnership agreements, and other similar formation and constituent documents of the Reorganized Debtors (other than Reorganized Parent) shall be amended or amended and restated, as applicable, as may be required to be consistent with the provisions of the Plan and the Bankruptcy Code. To the extent required under the Plan or applicable nonbankruptcy law, the Reorganized Debtors will file their respective New Organizational Documents with the applicable Secretaries of State and/or other applicable authorities in their respective states, provinces, or countries of incorporation in accordance with

the corporate laws of the respective states, provinces, or countries of incorporation. The New Organizational Documents shall, among other things: (a) authorize the issuance of the New Common Equity; and (b) 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. After the Effective Date, each Reorganized Debtor may amend and restate its limited liability company agreement, certificate of incorporation, limited partnership agreement, and other formation and constituent documents as permitted by the laws of its respective jurisdiction of formation and the terms of the New Organizational Documents, as applicable.

viii. Insurance Policies

Each of the Debtors' insurance policies and any agreements, documents, or instruments relating thereto, are treated as Executory Contracts under the Plan. On the Effective Date, (a) the Debtors shall be deemed to have assumed all insurance policies and any agreements, documents, and instruments relating to coverage of all insured Claims and (b) such insurance policies and any agreements, documents, or instruments relating thereto shall revest in the Reorganized Debtors.

ix. Directors, Managers, and Officers of the Reorganized Debtors

As of the Effective Date, the term of the current members of the boards of managers of the Debtors shall expire, and the initial boards of directors or managers, including the New Board, and the officers of each of the Reorganized Debtors, as applicable, shall be appointed in accordance with the respective New Organizational Documents. The existing officers (including the Debtors' Chief Restructuring Officer, Mr. John Castellano), boards of managers, and other governing bodies of the Debtors, as applicable, will be deemed to have resigned on and as of the Effective Date, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order or rule or vote, consent, authorization or approval of any Person or Entity.

Pursuant to section 1129(a)(5) of the Bankruptcy Code, the Debtors will disclose in advance of the Confirmation Hearing as part of the Plan Supplement, to the extent known at such time, the identity and affiliations of any Person proposed to serve on the New Board or as an officer of any of the Reorganized Debtors. To the extent any such director, manager, or officer of the Reorganized Debtors is an "insider" under the Bankruptcy Code, the Debtors also will disclose the nature of any compensation to be paid to such director, manager, or officer. Each such officer and director or manager shall serve from and after the Effective Date pursuant to the terms of the New Organizational Documents and other constituent documents of the Reorganized Debtors.

x. Section 1145 Exemption

Pursuant to section 1145 of the Bankruptcy Code, the offering, issuance, and distribution of the New Common Equity pursuant to and under the Plan will be exempt from the registration requirements of Section **Error! Bookmark not defined.** of the Securities Act and any other applicable U.S. state or local law requiring registration prior to the offering, issuance, distribution, or sale of securities. The shares of New Common Equity to be issued under the Plan (a) will not be "restricted securities" as defined in Rule 144(a)(3) under the Securities Act, and (b) subject to the terms of the New Organizational Documents, will be freely tradable unless the holder is an

"underwriter" as defined in subsection (b) of section 1145 of the Bankruptcy Code with respect to such securities.

In the event Reorganized Parent elects, on or after the Effective Date, to reflect any ownership of the New Common Equity issued pursuant to the Plan through the facilities of DTC, Reorganized Parent need not provide to DTC any further evidence other than the Plan or the Confirmation Order with respect to the treatment of such securities under the applicable securities laws. Notwithstanding anything to the contrary in the Plan, no Entity, including, for the avoidance of doubt, DTC or any transfer agent, 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 initial sale and delivery by the issuer to the holders of the New Common Equity are exempt from registration and/or eligible for DTC book-entry delivery, settlement, and depository services. The Confirmation Order shall provide that DTC or any transfer agent shall be required to accept and conclusively rely upon the Plan or Confirmation Order in lieu of a legal opinion regarding whether the New Common Equity are exempt from registration and/or eligible for DTC-book-entry delivery, settlement, and depositor services.

3. The Sale Transaction

The Debtors will conduct, or have conducted, a postpetition Sale Process and solicited bids in furtherance of the Sale Transaction in accordance with the terms and conditions of the RSA and the Bidding Procedures Order. If the Debtors are able to obtain a Successful Bid (as defined in the Bidding Procedures) that the Debtors, in consultation with the Consultation Parties (as defined in the Bidding Procedures), determine in good faith and in an exercise of their business judgment will maximize value for the Debtors' estates as compared to the Standalone Restructuring, the Debtors will elect to consummate the Sale Transaction pursuant to and in accordance with the Sale Transaction Documents, and holders of Allowed Claims will receive the Net Sale Proceeds in accordance with Article **Error! Reference source not found.** of the Plan. At any point prior to Transaction Election, the Debtors may terminate pursuit of the Sale Transaction in accordance with the terms of the RSA and the Bidding Procedures Order. The Transaction Election, if any, shall be made in connection with the filing of the Plan Supplement, and shall be made no later than ten (10) days prior to the deadline to object to Confirmation of the Plan and the deadline to vote on the Plan.

In the event that the Debtors determine to effectuate the Sale Transaction, upon the Effective Date, including pursuant to sections 363, 365, 1123(a)(5)(B), 1123(a)(5)(D), and 1141 of the Bankruptcy Code, the Debtors are authorized to execute and deliver, and to consummate the transactions contemplated by the Sale Transaction Documents 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, rule, or the vote, consent, authorization, or approval of any Entity, and (i) the Debtors are authorized and directed to consummate, and shall be deemed for all purposes to have consummated, the sale, transfer, and assignment of all of the Debtors' rights, title, and interest in the Debtors' assets acquired by the Purchaser (the "Acquired Assets") pursuant to the Asset Purchase Agreement to the Purchaser free and clear of all Claims, Liens, interests, and encumbrances (other than the liabilities expressly assumed by the Purchaser pursuant to the Sale Transaction Documents (the "Assumed Liabilities") and any permitted encumbrances on the

Acquired Assets permitted pursuant to the Sale Transaction Documents (the "Permitted Encumbrances")), and (ii) except as otherwise expressly provided in the Sale Transaction Documents, all encumbrances and liabilities (other than the Assumed Liabilities and Permitted Encumbrances) shall not be enforceable as against the Purchaser or the Acquired Assets. Unless otherwise expressly included in the Assumed Liabilities and the Permitted Encumbrances, or as otherwise provided in the Confirmation Order, the Purchaser shall not be responsible for any Claims, Liens, liabilities, obligations, interests or encumbrances, including, without limitation: (i) any mortgages, deeds, of trust and security interests against the Acquired Assets, (ii) any intercompany loans and receivables between one or more of the Debtors and any other Debtor, (iii) any bulk sales or similar laws, (iv) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, and (v) any other liabilities expressly excluded in the Sale Transaction Documents. Upon the Effective Date and consummation of the Sale Transaction, the Purchaser shall not, and shall be deemed not to, (A) have any common law successorship liability, (x) have, de facto, or otherwise, merged or consolidated with or into the Debtors, (B) be a mere continuation or substantial continuation of the Debtors, or (C) be liable for any acts or omissions of the Debtors in connection with the conduct of the Debtors' business or arising under or related to the Acquired Assets, except as expressly provided in the Sale Transaction Documents.

i. Sources of Consideration for Plan Distributions

The Debtors will fund distributions under the Plan with Cash held on the Effective Date by or for the benefit of the Debtors and the Sale Proceeds, as well as any Cash generated during the Wind Down from the liquidation of the Debtors' assets not acquired by the Purchaser.

ii. Vesting of Wind Down Amount and Excluded Assets in the Wind Down Debtors

On the Effective Date, upon consummation of the Sale Transaction, the Wind Down Debtor Assets, including all Causes of Action that do not constitute Acquired Assets, shall vest in each respective Wind Down Debtor, free and clear of all Liens, Claims, charges, or other encumbrances except as otherwise specifically provided in the Plan or in the Confirmation Order. On and after the Effective Date, except as otherwise provided in the Plan, each Wind Down Debtor, at the direction of the Plan Administrator, shall effectuate the Wind Down and 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.

After the Effective Date, pursuant to the Plan, and on behalf of the Wind Down Debtors, the Plan Administrator, as part of the Wind Down, shall sell, liquidate, and may operate, use, acquire, or dispose of property without approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules and compromise or settle any Claims, Interests, or Causes of Action remaining with the Wind Down Debtors after consummation of the Sale Transaction contemplated by the Asset Purchase Agreement.

iii. The Plan Administrator Effectuating Wind Down

On and after the Effective Date, the Plan Administrator will be authorized and directed to implement the Plan and any applicable orders of the Bankruptcy Court, and to effectuate the Wind

Down of the Wind Down Debtors. On and after the Effective Date, the Plan Administrator shall have the power and authority to take any action necessary to conduct the Wind Down of the Wind Down Debtors' Estates.

As soon as practicable after the Effective Date, the Plan Administrator shall: (a) cause the Wind Down Debtors to comply with, and abide by, the terms of the Plan, the Confirmation Order, and any other documents contemplated thereby including, the Sale Transaction Documents; and (b) take such other actions as the Plan Administrator may determine to be necessary or desirable to carry out the purposes of the Plan.

The Plan Administrator shall succeed to such powers as would have been applicable to the Wind Down Debtors' officers, directors, managers, and equityholders, and the Wind Down Debtors shall be authorized to be (and, upon the conclusion of the Wind Down, shall be) dissolved by the Plan Administrator, as applicable, in accordance with applicable state law. The Plan Administrator shall act for the Wind Down Debtors in the same capacity and shall have the same rights and powers as are applicable to a manager, managing member, board of managers, board of directors or equivalent governing body, as applicable, and to officers, subject to the provisions hereof (and all certificates of formation and limited liability company agreements and certificates of incorporation or by-laws, or equivalent governing documents and all other related documents (including membership agreements, stockholders agreements or other similar instruments), as applicable, are deemed amended pursuant to the Plan to permit and authorize the same). From and after the Effective Date, the Plan Administrator shall be the sole representative of and shall act for the Wind Down Debtors.

The Plan Administrator shall effectuate the Wind Down with the amounts reserved in the Wind Down Budget.

All costs, liabilities, and expenses reasonably incurred by the Plan Administrator, and any personnel employed by the Plan Administrator in the performance of the Plan Administrator's duties, as set forth in Article VI of the Plan, shall be paid from the Wind Down Debtor Assets in accordance with the Wind Down Budget. Any fees, costs, or expenses of the Notice, Claims, and Balloting Agent in connection with the administration of Administrative Claims, Priority Tax Claims, and/or General Unsecured Claims as requested by the Wind Down Debtors after the Effective Date shall be the sole responsibility of the Wind Down Debtors and shall be paid from the Wind Down Debtor Assets.

iv. Cooperation and Access

At the Wind Down Debtors' sole expense, to the extent applicable with respect to this subsection, the Purchaser shall cooperate in good faith with the Wind Down Debtors, including by (a) affording the Plan Administrator and its representatives reasonable access to its properties, books, and records in connection with the Wind Down Debtors' satisfaction of its duties and responsibilities under the Plan and (b) using commercially reasonable efforts to make available to the Plan Administrator and its representatives the employees or representatives of the Purchaser whose assistance, expertise, testimony, notes, recollections, or presence are reasonably necessary in connection with the Plan Administrator's satisfaction of its duties and responsibilities under the Plan; *provided* that the Purchaser may require the Plan Administrator on behalf of the Debtors to

execute a non-disclosure agreement in form and substance reasonably acceptable to the Purchaser prior to providing such materials or information to the Plan Administrator and its representatives; *provided further*, that the provision of any such documents and information will be without waiver of any confidentiality obligations or evidentiary privileges, including without limitation, the attorney-client privilege, work-product privilege or other privilege or immunity attaching to any such documents or information (written or oral). For the avoidance of doubt, nothing in Article IV.C.4 of the Plan shall require the Purchaser to provide or disclose anything subject to attorney-client privilege or any other privilege to the Plan Administrator; *provided* that to the extent there is a dispute regarding whether such documentation or information is privileged, the Purchaser and the Plan Administrator shall negotiate in good faith to resolve such dispute, taking into account the reasonableness and necessity of such information to the Plan Administrator's duties and responsibilities under the Plan. Absent a resolution, the Plan Administrator may seek a determination by the Bankruptcy Court.

Any reasonable and documented out-of-pocket expenses of the Purchaser incurred in connection with complying with Article IV.C.4 of the Plan shall be reimbursed from the Wind Down Debtor Assets. Such out-of-pocket expenses shall not include general overhead expenses of the Purchaser. To the extent the Wind Down Debtors or Plan Administrator seek discovery or document production from any other Released Party, the Wind Down Debtors shall reimburse such Released Party for its reasonable and documented out-of-pocket expenses in connection therewith.

v. Deemed Consolidation of Class 4

For the purpose of holders of Allowed General Unsecured Claims receiving distributions from the Wind Down Debtors in accordance with the terms of the Plan, (a) all assets and liabilities of the Debtors shall be deemed merged, (b) all guarantees or responsibility of one Debtor of the obligations of any other Debtor shall be deemed eliminated, and all guarantees or responsibility executed by multiple Debtors of the obligations of any other Entity shall be deemed consolidated into a single obligation, and (c) each and every General Unsecured Claim Filed or to be Filed in the Chapter 11 Case of any Debtor shall be Filed against, and shall be a single obligation of, the Debtors with respect to any distribution from the Wind Down Debtors to the holder of such General Unsecured Claim. Notwithstanding anything to the contrary herein, in no event shall holders of Allowed General Unsecured Claims recover more than the full amount of their Allowed General Unsecured Claims from the Wind Down Debtors.

4. Restructuring Expenses

The accrued and unpaid Restructuring Expenses incurred, or estimated to be incurred, up to and including the Effective Date (whether incurred prepetition or postpetition) 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) without the need for any further notice or approval by the Bankruptcy Court or otherwise. All Restructuring Expenses to be paid on the Effective Date shall be estimated in good faith prior to and as of the Effective Date and such estimates shall be delivered to the Debtors no later than five (5) days before the anticipated Effective Date.

5. Section 1146 Exemption

To the maximum extent permitted pursuant to section 1146(a) of the Bankruptcy Code, any transfer of property pursuant hereto, including the Sale Transaction (if any) or any transaction that is deemed or treated as equivalent to a transfer of property under applicable nonbankruptcy law as a result of a change of ownership or control, shall not be subject to any tax under a law imposing a stamp tax or similar tax, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents pursuant to such transfers of property without the payment of any such tax, recordation fee, or governmental assessment. The Bankruptcy Court shall retain specific jurisdiction with respect to these matters.

6. Director and Officer Liability Insurance

The Debtors' D&O Liability Insurance Policies shall be Reinstated under the Plan to the fullest extent possible under applicable Law. Notwithstanding anything in the Plan or the Confirmation Order to the contrary, effective as of the Effective Date, the Reorganized Debtors or Wind Down Debtors (including the Plan Administrator acting on behalf of the Wind Down Debtors), as applicable, shall be deemed to have assumed all D&O Liability Insurance Policies with respect to the Debtors' directors, managers, and officers serving on or prior to the Effective Date pursuant to section 365(a) of the Bankruptcy Code. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the assumption of each of the D&O Liability Insurance Policies by the Reorganized Debtors or the Wind Down Debtors, as applicable. Notwithstanding anything to the contrary contained in the Plan or the Confirmation Order, Confirmation of the Plan shall not discharge, impair, or otherwise modify any indemnity obligations assumed by the foregoing assumption of the D&O Liability Insurance Policies, and each such indemnity obligation will be deemed and treated as an Executory Contract that has been assumed by the Reorganized Debtors or Wind Down Debtors (including the Plan Administrator acting on behalf of the Wind Down Debtors), as applicable, under the Plan or the Confirmation Order, and no Proof of Claim, Administrative Claim, or Cure Claim need be Filed with respect thereto. For the avoidance of doubt, the D&O Liability Insurance Policies will continue to apply with respect to actions, or failures to act, that occurred on or prior to the Effective Date, subject to the terms and conditions of the D&O Liability Insurance Policies.

7. Dissolution of Certain Debtors

On or after the Effective Date and, if the Sale Transaction is consummated, solely to the extent each of the Debtors' requisite obligations to the Purchaser have been met in accordance with the Sale Transaction Documents, certain of the Debtors may be dissolved without further action under applicable law, regulation, order, or rule, including any action by the stockholders, members, the board of directors, or board of directors or similar governing body of the Debtors, Reorganized Debtors, or Wind Down Debtors; *provided* that, subject in all respects to the terms of the Plan, the Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, shall have the power and authority to take any action necessary to wind down and dissolve the foregoing Debtors, and shall, to the extent applicable: (i) file a certificate of dissolution for such Debtors, together with all other necessary corporate and company documents, to effect such Debtors' dissolution under the applicable laws of their states of formation; (ii) complete and file all final or otherwise required federal, state, and local tax returns and pay

taxes required to be paid for such Debtors, and pursuant to section 505(b) of the Bankruptcy Code, request an expedited determination of any unpaid tax liability of any such Debtors or their Estates, as determined under applicable tax laws; and (iii) represent the interests of the Debtors or their Estates before any taxing authority in all tax matters, including any action, proceeding or audit. The Plan Supplement shall identify what, if any, of the Debtors will be dissolved as of the Effective Date.

8. Cancellation of Securities and Agreements

On the Effective Date, except as otherwise specifically provided for in the Plan: (i) the obligations of the Debtors under any certificate, security, share, note, bond, credit agreement, 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 (except such certificates, notes, or other instruments or documents evidencing indebtedness or obligation of or ownership interest in the Debtors that are Reinstated pursuant to the Plan) shall be cancelled solely as to the Debtors and their affiliates, and the Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, shall not have any continuing obligations thereunder; and (ii) the obligations of the Debtors and their affiliates 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, indentures, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors (except such agreements, certificates, notes, or other instruments evidencing indebtedness or obligation of or ownership interest in the Debtors that are specifically Reinstated pursuant to the Plan) shall be released and discharged. Notwithstanding the foregoing, no Executory Contract or Unexpired Lease that (i) has been, or will be, assumed pursuant to Section 365 of the Bankruptcy Code or (ii) relating to a Claim that was paid in full prior to the Effective Date, shall be terminated or cancelled on the Effective Date.

9. Effectuating Documents; Further Transactions

On and after the Effective Date, the Reorganized Debtors and the officers and members of the boards of directors or managers thereof, or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, are 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 Sale Transaction Documents, the Restructuring Transactions, and the Securities issued pursuant to the Plan in the name of and on behalf of the Debtors or the Reorganized Debtors, without the need for any approvals, authorization, or consents except for those expressly required pursuant to the Plan.

10. Preservation of Causes of Action

In accordance with section 1123(b) of the Bankruptcy Code, but subject to Article **Error! Reference source not found.** of the Plan, the Reorganized Debtors, if the Standalone Restructuring is consummated, or the Wind Down Debtors, if the Sale Transaction is consummated, shall retain and may enforce all rights to commence and pursue, as appropriate, any

and all Causes of Action, whether arising before or after the Petition Date, including any actions specifically enumerated in the Schedule of Retained Causes of Action, and the rights of the Reorganized Debtors or Plan Administrator on behalf of the Wind Down Debtors, as applicable, to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date, other than the Causes of Action released by the Debtors pursuant to the releases and exculpations contained in the Plan, including in Article **Error! Reference source not found.** of the Plan, or otherwise transferred pursuant to the Sale Transaction Documents.

The Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, may pursue such Causes of Action, as appropriate, in accordance with the best interests of the Reorganized Debtors or the Wind Down Debtors, as applicable. **No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or this Disclosure Statement to any Cause of Action against it as any indication that the Debtors, the Reorganized Debtors, or the Wind Down Debtors, as applicable, will not pursue any and all available Causes of Action against it. The Debtors, the Reorganized Debtors, or the Wind Down Debtors, as applicable, expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the Plan, including Article** Error! Reference source not found. **of the Plan, or the Sale Transaction Documents.** Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Bankruptcy Court order, the Reorganized Debtors or Wind Down Debtors, 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 Confirmation or Consummation.

The Reorganized Debtors or Wind Down Debtors, as applicable, reserve and shall retain such Causes of Action notwithstanding the rejection or repudiation of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that a Debtor may hold against any Entity shall vest in the Reorganized Debtors or the Wind Down Debtors, as applicable, except as otherwise expressly provided in the Plan, including Article **Error! Reference source not found.** of the Plan. The applicable Reorganized Debtors or Wind Down Debtors, as applicable, through their authorized agents or representatives, including the Plan Administrator, shall retain and may exclusively enforce any and all such Causes of Action. The Reorganized Debtors or Wind Down Debtors (including through the Plan Administrator), 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 and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court.

D. Treatment of Executory Contracts and Unexpired Leases

1. Assumption and Rejection of Executory Contracts and Unexpired Leases

i. Standalone Restructuring

If the Standalone Restructuring is consummated, on the Effective Date, except as otherwise provided in the Plan or in any contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan, all Executory Contracts and Unexpired Leases shall be deemed assumed, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, as of the Effective Date under section 365 of the Bankruptcy Code, and regardless of whether or not such Executory Contract or Unexpired Lease is identified on the Schedule of Assumed Executory Contracts and Unexpired Leases, unless such Executory Contract or Unexpired Lease: (a) was previously assumed or rejected by the Debtors, pursuant to a Final Order of the Bankruptcy Court; (b) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (c) is the subject of a motion to assume, assume and assign, or reject filed by the Debtors on or before the date of entry of the Confirmation Order; or (d) with the consent of the Required Consenting Lenders and the Prepetition Agent, is specifically designated as a contract or lease to be rejected on the Schedule of Rejected Executory Contracts and Unexpired Leases. Each Executory Contract and Unexpired Lease assumed pursuant to Article V.A.1 of the Plan or by any order of the Bankruptcy Court, which has not been assigned to a third party prior to the Effective Date, shall revest in and be fully enforceable by the Reorganized Debtors in accordance with its terms, except as such terms are modified by the provisions of the Plan or any order of the Bankruptcy Court authorizing and providing for its assumption under applicable federal law.

Entry of the Confirmation Order by the Bankruptcy Court shall, subject to and upon the occurrence of the Effective Date, constitute a Bankruptcy Order approving the assumptions, assumptions and assignments, and/or rejections of the Executory Contracts and Unexpired Leases assumed, assumed and assigned, and/or rejected pursuant to the Plan. Any motions to reject Executory Contracts or Unexpired Leases pending on the Effective Date shall be subject to approval by the Bankruptcy Court on or after the Effective Date by a Final Order.

Notwithstanding anything to the contrary in the Plan, the Debtors reserve the right, with the consent of the Required Consenting Lenders and the Prepetition Agent, to alter, amend, modify, or supplement the Schedule of Assumed Executory Contracts and Unexpired Leases and/or the Schedule of Rejected Executory Contracts and Unexpired Leases to add or remove any Executory Contract or Unexpired Lease at any time prior to the Effective Date. The Debtors shall provide notice of any amendments to the Schedule of Assumed Executory Contracts and Unexpired Leases and/or the Schedule of Rejected Executory Contracts and Unexpired Leases to the parties to the Executory Contracts or Unexpired Leases affected thereby.

ii. Sale Transaction

If the Sale Transaction is consummated, on the Effective Date, except as otherwise provided herein, each Executory Contract or Unexpired Lease not previously assumed, assumed and assigned, or rejected pursuant to a Final Order of the Bankruptcy Court shall be deemed automatically rejected, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, as of the Effective Date under section 365 and 1123 of the Bankruptcy Code, and regardless of whether or not such Executory Contract or Unexpired Lease is identified on the Schedule of Rejected Executory Contracts and Unexpired Leases, unless such Executory Contract or Unexpired Lease: (a) is assumed by the Debtors and assigned to the Purchaser pursuant to the Sale Transaction, the Plan, and the Confirmation Order and in accordance with the

Sale Transaction Documents; or (b) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto. Notwithstanding anything to the contrary in the Plan, the Debtors reserve the right, with the consent of the Required Consenting Lenders and the Prepetition Agent, to alter, amend, modify, or supplement the Schedule of Assumed Executory Contracts and Unexpired Leases and/or the Schedule of Rejected Executory Contracts and Unexpired Leases to add or remove any Executory Contract or Unexpired Lease at any time prior to the Effective Date. The Debtors shall provide notice of any amendments to the Schedule of Assumed Executory Contracts and Unexpired Leases and/or the Schedule of Rejected Executory Contracts and Unexpired Leases to the counterparties to the Executory Contracts or Unexpired Leases affected thereby. For the avoidance of doubt, any Executory Contract or Unexpired Lease not assumed by the Debtors and assigned to the Purchaser in connection with the Sale Transaction pursuant to the Sale Transaction Documents shall be deemed rejected as of the Effective Date.

Entry of the Confirmation Order by the Bankruptcy Court shall, subject to and upon the occurrence of the Effective Date, constitute a Bankruptcy Order approving the assumptions and assignments or rejections of the Executory Contracts and Unexpired Leases assumed and assigned or rejected pursuant to the Plan and the other Sale Transaction Documents.

2. Director and Officer Liability Insurance

The Debtors' D&O Liability Insurance Policies shall be Reinstated under the Plan to the fullest extent possible under applicable Law. Notwithstanding anything in the Plan or the Confirmation Order to the contrary, effective as of the Effective Date, the Reorganized Debtors or Wind Down Debtors (including the Plan Administrator acting on behalf of the Wind Down Debtors), as applicable, shall be deemed to have assumed all D&O Liability Insurance Policies with respect to the Debtors' directors, managers, and officers serving on or prior to the Effective Date pursuant to section 365(a) of the Bankruptcy Code. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the assumption of each of the D&O Liability Insurance Policies by the Reorganized Debtors or the Wind Down Debtors, as applicable. Notwithstanding anything to the contrary contained in the Plan or the Confirmation Order, Confirmation of the Plan shall not discharge, impair, or otherwise modify any indemnity obligations assumed by the foregoing assumption of the D&O Liability Insurance Policies, and each such indemnity obligation will be deemed and treated as an Executory Contract that has been assumed by the Reorganized Debtors or Wind Down Debtors (including the Plan Administrator acting on behalf of the Wind Down Debtors), as applicable, under the Plan or the Confirmation Order, and no Proof of Claim, Administrative Claim, or Cure Claim need be Filed with respect thereto. For the avoidance of doubt, the D&O Liability Insurance Policies will continue to apply with respect to actions, or failures to act, that occurred on or prior to the Effective Date, subject to the terms and conditions of the D&O Liability Insurance Policies.

3. Indemnification Obligations

Except as expressly provided by the Confirmation Order or the Plan, or unless otherwise determined by the Debtors, consistent with applicable law, all indemnification provisions in place as of the Effective Date, including any tail policies (whether in the by-laws, certificates of incorporation or formation, limited liability company agreements, other organizational documents, board resolutions, indemnification agreements, employment contracts, or otherwise), for current

and former directors, officers, managers, employees, attorneys, accountants, investment bankers, and other professionals of the Debtors, in each case solely in their capacity as such, as applicable, shall be (i) be deemed Executory Contracts, (ii) be Reinstated or otherwise assumed (or assumed and assigned) by either the Reorganized Debtors or the Wind Down Debtors, as applicable, (iii) remain intact and irrevocable, and (iv) survive the Effective Date on terms no less favorable to such current and former directors, officers, managers, employees, attorneys, accountants, investment bankers, and other professionals of the Debtors than the indemnification provisions in place prior to the Effective Date.

4. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Unless otherwise provided by a Final Order of the Bankruptcy Court, all Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, pursuant to the Plan or the Confirmation Order, if any, must be Filed with the Bankruptcy Court within 30 days after the later of (i) the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection, (ii) the effective date of such rejection, or (iii) the Effective Date. **Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtors, the Reorganized Debtors, or the Wind Down Debtors, the Estates, or their property without the need for any objection by the Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of such Executory Contract or Unexpired Lease shall be deemed fully satisfied, released, and discharged, notwithstanding anything in the Schedules or a Proof of Claim to the contrary.** All Allowed Claims arising from the rejection of the Debtors' Executory Contracts or Unexpired Leases shall be classified as General Unsecured Claims.

5. Cure of Defaults for Executory Contracts and Unexpired Leases Assumed

Any monetary defaults under each Executory Contract and Unexpired Lease to be assumed or assumed and assigned pursuant to the Plan, Confirmation Order, and/or Sale Transaction Documents shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the default amount in Cash on the Effective Date, subject to the limitation described below, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree (the "Cure Amount"). In the event of a dispute regarding (i) the amount of any payments to cure such a default, (ii) the ability of the Debtors, Reorganized Debtors, or Purchaser, as applicable, to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assumed and assigned, or (iii) any other matter pertaining to assumption, the cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assumption and assignment. At least ten (10) calendar days prior to the deadline to object to Confirmation of the Plan, the Debtors shall provide for notices of proposed assumption or assumption and assignment and proposed Cure Amounts to be sent to applicable counterparties and for procedures for objecting thereto and resolution of disputes by the Bankruptcy Court. **Any objection by a counterparty to an Executory Contract or Unexpired Lease to a proposed assumption or**

assumption and assignment or related Cure Amount must be Filed, served, and actually received by the Debtors by the deadline to object to confirmation of the Plan. Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption, or proposed assumption and assignment, or Cure Amount will be deemed to have consented to such matters and will be deemed to have forever released and waived any objection to such proposed assumption, proposed assumption and assignment, and Cure Amount.

Assumption or assumption and assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or the Sale Transaction Documents shall result in the full release and satisfaction of any 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 or assumed and assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assumption and assignment, as applicable. Any counterparty to an Executory Contract or Unexpired Lease that does not timely object to the notice of the proposed assumption or assumption and assignment of such Executory Contract or Unexpired Lease shall be deemed to have consented to the assumption or assumption and assignment, as applicable, of the applicable Executory Contract or Unexpired Lease notwithstanding any provision thereof that purports to: (i) prohibit, restrict, or condition the transfer or assignment of such contract or lease; (ii) terminate or modify, or permit the termination or modification of, a contract or lease as a result of any direct or indirect transfer or assignment of the rights of any Debtor under such contract or lease or a change, if any, in the ownership or control of any Debtor under such contract or lease to the extent contemplated by the Plan; (iii) increase, accelerate, or otherwise alter any obligations or liabilities of any Debtor, Reorganized Debtor, or Purchaser under such Executory Contract or Unexpired Lease; or (iv) create or impose a Lien upon any property or asset of any Debtor, Reorganized Debtor, or Purchaser, as applicable. Each such provision shall be deemed to not apply to the assumption or assumption and assignment of such Executory Contract or Unexpired Lease pursuant to the Plan and counterparties to assumed Executory Contracts or Unexpired Leases that fail to object to the proposed assumption or assumption and assignment in accordance with the terms set forth in Article VI.D.5 of the Plan, shall forever be barred and enjoined from objecting to the proposed assumption or assumption and assignment or to the validity of such assumption or assumption and assignment (including with respect to any Cure Amounts or the provision of adequate assurance of future performance), or taking actions prohibited by the foregoing or the Bankruptcy Code on account of transactions contemplated by the Plan.

6. Preexisting Obligations to the Debtors under Executory Contracts and Unexpired Leases

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of preexisting obligations owed to the Debtors, Reorganized Debtors, or Wind Down Debtors, as applicable, under such Executory Contracts or Unexpired Leases. In particular, notwithstanding any non-bankruptcy law to the contrary, the Reorganized Debtors or the Wind Down Debtors, as applicable, expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties or continued maintenance obligations on goods previously purchased by the Debtors contracting from non-Debtor counterparties to rejected Executory Contracts or Unexpired Leases.

7. Modifications, Amendments, Supplements, Restatements, or Other Agreements

Unless otherwise provided in the Plan, each Executory Contract or Unexpired Lease that is assumed or assumed and assigned shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and Executory Contracts and Unexpired Leases related thereto, if any, including easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan.

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.

8. Reservation of Rights

Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease on the Schedule of Assumed Executory Contracts and Unexpired Leases or the Schedule of Rejected Executory Contracts and Unexpired Leases, nor anything contained in the Plan, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any of the Reorganized Debtors or the Wind Down Debtors 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 or assumption and assignment or rejection, the Debtors, the Reorganized Debtors, the Plan Administrator, or the Purchaser, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter its treatment of such contract or lease under the Plan.

9. 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, assuming and assigning, or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

10. Contracts and Leases Entered Into After the Petition Date

Contracts and leases entered into after the Petition Date by any Debtor, including any Executory Contracts and Unexpired Leases assumed or assumed and assigned by such Debtor, will be performed by the applicable Debtor, Reorganized Debtor, Wind Down Debtor, or the Purchaser, as applicable, in the ordinary course of their business. Accordingly, such contracts and leases (including any assumed or assumed and assigned Executory Contracts and Unexpired Leases) will survive and remain unaffected by entry of the Confirmation Order.

E. The Plan Administrator

1. Plan Administrator Rights and Powers

If the Sale Transaction is consummated, upon and following the Effective Date, the Plan Administrator shall have any and all powers and authority, without the need for Bankruptcy Court approval (unless otherwise indicated), to carry out and implement all provisions of the Plan and Confirmation Order, administer and distribute the Wind Down Debtor Assets and wind down the business and affairs of the Wind Down Debtors, including: (i) except to the extent Claims have been previously Allowed, controlling and effectuating the Claims reconciliation process, including to objecting to, seeking to subordinate, compromising or settling any and all Claims against the Debtors (for the avoidance of doubt, the Plan Administrator shall be responsible for objecting to, reconciling, or settling (a) Administrative Claims and Priority Tax Claims not otherwise satisfied on the Effective Date and (b) General Unsecured Claims not otherwise Allowed and satisfied as of and on the Effective Date); (ii) liquidating, receiving, holding, investing, supervising, and protecting the assets of the applicable Wind Down Debtors; (iii) making distributions to holders of Allowed Claims in accordance with the Plan and taking all steps to execute all instruments and documents necessary to effectuate the distributions to be made under the Plan, each in its capacity as Disbursing Agent (for the avoidance of doubt, the Plan Administrator shall be responsible for making distributions to holders of (a) Administrative Claims and Priority Tax Claims not otherwise satisfied on the Effective Date and (b) Allowed General Unsecured Claims); (iv) to the extent not released pursuant to the Plan, including pursuant to Article VI.C.10 of the Plan, prosecuting all Causes of Action on behalf of the Debtors, electing not to pursue any Causes of Action, and determining whether and when to compromise, settle, abandon, dismiss, or otherwise dispose of any such Causes of Action, as the Plan Administrator may determine is in the best interests of the Wind Down Debtors; (v) establishing and maintaining bank accounts in the name of the applicable Wind Down Debtors; (vi) maintaining the books, records, and accounts of the Wind Down Debtors; (vii) subject to the terms set forth herein, employing, retaining, terminating, or replacing professionals to represent the Plan Administrator with respect to the Plan Administrator's responsibilities or otherwise effectuating the Plan to the extent necessary; (viii) paying all reasonable fees, expenses, debts, charges, and liabilities of the applicable Wind Down Debtors; (ix) administering and paying taxes of the applicable Wind Down Debtors, including filing tax returns; (x) representing the interests of the applicable Wind Down Debtors or the Estates, as applicable, before any taxing authority in all matters, including any action, suit, proceeding, or audit; (xi) closing the sale pursuant to the Asset Purchase Agreement, if applicable; and (xii) exercising such other powers as may be vested in it pursuant to order of the Bankruptcy Court or pursuant to the Plan, or as it reasonably deems to be necessary and proper to carry out the provisions of the Plan.

The Plan Administrator may resign at any time; *provided* that such resignation shall only become effective upon the appointment of a permanent or interim successor Plan Administrator. Upon its appointment, the successor Plan Administrator, without any further act, shall become fully vested with all of the rights, powers, duties, and obligations of its predecessor, and all responsibilities of the predecessor Plan Administrator relating to the Wind Down Debtors shall be terminated.

The filing of the final monthly report (for the month in which the Effective Date occurs) and all subsequent quarterly reports shall be the responsibility of the Plan Administrator, except as otherwise provided herein.

i. Retention of Professionals

The Plan Administrator shall have the right to retain the services of attorneys, accountants, and other professionals that, in the discretion of the Plan Administrator, are necessary to assist the Plan Administrator in the performance of its duties. The reasonable fees and expenses of such professionals shall be paid upon the monthly submission of statements to the Plan Administrator. The payment of the reasonable fees and expenses of the Plan Administrator's retained professionals shall be made in the ordinary course of business in accordance with the Wind Down Budget and shall be satisfied exclusively from the Wind Down Debtor Assets. Any such payments shall not be subject to the approval of the Bankruptcy Court.

ii. Compensation of the Plan Administrator

The Plan Administrator's compensation, on a post-Effective Date basis, shall be as described in the Plan Supplement and shall be in accordance with the Wind Down Budget. Except as otherwise ordered by the Bankruptcy Court, the fees and expenses incurred by the Plan Administrator on or after the Effective Date (including taxes imposed on the applicable Wind Down Debtors) and any reasonable compensation and expense reimbursement Claims (including attorney fees and expenses) made by the Plan Administrator in connection with such Plan Administrator's duties shall be paid without any further notice to, or action, order, or approval of, the Bankruptcy Court in Cash in accordance with the Wind Down Budget, if such amounts relate to any actions taken hereunder.

iii. *Plan Administrator Expenses*

All reasonable costs, expenses, and obligations incurred by the Plan Administrator in administering the Plan, the applicable Wind Down Debtors, or in any manner connected, incidental, or related thereto, shall be incurred and paid in accordance with the Wind Down Budget.

2. Indemnification, Insurance, and Liability Limitation

The Plan Administrator and all professionals retained by the Plan Administrator, each in their capacities as such, shall be deemed indemnified, except for fraud, willful misconduct, or gross negligence, in all respects by the Wind Down Debtors. The Plan Administrator may obtain, at the expense of the applicable Wind Down Debtors and in accordance with the Wind Down Budget, commercially reasonable liability or other appropriate insurance with respect to the indemnification obligations of the applicable Wind Down Debtors. The Plan Administrator may rely upon written information previously generated by the Debtors.

Notwithstanding anything to the contrary contained herein, the Plan Administrator in its capacity as such, shall have no liability whatsoever to any party for the liabilities and/or obligations, however created, whether direct or indirect, in tort, contract, or otherwise, of the Debtors.

3. Tax Returns

After the Effective Date, the Plan Administrator shall complete and file all final or otherwise required federal, state, and local tax returns for each of the Wind Down Debtors and, pursuant to section 505(b) of the Bankruptcy Code, may request an expedited determination of any unpaid tax liability of such Wind Down Debtor or its Estate, for any tax incurred during the

administration of such Wind Down Debtor's Chapter 11 Case, as determined under applicable tax laws.

F. Provisions Governing Distributions

1. Timing and Calculation of Amounts to Be Distributed

Unless otherwise provided in the Plan, on the Effective Date (or if a Claim is not an Allowed Claim on the Effective Date, on the date that such Claim becomes an Allowed Claim, or as soon as reasonably practicable thereafter), or as soon as is reasonably practicable thereafter, each holder of an Allowed Claim shall receive the full amount of the distributions that the Plan provides for Allowed Claims in the applicable Class. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in Article **Error! Reference source not found.** of the Plan. Except as otherwise provided in the Plan, holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date.

2. Disbursing Agent

If the Standalone Restructuring is consummated, the Reorganized Debtors shall be the Disbursing Agent; *provided* that the Reorganized Debtors may hire professionals or consultants to assist with making disbursements or to act as the Disbursing Agent. If the Sale Transaction is consummated, the Plan Administrator shall be the Disbursing Agent; *provided* that the Plan Administrator may hire professionals or consultants to assist with making disbursements or to act as the Disbursing Agent. After the Effective Date, distributions under the Plan shall be made by the Disbursing Agent. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court.

3. Rights and Powers of Disbursing Agent

i. Powers of the Disbursing Agent

The Disbursing 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 Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof.

ii. Expenses Incurred On or After the Effective Date

Except as otherwise provided herein or ordered by the Bankruptcy Court, the amount of any reasonable fees and out-of-pocket expenses incurred by the Disbursing Agent on or after the Effective Date (including taxes) and any reasonable compensation and out-of-pocket expense

reimbursement claims (including reasonable attorney fees and expenses) made by the Disbursing Agent shall be paid in Cash by the Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable.

4. Delivery of Distributions and Undeliverable or Unclaimed Distributions

i. Record Date for Distribution

On the Distribution Record Date, the Claims Register shall be closed and any party responsible for making distributions shall instead be authorized and entitled to recognize only those record holders listed on the Claims Register as of the close of business on the Distribution Record Date.

ii. Delivery of Distributions

Except as otherwise provided herein, the Disbursing Agent shall make distributions to holders of Allowed Claims on the Effective Date at the address for each such holder as indicated on the Debtors' records as of the date of any such distribution; *provided*, *however*, that the manner of such distributions shall be determined at the discretion of the Disbursing Agent; *provided further*, *however*, that the address for each holder of an Allowed Claim shall be deemed to be the address set forth in any Proof of Claim Filed by that holder.

iii. Minimum Distributions

Notwithstanding any other provision of the Plan, the Disbursing Agent will not be required to make distributions of less than $500 in value (whether Cash or otherwise), and each such Claim to which this limitation applies shall be discharged pursuant to Article **Error! Reference source not found.** of the Plan and its holder is forever barred pursuant to Article **Error! Reference source not found.** of the Plan from asserting that Claims against the Debtors, Reorganized Debtors, or Wind Down Debtors, as applicable, or their respective property.

iv. No Fractional Distributions

No fractional shares or units of New Common Equity shall be distributed and no Cash shall be distributed in lieu of such fractional amounts. When any distribution pursuant to the Plan on account of an Allowed Claim would otherwise result in the issuance of a number of shares or units of New Common Equity that is not a whole number, the actual distribution of shares of New Common Equity shall be rounded as follows: (a) fractions of one-half (1/2) or greater shall be rounded to the next higher whole number and (b) fractions of less than one-half (1/2) shall be rounded to the next lower whole number with no further payment therefore. The total number of authorized shares or units of New Common Equity to be distributed to holders of Allowed Claims shall be adjusted as necessary to account for the foregoing rounding.

No payment of fractional cents shall be made pursuant to the Plan, including to holders of Allowed General Unsecured Claims by the Disbursing Agent. Whenever any payment of a fraction of a cent under the Plan would otherwise be required, the distribution shall reflect a rounding of such fraction to the nearest whole penny (up or down), with half cents or more being rounded up and fractions less than half of a cent being rounded down.

v. Undeliverable Distributions and Unclaimed Property

In the event that any distribution to any holder is returned as undeliverable, no distribution to such holder shall be made unless and until the Disbursing Agent has determined the then-current address of such holder, at which time such distribution shall be made to such holder without interest; *provided*, *however*, that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of six months from the Effective Date. After such date, all unclaimed property or interests in property shall revert to the Reorganized Debtors or the Wind Down Debtors, as applicable, automatically and without need for a further order by the Bankruptcy Court (notwithstanding any applicable federal, provincial, or state escheat, abandoned, or unclaimed property laws to the contrary), and the Claim of any holder to such property or interest in property shall be discharged and forever barred.

5. Compliance with Tax Requirements

In connection with the Plan, to the extent applicable, the Debtors, the Reorganized Debtors, the Plan Administrator on behalf of the Wind Down Debtors, as applicable, shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Disbursing Agent shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Debtors, Reorganized Debtors, or Plan Administrator on behalf of the Wind Down Debtors, as applicable, reserve the right to allocate all distributions made under the Plan in compliance with applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances.

6. Allocations

Distributions in respect of Allowed Claims shall be allocated first to the principal amount of such Claims (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claims, to any portion of such Claims for accrued but unpaid interest.

7. No Postpetition Interest on Claims

Unless otherwise specifically provided for in the Cash Collateral Orders, the Plan or the Confirmation Order, or required by applicable bankruptcy and non-bankruptcy law, postpetition interest shall not accrue or be paid on any prepetition Claims against the Debtors, and no holder of a prepetition Claim against the Debtors shall be entitled to interest accruing on or after the Petition Date on any such prepetition Claim.

8. 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.

9. Setoffs and Recoupment

The Debtors, the Reorganized Debtors or Wind Down Debtors, as applicable, may, but shall not be required to, set off against or recoup any payments or distributions to be made pursuant to the Plan in respect of any Claims of any nature whatsoever that the Debtors, the Reorganized Debtors or Wind Down Debtors, as applicable, may have against the claimant, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors, the Reorganized Debtors or the Wind Down Debtors, as applicable, of any such Claim it may have against the holder of such Claim. In no event shall any holder of Claims be entitled to set off or recoup any such Claim against any claim, right, or Cause of Action of the Debtor, Reorganized Debtor, or the Wind Down Debtors, as applicable, unless such holder has filed a motion with the Bankruptcy Court requesting the authority to perform such setoff or recoupment 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 or recoupment pursuant to section 553 of the Bankruptcy Code or otherwise.

10. Claims Paid or Payable by Third Parties

i. Claims Paid by Third Parties

A Claim shall be reduced in full, and such Claim shall be disallowed without a Claim objection 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 payment in full on account of such Claim from a party that is not a Debtor, a Reorganized Debtor, a Wind Down Debtor, or the Disbursing Agent, as applicable. 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, a Reorganized Debtor, a Wind Down Debtor, or the Disbursing Agent, as applicable on account of such Claim, such holder shall, within two (2) weeks of receipt thereof, repay or return the distribution to the applicable Debtor, Reorganized Debtor, Wind Down Debtor, or the Disbursing Agent, as applicable, 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.

ii. Claims Payable by Third Parties

The availability, if any, of insurance policy proceeds for the satisfaction of an Allowed Claim shall be determined by the terms of the insurance policies of the Debtors, Reorganized Debtors, or Wind Down Debtors, as applicable. 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 Claims 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. Except as otherwise provided in the Plan or Confirmation Order, nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors or any Entity may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

G. Procedures for Resolving Contingent, Unliquidated and Disputed Claims

1. Allowance of Claims

Prior to the Effective Date, the Debtors shall be entitled to object to Claims. After the Effective Date, each of the Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, shall have the right to object to Claims and shall retain any and all rights and defenses that the Debtors had with respect to any Claim immediately before the Effective Date, including the Causes of Action retained pursuant to Article VI.C.10 of the Plan. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Cases before the Effective Date (including the Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is deemed Allowed under the Plan or the Bankruptcy Code, or the Bankruptcy Court has entered a Final Order, including the Confirmation Order (when it becomes a Final Order), in the Chapter 11 Cases allowing such Claim.

2. Claims Administration Responsibilities

Except as otherwise specifically provided in the Plan, after the Effective Date, the Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, shall have the authority: (i) to File, withdraw, or litigate to judgment objections to Claims; (ii) to settle, compromise, withdraw, litigate to judgment, or otherwise resolve objections to any and all Claims, regardless of whether such Claims are in a Class or otherwise; (iii) to settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; and (iv) 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.

3. Estimation of Claims

Before or after the Effective Date, the Debtors, Reorganized Debtors, or Plan Administrator on behalf of the Wind Down Debtors, as applicable, may (but are not required to) at any time request that the Bankruptcy Court estimate any 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. 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 Plan Administrator, as applicable, may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim.

4. Adjustment to Claims Without Objection

Upon and following the Effective Date, any Claim that has been paid or satisfied, or any Claim that has been amended or superseded, cancelled or otherwise expunged (including pursuant to the Plan or the Confirmation Order), may be adjusted or expunged (including on the Claims Register, to the extent applicable) by the Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, without a Claim objection having to be Filed and without any further notice to or action, order or approval of the Bankruptcy Court.

5. Time to File Objections to Claims

Any objections to Claims shall be Filed on or before the later of (i) 180 days after the Effective Date and (ii) such other period of limitation as may be specifically fixed by the Debtors, Reorganized Debtors, or Plan Administrator on behalf of the Wind Down Debtors, as applicable, or by a Final Order of the Bankruptcy Court for objecting to such Claims.

6. Disallowance of Claims

Any Claims held by Entities from which property is recoverable under section 542, 543, 550, or 553 of the Bankruptcy Code, or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed Disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims may not receive any distributions on account of such Claims until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, to the Debtors by that Entity have been turned over or paid to the Reorganized Debtors or the Wind Down Debtors, as applicable. All Claims Filed on account of an indemnification obligation to a director, manager, officer, or employee of the Debtors as of the Effective Date shall be deemed satisfied and expunged from the Claims Register as of the Effective Date to the extent such indemnification obligation is assumed by the Reorganized Debtors or the Wind Down Debtors, as applicable, or honored or reaffirmed, as the case may be pursuant to the Plan, without any further notice to or action, order, or approval of the Bankruptcy Court.

Except as provided herein or otherwise agreed, any and all holders of Claims for which Proofs of Claim were Filed after the Bar Date shall not receive any distributions on account of such Claims, which shall be deemed Disallowed and expunged as of the Effective Date, unless on or before the first day of the Confirmation Hearing such late Claim has been deemed timely Filed by a Final Order; *provided* that such limitation shall not apply to Proofs of Claim filed by any Governmental Unit.

7. No Distributions Pending Allowance

If an objection to a Claim or portion thereof is Filed, no payment or distribution provided under the Plan shall be made on account of such Claim or portion thereof unless and until such Disputed Claim becomes an Allowed Claim.

8. Distributions 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 Disbursing 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, dividends, or accruals to be paid on account of such Claim unless required under applicable bankruptcy law.

H. Settlement, Release, Injunction and Related Provisions

1. Compromise and Settlement of Claims, Interests, and Controversies

Pursuant to sections 363 and 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a holder of a Claim or Interest may have, or any distribution to be made on account of such Allowed Claim. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all 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 reasonable. 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 or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, may compromise and settle any Claims and Causes of Action against other Entities.

2. **Discharge of Claims and Termination of Interests**

To the maximum extent provided by section 1141(d) of the Bankruptcy Code and except as otherwise specifically provided in the Definitive Documents, Plan or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims, Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability to the extent such Claims or Interests relate to services that employees of the Debtors performed prior to the Effective Date and that arise from a termination of employment, any contingent or non-

contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not (i) a Proof of Claim based upon such debt or right is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code, (ii) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code, or (iii) the holder of such a Claim or Interest has accepted the Plan. Any default by the Debtors with respect to any Claim or Interest that existed immediately prior to or on account of the filing of the Chapter 11 Cases shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the occurrence of the Effective Date.

3. **Release of Liens**

Except as otherwise provided in the Exit Facility Documents, if applicable, the Plan, the Plan Supplement, the Confirmation Order, or 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, except for Other Secured Claims that the Debtors elect to Reinstate in accordance with Article VI.B.4.i of the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, compromised, 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 automatically to the applicable Debtor and its successors and assigns. Any holder of such Secured Claim (and the applicable agents for such holder) shall be authorized and directed to release any collateral or other property of any Debtor (including any cash collateral and possessory collateral) held by such holder (and the applicable agents for such holder), and to take such actions as may be reasonably requested by the Debtors, Reorganized Debtors, or Wind Down Debtors (or the Plan Administrator on behalf of the Wind Down Debtors) to evidence the release of such Lien, including the execution, delivery, and filing or recording of such releases. The presentation or filing of the Confirmation Order to or with any federal, state, provincial, or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens.

In the event the Sale Transaction is consummated, for the avoidance of doubt, and consistent with Article IV.C of the Plan, the Purchaser shall acquire the Acquired Assets free and clear of all Claims, Liens, interests, and encumbrances other than those Assumed Liabilities and Permitted Encumbrances that are expressly contemplated by the Sale Transaction Documents.

4. **Releases by the Debtors**

Notwithstanding anything contained in the Plan to the contrary, pursuant to section 1123(b) of the Bankruptcy Code, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, on and after the Effective Date, each Released Party is deemed to be, conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtors, the Reorganized Debtors, the Wind Down Debtors,

their respective Estates, and any person seeking to exercise the rights of the Debtors or their Estates, including the Plan Administrator, and any successors to the Debtors or any Estates or any Estates representatives appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other Entities who may purport to assert any Cause of Action, directly or derivatively, by, through, for, or because of the foregoing Entities, from any and all Claims and Causes of Action, including any derivative claims, asserted or assertable on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, contingent or non-contingent, in law, equity, contract, tort or otherwise, that the Debtors, the Reorganized Debtors, the Wind Down Debtors, or their Estates, including the Plan Administrator, and any successors to the Debtors or any Estates representatives appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code, would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Entity, or that any holder of any Claim against, or Interest in, a Debtor or other Entity could have asserted on behalf of the Debtors, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the capital structure, management, ownership, or operation thereof), any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Credit Facility, the assertion or enforcement of rights and remedies against the Debtors, the Debtors' in- or out-of-court restructuring efforts, the Investigation, any Avoidance Actions, intercompany transactions between or among a Debtor and another Debtor, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or Filing of the RSA, the Disclosure Statement, the Bidding Procedures, the Plan (including, for the avoidance of doubt, the Plan Supplement), the Cash Collateral Orders, the Exit Facility (if applicable), the Sale Transaction, Standalone Restructuring, or any portion of the Restructuring Transactions, contract, instrument, release, or other agreement or document (including 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 RSA, the Disclosure Statement, the Bidding Procedures, the Plan, the Plan Supplement, the Cash Collateral Orders, the Exit Facility (if applicable), the Sale Transaction, Standalone Restructuring, or any portion of the Restructuring Transactions, before or during the Chapter 11 Cases, the Filing of the Chapter 11 Cases, the Disclosure Statement or the Plan, the solicitation of votes with respect to the Plan, 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 any other related agreement, or upon any other act or omission, transaction, agreement, event, or other occurrence related or relating to any of the foregoing taking place on or before the Effective Date, including all Avoidance Actions or other relief obtained by the Debtors in the Chapter 11 Cases, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes actual fraud, willful misconduct, or gross negligence, each solely to the extent as determined by a Final Order of a court of competent jurisdiction. Notwithstanding anything to the contrary in the foregoing, the

releases set forth in the Plan and recited herein do not release any post Effective Date obligations of any party or Entity under the Plan, the Confirmation Order, any Restructuring Transaction, any Definitive Document, the Sale Transaction Documents (if applicable), or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan or any Claim or obligation arising under the Plan.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Debtors' release, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Bankruptcy Court's finding that the Debtors' release is: (i) in exchange for the good and valuable consideration provided by the Released Parties, including, without limitation, the Released Parties' contributions to facilitating the Restructuring Transactions and implementing the Plan; (ii) a good faith settlement and compromise of the Claims released by the Debtors' release; (iii) in the best interests of the Debtors and all holders of Claims and Interests; (iv) fair, equitable, and reasonable; (v) given and made after due notice and opportunity for hearing; and (vi) a bar to any of the Debtors, the Reorganized Debtors, the Wind Down Debtors, the Plan Administrator, or the Debtors' Estates asserting any Claim or Cause of Action released pursuant to the Debtors' release.

5. **Releases by Holders of Claims and Interests**

Except as otherwise expressly set forth in the Plan or the Confirmation Order, on and after the Effective Date, in exchange for good and valuable consideration, the adequacy of which is confirmed, each Released Party is, and is deemed to be, conclusively, absolutely, unconditionally, irrevocably and forever, released and discharged by each Releasing Party from any and all Causes of Action, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, contingent or non-contingent, in law, equity, contract, tort, or otherwise, including any derivative claims asserted on behalf of the Debtors, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the capital structure, management, ownership, or operation thereof), any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Credit Facility, the assertion or enforcement of rights and remedies against the Debtors, the Debtors' in- or out-of-court restructuring efforts, the Investigation, any Avoidance Actions, intercompany transactions between or among a Debtor and another Debtor, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or Filing of the RSA, the Disclosure Statement, the Bidding Procedures, the Plan (including, for the avoidance of doubt, the Plan Supplement), the Cash Collateral Orders, the Exit Facility (if applicable), the Sale Transaction, Standalone Restructuring, or any portion of the Restructuring Transactions, contract, instrument, release, or other agreement or document created or entered into in connection with the RSA, the Disclosure Statement, the Bidding Procedures, the Plan, the Plan Supplement, the Cash Collateral Orders, the Exit Facility (if applicable), the Sale Transaction, Standalone Restructuring, or any portion of the Restructuring Transactions, before or during the Chapter 11 Cases, the Filing of the Chapter 11 Cases, the Disclosure Statement or the Plan,

the solicitation of votes with respect to the Plan, 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 any other related agreement, or upon any other act or omission, transaction, agreement, event, or other occurrence related or relating to any of the foregoing taking place on or before the Effective Date, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes actual fraud, willful misconduct, or gross negligence, each solely to the extent as determined by a Final Order of a court of competent jurisdiction. Notwithstanding anything to the contrary in the foregoing, the releases set forth in the Plan and recited above do not release (i) any party of any obligations related to customary banking products, banking services or other financial accommodations (except as may be expressly amended or modified by the Plan or any other financing document under and as defined therein), (ii) any post Effective Date obligations of any party or Entity under the Plan, the Confirmation Order, any Restructuring Transaction, any Definitive Document, the Sale Transaction Documents, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, including the Exit Facility documents, if any, or any Claim or obligation arising under the Plan, or (iii) any claims or causes of action against any Equity Party by any Entity that is, was or becomes a holder of a Credit Facility Claim for contribution or indemnification in respect of (a) any claims or causes of action asserted by IEP (or any successor or successor in interest thereto) against a holder of a Credit Facility Claim related to DevCo or the Credit Agreement or (b) solely to the extent any such claims for contribution or indemnification are applicable to an Equity Party in such context, obligations associated with the demolition or remediation of real property assets of DevCo ((a) and (b) together, the "Lender Preserved Indemnity and Contribution Claims"); *provided* that the release set forth in Article IX.E of the Plan shall not release any claims, counterclaims, defenses, or any rights related thereto of any Equity Party with respect to the Lender Preserved Indemnity and Contribution Claims.

Except to the extent a third party has opted out of the third-party releases in accordance with the terms of the Plan, entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the third-party releases, which includes by reference each of the related provisions and definitions contained herein, and, further, shall constitute the Bankruptcy Court's finding that the third-party releases are: (i) consensual; (ii) essential to the confirmation of the Plan; (iii) given in exchange for the good and valuable consideration provided by the Released Parties; (iv) a good faith settlement and compromise of the Claims released by the third-party releases; (v) in the best interests of the Debtors and their Estates; (vi) fair, equitable, and reasonable; (vii) given and made after due notice and opportunity for hearing; and (viii) a bar to any of the Releasing Parties asserting any claim or Cause of Action released pursuant to the third-party releases.

6. **Exculpation**

Except as otherwise specifically provided in the Plan or the Confirmation Order, no Exculpated Party shall have or incur liability for, and each Exculpated Party is hereby released and exculpated from, any Claims and Cause of Action for any claim related to any

act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or Filing of the RSA, the Disclosure Statement, the Bidding Procedures, the Investigation, the Plan, the Plan Supplement, the Cash Collateral Orders, the Exit Facility (if applicable), the Sale Transaction, Standalone Restructuring, or any portion of the Restructuring Transactions, contract, instrument, release or other agreement or document, including any Definitive Document, created or entered into before or during the Chapter 11 Cases, any preference, fraudulent transfer, or other avoidance claim arising pursuant to chapter 5 of the Bankruptcy Code or other applicable law, 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 any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, except for claims related to any act or omission that is determined in a Final Order by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan.

The Exculpated Parties and other parties set forth in the Plan have, and upon Confirmation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

7. **Injunction**

Except as otherwise expressly provided in the Plan or the Confirmation Order or for obligations or distributions issued or required to be paid pursuant to the Plan or the Confirmation Order, all Entities who have held, hold, or may hold Claims or Interests that have been released, discharged, or are subject to exculpation are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, the Wind Down Debtors, the Plan Administrator, the Exculpated Parties, or the Released Parties: (i) 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 or Interests; (ii) 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 or Interests; (iii) creating, perfecting, or enforcing any Lien or encumbrance of any kind against such Entities or the property or the Estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; (iv) asserting any right of setoff, subrogation, or recoupment 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 or Interests unless such holder has Filed a motion requesting the right to perform such setoff on or before the Effective Date, and notwithstanding an indication of a Claim or Interest or otherwise that such holder asserts, has, or intends to preserve any right of setoff pursuant to applicable

law or otherwise; and (v) 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 or Interests released or settled pursuant to the Plan.

Upon entry of the Confirmation Order, all holders of Claims and Interests and their respective current and former employees, agents, officers, directors, managers, principals, and direct and indirect affiliates shall be enjoined from taking any actions to interfere with the implementation or Consummation of the Plan. Except as otherwise set forth in the Confirmation Order, each holder of an Allowed Claim or Allowed Interest, as applicable, by accepting, or being eligible to accept, distributions under or Reinstatement of such Claim or Interest, as applicable, pursuant to the Plan, shall be deemed to have consented to the injunction provisions set forth in the Plan.

8. Protections Against Discriminatory Treatment

To the maximum extent provided by section 525 of the Bankruptcy Code and the Supremacy Clause of the U.S. Constitution, all Entities, including Governmental Units, shall not discriminate against the Reorganized Debtors or Wind Down Debtors, as applicable, or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Reorganized Debtors or Wind Down Debtors, as applicable, or another Entity with whom the Reorganized Debtors or Wind Down Debtors have been associated, solely because each Debtor has been a debtor under chapter 11 of the Bankruptcy Code, has been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before the Debtors are granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

9. Reimbursement or Contribution

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the time of allowance or disallowance, such Claim shall be forever disallowed and expunged notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Confirmation Date: (i) such Claim has been adjudicated as non-contingent or (ii) the relevant holder of a Claim has Filed a non-contingent Proof of Claim on account of such Claim and a Final Order has been entered prior to the Confirmation Date determining such Claim as no longer contingent.

10. Term of Injunctions or Stays

Unless otherwise provided in the Plan 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 extant 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.

I. Conditions Precedent to Consummation of the Plan

1. Conditions Precedent to the Effective Date

It shall be a condition to the Effective Date of the Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of Article VI.I.2 of the Plan:

i. The RSA shall remain in full force and effect and shall not have been terminated, no termination event thereunder shall have occurred, and there shall be no default thereunder;

ii. The Bankruptcy Court shall have entered the Confirmation Order, which shall be a Final Order, in form and substance consistent in all respects with the RSA and otherwise in form and substance reasonably acceptable to the Debtors and Required Consenting Lenders, and, if the Equity Party Consent Right (as defined in the RSA) is applicable, the Consenting Equity Parties, and which shall:

a) authorize the Debtors to take all actions necessary to enter into, implement, and consummate the contracts, instruments, releases, leases, indentures, and other agreements or documents created in connection with the Plan;

b) decree that the provisions in the Confirmation Order and the Plan are nonseverable and mutually dependent;

c) authorize the Debtors, as applicable/necessary, to: (1) implement the Restructuring Transactions; (2) distribute the New Common Equity, if applicable, pursuant to the exemption from registration under the Securities Act provided by section 1145 of the Bankruptcy Code or other exemption from such registration or pursuant to one or more registration statements; (3) make all distributions and issuances as required under the Plan, including cash and the New Common Equity, if applicable; and (4) enter into any agreements, transactions, and sales of property as set forth in the Plan Supplement;

d) if applicable, authorize the consummation of the Sale Transaction and the Purchaser's acquisition of the Acquired Assets free and clear of all Claims, Liens, interests, and encumbrances other than those Assumed Liabilities and Permitted Encumbrances expressly contemplated by the Sale Transaction Documents;

e) authorize the implementation of the Plan in accordance with its terms; and

f) provide that, pursuant to section 1146 of the Bankruptcy Code, the assignment or surrender of any lease or sublease, and the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with the Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of assets contemplated under the Plan, shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax; and

iii. the Debtors and the Purchaser, as applicable, shall have obtained all authorizations, consents, regulatory approvals, rulings, or documents that are necessary to implement and effectuate the Plan;

iv. the final version of each of the Plan, the Definitive Documents, and all documents contained in any supplement to the Plan, including the Plan Supplement and any exhibits, schedules, amendments, modifications, or supplements thereto or other documents contained therein shall have been executed or Filed, as applicable, in form and substance consistent in all material respects with the RSA;

v. the Final Cash Collateral Order shall remain in full force and effect and no event of default shall have occurred and be continuing thereunder;

vi. to the extent an Exit Facility is entered into, all conditions precedent to the effectiveness of the Exit Facility shall have been satisfied or duly waived, and the Exit Facility, including all documentation related thereto, shall be in effect (which may occur substantially contemporaneously with the occurrence of the Effective Date);

vii. all conditions precedent to the closing of the Sale Transaction, if applicable, shall have been satisfied or waived in accordance with the terms of the Asset Purchase Agreement and the Sale Transaction Documents (which may occur substantially contemporaneously with the occurrence of the Effective Date);

viii. the Restructuring Expenses shall have been paid in full in Cash;

ix. the Professional Fee Escrow Account shall have been established and funded with the Professional Fee Escrow Amount;

x. the Administrative Claim Reserve Account shall have been established and funded with the Administrative Claims Reserve Amount;

xi. the Priority Tax Reserve Account shall have been established and funded with the Priority Tax Reserve Amount;

xii. the Debtors shall have implemented the Restructuring Transactions in a manner consistent with the RSA and the Plan (which may occur substantially contemporaneously with the occurrence of the Effective Date);

xiii. all governmental and third-party approvals and consents, including Bankruptcy Court approval, necessary in connection with the transactions contemplated by the Plan shall have been obtained, not be subject to unfulfilled conditions, and be in full force and effect, and all applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain, prevent, or otherwise impose materially adverse conditions on such transactions; and

xiv. all conditions precedent to the issuance of the New Common Equity, if applicable, other than any conditions related to the occurrence of the Effective Date, shall have occurred.

2. Waiver of Conditions

The conditions to Confirmation and to Consummation set forth in Article **Error! Reference source not found.** of the Plan may be waived by the Debtors, with the prior written

consent of the Required Consenting Lenders and, if the Equity Party Consent Right (as defined in the RSA) is applicable, the Consenting Equity Parties (not to be withheld unreasonably, conditioned, or delayed), without notice, leave, or order of the Bankruptcy Court or any formal action other than proceeding to confirm or consummate the Plan.

The stay of the Confirmation Order pursuant to Bankruptcy Rule 3020(e) shall be deemed waived by and upon the entry of the Confirmation Order, and the Confirmation Order shall take effect immediately upon its entry.

3. Substantial Consummation

"Substantial Consummation" of the Plan, as defined in 11 U.S.C. § 1101(2), shall be deemed to occur on the Effective Date.

4. Effect of Nonoccurrence of Conditions

If Consummation does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (i) constitute a waiver or release of any Claims by the Debtors, any holders, or any other Entity; (ii) prejudice in any manner the rights of the Debtors, any holders, or any other Entity; or (iii) constitute an admission, acknowledgment, offer or undertaking by the Debtors, any holders, or any other Entity in any respect; *provided* that all provisions of the RSA that survive termination thereof shall remain in effect in accordance with the terms thereof.

J. Modification, Revocation or Withdrawal of the Plan

1. Modification and Amendments

Subject to the terms of the RSA and with the consent of the Required Consenting Lenders and, if the Equity Party Consent Right (as defined in the RSA) is applicable, the Consenting Equity Parties, except as otherwise specifically provided in the Plan, the Debtors reserve the right to modify the Plan, whether such modification is material or immaterial, and seek Confirmation consistent with the Bankruptcy Code and, as appropriate, not re-solicit votes on such modified Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 (as well as those restrictions on modifications set forth in the Plan), the Debtors expressly reserve their respective rights to revoke or withdraw, to alter, amend or modify the Plan with respect to such Debtor, one or more times, before or after Confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend or modify the Plan, or remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan.

2. Effect of Confirmation on Modifications

Entry of the Confirmation Order shall mean that all modifications or amendments to the Plan since the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or re-solicitation under Bankruptcy Rule 3019.

3. Revocation or Withdrawal of Plan

Subject to the terms of the RSA, the Debtors reserve the right to revoke or withdraw the Plan before the Confirmation Date and to file subsequent plans of reorganization, in each case, with respect to any Debtor or Debtors, upon filing notice with the Bankruptcy Court. If the Debtors revoke or withdraw the Plan with respect to any Debtor or Debtors, or if Confirmation or Consummation does not occur, then with respect to such applicable Debtor or Debtors: (i) the Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of the Claims or Interests or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (iii) nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims or Interests; (b) prejudice in any manner the rights of such Debtor, any holder, or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by such Debtor, any holder, or any other Entity.

K. Retention of Jurisdiction

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after 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:

i. allow, disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims or Interests;

ii. 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;

iii. resolve any matters related to: (a) the assumption, assumption and assignment, or rejection 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 Claims arising therefrom, including Claims related to the rejection of an Executory Contract or Unexpired Lease, Cure Claims pursuant to section 365 of the Bankruptcy Code, or any other matter related to such Executory Contract or Unexpired Lease; (b) amending, modifying, or supplementing, after the Effective Date, pursuant to Article **Error! Reference source not found.** of the Plan, any Executory Contracts or Unexpired Leases to the list of Executory Contracts and Unexpired Leases to be assumed and assigned or rejected or otherwise; and (c) any dispute regarding whether a contract or lease is or was executory, expired, or terminated;

iv. ensure that distributions to holders of Allowed Claims and Interests are accomplished pursuant to the provisions of the Plan;

v. 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;

vi. adjudicate, decide, or resolve any and all matters related to sections 1141 and 1145 of the Bankruptcy Code;

vii. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan, the Plan Supplement, or the Disclosure Statement, including the RSA;

viii. enter and enforce any order for the sale of property pursuant to section 363, 1123, or 1146(a) of the Bankruptcy Code;

ix. resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with Consummation, including interpretation or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;

x. 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;

xi. resolve any cases, controversies, suits, disputes or Causes of Action with respect to the releases, injunctions, exculpations, and other provisions contained in Article **Error! Reference source not found.** of the Plan, and enter such orders as may be necessary or appropriate to enforce or implement such releases, injunctions, exculpations, and other provisions;

xii. resolve any cases, controversies, suits, disputes or Causes of Action 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 VI.F.10.i of the Plan;

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

xiv. determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created in connection with the Plan or the Disclosure Statement;

xv. enter an order or final decree concluding or closing any of the Chapter 11 Cases;

xvi. adjudicate any and all disputes arising from or relating to distributions under the Plan;

xvii. 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;

xviii. determine requests for the payment of Claims entitled to priority pursuant to section 507 of the Bankruptcy Code;

xix. hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with the Plan;

xx. hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Restructuring Transactions, whether they occur before, on or after the Effective Date;

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

xxii. hear and determine all disputes involving the existence, nature, scope, or enforcement of any exculpations, discharges, injunctions, and releases granted in connection with and under the Plan, including under Article **Error! Reference source not found.** of the Plan;

xxiii. enforce all orders previously entered by the Bankruptcy Court; and

xxiv. hear any other matter not inconsistent with the Bankruptcy Code.

L. Miscellaneous Provisions

1. Immediate Binding Effect

Subject to Article VI.I.1 of the Plan 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, the Wind Down Debtors, and the Plan Administrator, as applicable, and any and all holders of Claims or Interests (irrespective of whether their 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.

2. Additional Documents

On or before the Effective Date and subject to the terms of the RSA, 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. The Debtors, the Reorganized Debtors, or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, and all holders receiving distributions pursuant to the Plan and all other parties in interest may, 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.

3. Payment of Statutory Fees

All fees payable pursuant to section 1930(a) of the Judicial Code shall be paid by each of the Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or closed, whichever occurs first; *provided* that on and after the Effective Date, the Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, shall (i) pay in full in cash when due and payable, and shall be solely responsible for paying, any and all such fees and interest with respect to any and all disbursements (and any other actions giving rise to such fees and interest) of the Reorganized Debtors or the Wind Down Debtors, as applicable, and (ii) File in the Chapter 11 Cases (to the extent they have not yet been closed, dismissed, or converted) quarterly reports as required by the Bankruptcy Code, Bankruptcy Rules, and Local Rules, as applicable, in connection therewith. The U.S. Trustee shall not be required to file any proof of claim or request for payment for quarterly fees.

4. Statutory Committee and Cessation of Fee and Expense Payment

On the Effective Date, if appointed, any statutory committee in the Chapter 11 Cases shall dissolve and members thereof shall be released and discharged from all rights and duties from or related to the Chapter 11 Cases, except for the filing of applications for compensation. The Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, shall no longer be responsible for paying any fees or expenses incurred by any statutory committees, if appointed, after the Effective Date.

5. Reservation of Rights

Except as expressly set forth in the Plan, the Plan shall have no force or effect unless the Bankruptcy Court enters the Confirmation Order, and the Confirmation Order shall have no force or effect if the Effective Date does not occur. 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 unless and until the Effective Date has occurred.

6. 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, manager, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

7. Entire Agreement

Except as otherwise indicated, the Plan and the Plan Supplement supersede 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.

8. Exhibits

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. After the exhibits and documents are Filed, copies of such exhibits and documents shall be available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from the website of the Notice, Claims, and Balloting Agent at https://cases.ra.kroll.com/salemharbor or the Bankruptcy Court's website at http://www.deb.uscourts.gov/. To the extent any exhibit or document is inconsistent with the terms of the Plan, unless otherwise ordered by the Bankruptcy Court, the non-exhibit or non-document portion of the Plan shall control.

9. Non-Severability of Plan Provisions

The provisions of the Plan, including its release, injunction, exculpation, and compromise provisions, are mutually dependent and non-severable. 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 consent of the Debtors, consistent with the terms set forth herein; and (iii) non-severable and mutually dependent.

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 their respective affiliates, agents, representatives, members, principals, shareholders, 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, as applicable, and any previous plan and, therefore, no such parties 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 or any previous plan, as applicable.

11. 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, or papers filed with the Bankruptcy Court prior to the Confirmation Date.

12. Closing of Chapter 11 Cases

The Reorganized Debtors or the Wind Down Debtors, as applicable, 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. As of the Effective Date, the Debtors, the Reorganized Debtors, or the Wind Down Debtors, as applicable, may submit separate orders to the Bankruptcy Court under certification of counsel closing the Chapter 11 Cases of substantially all of the Debtors

(collectively, the "Closing Cases"), with the exception of a single Chapter 11 Case designated by the Debtors, the Reorganized Debtors, or the Plan Administrator on behalf of the Wind Down Debtors, as applicable (the "Surviving Case"), (1) otherwise resolving Disputed Claims in accordance with Article VIII of the Plan and reporting distributions on Allowed Claims in accordance with Article VII of the Plan; and (2) administratively consolidating the claims registers of the Closing Cases under the claims register for the Surviving Case. Nothing in the Plan shall authorize the closing of any case *nunc pro tunc* to a date that precedes the date any such order is entered. Any request for *nunc pro tunc* relief shall be made on motion served on the U.S. Trustee, and the Bankruptcy Court shall rule on such request after notice and a hearing. Upon the Filing of a motion to close the Surviving Case, the Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, shall file a final report with respect to all of the Chapter 11 Cases pursuant to Local Rule 3022-1(c).

ARTICLE VII.
VALUATION ANALYSIS

To provide information to parties in interest regarding the possible range of values of their distributions under the Plan, it is necessary to ascribe an estimated value, or range of values, to the Reorganized Debtors. The Debtors have been advised by their investment banker, Houlihan, with respect to the estimated value of the Reorganized Debtors on a going-concern basis assuming the Standalone Restructuring contemplated by the Plan is consummated. Houlihan estimates the total enterprise value of the Reorganized Debtors to be approximately $[●] million to $[●] million, with a mid-point of $[●] million.

A summary of the valuation analysis (the "Valuation Analysis") performed by Houlihan is attached hereto as **Exhibit D**.[21] The estimates of the enterprise value contained therein do not reflect values that could be attainable in public or private markets, and are not a prediction or guarantee of the actual market value of the Reorganized Debtors that could be realized through the sale of any securities to be issued pursuant to the Plan.

Depending on the results of the Reorganized Debtors' operations, changes in the financial markets and/or other economic conditions, the value of the Reorganized Debtors may change significantly. In addition, the valuation of newly issued securities is subject to additional uncertainties and contingencies, all of which are difficult to predict. Actual market prices of such securities at issuance will depend upon, among other things, prevailing interest rates, conditions in the financial markets, the anticipated initial securities holdings of prepetition creditors, some of which may prefer to liquidate their investment rather than hold it on a long-term basis, and other factors that generally influence the prices of securities. Actual market prices of such securities also may be affected by the Debtors' history in the Chapter 11 Cases, conditions affecting generally the industry in which the Debtors participate and by other factors not capable of accurate prediction. Accordingly, the Reorganized Debtors' enterprise value estimated by Houlihan does not necessarily reflect, and should not be construed as reflecting, values that will be attained in the public or private markets. The equity value ascribed in the analysis does not purport to be an estimate of the post-reorganization market trading value. Such trading value may be materially

[21] The Debtors intend to file **Exhibit D** in advance of the hearing to consider approval of the Disclosure Statement.

different from the reorganization equity value ranges described in Houlihan's valuation analysis. The estimated Reorganized Debtors' enterprise value depends highly upon achieving the future financial results set forth in the Financial Projections (as defined below), as well as the realization of certain other assumptions that are not guaranteed. The valuations set forth therein represent estimated reorganization enterprise values and do not necessarily reflect values that could be attainable in public or private markets. The estimated equity value ascribed in the analysis does not purport to be an estimate of the post-reorganization market trading value of the Reorganized Debtors. Such a market trading value, if any, may differ materially from the estimated reorganization equity value associated with the valuation analysis.

ARTICLE VIII.
TRANSFER RESTRICTIONS AND CONSEQUENCES UNDER FEDERAL SECURITIES LAWS

A. Issuance

If the Standalone Restructuring is consummated, the Plan provides for the offer, issuance, sale, or distribution of New Common Equity on account of the Credit Facility Secured Claims (the "Section 1145 Securities"). The offer, issuance, sale, or distribution of the Section 1145 Securities by the Reorganized Debtors will be exempt from registration under Section 5 of the Securities Act and under any state or local law requiring registration for offer or sale of a security pursuant to section 1145 of the Bankruptcy Code, except with respect to an entity that is an "underwriter," as defined in Section 1145(b) of the Bankruptcy Code (as further discussed below).

Section 1145(a)(1) of the Bankruptcy Code exempts the offer and sale of securities under a chapter 11 plan from registration under section 5 of the Securities Act and state or local securities laws if three principal requirements are satisfied: (1) the securities must be offered and sold under a chapter 11 plan and must be securities issued by the debtor, an affiliate participating in a joint plan with the debtor, or a successor to the debtor under the plan; (2) the recipients of the securities must hold prepetition or administrative expense claims against the debtor or interests in the debtor; and (3) the securities must be issued entirely in exchange for the recipient's claim against or interest in the debtor, or "principally" in exchange for such claim or interest and "partly" for cash or property.

B. Subsequent Transfers

The Section 1145 Securities may be freely transferred by recipients following the initial issuance under the Plan, and all resales and subsequent transfers of the Section 1145 Securities are exempt from registration under the Securities Act and state securities laws, unless the holder is an "underwriter" with respect to such securities. Section 1145(b) of the Bankruptcy Code defines four types of "underwriters", excluding, in each case, with respect to ordinary trading transactions of an entity that is not an issuer:

1. a person (as defined in section 101(41) of the Bankruptcy Code, a "Person") who purchases a claim against, an interest in, or a claim for an administrative expense against the debtor with a view to distributing any security received in exchange for such claim or interest;

2. a Person who offers to sell securities offered or sold under a plan for the holders of such securities;

3. a Person who offers to buy securities offered or sold under a plan from the holders of such securities, if the offer to buy is:

    i. with a view to distributing such securities; and

    ii. under an agreement made in connection with the plan, the consummation of the plan, or with the offer or sale of securities under the plan; and

4. a Person who is an "issuer" (as defined in section 2(a)(11) of the Securities Act) with respect to the securities.

Under section 2(a)(11) of the Securities Act, an "issuer" includes any Person directly or indirectly controlling or controlled by the issuer, or any Person under direct or indirect common control of the issuer.

To the extent that Persons who receive Section 1145 Securities pursuant to the Plan are deemed to be underwriters, resales by such Persons would not be exempted from registration under the Securities Act or other applicable law by section 1145 of the Bankruptcy Code. Persons deemed to be underwriters may, however, be permitted to resell such Section 1145 Securities without registration pursuant to the provisions of Rule 144 under the Securities Act or another available exemption under the Securities Act. In addition, such Persons will also be entitled to resell their Section 1145 Securities in transactions registered under the Securities Act following the effectiveness of a registration statement.

Holders of Section 1145 Securities who are deemed underwriters may resell Section 1145 Securities pursuant to the limited safe harbor resale provision under Rule 144 of the Securities Act. Generally, Rule 144 would permit the public sale of securities received by such Person if, at the time of the sale, certain current public information regarding the issuer is available and only if such Person also complies with the volume, manner of sale and notice requirements of Rule 144. If the issuer is not subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act"), adequate current public information as specified under Rule 144 is available if certain company information is made publicly available, as specified in Section (c)(2) of Rule 144. The Reorganized Debtors will not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act.

Whether or not any particular Person would be deemed to be an underwriter with respect to the Section 1145 Securities or other security to be issued pursuant to the Plan would depend upon various facts and circumstances applicable to that Person. Accordingly, the Debtors express no view as to whether any particular Person receiving Section 1145 Securities or other securities under the Plan would be an underwriter with respect to such Section 1145 Securities or other securities, whether such Person may freely resell such securities or the circumstances under which they may resell such securities.

Notwithstanding the foregoing, the Section 1145 Securities will also be subject to any applicable transfer restrictions in the New Organizational Documents.

BECAUSE OF THE COMPLEX, SUBJECTIVE NATURE OF THE QUESTION OF WHETHER A PARTICULAR PERSON MAY BE AN UNDERWRITER OR AN AFFILIATE AND THE HIGHLY FACT-SPECIFIC NATURE OF THE AVAILABILITY OF EXEMPTIONS FROM REGISTRATION UNDER THE SECURITIES ACT, INCLUDING THE EXEMPTIONS AVAILABLE UNDER SECTION 1145 OF THE BANKRUPTCY CODE AND RULE 144 UNDER THE SECURITIES ACT, NONE OF THE DEBTORS MAKE ANY REPRESENTATION CONCERNING THE ABILITY OF ANY PERSON TO DISPOSE OF THE SECURITIES TO BE ISSUED UNDER OR OTHERWISE ACQUIRED PURSUANT TO THE PLAN.

THE DEBTORS RECOMMEND THAT POTENTIAL RECIPIENTS OF THE SECURITIES TO BE ISSUED UNDER OR OTHERWISE ACQUIRED PURSUANT TO THE PLAN CONSULT THEIR OWN COUNSEL CONCERNING WHETHER THEY MAY FREELY TRADE SUCH SECURITIES AND THE CIRCUMSTANCES UNDER WHICH THEY MAY RESELL SUCH SECURITIES.

ARTICLE IX.
CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

As of the date hereof, the Debtors are still engaged in negotiations with the Consenting Stakeholders with respect to determining the ultimate tax structuring of the Restructuring Transactions and the terms and sizing of the Exit Facility, if any, which remain subject in all respects to the consent rights set forth in the RSA. Consequently, as of the date hereof, the disclosures set forth in this Article IX may not be final and remain subject to ongoing negotiation and modification. Subject to the terms and conditions of the Plan and the RSA, the Debtors reserve all rights to amend, revise, and/or otherwise supplement this Article IX at any time prior to the hearing to consider approval of this Disclosure Statement, or any such other date thereafter as may be permitted by the Plan or by order of the Bankruptcy Court, including in connection with the filing of the Plan Supplement.

A. Introduction

The following discussion is a summary of certain U.S. federal income tax consequences of the consummation of the Plan to the Debtors, the Reorganized Debtors, and to certain holders (which solely for purposes of this discussion means the beneficial owners for U.S. federal income tax purposes) of certain Claims. The following summary does not address the U.S. federal income tax consequences to holders of Claims or Interests not entitled to vote to accept or reject the Plan. This summary is based on the U.S. Internal Revenue Code of 1986, as amended (the "IRC"), the Treasury Regulations promulgated thereunder, judicial authorities, published administrative positions of the U.S. Internal Revenue Service (the "IRS"), and other applicable authorities, all as in effect on the date of this Disclosure Statement and all of which are subject to change or differing interpretations, possibly with retroactive effect. Due to the lack of definitive judicial and administrative authority in a number of areas, substantial uncertainty may exist with respect to some of the tax consequences described below. No opinion of counsel has been obtained and the Debtors do not intend to seek a ruling from the IRS as to any of the tax consequences of the Plan discussed below. The discussion below is not binding upon the IRS or the courts. No

assurance can be given that the IRS would not assert, or that a court would not sustain, a different position than any position discussed herein.

This discussion does not purport to address all aspects of U.S. federal income taxation that may be relevant to the Debtors or to holders of Claims or Interests in light of their individual circumstances, nor does it address tax issues with respect to such holders that are subject to special treatment under the U.S. federal income tax laws (including, for example, banks, governmental authorities or agencies, partnerships or other pass-through entities, subchapter S corporations, trusts, dealers and traders in securities, insurance companies, financial institutions, tax-exempt organizations, small business investment companies, persons who are related to the Debtors within the meaning of the IRC, persons using a mark-to-market method of accounting, holders of Claims who are themselves in bankruptcy, real estate investment trusts, expatriates or former long-term residents of the United States, and regulated investment companies and those holding, or who will hold, Claims or the New Common Equity as part of a hedge, straddle, conversion, or other integrated transaction). This discussion does not address any U.S. federal non-income (including estate or gift), state, local, or non-U.S. tax considerations, the Medicare tax imposed on certain net investment income or considerations under any applicable tax treaty. Furthermore, this discussion assumes that a holder of a Claim holds only Claims in a single Class and holds Claims as "capital assets" within the meaning of section 1221 of the IRC (generally, property held for investment). Moreover, this discussion does not address special considerations that may apply to persons who are both holders of Claims and holders of Interests (directly or indirectly). This summary also assumes that the various debt instruments and other arrangements to which the Debtors are a party will be respected for U.S. federal income tax purposes in accordance with their form. Moreover, except to the extent specifically addressed herein, this discussion assumes that the "installment sale method" of reporting any gain that may be recognized by holders in respect of the transactions described herein does not apply and this discussion does not address the U.S. federal income tax consequences attributable to the installment sale method or open transaction reporting except to the extent specifically addressed herein.

For purposes of this discussion, a "U.S. Holder" is a holder that is: (1) an individual citizen or resident of the United States for U.S. federal income tax purposes; (2) a corporation (or other entity validly treated as a corporation for U.S. federal income tax purposes) created or organized under the laws of the United States, any state thereof or the District of Columbia; (3) an estate the income of which is subject to U.S. federal income taxation regardless of the source of such income; or (4) a trust (A) if a court within the United States is able to exercise primary jurisdiction over the trust's administration and one or more United States persons (within the meaning of section 7701(a)(30) of the IRC) has authority to control all substantial decisions of the trust or (B) that has a valid election in effect under applicable Treasury Regulations to be treated as a United States person (within the meaning of section 7701(a)(30) of the IRC). For purposes of this discussion, a "Non-U.S. Holder" is any holder that is not a U.S. Holder or a partnership (or other entity treated as a partnership or other pass-through entity for U.S. federal income tax purposes).

If a partnership (or other entity treated as a partnership or other pass-through entity for U.S. federal income tax purposes) is a holder, the tax treatment of a partner (or other owner) generally will depend upon the status of the partner (or other owner) and the activities of the partner (or other owner) and the partnership (or other entity treated as a partnership or other pass-through entity for U.S. federal income tax purposes). Partners of any partnership (or other entity treated as a

partnership or other pass-through entity for U.S. federal income tax purposes) that is a holder are urged to consult their respective tax advisors regarding the U.S. federal income tax consequences of the Plan.

The following discussion assumes that the Debtors will undertake the Restructuring Transactions currently contemplated by the Plan in accordance with the Plan and as further described herein and in the Plan. Holders of Claims are urged to consult their tax advisors regarding the tax consequences of the Restructuring Transactions.

THE FOLLOWING SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES PERTAINING TO A HOLDER OF A CLAIM OR INTEREST. ALL HOLDERS OF CLAIMS OR INTERESTS ARE URGED TO CONSULT THEIR TAX ADVISORS FOR THE U.S. FEDERAL, STATE, LOCAL, AND NON-U.S. TAX CONSEQUENCES OF THE PLAN.

B. Certain U.S. Federal Income Tax Consequences to the Debtors

1. Characterization of the Debtors

TopCo is treated as a partnership for U.S. federal income tax purposes. TopCo GP is treated as an entity that is disregarded from its owner for U.S. federal income tax purposes. All of the direct and indirect wholly-owned subsidiaries of TopCo, including all of the other Debtors, are treated as entities disregarded as separate from TopCo for U.S. federal income tax purposes. Accordingly, the U.S. federal income tax consequences of the Restructuring Transactions will generally be borne by the equity holders of TopCo (including the equity holders of TopCo GP) rather than the Debtors. For purposes of the following disclosure, references to TopCo are deemed to include references to subsidiaries of TopCo that are disregarded as separate from it for U.S. federal income tax purposes where applicable.

As a partnership or disregarded entity (as applicable), TopCo GP and TopCo and its subsidiaries generally are not subject to U.S. federal income taxation. Instead, each existing equity holder of TopCo (including the equity holder of TopCo GP) is required to report on its U.S. federal income tax return, and is subject to tax in respect of, its distributive share of each item of income, gain, loss, deduction and credit of such Debtors. Accordingly, except to the extent noted below, the U.S. federal income tax consequences of the Restructuring Transactions under the Plan generally will not be borne by the Debtors, and instead will be borne by the existing equity holders of TopCo.

2. Characterization of Restructuring Transactions

The Debtors have not yet determined how the Restructuring Transactions will be structured. There are currently two anticipated alternatives contemplated by the Plan—the Standalone Restructuring or the Sale Transaction, each as defined and described below. A Standalone Restructuring may be structured such that the Reorganized Parent is either TopCo, as reorganized ("Reorganized TopCo"), or DevCo, as reorganized ("Reorganized DevCo"). Unless otherwise noted, the discussion below applies only to U.S. Holders.

i. Standalone Restructuring

a) Reorganized TopCo as Reorganized Parent

If the Restructuring Transactions are effected pursuant to the Standalone Restructuring whereby Reorganized Parent is Reorganized TopCo, then, on the Effective Date, all existing Interests in TopCo will be automatically cancelled and Reorganized TopCo will issue the New Common Equity to holders of Claims entitled to receive the New Common Equity pursuant to the Plan. In general, when the debt of a partnership is cancelled, its creditors are equitized, and existing equityholders' interests are cancelled, there is some uncertainty in the U.S. federal income tax treatment. It could be that holders of Claims are treated as contributing their claims to the existing partnership in a transaction governed by section 721 of the IRC, potentially resulting in the allocation of certain items of taxable income, loss, gain, and deduction to the holders of the existing Interests of TopCo whose Interests are being cancelled. Alternatively, it could be the case that the existing partnership is deemed to transfer its assets to creditors in a taxable transaction, with a new partnership immediately being formed, in which case the tax consequences of the deemed sale of the assets of TopCo should be recognized by the holders of the existing Interests of TopCo (including through ownership of the Interests of TopCo GP) and not by Reorganized Parent or any holders of New Common Equity. The remainder of this disclosure assumes that if the Restructuring Transactions are effected pursuant to the Standalone Restructuring in which Reorganized Parent is Reorganized TopCo, holders of Claims are treated as contributing their claims to the existing partnership in a transaction governed by section 721 of the IRC.

b) Reorganized DevCo as Reorganized Parent

If the Restructuring Transactions are effected pursuant to the Standalone Restructuring whereby Reorganized Parent is Reorganized DevCo, then Reorganized DevCo is expected to be treated as a newly formed partnership for U.S. federal income tax purposes. As a result, the tax consequences of the deemed sale of the assets of DevCo, should be recognized by the holders of the existing Interests of TopCo (including through ownership of the Interests of TopCo GP) and not by Reorganized Parent or any holders of New Common Equity.

ii. Sale Transaction

If the Restructuring Transactions are effected pursuant to the Sale Transaction, the tax consequences of the sale of the assets of TopCo, including cancellation of indebtedness income (if any), should be recognized by the holders of the existing Interests of TopCo (including through ownership of the Interests of TopCo GP).

C. Certain U.S. Federal Income Tax Consequences to Certain U.S. Holders of Allowed Class 3 Claims and Allowed Class 4 Claims

The following discussion assumes that the Debtors will undertake the Restructuring Transactions currently contemplated by the Plan using one of the transaction structures described above in Article IX.B.2. U.S. Holders are urged to consult their tax advisors regarding the Restructuring Transactions' tax consequences to them.

1. U.S. Holders of Allowed Class 3 Claims

i. Standalone Restructuring

a) Reorganized TopCo as Reorganized Parent

If the Plan is implemented pursuant to the Standalone Restructuring with Reorganized TopCo as Reorganized Parent, then pursuant to the Plan, in exchange for full and final satisfaction, compromise, settlement, release, and discharge of their Claims, each holder of an Allowed Class 3 Claim will receive its Pro Rata share of 100 percent of the New Common Equity of Reorganized TopCo.

In such case, U.S. Holders of Allowed Class 3 Claims are expected to be treated as receiving their share of the New Common Equity in an exchange governed by section 721 of the IRC on which no gain or loss is realized (other than with respect to any amounts received that are attributable to accrued but paid interest, which will be taxed as ordinary interest income to the extent not previously so taxed). A U.S. Holder's initial aggregate tax basis in the New Common Equity should be equal to the sum of (1) the fair market value of the New Common Equity treated as received by such U.S. Holder in respect of accrued but unpaid interest (as discussed herein), (2) such U.S. Holder's existing adjusted tax basis in the portion of its Claims treated as exchanged for New Common Equity (other than in respect of accrued but unpaid interest) and (3) such U.S. Holder's allocable portion of liabilities of Reorganized Parent. A U.S. Holder's holding period of the New Common Equity should include the period that the U.S. Holder held the Claim, except to the extent such New Common Equity is treated as received in respect of accrued but unpaid interest, in which case the holding period would begin on the day following the Effective Date.

b) Reorganized DevCo as Reorganized Parent

If the Plan is implemented pursuant to the Standalone Restructuring with Reorganized DevCo as Reorganized Parent, then pursuant to the Plan, in exchange for full and final satisfaction, compromise, settlement, release, and discharge of their Claims, each holder of an Allowed Class 3 Claim will receive its Pro Rata share of 100 percent of the New Common Equity of Reorganized DevCo.

In such case, U.S. Holders of Allowed Class 3 Claims are expected to be treated as receiving their Pro Rata share of the New Common Equity in a taxable exchange under section 1001 of the IRC, followed by a contribution governed by section 721 of the IRC on which no gain or loss is realized. Accordingly, subject to the discussion of accrued interest and market discount below, each U.S. Holder of an Allowed Class 3 Claim would generally recognize gain or loss in the exchange in an amount equal to the difference between (1) the fair market value of such U.S. Holder's Pro Rata share of the New Common Equity and (2) such U.S. Holder's adjusted tax basis in its Allowed Class 3 Claim. The character of such gain or loss that a U.S. Holder recognizes on receipt of its Pro Rata share of the New Common Equity as capital gain or loss or as ordinary income or loss will be determined by a number of factors, including the tax status of the U.S. Holder, the nature of the Allowed Class 3 Claim in the U.S. Holder's hands, whether the Allowed Class 3 Claim constitutes a capital asset in the hands of the U.S. Holder, whether the Allowed Class 3 Claim was purchased at a discount, and whether, and to what extent, the U.S. Holder has

previously claimed a bad debt deduction with respect to the Allowed Class 3 Claim, as applicable. If recognized gain is capital gain, such gain generally would be long-term capital gain if the U.S. Holder held the Allowed Class 3 Claim for more than one year at the time of the exchange. The deductibility of capital losses is subject to certain limitations, as discussed below.

A U.S. Holder's initial aggregate tax basis in the New Common Equity should be equal to the sum of (1) the fair market value of the New Common Equity received by such U.S. Holder and (2) such U.S. Holder's allocable portion of liabilities of Reorganized Parent. A U.S. Holder's holding period of the New Common Equity will begin on the day following the Effective Date.

ii. Sale Transaction

If the Restructuring Transactions are effected pursuant to the Sale Transaction, a U.S. Holder of an Allowed Class 3 Claim's exchange of its Allowed Class 3 Claim for its Pro Rata share of the Net Sale Proceeds will constitute a fully taxable exchange under section 1001 of the IRC. Accordingly, subject to the discussion of accrued interest and market discount below, each U.S. Holder of an Allowed Class 3 Claim would generally recognize gain or loss in the exchange in an amount equal to the difference between (a) the amount of cash received from its Pro Rata share of the Net Sale Proceeds and (b) such U.S. Holder's adjusted tax basis in its Allowed Class 3 Claim. The character of such gain or loss that a U.S. Holder recognizes on receipt of its Pro Rata share of the Net Sale Proceeds as capital gain or loss or as ordinary income or loss will be determined by a number of factors, including the tax status of the U.S. Holder, the nature of the Allowed Class 3 Claim in the U.S. Holder's hands, whether the Allowed Class 3 Claim constitutes a capital asset in the hands of the U.S. Holder, whether the Allowed Class 3 Claim was purchased at a discount, and whether, and to what extent, the U.S. Holder has previously claimed a bad debt deduction with respect to the Allowed Class 3 Claim, as applicable. If recognized gain is capital gain, such gain generally would be long-term capital gain if the U.S. Holder held the Allowed Class 3 Claim for more than one year at the time of the exchange. The deductibility of capital losses is subject to certain limitations, as discussed below.

2. U.S. Holders of Allowed Class 4 Claims

i. Standalone Restructuring

If the Plan is implemented pursuant to the Standalone Restructuring, then pursuant to the Plan, in exchange for full and final satisfaction, compromise, settlement, release, and discharge of their Claims, each holder of an Allowed Class 4 Claim will receive its Pro Rata share of the Unencumbered Asset Cash subject to the rights of the Prepetition Secured Parties to assert adequate protection claims pursuant to the Cash Collateral Order. Pursuant to the Plan, each U.S. Holder of an Allowed Class 4 Claim that votes to accept the Plan shall receive a complete waiver and release of any and all claims, Causes of Action, and other rights against the holders of Allowed Class 4 Claim based on claims pursuant to chapter 5 of the Bankruptcy Code or under similar or related state or federal statutes and common law including fraudulent transfer laws by the Debtors and their Estates, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other entities who may purport to assert any Cause of Action, directly or derivatively, by, through, for, or because of the foregoing entities.

A U.S. Holder of an Allowed Class 4 Claim will generally be treated as having exchanged its Allowed Class 4 Claim for its Pro Rata share of any such cash in an exchange governed by Section 1001 of the IRC on which taxable gain or loss is realized in an amount equal to the difference between (a) the sum of the cash received and (b) such U.S. Holder's adjusted basis, if any, in its Allowed Class 4 Claim. Any cash received in respect of accrued but unpaid interest will be taxed as set forth below. Subject to the discussions below, any such gain or loss should be capital gain or loss and will generally be long-term capital gain or loss if the U.S. Holder held its Allowed Class 4 Claim for more than one year on the Effective Date. Under current U.S. federal income tax law, certain non-corporate U.S. Holders (including individuals) are eligible for preferential rates of U.S. federal income tax on long-term capital gains. The deductibility of capital losses is subject to limitation, as discussed below.

ii. Sale Transaction

If the Plan is implemented pursuant to the Sale Transaction, then pursuant to the Plan, in exchange for full and final satisfaction, compromise, settlement, release, and discharge of their Claims, each holder of an Allowed Class 4 Claim will receive (a) its Pro Rata share of the Unencumbered Asset Cash subject to the rights of the Prepetition Secured Parties to assert adequate protection claims pursuant to the Cash Collateral Order and (b) to the extent the Credit Facility Claims are satisfied in full in Cash, its Pro Rata share of the Net Sale Proceeds remaining until all Allowed General Unsecured Claims are satisfied in full in Cash.

A U.S. Holder of an Allowed Class 4 Claim will generally be treated as having exchanged its Allowed Class 4 Claim for its Pro Rata share of any such cash in an exchange governed by Section 1001 of the IRC on which taxable gain or loss is realized in an amount equal to the difference between (a) the sum of the cash received and (b) such U.S. Holder's adjusted basis, if any, in its Allowed Class 4 Claim. Any cash received in respect of accrued but unpaid interest will be taxed as set forth below. Subject to the discussions below, any such gain or loss should be capital gain or loss and will generally be long-term capital gain or loss if the U.S. Holder held its Allowed Class 4 Claim for more than one year on the Effective Date. Under current U.S. federal income tax law, certain non-corporate U.S. Holders (including individuals) are eligible for preferential rates of U.S. federal income tax on long-term capital gains. The deductibility of capital losses is subject to limitation, as discussed below.

3. Accrued Interest

To the extent that any amount received by a U.S. Holder of a Claim under the Plan is attributable to accrued but unpaid interest on the debt instruments constituting the surrendered Claim, the receipt of such amount should be taxable to the U.S. Holder as ordinary interest income (to the extent not already taken into income by the U.S. Holder). Conversely, a U.S. Holder of a Claim may be able to recognize a deductible loss to the extent that any accrued interest on the debt instruments constituting such claim was previously included in the holder's gross income but was not paid in full by the Debtors.

If the fair market value of the consideration is not sufficient to fully satisfy all principal and interest on Allowed Claims, the extent to which such consideration will be attributable to accrued interest is unclear. Under the Plan, the aggregate consideration to be distributed to holders

of Allowed Claims in each Class will be allocated first to the principal amount of Allowed Claims, with any excess allocated to unpaid interest that accrued on these Claims, if any. Certain legislative history indicates that an allocation of consideration as between principal and interest provided in a chapter 11 plan of reorganization is binding for U.S. federal income tax purposes, and certain case law generally indicates that a final payment on a distressed debt instrument that is insufficient to repay outstanding principal and interest will be allocated to principal, rather than interest. Certain Treasury Regulations treat payments as allocated first to any accrued but unpaid interest. The IRS could take the position that the consideration received by the holder should be allocated in some way other than as provided in the Plan. U.S. Holders of Claims are urged to consult their tax advisors regarding the proper allocation of the consideration received by them under the Plan.

4. Market Discount

Under the "market discount" provisions of the IRC, some or all of any gain realized by a U.S. Holder of a Claim who exchanges the Claim on the Effective Date may be treated as ordinary income (instead of capital gain), to the extent of the amount of "accrued market discount" on the debt instruments constituting the exchanged Claim. In general, a debt instrument is considered to have been acquired with "market discount" if it is acquired other than on original issue and if its holder's adjusted tax basis in the debt instrument is less than (i) the sum of all remaining payments to be made on the debt instrument, excluding "qualified stated interest" or (ii) in the case of a debt instrument issued with original issue discount, its adjusted issue price, by at least a de minimis amount (equal to 0.25% of the sum of all remaining payments to be made on the debt instrument, excluding qualified stated interest, multiplied by the number of remaining whole years to maturity).

Any gain recognized by a U.S. Holder on the taxable disposition of an Allowed Claim (determined as described above) that was acquired with market discount should be treated as ordinary income to the extent of the market discount that accrued thereon while the Claim was considered to be held by the U.S. Holder (unless the U.S. Holder elected to include market discount in income as it accrued). To the extent that the Allowed Claims that were acquired with market discount are exchanged in a tax-free transaction for other property, any market discount that accrued on the Allowed Claims (i.e., up to the time of the exchange), but was not recognized by the U.S. Holder is carried over to the property received therefor, and any gain recognized on the subsequent sale, exchange, redemption, or other disposition of the property is treated as ordinary income to the extent of the accrued, but not recognized, market discount.

5. Limitations on Use of Capital Losses

A U.S. Holder of an Allowed Claim who recognizes capital losses as a result of the distributions under the Plan will be subject to limits on its use of capital losses. For a non-corporate U.S. Holder, capital losses may be used to offset any capital gains (without regard to holding periods) plus ordinary income to the extent of the lesser of (i) $3,000 ($1,500 for married individuals filing separate returns) or (ii) the excess of the capital losses over the capital gains. A non-corporate U.S. Holder may carry over unused capital losses and apply them to capital gains and a portion of their ordinary income for an unlimited number of years. For corporate U.S. Holders, losses from the sale or exchange of capital assets may only be used to offset capital gains. A corporate U.S. Holder who has more capital losses than can be used in a tax year may be allowed

to carry over the excess capital losses for use in succeeding tax years. Corporate U.S. Holders may only carry over unused capital losses for the five years following the capital loss year, but are allowed to carry back unused capital losses to the three years preceding the capital loss year.

6. U.S. Federal Income Tax Consequences to U.S. Holders of Owning and Disposing of New Common Equity

Items of income, gain, loss, and deduction of Reorganized Parent will be allocated to U.S. Holders of the New Common Equity as provided in the New Organizational Documents. Each item generally will have the same character as if the U.S. Holder had realized the item directly. U.S. Holders will be required to report these items regardless of the extent to which, or whether, they receive cash distributions from Reorganized Parent for such taxable year, and thus may incur income tax liabilities in excess of any cash distributions from Reorganized Parent.

A U.S. Holder is allowed to deduct its allocable share of Reorganized Parent's losses (if any) only to the extent of such U.S. Holder's adjusted tax basis (discussed below) in the New Common Equity at the end of the taxable year in which the losses occur. In addition, various other limitations in the IRC may significantly limit a U.S. Holder's ability to deduct its allocable share of deductions and losses of Reorganized Parent against other income.

Reorganized Parent will provide each U.S. Holder with the necessary information to report its allocable share of Reorganized Parent's tax items for U.S. federal income tax purposes. However, no assurance can be given that Reorganized Parent will be able to provide such information prior to the initial due date of the U.S. Holder's U.S. federal income tax return and U.S. Holders may therefore be required to apply to the IRS for an extension of time to file their tax returns.

Reorganized Parent will determine how items will be reported on Reorganized Parent's U.S. federal income tax returns in accordance with the New Organizational Documents, and all U.S. Holders of New Common Equity will be required under the IRC to treat the items consistently on their own returns, unless they file a statement with the IRS disclosing the inconsistency. In the event that Reorganized Parent's income tax returns are audited by the IRS, the tax treatment of Reorganized Parent's income, gain, loss, and deductions generally will be determined at the Reorganized Parent level in a single proceeding, rather than in individual audits of U.S. Holders of New Common Equity. Reorganized Parent's "partnership representative" will have considerable authority under the IRC and the New Organizational Documents to make decisions affecting the tax treatment and procedural rights of the U.S. Holders of New Common Equity.

A U.S. Holder of New Common Equity generally will not recognize gain or loss on the receipt of a distribution of cash or property from Reorganized Parent (provided that such U.S. Holder is not treated as exchanging such U.S. Holder's share of Reorganized Parent's "unrealized receivables" and/or certain "inventory items" (as those terms are defined in the IRC, and together, "ordinary income items") for other partnership property). A U.S. Holder, however, will recognize gain on the receipt of a distribution of cash and, in some cases, marketable securities, from Reorganized Parent (including any constructive distribution of money resulting from a reduction of the U.S. Holder's share of Reorganized Parent's indebtedness) to the extent such distribution or the fair market value of such marketable securities distributed exceeds such U.S. Holder's adjusted

tax basis in the New Common Equity. Such distribution would be treated as gain from the sale or exchange of the New Common Equity, which is described below.

A U.S. Holder's adjusted tax basis in the New Common Equity generally will be equal to such U.S. Holder's initial tax basis, increased by the sum of (i) any additional capital contribution such U.S. Holder makes to Reorganized Parent; (ii) the U.S. Holder's allocable share of the income of Reorganized Parent; and (iii) increases in the U.S. Holder's allocable share of Reorganized Parent's indebtedness, and reduced, but not below zero, by the sum of (a) the U.S. Holder's allocable share of Reorganized Parent's losses, and (b) the amount of money or the adjusted tax basis of property distributed to such U.S. Holder, including constructive distributions of cash resulting from reductions in such U.S. Holder's allocable share of Reorganized Parent's indebtedness.

A sale of all or part of the New Common Equity will result in the recognition of gain or loss in an amount equal to the difference between the amount of the sales proceeds or distribution (including any constructive distribution) and such U.S. Holder's adjusted tax basis for the New Common Equity disposed of. Any gain or loss recognized with respect to such a sale generally will be treated as capital gain or loss, and will be long-term capital gain or loss if the New Common Equity has been held for more than one year, except to the extent (i) that the proceeds of the sale are attributable to a U.S. Holder's allocable share of certain of Reorganized Parent's ordinary income items and such proceeds exceed the U.S. Holder's adjusted tax basis attributable to such ordinary income items and (ii) of previously allowed bad debt or ordinary loss deductions. A U.S. Holder's ability to deduct any loss recognized on the sale of the New Common Equity will depend on the U.S. Holder's own circumstances and may be restricted under the IRC.

D. Certain U.S. Federal Income Tax Consequences to Certain Non-U.S. Holders of Allowed Claims

The following discussion assumes that the Debtors will undertake the Restructuring Transactions currently contemplated by the Plan and includes only certain U.S. federal income tax consequences of the Plan to Non-U.S. Holders. The rules governing the U.S. federal income tax consequences to Non-U.S. Holders are complex. Each Non-U.S. Holder is urged to consult its tax advisor regarding the U.S. federal, state, local, non-U.S., and non-income tax consequences of the consummation of the Plan to such Non-U.S. Holder and the ownership and disposition of the New Common Equity.

1. Gain Recognition

Any gain realized by a Non-U.S. Holder on the exchange of its Claim generally will not be subject to U.S. federal income taxation unless (i) the Non-U.S. Holder is an individual who was present in the U.S. for 183 days or more during the taxable year in which the Restructuring Transactions occur and certain other conditions are met or (ii) such gain is effectively connected with the conduct by such Non-U.S. Holder of a trade or business in the U.S. (and, if an income tax treaty applies, such gain is attributable to a permanent establishment maintained by such Non-U.S. Holder in the U.S.).

If the first exception applies, the Non-U.S. Holder generally will be subject to U.S. federal income tax at a rate of 30% (or at a reduced rate or exemption from tax under an applicable income tax treaty) on the amount by which such Non-U.S. Holder's capital gains allocable to U.S. sources exceed capital losses allocable to U.S. sources during the taxable year of the exchange. If the second exception applies, the Non-U.S. Holder generally will be subject to U.S. federal income tax with respect to any gain realized on the exchange if such gain is effectively connected with the Non-U.S. Holder's conduct of a trade or business in the U.S. in the same manner as a U.S. Holder (except that the Medicare tax would generally not apply). In order to claim an exemption from withholding tax, such Non-U.S. Holder will be required to provide a properly executed IRS Form W-8ECI (or such successor form as the IRS designates). In addition, if such a Non-U.S. Holder is a corporation, it may be subject to a branch profits tax equal to 30% (or such lower rate provided by an applicable treaty) of its effectively connected earnings and profits for the taxable year, subject to certain adjustments.

2. Accrued Interest

Subject to the discussion of backup withholding and FATCA (as defined below), any amount received by a Non-U.S. Holder of a Claim under the Plan that is attributable to accrued but unpaid interest on the debt instruments constituting the surrendered Claim that is not effectively connected with a U.S. trade or business carried on by the Non-U.S. Holder will qualify for the so-called "portfolio interest exemption" and, therefore, will not be subject to U.S. federal income tax or withholding, provided that:

- the Non-U.S. Holder does not own, actually or constructively, a 10% or greater interest in TopCo within the meaning of Section 871(h)(3) of the IRC and Treasury Regulations thereunder;

- the Non-U.S. Holder is not a controlled foreign corporation related to TopCo, actually or constructively through the ownership rules under Section 864(d)(4) of the IRC;

- the Non-U.S. Holder is not a bank that is receiving the interest on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of its trade or business; and

- the beneficial owner gives TopCo or TopCo's paying agent an appropriate IRS Form W-8 (or suitable substitute or successor form or such other form as the IRS may prescribe) that has been properly completed and duly executed establishing its status as a Non-U.S. Holder.

If not all of these conditions are met, any amount received by a U.S. Holder of a Claim under the Plan that is attributable to accrued but unpaid interest that is not effectively connected with a U.S. trade or business carried on by the Non-U.S. Holder will generally be subject to U.S. federal income tax and withholding at a 30% rate, unless an applicable income tax treaty reduces or eliminates such withholding and the Non-U.S. Holder claims the benefit of that treaty by providing an appropriate IRS Form W-8 (or a suitable substitute or successor form or such other form as the IRS may prescribe) that has been properly completed and duly executed.

If any amount received by a U.S. Holder of a Claim under the Plan that is attributable to accrued but unpaid interest is effectively connected with a U.S. trade or business carried on by the Non-U.S. Holder ("ECI"), the Non-U.S. Holder will be required to pay U.S. federal income tax on that interest on a net income basis generally in the same manner as a U.S. Holder (and the 30% withholding tax described above will not apply, provided the appropriate statement is provided to TopCo or TopCo's paying agent) unless an applicable income tax treaty provides otherwise. To claim an exemption from withholding, such non-U.S. Holder will be required to provide a properly executed IRS Form W-8ECI (or suitable substitute or successor form or such other form as the IRS may prescribe). If a Non-U.S. Holder is eligible for the benefits of any income tax treaty between the United States and its country of residence, any interest income that is ECI will be subject to U.S. federal income tax in the manner specified by the treaty if the Non-U.S. Holder claims the benefit of the treaty by providing an appropriate IRS Form W-8 (or a suitable substitute or successor form or such other form as the IRS may prescribe) that has been properly completed and duly executed. In addition, a corporate Non-U.S. Holder may, under certain circumstances, be subject to an additional "branch profits tax" at a 30% rate, or, if applicable, a lower treaty rate, on its effectively connected earnings and profits attributable to such interest (subject to adjustments).

The certifications described above must be provided to the applicable withholding agent prior to the payment of any amount that is attributable to accrued but unpaid interest. Non-U.S. Holders that do not timely provide the applicable withholding agent with the required certification, but that qualify for a reduced rate under an applicable income tax treaty, may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS. Non-U.S. Holders are urged to consult their tax advisors regarding their entitlement to benefits under any applicable income tax treaty.

3. U.S. Federal Income Tax Consequences to Non-U.S. Holders of Owning and Disposing of New Common Equity

Non-U.S. Holders treated as engaged in a U.S. trade or business are subject to U.S. federal income tax at the graduated rates applicable to U.S. persons on ECI. Non-U.S. Holders that are corporations may also be subject to a 30% branch profits tax on ECI. The 30% rate applicable to branch profits may be reduced or eliminated under the provisions of an applicable income tax treaty between the United States and the country in which the Non-U.S. Holder resides or is organized.

It is expected that Reorganized Parent's method of operation will result in a determination that Reorganized Parent is engaged in a U.S. trade or business with the result that some portion of Reorganized Parent's income is properly treated as ECI with respect to Non-U.S. Holders. If a Non-U.S. Holder were treated as being engaged in a U.S. trade or business in any year because of an investment in New Common Equity in such year, (i) the Non-U.S. Holder's share of Reorganized Parent's ECI will be subject to tax at regular U.S. federal income tax rates and, if the Non-U.S. Holder is a corporation for U.S. federal income tax purposes, may also be subject to U.S. branch profits tax, (ii) the gain on a disposition of the Non-U.S. Holder's interest in Reorganized Parent would be treated as ECI to the extent such gain is attributable to assets of Reorganized Parent that generate ECI (and the acquiror in such disposition would be required to withhold 10% of the amount realized by such Non-U.S. Holder on such disposition), (iii) the Non-U.S. Holder

generally would be required to file a U.S. federal income tax return (even if no income allocated to the Non-U.S. Holder is ECI), and (iv) Reorganized Parent would be required to withhold U.S. federal income tax with respect to the Non-U.S. Holder's share of Reorganized Parent's income that is ECI. Furthermore, all or a portion of a Non-U.S. Holder's New Common Equity likely will be attributable to U.S. real property, in which case gain on sale or exchange of such New Common Equity could be treated for U.S federal income tax purposes as effectively connected income under the FIRPTA rules described below, even if Reorganized Parent were not otherwise treated as engaged in a U.S. trade or business, in which case such gains would be subject to U.S. federal income tax at regular rates applicable to U.S. persons and FIRPTA withholding (at a rate of 15%, as described below) by the transferee may apply to the total amount realized.

Non-U.S. Holders may have to supply certain beneficial ownership statements to Reorganized Parent (which would be available to the IRS) to obtain reductions in U.S. federal withholding tax on interest and to obtain benefits under U.S. income tax treaties, to the extent applicable.

In general, different rules from those described above apply in the case of Non-U.S. Holder subject to special treatment under U.S. federal income tax law, including a Non-U.S. Holder (i) who has an office or fixed place of business in the United States or is otherwise carrying on a U.S. trade or business; (ii) who is an individual present in the United States for 183 or more days or has a "tax home" in the United States for U.S. federal income tax purposes; or (iii) who is a former citizen or resident of the United States.

Non-U.S. Holders are urged to consult their tax advisors with regard to the U.S. federal income tax consequences to them of acquiring, holding and disposing of the New Common Equity, as well as the effects of state, local and non-U.S. tax laws, as well as eligibility for any reduced withholding benefits.

4. FIRPTA

Under the Foreign Investment in Real Property Tax Act ("FIRPTA"), gain on the disposition of certain investments in U.S. real property is subject to U.S. federal income tax in the hands of Non-U.S. Holders and treated as ECI that is subject to U.S. federal net income tax even if a Non-U.S. Holder is not otherwise engaged in a U.S. trade or business.

An interest in a partnership, such as Reorganized Parent, is treated as a United States real property interest ("USRPI") subject to the FIRPTA rules if 50% or more of the value of gross partnership assets consists of USRPIs and 90% or more of the value of the gross partnership assets consists of USRPIs plus cash and cash equivalents (the "50/90 Test"). Although it is uncertain, the New Common Equity will likely qualify as a USRPI pursuant to the 50/90 Test. Even if New Common Equity did not qualify as a USRPI pursuant to the 50/90 Test, however, as described above, a Non-U.S. Holder's gain with respect to a sale of equity in an entity taxed as a partnership that is engaged in a U.S. trade or business will be treated as ECI to the extent it relates to the underlying U.S. trade or business.

As such, regardless of whether New Common Equity qualifies as a USRPI pursuant to the 50/90 Test, a disposition of assets by Reorganized Parent and its subsidiaries generally will subject

a Non-U.S. Holder of Reorganized Parent to taxation as if the ECI rules discussed above applied (even if Reorganized Parent and its subsidiaries were not otherwise determined to be engaged in a U.S. trade or business), either because (i) such assets are USRPIs (in which event a Non-U.S. Holder would be subject to FIRPTA taxation on its distributive share of the partnership gain as if such holder had realized such gain directly from the disposition of the USRPI), or (ii) because such assets are attributable to a U.S. trade or business (as described above), and in each case certain withholding requirements would also apply, as described above. Additionally, if New Common Equity did not qualify as a USRPI pursuant to the 50/90 Test, then, nevertheless, the disposition of interests in Reorganized Parent would be treated as a disposition of a proportionate share of any USRPIs owned by Reorganized Parent for purposes of substantive FIRPTA taxation as well as certain withholding requirements, and any such gain would be subject to U.S. income tax under the ECI rule noted above. Finally, if New Common Equity qualifies as a USRPI pursuant to the 50/90 Test, then substantive FIRPTA taxation and FIRPTA withholding requirements (at 15% of the amount realized) would apply to the entire amount realized.

5. FATCA

Under legislation commonly referred to as the Foreign Account Tax Compliance Act ("FATCA"), foreign financial institutions and certain other foreign entities must report certain information with respect to their U.S. account holders and investors or be subject to withholding at a rate of 30% on the receipt of "withholdable payments." For this purpose, "withholdable payments" are generally U.S. source payments of fixed or determinable, annual or periodical income, and, subject to the paragraph immediately below, also include gross proceeds from the sale of any property of a type which can produce U.S. source interest or dividends. FATCA withholding will apply even if the applicable payment would not otherwise be subject to U.S. federal nonresident withholding.

FATCA withholding rules that would have applied to payments of gross proceeds from the sale or other disposition of property of a type that can produce U.S. source interest or dividends have effectively been suspended under proposed Treasury Regulations that may be relied on until final regulations become effective. Nonetheless, there can be no assurance that a similar rule will not go into effect in the future. Each Non-U.S. Holder is urged to consult its tax advisor regarding the possible impact of FATCA withholding rules on such Non-U.S. Holder.

E. Information Reporting and Backup Withholding

The Debtors and applicable withholding agents will withhold all amounts required by law to be withheld from payments of interest and dividends, whether in connection with distributions under the Plan or in connection with payments made on account of consideration received pursuant to the Plan, and will comply with all applicable information reporting requirements. The IRS may make the information returns reporting such interest and dividends and withholding available to the tax authorities in the country in which a Non-U.S. Holder is resident. In general, information reporting requirements may apply to distributions or payments under the Plan. Additionally, under the backup withholding rules, a holder may be subject to backup withholding (currently at a rate of 24%) with respect to distributions or payments made pursuant to the Plan unless that holder: (1) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates that fact or (2) timely provides a correct taxpayer identification number

and certifies under penalty of perjury that the taxpayer identification number is correct and that the holder is not subject to backup withholding (generally in the form of a properly executed IRS Form W-9 for a U.S. Holder, and, for a Non-U.S. Holder, in the form of a properly executed applicable IRS Form W-8) or otherwise establishes such Non-U.S. Holder's eligibility for an exemption. Backup withholding is not an additional tax but is, instead, an advance payment that may be refunded to the extent it results in an overpayment of tax; provided that the required information is timely provided to the IRS.

In addition, from an information reporting perspective, Treasury Regulations generally require disclosure by a taxpayer on its U.S. federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, certain transactions that result in the taxpayer's claiming a loss in excess of specified thresholds. holders subject to the Plan are urged to consult their tax advisors regarding these regulations and whether the transactions contemplated by the Plan would be subject to these regulations and require disclosure on the holders' tax returns.

THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. THE FOREGOING SUMMARY DOES NOT DISCUSS ALL ASPECTS OF U.S. FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR HOLDER IN LIGHT OF SUCH HOLDER'S CIRCUMSTANCES AND INCOME TAX SITUATION. ALL HOLDERS OF CLAIMS AND INTERESTS ARE URGED TO CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL, OR NON-U.S. TAX LAWS, AND OF ANY CHANGE IN APPLICABLE TAX LAWS.

ARTICLE X.
CERTAIN RISK FACTORS TO BE CONSIDERED

BEFORE VOTING TO ACCEPT OR REJECT THE PLAN, ALL HOLDERS OF CLAIMS THAT ARE IMPAIRED SHOULD READ AND CONSIDER CAREFULLY THE RISK FACTORS SET FORTH HEREIN, AS WELL AS ALL OTHER INFORMATION SET FORTH OR OTHERWISE REFERENCED IN THIS DISCLOSURE STATEMENT. ALTHOUGH THESE RISK FACTORS ARE MANY, THESE FACTORS SHOULD NOT BE REGARDED AS CONSTITUTING THE ONLY RISKS PRESENT IN CONNECTION WITH THE DEBTORS' BUSINESS OR THE PLAN AND ITS IMPLEMENTATION. NEW FACTORS, RISKS AND UNCERTAINTIES EMERGE FROM TIME TO TIME AND IT IS NOT POSSIBLE TO PREDICT ALL SUCH FACTORS, RISKS AND UNCERTAINTIES.

A. Certain Bankruptcy Law Considerations

1. Effect of Restructuring Proceedings

While the Debtors believe that the Chapter 11 Cases will be of short duration and will not be materially disruptive to their business, the Debtors cannot be certain that this will be the case. Although the Plan is designed to minimize the length of the Chapter 11 Cases, it is impossible to predict with certainty the amount of time that one or more of the Debtors may spend in bankruptcy or to assure parties in interest that the Plan will be confirmed. Even if confirmed on a timely basis, bankruptcy proceedings to confirm the Plan could have an adverse effect on the Debtors' business. Among other things, it is possible that bankruptcy proceedings could adversely affect the Debtors' relationships with their key customers (including ISO-NE) and suppliers. The proceedings will also involve additional expenses and will divert some of the attention of the Debtors' asset manager away from business operations.

2. Risk of Non-Confirmation of Plan under the Bankruptcy Code

Although the Debtors believe that the Plan will satisfy all requirements necessary for confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will reach the same conclusion or that modifications to the Plan will not be required for confirmation, or that such modifications would not necessitate re-solicitation of votes. Moreover, the Debtors can make no assurances that they will receive the requisite votes for acceptance to confirm the Plan. Even if all Voting Classes vote in favor of the Plan or the requirements for "cramdown" are met with respect to any Class that rejected or is deemed to reject the Plan, the Bankruptcy Court may decline to confirm the Plan, if it finds that any of the requirements for confirmation are not met. If the Plan is not confirmed, it is unclear what distributions holders of Claims ultimately would receive with respect to their Claims under a subsequent chapter 11 plan.

3. Non-Consensual Confirmation

In the event that any impaired class of Claims or Interests does not accept or is deemed not to accept the Plan, the Bankruptcy Court may nevertheless confirm such plan at the Debtors' request if at least one impaired class has voted to accept the Plan (with such acceptance being determined without including the vote of any "insider" in such class), and as to each impaired class that has not accepted the Plan, the Bankruptcy Court determines that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to the dissenting impaired classes. In the event that holders of Credit Facility Secured Claims in Class 3 or General Unsecured Claims in Class 4 vote to reject the Plan, the Debtors believe that the Plan satisfies the requirements for non-consensual confirmation.

4. Risk of Failing to Satisfy Vote Requirement

In the event that the Debtors are unable to obtain sufficient votes from the Voting Classes, the Debtors may seek to accomplish an alternative chapter 11 plan. There can be no assurance that the terms of any such alternative chapter 11 plan would be similar or as favorable to holders of Claims as those proposed in the Plan.

5. Releases, Injunctions, and Exculpations Provisions May Not Be Approved

Article IX of the Plan provides for certain releases, injunctions, and exculpations, including a release of liens and third-party releases that may otherwise be asserted against the Debtors, Reorganized Debtors or Wind Down Debtors, as applicable, or Released Parties, as applicable. The releases, injunctions, and exculpations provided in the Plan may not be approved. If the releases are not approved, certain Released Parties may withdraw their support for the Plan. The releases provided to the Released Parties and the exculpation provided to the Exculpated Parties are necessary to the success of the Debtors' reorganization because the Released Parties and Exculpated Parties have made significant contributions to the Debtors' reorganization efforts and have agreed to make further contributions, but only if they receive the full benefit of the Plan's release and exculpation provisions. The Plan's release and exculpation provisions are an inextricable component of the RSA and the significant deleveraging and financial benefits embodied in the Plan.

6. Risk of Non-Occurrence of Effective Date

There can be no assurance as to the timing of the Effective Date. If the conditions precedent to the Effective Date set forth in the Plan have not occurred or have not been waived as set forth in Article X.B of the Plan, then the Confirmation Order may be vacated, in which event no distributions would be made under the Plan, the Debtors and all holders of Claims and Interests would be restored to the status quo as of the day immediately preceding the Confirmation Date, and the Debtors' obligations with respect to Claims and Interests would remain unchanged.

7. Risk of Termination of RSA

The RSA contains provisions that give the Consenting Stakeholders the ability to terminate their obligations to support the Restructuring Transactions thereunder upon the occurrence of certain events or if certain conditions are not satisfied, including the failure to achieve the Milestones. Termination of the RSA could result in protracted Chapter 11 Cases, which could significantly and detrimentally impact the Debtors' relationships with, among others, vendors, suppliers, and customers.

8. Parties in Interest May Object to the Debtors' Classification of Claims and Interests

Parties in interest may object to the Debtors' classification of Claims and Interests. Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an equity interest in a particular class only if such claim or equity interest is substantially similar to the other claims or equity interests in such class. The Debtors believe that the classification of Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because the Debtors created Classes of Claims and Interests, each encompassing Claims or Interests, as applicable, that are substantially similar to the other Claims and Interests in each such Class. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

9. Risk Related to Possible Objections to Plan

There is a risk that certain parties could oppose and object to the Plan in the Bankruptcy Court either in its entirety or to specific provisions thereof. While the Debtors believe that the Plan complies with all relevant Bankruptcy Code provisions, there can be no guarantee that a party in interest will not file an objection to the Plan or that the Bankruptcy Court will not sustain such an objection.

10. Conversion into Chapter 7 Cases

If no chapter 11 plan can be confirmed, or if the Bankruptcy Court otherwise finds that it would be in the best interests of holders of Claims and Interests, the Chapter 11 Cases may be converted to cases under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be appointed or elected to liquidate the Debtors' assets for distribution in accordance with the priorities established by the Bankruptcy Code. For a discussion of the effects that a chapter 7 liquidation would have on the recoveries to holders of Claims, see Article I.A.1.i, as well as the Liquidation Analysis attached hereto as **Exhibit E**.

11. The Plan Is Based Upon Assumptions the Debtors Developed Which May Prove Incorrect and Could Render the Plan Unsuccessful

The Restructuring Transactions affect both the Debtors' capital structure and the ownership structure and operation of their business and reflects assumptions and analyses based on the Debtors' experience and perception of historical trends, current conditions, and expected future developments, as well as other factors that the Debtors consider appropriate under the circumstances.

Whether actual future results and developments will be consistent with the Debtors' expectations and assumptions depends on a variety of factors, including but not limited to (i) the ability to implement the changes to the Debtors' capital structure, (ii) the ability to obtain adequate liquidity and financing sources, (iii) the ability to maintain customer confidence in the Debtors' viability as continuing entities and to attract and retain sufficient business, and (iv) the overall strength and stability of general economic conditions of the energy industry in the United States and global markets generally. The failure of any of these factors could materially adversely affect the successful reorganization of the Debtors' business.

In addition, the feasibility of the Plan for confirmation purposes under the Bankruptcy Code relies on financial projections, including with respect to revenues, EBITDA, debt service, and cash flow. Financial forecasts are necessarily speculative, and it is likely that one or more of the assumptions and estimates that are the basis of these financial forecasts will not be accurate.

The Debtors expect that their actual financial condition and results of operations may differ, perhaps materially, from what was anticipated. Consequently, there can be no assurance that the results or developments contemplated by any chapter 11 plan the Debtors may implement will occur or, even if they do occur, that they will have the anticipated effects on the Debtors and their respective subsidiaries or their business or operations. The failure of any such results or developments to materialize as anticipated could materially adversely affect the successful execution of the Plan.

12. Contingencies May Affect Distributions to Holders of Allowed Claims

The distributions available to holders of Allowed Claims under the Plan can be affected by a variety of contingencies, including whether the Bankruptcy Court orders certain Allowed Claims to be subordinated and turned over to other Allowed Claims. The occurrence of any and all such contingences could affect distributions under the Plan and/or parties' support for the Plan.

13. The Debtors May Seek to Amend, Waive, Modify, or Withdraw the Plan At Any Time before Confirmation

Subject to and in accordance with the terms of the RSA, the Debtors reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify the Plan (with respect to any Debtor or all of the Debtors) before the entry of the Confirmation Order or waive any conditions thereto if and to the extent such amendments or waivers are necessary or desirable to consummate the Plan. The potential impact of any such amendment or waiver on the holders of Claims and Interests cannot presently be foreseen but may include a change in the economic impact of the Plan on some or all of the proposed Classes or a change in the relative rights of such Classes. All holders of Claims and Interests will receive notice of such amendments or waivers required by applicable law and the Bankruptcy Court. If, the Debtors seek to modify the Plan after receiving sufficient acceptances but before the Bankruptcy Court's Confirmation of the Plan, the previously solicited acceptances will be valid only if (i) all classes of adversely affected holders accept the modification in writing, or (ii) the Bankruptcy Court determines, after notice to designated parties, that such modification was *de minimis* or purely technical or otherwise did not adversely change the treatment of holders of accepting Claims, or is otherwise permitted by the Bankruptcy Code.

14. Other Parties in Interest Might Be Permitted to Propose Alternative Plans of Reorganization That May Be Less Favorable to Certain of the Debtors' Constituencies Than the Plan

Other parties in interest could seek authority from the Bankruptcy Court to propose an alternative chapter 11 plan to the Plan. Under the Bankruptcy Code, a debtor in possession initially has the exclusive right to propose and solicit acceptances of a chapter 11 plan for a period of 120 days from the petition date. However, such exclusivity period can be reduced or terminated upon order of the Bankruptcy Court. If such an order were to be entered, other parties in interest would then have the opportunity to propose alternative plans of reorganization.

If another party in interest were to propose an alternative chapter 11 plan following expiration or termination of the Debtors' exclusivity period, such a plan may be less favorable to existing holders of Claims than the treatment afforded to such holders under the Plan. If there were competing plans, the Chapter 11 Cases likely would become longer, more complicated, and much more expensive. If this were to occur, or if the Debtors' customers, vendors, or other constituencies important to the Debtors' business were to react adversely to an alternative chapter 11 plan, the adverse consequences discussed below in Article X.A.15 also could occur.

15. The Debtors Cannot Predict the Amount of Time Spent in Bankruptcy for the Purpose of Implementing the Plan, and a Lengthy Bankruptcy Proceeding Could Disrupt the Debtors' Business, as Well as Impair the Prospect for Emergence on the Terms Contained in the Plan

While the Debtors believe that the Chapter 11 Cases will be of short duration, they could last considerably longer if, for example, Confirmation is contested or the conditions to consummation of the Plan are not satisfied or waived. Although the Plan is designed to minimize the length of the bankruptcy proceedings, it is impossible to predict with certainty the amount of time that the Debtors may spend in bankruptcy, and the Debtors cannot be certain that the Plan will be confirmed. Even if confirmed on a timely basis, a bankruptcy proceeding to confirm the Plan could itself have an adverse effect on the Debtors' business. There is a risk, due to uncertainty about the Debtors' futures that, among other things, business partners and vendors could terminate their relationships with the Debtors or demand financial assurances or enhanced performance, any of which could impair the Debtors' prospects.

A lengthy bankruptcy proceeding also would involve additional expenses and divert the attention of the Debtors' asset manager from the operation of the Debtors' business, as well as create concerns for vendors and other parties with whom the Debtors interact.

The disruption that the bankruptcy process would have on the Debtors' business could increase with the length of time it takes to complete the Chapter 11 Cases. If the Debtors are unable to obtain Confirmation of the Plan on a timely basis, because of a challenge to the Plan, a delay in the approval of the adequacy of this Disclosure Statement, or otherwise, the Debtors may be forced to operate in bankruptcy for an extended period of time while they try to develop a different chapter 11 plan that can be confirmed. A protracted bankruptcy case could increase both the probability and the magnitude of the adverse effects described above.

16. Necessary Governmental Approvals May Not be Granted

Consummation of the Restructuring Transactions depends upon approval by FERC and may also require approvals by other state or federal regulators or governmental units. In addition, the Sale Transaction may be subject to certain regulatory approvals by the Federal Trade Commission and the Department of Justice in connection with the Hart-Scott-Rodino Act. Certain parties may intervene and protest approval, absent the imposition of conditions to resolve their concerns. The approvals by governmental units may be denied, conditioned, or delayed. Failure to obtain such approvals could prevent consummation of the Restructuring Transactions and Confirmation of the Plan.

B. Additional Factors Affecting Value of Debtors

1. Claims Could Be More than Projected

There can be no assurance that the estimated Allowed amount of Claims in certain Classes will not be significantly more than projected, which in turn, could cause the value of distributions to be reduced substantially. Inevitably, some assumptions will not materialize, and unanticipated events and circumstances may affect the ultimate results. Therefore, the actual amount of Allowed Claims may vary from estimates included in the Financial Projections and the Liquidation Analysis, and the variation may be material.

2. Projections and Other Forward-Looking Statements Are Not Assured, and Actual Results May Vary

Certain of the information contained in this Disclosure Statement is, by nature, forward-looking, and contains estimates and assumptions that might ultimately prove to be incorrect, and contains projections that may be materially different from actual future experiences. Many of the assumptions underlying the projections are subject to significant uncertainties that are beyond the control of the Debtors, including the timing, confirmation, and consummation of the Plan, inflation, and other unanticipated market and economic conditions. There are uncertainties associated with any projections and estimates, and they should not be considered assurances or guarantees of the amount of funds or the amount of Claims in the various Classes that might be allowed. Some assumptions may not materialize, and unanticipated events and circumstances may affect the actual results. Projections are inherently subject to substantial and numerous uncertainties and to a wide variety of significant business, economic, and competitive risks, and the assumptions underlying the projections may be inaccurate in material respects. In addition, unanticipated events and circumstances occurring after the approval of this Disclosure Statement by the Bankruptcy Court including any natural disasters, terrorist attacks, or health epidemics may affect the actual financial results achieved. Such results may vary significantly from the forecasts and such variations may be material.

3. Impact of Interest Rates

Changes in interest rates may affect the fair market value of the Debtors' assets or the distributions to holders of Claims under the Plan.

C. Risks Related to Debtors' Financial Condition

1. The Debtors May Fail to Obtain Necessary Exit Financing

In accordance with the RSA, the Debtors and the Required Consenting Lenders will agree upon the sizing of the Exit Facility, if any. There can be no assurance that the Debtors will receive the proceeds of the Exit Facility Loans, if any, or that the Exit Facility, if any, will be sufficient to fund the Debtors' operations after the Effective Date.

2. Post-Effective Date Indebtedness

If the Standalone Restructuring is consummated, the Reorganized Debtors may seek to enter into the Exit Facility, resulting in outstanding indebtedness of approximately $[●] under the Exit Facility. The Reorganized Debtors' ability to service their debt obligations will depend on, among other things, the amount of cash debt service and their future operating performance, which depends partly on economic, financial, competitive, and other factors beyond the Reorganized Debtors' control. The Reorganized Debtors may not be able to generate sufficient cash from operations to meet their ongoing cash debt service obligations, repay their debt in full upon maturity, and fund necessary capital expenditures and operational expenses. In addition, if the Reorganized Debtors need to refinance their debt, obtain additional financing, and/or sell assets or equity, they may not be able to do so on commercially reasonable terms, if at all.

3. Use of Cash Collateral

The use of Cash Collateral is intended to provide liquidity to the Debtors during the pendency of the Chapter 11 Cases. If the Chapter 11 Cases take longer than expected to conclude

or unexpected liquidity needs arise, the Debtors may exhaust or lose access to their Cash Collateral. There is no assurance that the Debtors will be able to obtain additional financing from the Debtors' existing lenders or otherwise. In either case, the liquidity necessary for the orderly functioning of the Debtors' business may be materially impaired.

4. Impact of the Chapter 11 Cases on the Debtors

The Chapter 11 Cases may affect the Debtors' relationships with, and their ability to negotiate favorable terms with, creditors, customers, vendors, suppliers, and other counterparties. While the Debtors expect to continue normal operations, public perception of their continued viability may affect, among other things, the desire of new and existing counterparties to enter into or continue their agreements or arrangements with the Debtors. The failure to maintain any of these important relationships could adversely affect the Debtors' business, financial condition, and results of operations.

Because of the public disclosure of the Chapter 11 Cases and concerns vendors and suppliers may have about the Debtors' liquidity, the Debtors' ability to obtain or maintain normal credit terms with vendors or suppliers may be impaired. Also, the Debtors' transactions that are outside of the ordinary course of business are generally subject to the approval of the Bankruptcy Court, which may limit the Debtors' ability to respond on a timely basis to certain events or take advantage of certain opportunities. As a result, the effect that the Chapter 11 Cases will have on the Debtors' business, financial conditions, and results of operations cannot be accurately predicted or quantified at this time.

Additionally, the terms of the Cash Collateral Orders limit the Debtors' ability to undertake certain business initiatives outside the ordinary course, as described therein.

D. Risks Relating to the Debtors' Business and Industry

1. Risks Inherent to Power-Generating Industry

The Debtors' operations involve hazardous activities, including operating large pieces of high-speed rotating equipment and delivering electricity to transmission and distribution systems. In addition, natural disasters such as earthquake, flood, storm surge, lightning, hurricane, tornado, and wind pose a risk to Debtors' infrastructure and operations, and the risk of natural disasters is generally expected to increase as a consequences of global climate change. Further, hazards such as fire, explosion, collapse, and machinery failure are inherent risks in the Debtors' operations. These hazards can cause significant injury to personnel or loss of life, severe damage to and destruction of property, plant and equipment, contamination of, or damage to, the environment and suspension of operations. The occurrence of any of these events may result in one or more of the Debtors being named as a defendant in lawsuits asserting claims for substantial damages, environmental cleanup costs, personal injury, and fines and/or penalties.

Additionally, the Facility may be subject to unplanned outages, which could result in significant financial losses for the Debtors. As a result of an unplanned outage, there may be unforeseen repair and maintenance costs as well as the cost of replacing any power sold to ISO-NE via participation in the "Day-Ahead Market" or sold to other counterparties via exchange or bilateral arrangement.

2. Operational Risks May Not be Covered by Insurance

The operation of power generation facilities involve many risks, including supply interruptions, work stoppages, labor disputes, safety-related concerns social unrest, weather interferences, unforeseen engineering, environmental and geological problems, and unanticipated cost overruns on maintenance and refurbishment projects.

The ongoing operation of the Facility involves all of the risks described above, in addition to risks relating to the breakdown or failure of equipment or processes and performance below expected levels of generation output or efficiency. New plants may employ recently developed and technologically complex equipment, especially in the case of newer environmental emission control technology. The Facility cannot operate without certain critical components that, if they failed, could take significant time to replace. While the Debtors maintain insurance (including business interruption insurance), obtain warranties from vendors, and obligate contractors to meet certain performance levels, the proceeds of such insurance, warranties, or performance guarantees may not be timely received or adequate to cover lost revenues, increased expenses, or liquidated damages payments. Any of these risks could cause the Debtors to operate below expected capacity levels, which in turn could result in lost revenues, increased expenses, higher maintenance costs, and penalties.

3. Risks Related to Wholesale Power Prices

The Debtors sell energy, capacity, and ancillary services from the Facility into the ISO-NE wholesale electricity market. The prices of such products in those markets are influenced by many factors outside of the Debtors' control, including fuel prices, natural gas prices, energy prices, capacity prices, transmission constraints and prices, supply and demand, weather, economic conditions, and the rules, regulations, and actions of the system operators and regulatory regimes in those markets. In addition, unlike most other commodities, energy, for the most part, cannot be stored and therefore must be produced concurrently with its use. As a result, the wholesale power markets are subject to significant price fluctuations over relatively short periods of time and can be unpredictable. Furthermore, it is possible for real-time energy prices to fall below zero, which could require the Debtors to pay for power produced during those intervals in addition to paying for fuel, operations, and emissions credits.

4. Risks Related to Industry Structure and Regulation

ISO-NE's wholesale market is subject to changes in structure and operation and imposes various pricing limitations. These changes and pricing limitations may affect the Debtors' ability to sell energy, capacity, and ancillary services into the wholesale market and the price and terms on which the Facility's output can be sold which, in turn, may adversely affect the profitability of the Facility. ISO-NE imposes, and in the future may continue to impose, offer caps and other mechanisms to guard against the potential exercise of market power as well as price limitations. These types of price limitations and other regulatory mechanisms may adversely affect the profitability of the Facility, which sell energy and capacity into the ISO-NE's wholesale power market. In addition, certain limitations ISO-NE may impose may affect the Debtors' ability to participate in the "Day-Ahead Market," subjecting the Debtors to greater potential volatility inherent in the "Real-Time Market."

5. Risks Related to Competition in Wholesale Power Market

The Debtors have multiple competitors, and additional competitors may enter the industry. The Debtors' power generation business competes with other non-utility generators, regulated utilities, unregulated subsidiaries of regulated utilities, other energy service companies, and financial institutions in the sale of energy, capacity, and ancillary services. Moreover, aggregate demand for power may be met by generation capacity based on several competing technologies, as well as power generating facilities fueled by alternative or renewable energy sources, including hydroelectric power, synthetic fuels, solar, wind, wood, geothermal, waste heat, and solid waste sources. Regulatory initiatives designed to enhance renewable generation could increase competition from these types of facilities.

The Debtors also compete against other energy merchants on the basis of their relative operating skills, financial position, and access to credit sources. Electric energy customers, wholesale energy suppliers, and transporters often seek financial guarantees, credit support such as letters of credit, and other assurances that energy contracts will be satisfied. Companies with which the Debtors compete may have greater resources in these areas or lower costs of service than the Debtors.

Many of the Debtors' competitors derive revenue from sources other than wholesale power, such as sales of power to retail customers at cost-of-service regulated rates and power purchase contracts, as well as non-power related revenue, such as renewable energy credits and various tax incentives including production tax credits. As a result, fluctuations in wholesale energy prices and related costs may disproportionately impact the profitability of the Debtors as compared to its competitors.

Moreover, many companies in the regulated utility industry, with which the wholesale power industry is closely linked, are also restructuring or reviewing their strategies. Several of those companies have discontinued or are discontinuing their unregulated activities and are seeking to divest or spin-off their unregulated subsidiaries. Some of those companies have had, or are attempting to have, their regulated subsidiaries acquire assets out of their or other companies' unregulated subsidiaries. This may lead to increased competition between the regulated utilities and the unregulated power producers within certain markets. To the extent competition increases, the Debtors' financial condition, results of operations, and cash flows may be materially adversely affected.

6. Risks Related to Competitive Technology

The Debtors generate electricity using natural gas at the Facility. It is possible that advances in certain competitive technologies, including, among other things, wind and solar power generation, or governmental incentives for such renewable energies, will reduce their costs to levels that are equal to or below that of most thermal energy production, and could make the Debtors less competitive in the energy market.

7. Risks Related to Seasonality

The Debtors' principal source of revenue is power generation. The Debtors' experience seasonal revenue patterns similar to those of other companies in the power generation industry.

This seasonality can be expected to also cause fluctuations in the Debtors' revenues, cash flows, profit margins, and net income.

8. Prices of Power and Natural Gas

The Debtors' profitability is primarily driven by the spread between power and natural gas prices. Decreases in the spread between power and natural gas prices will have a negative impact on the Debtors' profitability. The price of power is influenced by a number of factors that are inherently difficult to predict, including both the demand for and supply of power, in addition to general economic, market, and regulatory factors. The significance and relative impact of these factors on the price of power is difficult to predict.

The Facility is fired by natural gas. The Debtors rely upon third parties to supply them with physical natural gas transported to the Debtors' receipt point that is consumed in the production of power, and the prices for and availability of natural gas are subject to volatile market conditions. These market conditions often are affected by factors beyond the Debtors' control, such as weather conditions, overall economic conditions, and foreign and domestic governmental regulation and relations. Significant disruptions in the supply of and/or transport of natural gas could temporarily impair the Debtors' ability to produce power at the Facility. Furthermore, increases in natural gas prices or changes in the Debtors' natural gas costs relative to natural gas costs paid by competitors may adversely affect the Debtors' financial performance.

9. Risks Related to Reliance on Single Supplier

The Debtors often rely on a limited number of firm natural gas transport and supply agreements with one or two suppliers for the provision of natural gas, which is essential to the Facility's electrical energy production. The Debtors also rely on a single supplier (or few suppliers) for operational, maintenance, and other services, as well as on their sole energy manager to sell their electricity into the ISO-NE wholesale electricity market through scheduling services. The Debtors' inability to obtain additional firm natural gas transport and supply commitments at a reasonable economic cost, or the failure of any one supplier to fulfill its contractual obligations in connection with the Facility, could have a material adverse effect on the Facility's (and the Debtors') financial results. Consequently, the financial performance of the Facility is dependent on the continued performance by suppliers of their obligations.

10. Risks Related to Retirement of Thermal Generation Assets

ISO-NE relies on a fleet of thermal generators, including the Facility, to power the New England electrical grid. Each of these thermal generators has a limited lifespan and may be retired by ISO-NE at some point due to reliability risks associated with an aging facility. To the extent competing thermal generators are not retired by ISO-NE in the near term, the Debtors' market share within ISO-NE may be limited. Additionally, ISO-NE may replace retiring thermal generation facilities with intermittent renewable generation facilities, which could increase competition from additional suppliers and adversely affect the profitability of the Facility.

11. Risks Related to Working Capital and Collateral

The Debtors are exposed to market risks through their sale of energy, capacity, and ancillary services through ISO-NE. Without a sufficient amount of working capital and collateral to post as performance guarantees, the Debtors may not be able to effectively manage existing price volatility and may not be able to successfully manage the other risks associated with operating in the energy market, including the risk that counterparties may not perform or refuse to continue to do business with the Debtors.

12. Risks Related to Reliance on Third-Party Transmission Facilities

The Debtors depend on dedicated, non-redundant transmission facilities owned and operated by third parties to sell wholesale power from the Facility. These transmission facilities may fail and would require extended periods for repair. If service from these third-party owned transmission facilities is unavailable or disrupted, or if the transmission capacity infrastructure is inadequate, the Debtors' ability to sell and deliver wholesale power may be materially adversely affected.

13. Potential Cyber Incident

The Debtors' business has become increasingly dependent on digital technologies to conduct day-to-day operations. The Debtors depend on digital technology to process and record financial and operating data, and in many other activities related to their business. Their technologies, systems, and networks may become the target of cyber-attacks or information security breaches that could result in the disruption of their business operations. To date, the Debtors have not experienced any material losses relating to cyber-attacks. However, there can be no assurance that the Debtors will not suffer such losses in the future. As cyber threats continue to evolve, the Debtors may be required to expend significant additional resources to continue to modify or enhance their protective measures or to investigate and remediate any cyber vulnerabilities.

14. Regulatory Risks

The Debtors' business is subject to extensive energy and environmental regulation. The Debtors will be required to comply with numerous laws and regulations, and to obtain or operate under numerous governmental permits. If there is a delay in obtaining required approvals or permits, or if the Debtors fail to obtain and comply with such permits, the operation of the Facility may be interrupted or subject the Debtors to civil or criminal liability, the imposition of liens or fines, or actions by regulatory agencies seeking to curtail the Debtors' operations. The Debtors cannot assure, moreover, that existing regulations will not be revised or reinterpreted, that new laws and regulations will not be adopted or become applicable in the future, or that future changes in laws and regulations will not have a material effect on their business.

15. Risks Related to Customer Concentration

The Debtors' business is dependent upon their ability to sell electricity into New England's electrical grid through ISO-NE and the capacity revenues that the Debtors receive from ISO-NE. The Debtors may not be able to enter into a replacement arrangement on terms as favorable as its existing arrangement, or at all. If the Debtors are unable to enter into a replacement arrangement agreement, the Debtors' financial performance would be disrupted. The Debtors may also be

subject to significant "Pay-for-Performance" penalties administered by ISO-NE if the Debtors are deemed to have underperformed their *pro rata* share of their capacity supply obligation based on the Debtors' actual performance during times of scarcity.

16. Other Risks Associated with the Debtors' Business and Industry

The risks associated with the Debtors' business and industry include, but are not limited to, the following:

- the supply of, and demand for, domestic and foreign natural gas;
- the supply of, and demand for, electricity;
- the cost of using, and the availability of, other fuels, including the effects of technological developments;
- advances in power technologies, including those related to alternative and renewable energy sources;
- the efficiency of the Debtors' Facility;
- the pricing terms contained in the Debtors' long-term contracts and the cancellation or renegotiation of contracts;
- legislative, regulatory and judicial developments, including those related to the release of greenhouse gases;
- air emission, wastewater discharge, and other environmental standards for power plants;
- inclement or hazardous weather conditions and natural disasters;
- availability and cost or interruption of natural gas, fuel, equipment, and other supplies;
- transportation costs;
- availability of transportation infrastructure;
- availability of skilled personnel or contractors;
- work stoppages or other labor difficulties; and
- *force majeure* events.

E. Risk Factors Relating to the Exit Facility and the New Common Equity to Be Issued Under the Plan

1. The Terms of the Exit Facility Are Subject to Change Based on Ongoing Negotiation

The terms and sizing of the Exit Facility, if any, are subject to change based on negotiations between the Debtors and the Consenting Lenders. Holders of Claims that are not the Consenting Lenders will not participate in these negotiations and the results of such negotiations may alter the terms of the Exit Facility and, as a result, the New Common Equity in a material manner. Accordingly, the final terms of the Exit Facility Documents may be less favorable to holders of Claims than as described herein and in the Plan.

2. Insufficient Cash Flow to Meet Debt Obligations

The Debtors' earnings and cash flow may vary significantly from year to year. Additionally, the Debtors' future cash flow may be insufficient to meet their cash debt service obligations and commitments, including, if the Standalone Restructuring is consummated, its cash debt service obligations under any Exit Facility, increasing the risk that they may default on such debt obligations. An inability to service the cash debt service obligations could negatively impact the Debtors' business. A range of economic, competitive, business, and industry factors will affect the Debtors' future financial performance and, as a result, their ability to generate cash flow from operations and to pay their cash debt service obligations. Many of these factors are beyond the Debtors' control.

If the Debtors do not generate enough cash flow from operations to satisfy their cash debt service obligations, including ongoing obligations and repayment of debt in full upon maturity, they may have to undertake alternative financing plans, such as refinancing or restructuring debt, selling assets, reducing or delaying capital investments, or seeking to raise additional capital.

It cannot be assured, however, that undertaking alternative financing plans, if necessary, would allow the Debtors to meet their debt obligations. An inability to generate sufficient cash flow to satisfy their debt obligations or to obtain alternative financing could materially and adversely affect the Debtors' ability to make required payments on the Exit Facility, as applicable, as well as the Debtors' business, financial condition, results of operations, and prospects.

3. The Reorganized Debtors' New Common Equity Will Not Be Publicly Traded

If the Standalone Restructuring is consummated, there can be no assurance that an active market for the New Common Equity will develop, nor can any assurance be given as to the prices at which such shares might be traded. If the Standalone Restructuring is consummated, the New Common Equity to be issued under the Plan will not be listed on or traded on any nationally recognized market or exchange.

The Debtors are under no obligation to list the New Common Equity on any national securities exchange. Therefore, there can be no assurance that any of the foregoing securities will be tradable or liquid at any time after the Effective Date. If a trading market does not develop or is not maintained, holders of the foregoing securities may experience difficulty in reselling such

securities or may be unable to sell them at all. Even if such a market were to exist, such securities could trade at prices higher or lower than the estimated value set forth in the Disclosure Statement depending upon many factors including prevailing interest rates, markets for similar securities, industry conditions, and the performance of, and investor expectations for the Reorganized Debtors. Accordingly, holders of these securities may bear certain risks associated with holding securities for an indefinite period of time.

4. Reporting Requirements of a Private Company

If the Standalone Restructuring is consummated, the Reorganized Debtors are not expected to be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act. As a result, holders of the New Common Equity may receive less information with respect to the Reorganized Debtors' business than they would have received if the Reorganized Debtors were subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act.

5. Equity Interests Subordinated to the Reorganized Debtors' Indebtedness

In any subsequent liquidation, dissolution, or winding up of the Reorganized Debtors if the Standalone Restructuring is consummated, the New Common Equity would rank below all debt claims against the Reorganized Debtors. As a result, holders of the New Common Equity will not be entitled to receive any payment or other distribution of assets upon the liquidation, dissolution, or winding up of the Reorganized Debtors until after all the Reorganized Debtors' obligations to their debt holders have been satisfied.

6. Small Number of Holders or Voting Blocks May Control the Reorganized Debtors

Consummation of the Plan pursuant to the Standalone Restructuring may result in a small number of holders owning a significant percentage of the New Common Equity. These holders may, among other things, exercise a controlling influence over the Reorganized Debtors and have the power to elect directors (or managers, as applicable) and approve significant transactions.

7. Potential Dilution

If the Standalone Restructuring is consummated, the ownership percentage represented by the New Common Equity will be subject to dilution from any other shares that may be issued post-emergence, including through the conversion or exercise of any other options, warrants, convertible securities, exercisable securities, or other securities that may be issued post-emergence. In the future, additional equity financings or other share issuances by any of the Reorganized Debtors could adversely affect the value of the New Common Equity. The amount and dilutive effect of any of the foregoing could be material.

8. The Estimated Valuation of the Debtors and the New Common Equity and the Estimated Recoveries to Holders of Allowed Claims Are Not Necessarily Representative of the Private or Public Sale Values of the New Common Equity

The Debtors' estimated recoveries to holders of Allowed Claims are not intended to represent the private or public sale values of the Reorganized Debtors' securities if the Standalone

Restructuring is consummated. The estimated recoveries are based on numerous assumptions (the realization of many of which are beyond the control of the Debtors), including, among other things, (i) the successful reorganization of the Debtors; (ii) an assumed date for the occurrence of the Effective Date; (iii) the Debtors' ability to achieve the operating and financial results included in the Financial Projections; and (iv) the Debtors' ability to maintain adequate liquidity to fund operations.

9. Defects in Collateral Securing the Exit Facility

If the Standalone Restructuring is consummated, the indebtedness under the Exit Facility, if applicable, will be secured. As such, this indebtedness may be subject to certain exceptions and permitted liens, as applicable, by security interests in the principal assets of the Debtors (henceforth, the "Collateral"). The Collateral potentially securing this secured debt may be subject to exceptions, defects, encumbrances, liens and other imperfections. Accordingly, it cannot be assured that the remaining proceeds from a sale of the Collateral would be sufficient to repay holders of the secured funded debt securities all amounts owed under them. The fair market value of the Collateral is subject to fluctuations based on factors that include, among others, the ability to sell Collateral in an orderly manner, general economic conditions, the availability of buyers, the Reorganized Debtors' failure to implement their business strategy, and similar factors. The amount received upon a sale of Collateral would be dependent on numerous factors, including, but not limited to, the actual fair market value of the Collateral at such time, and the timing and manner of the sale. By its nature, portions of the Collateral may be illiquid and may have no readily ascertainable market value. In the event of a subsequent foreclosure, liquidation, bankruptcy, or similar proceeding, it cannot be assured that the proceeds from any sale or liquidation of the Collateral will be sufficient to pay the Reorganized Debtors' obligations under the Exit Facility, if applicable, in full or at all. There can also be no assurance that the Collateral will be saleable, and, even if saleable, the timing of its liquidation would be uncertain. Accordingly, there may not be sufficient Collateral to pay all or any of the amounts due on the Reorganized Debtors' new secured funded debt.

10. Failure to Perfect Security Interests in Collateral

If the Standalone Restructuring is consummated, the failure to properly perfect liens on the Collateral could adversely affect the collateral agent's ability to enforce its rights with respect to the Collateral for the benefit of the holders of the Reorganized Debtors' secured funded debt. In addition, applicable law requires that certain property and rights acquired after the grant of a general security interest or lien can only be perfected at the time such property and rights are acquired and identified. There can be no assurance that the collateral agent will monitor, or that the Reorganized Debtors will inform the trustee or the collateral agent of, the future acquisition of property and rights that constitute Collateral, and that the necessary action will be taken to properly perfect the security interest in such after-acquired Collateral. The collateral agent has no obligation to monitor the acquisition of additional property or rights that constitute Collateral or the perfection of any security interests therein. Such failure may result in the loss of the practical benefits of the liens thereon or of the priority of such liens against third parties.

11. Casualty Risk of Collateral

If the Standalone Restructuring is consummated, the Reorganized Debtors will be obligated under various secured funded debt documents and instruments to maintain adequate insurance or otherwise insure against hazards as is customarily done by companies having assets of a similar nature in the same or similar localities. There are, however, certain losses that may either be uninsurable or not economically insurable, in whole or in part. As a result, it is possible that the insurance proceeds will not compensate the Reorganized Debtors fully for losses. If there is a total or partial loss of any of the pledged Collateral, the insurance proceeds received may be insufficient to satisfy the secured obligations of the Reorganized Debtors.

12. Any Future Pledge of Collateral Might Be Avoidable in a Subsequent Bankruptcy by the Reorganized Debtors

Any future pledge of Collateral in favor of the collateral agent, including pursuant to security documents delivered after the date of the Exit Facility, might be avoidable by the pledgor (as a subsequent debtor in possession) or by its trustee in bankruptcy if certain events or circumstances exist or occur, including, among others, if the pledgor is insolvent at the time of the pledge, the pledge permits the holders of the securities under the secured funded debt to receive a greater recovery than if the pledge had not been given, and a U.S. bankruptcy case in respect of the pledgor is commenced within 90 days following the pledge, or, in certain circumstances, a longer period. Similar or longer reachback periods may exist if a case or proceeding is commenced under the insolvency laws of a non-U.S. jurisdiction with similar legal principles.

F. Additional Factors

1. Debtors Could Withdraw Plan

Subject to the terms of, and without prejudice to, the rights of the Consenting Stakeholders under the RSA, the Debtors could revoke or withdraw the Plan (with respect to any Debtor or all Debtors) before the Confirmation Date.

2. Debtors Have No Duty to Update

The statements contained in this Disclosure Statement are made by the Debtors as of the date hereof, unless otherwise specified herein, and the delivery of this Disclosure Statement after that date does not imply that there has been no change in the information set forth herein since that date. The Debtors have no duty to update this Disclosure Statement unless otherwise ordered to do so by the Bankruptcy Court.

3. No Representations Outside This Disclosure Statement Are Authorized

No representations concerning or related to the Debtors, the Chapter 11 Cases, or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. Any representations or inducements made to secure your acceptance or rejection of the Plan that are other than those contained in, or included with, this Disclosure Statement should not be relied upon in making the decision to accept or reject the Plan.

4. No Legal or Tax Advice Is Provided by this Disclosure Statement

The contents of this Disclosure Statement should not be construed as legal, business, or tax advice. Each holder should consult its own legal counsel and accountant as to legal, tax, and other matters concerning its Claim. This Disclosure Statement is not legal advice to you. This Disclosure Statement may not be relied upon for any purpose other than to determine how to vote on the Plan or object to confirmation of the Plan.

5. No Representation Made

Nothing contained herein or in the Plan shall constitute a representation of the tax or other legal effects of the Plan on the Debtors or holders of Claims.

6. Certain Tax Consequences

For a discussion of certain tax considerations to the Debtors and certain holders of Claims in connection with the implementation of the Plan, see Article IX hereof.

ARTICLE XI.
VOTING PROCEDURES AND REQUIREMENTS

Before voting to accept or reject the Plan, each holder of a Credit Facility Secured Claim as of May 25, 2022 (the "Credit Facility Secured Claims Voting Record Date") or a General Unsecured Claim as of the Bar Date applicable to General Unsecured Claims (the "General Unsecured Claims Voting Record Date" and, together with the Credit Facility Secured Claims Voting Record Date, the "Voting Record Date" and each such holder as of the Voting Record Date, a "Record Holder") should carefully review the Plan attached hereto as **Exhibit A**. All descriptions of the Plan set forth in this Disclosure Statement are subject to the terms and conditions of the Plan.

A. Voting Instructions and Voting Deadline

All Record Holders have been sent a Ballot together with this Disclosure Statement. Such holders should read the Ballot carefully and follow the instructions contained therein. Please use only the Ballot that accompanies this Disclosure Statement to cast your vote.

The Debtors have engaged Kroll Restructuring Administration LLC (f/k/a Prime Clerk LLC) as their Solicitation Agent to assist in the transmission of voting materials and in the tabulation of votes with respect to the Plan. **FOR YOUR VOTE TO BE COUNTED, YOUR VOTE MUST BE RECEIVED BY THE SOLICITATION AGENT AT THE ADDRESS SET FORTH BELOW ON OR BEFORE THE VOTING DEADLINE OF 4:00 P.M. (PREVAILING EASTERN TIME) ON JULY 6, 2022 UNLESS EXTENDED BY THE DEBTORS.**

IF YOUR BALLOT IS DAMAGED OR LOST, YOU MAY CONTACT THE SOLICITATION AGENT AT THE NUMBER SET FORTH BELOW TO RECEIVE A REPLACEMENT BALLOT. ANY BALLOT THAT IS EXECUTED AND RETURNED BUT WHICH DOES NOT INDICATE A VOTE FOR ACCEPTANCE OR REJECTION OF THE PLAN WILL NOT BE COUNTED.

IF YOU HAVE ANY QUESTIONS CONCERNING VOTING PROCEDURES, YOU MAY CONTACT THE SOLICITATION AGENT AT:

Salem Harbor Power Development LP
Ballot Processing Center
c/o Kroll Restructuring Administration LLC (f/k/a Prime Clerk LLC)
850 3rd Avenue, Suite 412
Brooklyn, NY 11232
Tel: (844) 205-7534 (Domestic, toll-free); +1 (646) 813-2944 (International)

Questions (but not documents) may be directed to the following email (please reference "Salem Harbor Solicitation" in the subject line): salemharborinfo@ra.kroll.com.

Additional copies of this Disclosure Statement are available upon request made to the Solicitation Agent at the telephone numbers or email address set forth immediately above.

B. Voting Procedures

The Debtors are providing copies of this Disclosure Statement (including all exhibits thereto), a Ballot (either just a ballot for Class 3 or 4), and related materials (collectively, a "Solicitation Package") to Record Holders of Credit Facility Secured Claims and General Unsecured Claims. Any Record Holder or nominee of a Record Holder who has not received an applicable Ballot should contact the Solicitation Agent.

Holders of Credit Facility Secured Claims in Class 3 and General Unsecured Claims in Class 4 should provide all of the information requested by the Ballot and ***promptly*** return all Ballots received in the enclosed, self-addressed, postage-paid envelope provided with each such Ballot to the Solicitation Agent by the Voting Deadline.

Alternatively, such holders may submit their Ballots electronically through the Solicitation Agent's online portal, at https://cases.ra.kroll.com/salemharbor. Holders should click on the "Submit E-Ballot" section of the website and follow the instructions to submit their Ballot electronically. Each holder will receive a unique e-ballot identification number with which to submit their Ballot electronically on the Solicitation Agent's online portal.

The Solicitation Agent's online portal is the sole manner in which Ballots will be accepted via electronic or online transmission. **Ballots submitted by facsimile, email or other means of electronic transmission will not be counted.** Holders of Credit Facility Secured Claims or General Unsecured Claims who cast a Ballot using the Solicitation Agent's online portal should NOT also submit a paper Ballot.

If you have any questions about the solicitation or voting process, please contact the solicitation agent at (844) 205-7534 (Domestic, toll-free) or +1 (646) 813-2944 (International) or via electronic mail to salemharborinfo@ra.kroll.com (with "Salem Harbor Solicitation" in the subject line).

C. Parties Entitled to Vote

Pursuant to the provisions of the Bankruptcy Code, only holders of allowed claims or equity interests in classes of claims or equity interests that are impaired and that are not deemed to have rejected a proposed plan are entitled to vote to accept or reject such proposed plan. Classes of claims or interests in which the holders of claims or interests are unimpaired under a plan are presumed to have accepted such plan and are not entitled to vote to accept or reject the plan. Similarly, classes of claims or interests in which the holders of claims or interests are impaired and are not entitled to receive or retain any property under the plan on account of such claims or interests are deemed to have rejected such plan and are not entitled to vote to accept or reject the plan. For a detailed description of the treatment of Claims under the Plan, see Article VI of this Disclosure Statement.

The Debtors will request confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code as necessary. Section 1129(b) of the Bankruptcy Code permits the confirmation of a chapter 11 plan notwithstanding the rejection of such plan by one or more impaired classes of claims or equity interests. Under section 1129(b), a plan may be confirmed by a bankruptcy court if it does not "discriminate unfairly" and is "fair and equitable" with respect to each rejecting class. For a more detailed description of the requirements for confirmation of a nonconsensual plan, see Article XII.C.3 of this Disclosure Statement.

The Claims in Classes 3 and 4 are impaired under the Plan and entitled to vote to accept or reject the Plan. Class 3 includes Credit Facility Secured Claims and Class 4 includes General Unsecured Claims.

D. Fiduciaries and Other Representatives

If a Ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation, or another, acting in a fiduciary or representative capacity, such person should indicate such capacity when signing and, if requested, must submit proper evidence satisfactory to the Debtors of authority to so act. Authorized signatories should submit the separate Ballot of each Record Holder of a Credit Facility Secured Claim in Class 3 or General Unsecured Claim in Class 4 for whom they are voting.

UNLESS A BALLOT, OR ANY PROVISIONAL BALLOTS AS NECESSARY, IS SUBMITTED TO THE SOLICITATION AGENT ON OR BEFORE THE VOTING DEADLINE, SUCH BALLOT WILL BE REJECTED AS INVALID AND WILL NOT BE COUNTED AS AN ACCEPTANCE OR REJECTION OF THE PLAN; PROVIDED, HOWEVER, THE DEBTORS RESERVE THE RIGHT, IN THEIR SOLE DISCRETION, TO ALLOW ANY SUCH BALLOTS TO BE COUNTED, ABSENT A CONTRARY ORDER FROM THE BANKRUPTCY COURT.

E. Agreements Upon Furnishing Ballots

The delivery of an accepting Ballot pursuant to one of the procedures set forth above will constitute the agreement of the holder with respect to such Ballot to accept (1) all of the terms of, and conditions to, this solicitation; and (2) the terms of the Plan including the injunction, releases,

and exculpations set forth in Article IX therein. All parties in interest retain their right to object to confirmation of the Plan, subject to any applicable terms of the RSA.

F. Change of Vote

Except as provided in the RSA, any party who has previously submitted to the Solicitation Agent before the Voting Deadline a properly completed Ballot may revoke such Ballot and change its vote by submitting to the Solicitation Agent before the Voting Deadline a subsequent, properly completed Ballot for acceptance or rejection of the Plan.

G. Waivers of Defects, Irregularities, Etc.

Unless otherwise directed by the Bankruptcy Court, all questions as to the validity, form, eligibility (including time of receipt), acceptance, and revocation or withdrawals of Ballots will be determined by the Solicitation Agent or the Debtors, as applicable, in their sole discretion, which determination will be final and binding. The Debtors reserve the right to reject any and all Ballots submitted by any of their respective holders not in proper form, the acceptance of which would, in the opinion of the Debtors or their counsel, as applicable, be unlawful. The Debtors further reserve their respective rights to waive any defects or irregularities or conditions of delivery as to any particular Ballot by any of their holders. The interpretation (including the Ballot and the respective instructions thereto) by the applicable Debtor, unless otherwise directed by the Bankruptcy Court, will be final and binding on all parties. Unless waived, any defects or irregularities in connection with deliveries of Ballots must be cured within such time as the Debtors (or the Bankruptcy Court) determines. Neither the Debtors nor any other person will be under any duty to provide notification of defects or irregularities with respect to deliveries of Ballots nor will any of them incur any liabilities for failure to provide such notification. Unless otherwise directed by the Bankruptcy Court, delivery of such Ballots will not be deemed to have been made until such irregularities have been cured or waived. Ballots previously furnished (and as to which any irregularities have not theretofore been cured or waived) will be invalidated.

H. Miscellaneous

All Ballots must be signed by the Record Holder of the Credit Facility Secured Claim or General Unsecured Claim, as applicable, or any person who has obtained a properly completed Ballot proxy from the Record Holder of the Credit Facility Secured Claim or General Unsecured Claim, as applicable, on such date. For purposes of voting to accept or reject the Plan, the Record Holders of the Credit Facility Secured Claim or General Unsecured Claim will be deemed to be the "holders" of such Claims. Unless otherwise ordered by the Bankruptcy Court, Ballots that are signed, dated, and timely received, but on which a vote to accept or reject the Plan has not been indicated, will not be counted. The Debtors, in their sole discretion, may request that the Solicitation Agent attempt to contact such holders to cure any such defects in the Ballots. Any Ballot marked to both accept and reject the Plan will not be counted. If a holder returns more than one Ballot voting Credit Facility Secured Claims or General Unsecured Claims, the Ballots are not voted in the same manner, and the holder does not correct this before the Voting Deadline, the last Ballot submitted will be the Ballot counted. An otherwise properly executed Ballot that attempts to partially accept and partially reject the Plan will likewise not be counted.

Under the Bankruptcy Code, for purposes of determining whether the requisite acceptances have been received, only holders of the Credit Facility Secured Claims or General Unsecured Claims, as applicable, who actually vote will be counted. The failure of a holder to deliver a duly executed Ballot to the Solicitation Agent will be deemed to constitute an abstention by such holder with respect to voting on the Plan and such abstentions will not be counted as votes for or against the Plan.

Except as provided below, unless a Ballot, or any provisional ballots as necessary, is timely submitted to the Solicitation Agent before the Voting Deadline together with any other documents required by such Ballot, the Debtors may, in their sole discretion, reject such Ballot as invalid, and therefore decline to utilize it in connection with seeking confirmation of the Plan.

THE PLAN PROVIDES THAT HOLDERS OF IMPAIRED CLAIMS WHO ARE ENTITLED TO VOTE ON THE PLAN BUT WHO DO NOT SUBMIT A BALLOT TO ACCEPT OR REJECT THE PLAN OR WHO REJECT THE PLAN BUT DO NOT OPT OUT OF THE RELEASE PROVISIONS OF THE PLAN ARE DEEMED TO HAVE GRANTED THE RELEASES THEREIN. ADDITIONALLY, THE PLAN PROVIDES THAT HOLDERS OF IMPAIRED CLAIMS WHO ARE ENTITLED TO VOTE ON THE PLAN AND WHO VOTE TO ACCEPT THE PLAN ARE DEEMED TO HAVE GRANTED THE RELEASES CONTEMPLATED BY THE RELEASE PROVISIONS OF THE PLAN.

ARTICLE XII.
CONFIRMATION OF THE PLAN

A. Confirmation Hearing

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court to hold a confirmation hearing to confirm a chapter 11 plan upon appropriate notice to all required parties. Notice of the Confirmation Hearing will be provided to all known creditors or their representatives. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for the announcement of the continuation date made at the Confirmation Hearing, at any subsequent continued Confirmation Hearing, or pursuant to a notice filed on the docket for the Chapter 11 Cases.

B. Objections to Confirmation

Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to the confirmation of a plan. Any objection to confirmation of the Plan must be in writing, must conform to the Bankruptcy Rules and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, must set forth the name of the objector, the nature and amount of Claims or Interests held or asserted by the objector against the Debtors' estates or properties, the basis for the objection and the specific grounds therefor, and must be filed with the Bankruptcy Court, together with proof of service thereof, and served upon the following parties, including such other parties as the Bankruptcy Court may order:

1. Debtors at:

Salem Harbor Power Development LP
c/o Tateswood Energy Company, LLC
480 Wildwood Forest Drive, Suite 475
Spring, TX 77380
Attn: John Lambert
Email: jlambert@tateswood.com

2. Counsel to the Debtors at:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
Attn: Brian S. Hermann
John T. Weber
Alice Nofzinger
Email: bhermann@paulweiss.com
jweber@paulweiss.com
anofzinger@paulweiss.com

-- and --

Young Conaway Stargatt & Taylor, LLP
1000 North King Street
Wilmington, Delaware 19801
Fax: (302) 571-1253
Attn: Pauline K. Morgan
Andrew L. Magaziner
Katelin A. Morales
Timothy R. Powell
Email: pmorgan@ycst.com
amagaziner@ycst.com
kmorales@ycst.com
tpowell@ycst.com

3. Office of the U.S. Trustee at:

Office of the United States Trustee for the District of Delaware
844 North King Street, Suite 2207, Lockbox 35
Wilmington, Delaware 19801
Attn: Joseph Cudia
Email: joseph.cudia@usdoj.gov

4. Counsel to the Prepetition Agent at:

Mayer Brown LLP
1221 Avenue of the Americas
New York, NY 10020
Attn: Brian Trust
Joaquin M. C De Baca
Email: btrust@mayerbrown.com
jcdebaca@mayerbrown.com

-- and --

Potter Anderson & Corroon LLP
1313 N. Market Street, 6th Floor
Wilmington, Delaware 19801
Attn: Christopher M. Samis
L. Katherine Good
Email: csamis@potteranderson.com
kgood@potteranderson.com

UNLESS AN OBJECTION TO CONFIRMATION IS TIMELY SERVED AND FILED, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT.

C. Requirements for Confirmation of the Plan

1. Requirements of Section 1129(a) of the Bankruptcy Code

At the Confirmation Hearing, the Bankruptcy Court will determine whether the confirmation requirements specified in section 1129(a) of the Bankruptcy Code have been satisfied including, without limitation, whether:

- the Plan complies with the applicable provisions of the Bankruptcy Code;
- the Debtors have complied with the applicable provisions of the Bankruptcy Code;
- the Plan has been proposed in good faith and not by any means forbidden by law;
- any payment made or promised by the Debtors or by a person issuing securities or acquiring property under the Plan, for services or for costs and expenses in or in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, has

been disclosed to the Bankruptcy Court, and any such payment made before confirmation of the Plan is reasonable, or if such payment is to be fixed after confirmation of the Plan, such payment is subject to the approval of the Bankruptcy Court as reasonable;

- the Debtors have disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, if applicable, as a director or officer of the Reorganized Debtors, the Plan Administrator for the Wind Down Debtors, an affiliate of the Debtors participating in a Plan with the Debtors, or a successor to the Debtors under the Plan, and the appointment to, or continuance in, such office of such individual is consistent with the interests of holders of Claims and Interests and with public policy, and the Debtors have disclosed the identity of any insider who will be employed or retained by the Reorganized Debtors, and the nature of any compensation for such insider;

- with respect to each Class of Claims or Interests, each holder of an impaired Claim has either accepted the Plan or will receive or retain under the Plan, on account of such holder's Claim, property of a value, as of the Effective Date of the Plan, that is not less than the amount such holder would receive or retain if the Debtors were liquidated on the Effective Date of the Plan under Chapter 7 of the Bankruptcy Code;

- except to the extent the Plan meets the requirements of section 1129(b) of the Bankruptcy Code (as discussed further below), each Class of Claims either accepted the Plan or is not impaired under the Plan;

- except to the extent that the holder of a particular Claim has agreed to a different treatment of such Claim, the Plan provides that administrative expenses and priority Claims, other than priority tax Claims, will be paid in full on the Effective Date, and that priority tax Claims will receive either payment in full on the Effective Date or deferred cash payments over a period not exceeding five years after the Petition Date, of a value, as of the Effective Date of the Plan, equal to the allowed amount of such Claims;

- at least one Class of impaired Claims has accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim in such Class;

- confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtors or any successor to the Debtors under the Plan; and

- all fees payable under section 1930 of title 28, as determined by the Bankruptcy Court at the Confirmation Hearing, have been paid or the Plan provides for the payment of all such fees on the Effective Date of the Plan.

i. Best Interests Test

As noted above, with respect to each impaired class of claims and equity interests, confirmation of a plan requires that each such holder either (a) accept the plan or (b) receive or retain under the plan property of a value, as of the effective date of the plan, that is not less than

the value such holder would receive or retain if the debtors were liquidated under chapter 7 of the Bankruptcy Code ("Chapter 7"). This requirement is referred to as the "best interests test."

This test requires the Bankruptcy Court to determine what the holders of allowed claims and allowed equity interests in each impaired class would receive from a liquidation of the debtor's assets and properties in the context of a liquidation under Chapter 7 of the Bankruptcy Code. To determine if a plan is in the best interests of each impaired class, the value of the distributions from the proceeds of the liquidation of the debtor's assets and properties (after subtracting the amounts attributable to the aforesaid claims) is then compared with the value offered to such classes of claims and equity interests under the plan.

The Debtors believe that under the Plan all holders of impaired Claims and Interests will receive property with a value not less than the value such holder would receive in a liquidation under chapter 7 of the Bankruptcy Code. The Debtors' belief is based primarily on (a) consideration of the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to holders of impaired Claims and Interests and (b) the Debtors' liquidation analysis (the "Liquidation Analysis") attached hereto as **Exhibit E** prepared solely for purposes of estimating proceeds available in a liquidation under Chapter 7 of the Debtors' estates.[22]

The Liquidation Analysis is based on a number of estimates and assumptions that are inherently subject to significant economic, competitive and operational uncertainties and contingencies that are beyond the control of the Debtors or a trustee under Chapter 7. Furthermore, the actual amounts of claims against the Debtors' estates could vary materially from the estimates set forth in the Liquidation Analysis, depending on, among other things, the claims asserted during Chapter 7. Accordingly, while the information contained in the Liquidation Analysis is necessarily presented with numerical specificity, the Debtors cannot provide any assurances that the values assumed would be realized or the claims estimates assumed would not change if the Debtors were in fact liquidated, nor can assurances be made that the Bankruptcy Court would accept this analysis or concur with these assumptions in making its determination under section 1129(a) of the Bankruptcy Code.

As set forth in detail on the Liquidation Analysis, the Debtors believe that the Plan will produce a greater recovery for the holders of Claims and Interests than would be achieved in a Chapter 7 liquidation. Consequently, the Debtors believe that the Plan, which provides for the continuation of the Debtors' business, will provide a substantially greater ultimate return to the holders of Claims and Interests than would a Chapter 7 liquidation.

ii. Feasibility

Pursuant to section 1129(a)(11) of the Bankruptcy Code, among other things, the Bankruptcy Court must determine that confirmation of the Plan is not likely to be followed by the liquidation or need for further financial reorganization of the Debtors or any successors to the Debtors under the Plan. This condition is often referred to as the "feasibility" of the Plan. The Debtors believe that the Plan satisfies this requirement.

[22] The Debtors intend to file **Exhibit E** in advance of the hearing to consider approval of the Disclosure Statement.

For purposes of determining whether the Plan meets this requirement, the Debtors' prepared a projected financial outlook assuming consummation of the Standalone Restructuring pursuant to the Plan. These financial outlooks, and the assumptions on which they are based, are annexed hereto as **Exhibit F** (the "Financial Projections").[23] Based upon the Financial Projections, the Debtors believe that the Reorganized Debtors will be able to make all payments required pursuant to the Plan, and therefore, that confirmation of the Plan is not likely to be followed by liquidation or the need for further reorganization. The Debtors also believe that they will be able to repay or refinance on commercially reasonable terms any and all of the indebtedness under the Plan at or before the maturity of such indebtedness.

The Financial Projections should be read in conjunction with the assumptions, qualifications, and explanations set forth in this Disclosure Statement and in the Plan in their entirety. The Debtors prepared the Financial Projections based upon, among other things, the anticipated future financial condition and results of operations of the Reorganized Debtors. The Debtors do not, as a matter of course, publish their business plans, strategies, projections, or their anticipated results of operations or financial condition. Accordingly, the Debtors do not intend to update or otherwise revise the Financial Projections or otherwise make such information public to reflect events or circumstances existing or arising after the date of this Disclosure Statement or to reflect the occurrence of unanticipated events, even in the event that any or all of the underlying assumptions are shown to be in error.

THE FINANCIAL PROJECTIONS WERE NOT PREPARED TO COMPLY WITH THE GUIDELINES FOR PROSPECTIVE FINANCIAL STATEMENTS PUBLISHED BY THE FINANCIAL ACCOUNTING STANDARDS BOARD. THE DEBTORS' INDEPENDENT ACCOUNTANTS HAVE NEITHER EXAMINED NOR COMPILED THE ACCOMPANYING FINANCIAL PROJECTIONS AND ACCORDINGLY DO NOT EXPRESS AN OPINION OR ANY OTHER FORM OF ASSURANCE WITH RESPECT TO THE FINANCIAL PROJECTIONS, ASSUME NO RESPONSIBILITY FOR THE FINANCIAL PROJECTIONS, AND DISCLAIM ANY ASSOCIATION WITH THE FINANCIAL PROJECTIONS. EXCEPT AS MAY OTHERWISE BE PROVIDED IN THE PLAN OR THIS DISCLOSURE STATEMENT, THE DEBTORS DO NOT INTEND TO UPDATE OR OTHERWISE REVISE THESE FINANCIAL PROJECTIONS TO REFLECT EVENTS OR CIRCUMSTANCES EXISTING OR ARISING AFTER THE DATE OF THIS DISCLOSURE STATEMENT OR TO REFLECT THE OCCURRENCE OF UNANTICIPATED EVENTS.

THE FINANCIAL PROJECTIONS, WHILE PRESENTED WITH NUMERICAL SPECIFICITY, ARE NECESSARILY BASED ON A VARIETY OF ESTIMATES AND ASSUMPTIONS THAT, THOUGH CONSIDERED REASONABLE BY THE DEBTORS, MAY NOT BE REALIZED, AND ARE INHERENTLY SUBJECT TO SIGNIFICANT BUSINESS, ECONOMIC, COMPETITIVE, INDUSTRY, REGULATORY, MARKET AND FINANCIAL UNCERTAINTIES AND CONTINGENCIES, MANY OF WHICH WILL BE BEYOND THE DEBTORS' AND THE REORGANIZED DEBTORS' CONTROL. THE DEBTORS CAUTION THAT NO REPRESENTATIONS CAN BE OR ARE MADE AS TO THE ACCURACY OF THE FINANCIAL PROJECTIONS OR TO THE REORGANIZED

[23] The Debtors intend to file **Exhibit F** in advance of the hearing to consider approval of the Disclosure Statement.

DEBTORS' ABILITY TO ACHIEVE THE PROJECTED RESULTS. SOME ASSUMPTIONS MAY ULTIMATELY BE INCORRECT. MOREOVER, EVENTS AND CIRCUMSTANCES OCCURRING SUBSEQUENT TO THE DATE ON WHICH THE PROJECTIONS WERE PREPARED MAY BE DIFFERENT FROM THOSE ASSUMED, OR, ALTERNATIVELY, MAY HAVE BEEN UNANTICIPATED, AND THUS MAY AFFECT FINANCIAL RESULTS IN A MATERIAL AND POSSIBLY ADVERSE MANNER. THE FINANCIAL PROJECTIONS, THEREFORE, MAY NOT BE RELIED UPON AS A GUARANTEE OR OTHER ASSURANCE OF THE ACTUAL RESULTS THAT WILL OCCUR. SEE ARTICLE X OF THIS DISCLOSURE STATEMENT (CERTAIN RISK FACTORS TO BE CONSIDERED).

IN DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN, HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN MUST MAKE THEIR OWN DETERMINATIONS AS TO THE REASONABLENESS OF SUCH ASSUMPTIONS AND THE RELIABILITY OF THE FINANCIAL PROJECTIONS AND SHOULD CONSULT WITH THEIR OWN ADVISORS.

2. Equitable Distribution of Voting Power

Pursuant to section 1123(a)(6) of the Bankruptcy Code, to the extent applicable to these Chapter 11 Cases, the New Organizational Documents of the Reorganized Debtors will prohibit the issuance of non-voting equity securities.

3. Additional Requirements for Non-Consensual Confirmation

In the event that any impaired Class of Claims or Interests does not accept or is deemed to reject the Plan, the Bankruptcy Court may still confirm the Plan at the request of the Debtors if, as to each impaired Class of Claims that has not accepted the Plan, the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to such Classes of Claims or Interests, pursuant to section 1129(b) of the Bankruptcy Code. Both of these requirements are in addition to other requirements established by case law interpreting the statutory requirements.

i. Unfair Discrimination Test

The "no unfair discrimination" test applies to Classes of Claims or Interests that are of equal priority and are receiving different treatment under the Plan. A chapter 11 plan does not discriminate unfairly, within the meaning of the Bankruptcy Code, if the legal rights of a dissenting Class are treated in a manner consistent with the treatment of other Classes whose legal rights are substantially similar to those of the dissenting Class and if no Class of Claims or Interests receives more than it legally is entitled to receive for its Claims or Interests. This test does not require that the treatment be the same or equivalent, but that such treatment be "fair."

The Debtors believe the Plan satisfies the "unfair discrimination" test. Claims of equal priority are receiving comparable treatment and such treatment is fair under the circumstances.

ii. Fair and Equitable Test

The "fair and equitable" test applies to classes of different priority and status (*e.g.*, secured versus unsecured) and includes the general requirement that no class of claims receive more than

100% of the allowed amount of the claims in such class. As to dissenting classes, the test sets different standards depending on the type of claims in such class.

The Debtors believe that the Plan satisfies the "fair and equitable" test. The Debtors submit that if the Debtors "cramdown" the Plan pursuant to section 1129(b) of the Bankruptcy Code, the Plan is structured so that it does not "discriminate unfairly" and satisfies the "fair and equitable" requirement. With respect to the unfair discrimination requirement, all Classes under the Plan are provided treatment that is substantially equivalent to the treatment that is provided to other Classes that have equal rank. With respect to the fair and equitable requirement, no Class under the Plan will receive more than 100% of the amount of Allowed Claims or Interests in that Class. The Debtors believe that the Plan and the treatment of all Classes of Claims or Interests under the Plan satisfy the foregoing requirements for nonconsensual Confirmation of the Plan.

ARTICLE XIII.
ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN

The Debtors have evaluated several alternatives to the Plan. After studying these alternatives, the Debtors have concluded that the Plan is the best alternative and will maximize recoveries to parties in interest, assuming confirmation and consummation of the Plan. If the Plan is not confirmed and consummated, the alternatives to the Plan are (a) the preparation and presentation of an alternative chapter 11 plan, (b) a sale of some or all of the Debtors' assets pursuant to section 363 of the Bankruptcy Code, or (c) a liquidation under chapter 7 of the Bankruptcy Code.

A. Alternative Chapter 11 Plan

Subject to the terms of the RSA, if the Plan is not confirmed, the Debtors (or if the Debtors' exclusive period in which to file a chapter 11 plan has expired, any other party in interest) could attempt to formulate a different plan. Such a plan might involve either a reorganization and continuation of the Debtors' business or an orderly liquidation of their assets. The Debtors, however, submit that the Plan, as described herein, enables their creditors to realize the most value under the circumstances.

B. Sale Under Section 363 of the Bankruptcy Code

If the Plan is not confirmed, the Debtors could seek from the Bankruptcy Court, after notice and a hearing, authorization to sell their assets under section 363 of the Bankruptcy Code. Upon analysis and consideration of this alternative, the Debtors do not believe a sale of their assets other than as may be consummated under the Plan would yield a higher recovery for holders of Claims than the Plan.

C. Liquidation Under Chapter 7 or Applicable Non-Bankruptcy Law

If no plan can be confirmed, the Chapter 11 Cases may be converted to cases under Chapter 7 of the Bankruptcy Code in which a trustee would be elected or appointed to liquidate the assets of the Debtors for distribution to their creditors in accordance with the priorities

established by the Bankruptcy Code. The Liquidation Analysis will set forth the effect a Chapter 7 liquidation would have on the recovery of holders of allowed Claims and Interests.

As noted in the Liquidation Analysis, the Debtors believe that liquidation under Chapter 7 would result in lower distributions to creditors than those provided for under the Plan. Among other things, the value that the Debtors expect to obtain from their assets in a Chapter 7 liquidation, instead of continuing as a going concern as provided in the Plan, would be materially less. A Chapter 7 liquidation would also generate more unsecured claims against the Debtors' estates from, among other things, damages related to rejected contracts. In addition, a Chapter 7 liquidation would result in a delay from the conversion of the cases and the additional administrative expenses associated with the appointment of a trustee and the trustee's retention of professionals, who would be required to become familiar with the many legal and factual issues in the Debtors' Chapter 11 Cases.

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ARTICLE XIV.
CONCLUSION AND RECOMMENDATION

For all of the reasons set forth in this Disclosure Statement, the Debtors believe the Plan is in the best interests of all stakeholders and urge the holders of Voting Classes to vote in favor thereof. Any alternative other than confirmation of the Plan could result in extensive delays and increased administrative expenses, ultimately resulting in smaller distributions to the holders of Allowed Claims and Interests than those set forth in the Plan.

Dated: April 20, 2022

Salem Harbor Power Development LP (f/k/a Footprint Power Salem Harbor Development LP)

Highstar Salem Harbor Holdings GP, LLC (f/k/a Highstar Footprint Holdings GP, LLC)

Highstar Salem Harbor Power Holdings L.P. (f/k/a Highstar Footprint Power Holdings L.P.)

Salem Harbor Power FinCo GP, LLC (f/k/a Footprint Power Salem Harbor FinCo GP, LLC)

Salem Harbor Power FinCo, LP (f/k/a Footprint Power Salem Harbor FinCo, LP)

SH Power DevCo GP LLC (f/k/a Footprint Power SH DevCo GP LLC)

By: /s/ *John R. Castellano*
Name: John R. Castellano
Title: Chief Restructuring Officer

Exhibit A

Joint Chapter 11 Plan

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
SALEM HARBOR POWER DEVELOPMENT LP (f/k/a Footprint Power Salem Harbor Development LP), *et al.*,[1]	Case No. 22-10239 (MFW)
	(Jointly Administered)
Debtors.	

JOINT CHAPTER 11 PLAN OF SALEM HARBOR POWER DEVELOPMENT LP AND ITS DEBTOR AFFILIATES

Brian S. Hermann (admitted *pro hac vice*)
John T. Weber (admitted *pro hac vice*)
Alice Nofzinger (admitted *pro hac vice*)
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Counsel to the Debtors and Debtors in Possession

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Salem Harbor Power Development LP (f/k/a Footprint Power Salem Harbor Development LP) (1360); Highstar Salem Harbor Holdings GP, LLC (f/k/a Highstar Footprint Holdings GP, LLC) (2253); Highstar Salem Harbor Power Holdings L.P. (f/k/a Highstar Footprint Power Holdings L.P.) (9509); Salem Harbor Power FinCo GP, LLC (f/k/a Footprint Power Salem Harbor FinCo GP, LLC) (N/A); Salem Harbor Power FinCo, LP (f/k/a Footprint Power Salem Harbor FinCo, LP) (9219); and SH Power DevCo GP LLC (f/k/a Footprint Power SH DevCo GP LLC) (9008). The location of the Debtors' service address is: c/o Tateswood Energy Company, LLC, 480 Wildwood Forest Drive, Suite 475, Spring, Texas 77380.

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INTRODUCTION

Each of Salem Harbor Power Development LP (f/k/a Footprint Power Salem Harbor Development LP), Highstar Salem Harbor Holdings GP, LLC (f/k/a Highstar Footprint Holdings GP, LLC), Highstar Salem Harbor Power Holdings L.P. (f/k/a Highstar Footprint Power Holdings L.P.), Salem Harbor Power FinCo GP, LLC (f/k/a Footprint Power Salem Harbor FinCo GP, LLC), Salem Harbor Power FinCo, LP (f/k/a Footprint Power Salem Harbor FinCo, LP), and SH Power DevCo GP LLC (f/k/a Footprint Power SH DevCo GP LLC) proposes this joint chapter 11 plan pursuant to section 1121(a) of the Bankruptcy Code. Although proposed jointly for administrative and distribution 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.

Reference is made to the accompanying *Disclosure Statement for the Joint Chapter 11 Plan of Salem Harbor Power Development LP and Its Debtor Affiliates* for a discussion of the Debtors' history, business, properties and operations, projections, risk factors, a summary and analysis of the Plan and the transactions contemplated thereby, and certain related matters.

ALL HOLDERS OF CLAIMS, TO THE EXTENT APPLICABLE, 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 AND GOVERNING LAW

A. Defined Terms

As used in the Plan, capitalized terms have the meanings ascribed to them below.

1. "***Administrative Claim***" means a Claim for costs and expenses 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: (a) the actual and necessary costs and expenses incurred on or after the Petition Date until and including the Effective Date of preserving the Estates and operating the Debtors' business; (b) Allowed Professional Fee Claims; and (c) all fees and charges assessed against the Estates pursuant to section 1930 of chapter 123 of the Judicial Code. For the avoidance of doubt, a Claim arising under section 503(b)(9) of the Bankruptcy Code is an Administrative Claim.

2. "***Administrative Claim Bar Date***" means the deadline for filing requests for payment of Administrative Claims, which shall be 30 days after the Effective Date.

3. "***Administrative Claim Objection Bar Date***" means the deadline for filing objections to requests for payment of Administrative Claims (other than requests for payment of Professional Fee Claims), which shall be the later of (a) 60 days after the Effective Date and (b) 75 days after the Filing of the applicable request for payment of the Administrative Claims; *provided* that the Administrative Claim Objection Bar Date may be extended by the Bankruptcy Court after notice and a hearing.

4. "***Administrative Claim Reserve Account***" shall have the meaning ascribed to such term in Article II.A.

5. "***Administrative Claim Reserve Amount***" shall have the meaning ascribed to such term in Article II.A.

6. "***Affiliate***" has the meaning set forth in section 101(2) of the Bankruptcy Code.

7. "***Agent***" means, as applicable herein, the Prepetition Agent or the Exit Facility Agent.

8. "***Allowed***" means, with reference to any Claim, except as otherwise provided herein: (a) a Claim in a liquidated amount as to which no objection has been Filed prior to the applicable claims objection deadline and that is evidenced by a Proof of Claim timely Filed by the applicable Bar Date or that is not required to be evidenced by a Filed Proof of Claim under the Plan, the Bankruptcy Code, or a Final Order; (b) a Claim that is scheduled by the Debtors as neither disputed, contingent, nor unliquidated, and for which no Proof of Claim has been timely Filed in an unliquidated or a different amount; (c) a Claim that is upheld or otherwise Allowed (i) pursuant to the Plan, (ii) in any stipulation that is approved by the Bankruptcy Code, (iii) pursuant to any contract, instrument, indenture or other agreement entered into or assumed in connection herewith, or (iv) by Final Order (including any such Claim to which the Debtors had objected or which the Bankruptcy Court had disallowed prior to such Final Order); *provided* that with respect to a Claim described in clauses (a) through (c) above, such Claim shall be considered Allowed only if and to the extent that with respect to such Claim no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or if such objection is so interposed, such Claim shall have been Allowed by a Final Order; *provided, further,* 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 that has been or is hereafter listed in the Schedules as contingent, unliquidated or disputed, and for which no Proof of Claim is or has been timely Filed (except to the extent otherwise Allowed pursuant to clause (c) above), is not considered Allowed and shall be deemed expunged without further action by the Debtors and without further notice to any party or action, approval, or order of the Bankruptcy Code. For the avoidance of any doubt, the Credit Facility Claim shall be deemed Allowed.

9. "***Acquired Assets***" has the meaning set forth in Article IV.C.

10. "***Asset Purchase Agreement***" means one or more asset purchase agreements pursuant to which the Sale Transaction, if any, is consummated.

11. "***Assumed Liabilities***" has the meaning set forth in Article IV.C.

12. "***Auction***" means the auction, if any, for some or all of the Debtors' assets, conducted in accordance with the Bidding Procedures.

13. "***Avoidance Actions***" means any and all causes of action to avoid a transfer of property or an obligation incurred by any of the Debtors arising under sections 542, 544, 545, and

547 through and including 553 of the Bankruptcy Code or other similar or related state or federal statutes and common law.

14. "***Bankruptcy Code***" means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as now in effect or hereafter amended.

15. "***Bankruptcy Court***" means the United States Bankruptcy Court for the District of Delaware and, to the extent of the withdrawal of reference under section 157 of the Judicial Code, the United States District Court for the District of Delaware.

16. "***Bankruptcy Rules***" means the Federal Rules of Bankruptcy Procedure, as applicable to the Chapter 11 Cases, promulgated under section 2075 of the Judicial Code and the general, local, and chambers rules of the Bankruptcy Court.

17. "***Bar Date***" means the dates established by the Bankruptcy Court by which Proofs of Claim must be Filed with respect to such Claims, other than Administrative Claims or other Claims for which the Bankruptcy Court entered an order excluding the holders of such Claims from the requirement of Filing Proofs of Claim.

18. "***Bidding Procedures***" means the procedures governing the Auction and sale of all or substantially all of the Debtors' assets, as approved by the Bankruptcy Court pursuant to the Bidding Procedures Order, and as may be amended from time to time in accordance with their terms.

19. "***Bidding Procedures Order***" means the order entered by the Bankruptcy Court on April 20, 2022 [D.I. 127] approving the Bidding Procedures.

20. "***Business Day***" means any day, other than a Saturday, Sunday, "legal holiday" (as defined in Bankruptcy Rule 9006(a)(6)), or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state of New York.

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

22. "***Cash Collateral***" has the meaning set forth in section 363(a) of the Bankruptcy Code.

23. "***Cash Collateral Orders***" means, together, the Interim Cash Collateral Order and Final Cash Collateral Order.

24. "***Causes of Action***" means any actions, claims, cross claims, third-party claims, interests, damages, controversies, remedies, causes of action, debts, judgments, demands, rights, actions, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, Liens, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, secured or unsecured, assertable, directly or derivatively, matured or unmatured, suspected or unsuspected, disputed or undisputed, whether arising before, on, or after the Petition Date, in contract, tort, law, equity, or pursuant to any other theory of law or otherwise.

Causes of Action also include: (a) any rights of setoff, counterclaim, or recoupment and any claims under contracts or for breaches of duties imposed by law or in equity; (b) the right to object to or otherwise contest Claims or Interests; (c) claims pursuant to sections 362, 510, 542, 543, 544 through 550, or 553 of the Bankruptcy Code; and (d) any claims or defenses, including fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; and (e) any state law fraudulent transfer claim.

25. "***Chapter 11 Cases***" means (a) when used with reference to a particular Debtor, the case pending for that Debtor under chapter 11 of the Bankruptcy Code and (b) when used with reference to all Debtors, the procedurally consolidated chapter 11 cases pending for the Debtors in the Bankruptcy Court.

26. "***Claim***" means any claim, as such term is defined in section 101(5) of the Bankruptcy Code, against a Debtor or a Debtor's Estate.

27. "***Claims Register***" means the official register of Claims maintained by the Notice, Claims, and Balloting Agent.

28. "***Class***" means a class of Claims or Interests as set forth in Article III of the Plan pursuant to section 1122(a) of the Bankruptcy Code.

29. "***Closing Cases***" has the meaning set forth in Article XIII.M.

30. "***Confirmation***" means the Bankruptcy Court's entry of the Confirmation Order on the docket of the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.

31. "***Confirmation Date***" means the date on 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.

32. "***Confirmation Hearing***" means the hearing held by the Bankruptcy Court to consider Confirmation of the Plan pursuant to sections 1128 and 1129 of the Bankruptcy Code.

33. "***Confirmation Order***" means the order of the Bankruptcy Court confirming the Plan under section 1129 of the Bankruptcy Code.

34. "***Consenting Equity Parties***" means the Equity Parties that are or become party to the RSA, together with their respective successors and permitted assigns.

35. "***Consenting Lenders***" means the Prepetition Lenders that are or become party to the RSA, together with their respective successors and permitted assigns.

36. "***Consenting Stakeholders***" means, collectively, the Consenting Lenders and the Consenting Equity Parties.

37. "***Consummation***" means the occurrence of the Effective Date.

38. "***Credit Agreement***" means that certain Credit Agreement, dated as of January 9, 2015 (as amended, restated, supplemented, or otherwise modified and in effect from time to time), by and among DevCo, as borrower, the lenders thereto from time to time, the Prepetition Agent in its capacity as administrative agent, collateral agent, and depositary bank, and BNP Paribas, as issuing bank.

39. "***Credit Facility***" means the credit facility outstanding under the Credit Agreement.

40. "***Credit Facility Claim***" means any Claim arising under the Credit Agreement, including any Claim on account of the "Obligations" (as defined in the Credit Agreement) under the Credit Agreement. The Credit Facility Claims constitute legal, valid, and binding obligations of the applicable Debtors, enforceable against them in accordance with their respective terms, and no portion of the Credit Facility Claims or any payments made to the holders of any Credit Facility Claim or applied to or paid on account of the Obligations (as defined under the Credit Agreement) owing under the Financing Documents (as defined in the Credit Agreement) prior to the Petition Date is subject to any contest, attack, rejection, recovery, recoupment, reduction, defense, counterclaim, set-off, offset, subordination (whether equitable, contractual, or otherwise), recharacterization, avoidance, or other claim, cause of action, or other challenge of any nature under the Bankruptcy Code or applicable nonbankruptcy law.

41. "***Credit Facility Collateral***" means the applicable Debtors' assets, as more fully described in the Credit Agreement and other Financing Documents (as defined therein), including (a) all of DevCo's right, title, and interest in all or substantially all of DevCo's property, including real property, personal property, and fixtures, (b) all of SH Power DevCo GP LLC's (f/k/a Footprint Power SH DevCo GP LLC) interests in DevCo, and (c) all of Salem Harbor Power FinCo, LP's (f/k/a Footprint Power Salem Harbor Finco, LP) interests in DevCo and SH Power DevCo GP LLC.

42. "***Credit Facility Deficiency Claims***" means, collectively, the portion of any Credit Facility Claim that is not a Credit Facility Secured Claim.

43. "***Credit Facility First Priority Liens***" means, collectively, first priority liens and mortgages on, security interests in, and assignments and pledges of the Credit Facility Collateral, which are: (a) valid, binding, perfected, duly recorded, and enforceable liens on, and security interests in the Credit Facility Collateral; (b) not subject to, pursuant to the Bankruptcy Code or other applicable law (foreign or domestic), avoidance, disallowance, reduction, recharacterization, recovery, subordination (whether equitable, contractual, or otherwise), attachment, set-off, offset, recoupment, counterclaim, defense, "claim" (as defined in the Bankruptcy Code), impairment, or any other challenge of any kind by any person or entity; and (c) were granted for fair consideration and reasonably equivalent value, and were granted in consideration of the making and/or continued making of loans, commitments, and/or other financial accommodations under the Financing Documents (as defined in the Credit Agreement).

44. "***Credit Facility Secured Claims***" means, collectively, any Credit Facility Claim that is a Secured Claim. For the avoidance of doubt, the Credit Facility Secured Claims are secured by, among other things, the Credit Facility First Priority Liens.

45. "***Cure Amount***" has the meaning set forth in Article V.D.

46. "***Cure Claim***" means any monetary Claim based upon the Debtors' defaults under any Executory Contracts and Unexpired Leases at the time such contract or lease is assumed by the Debtors, or assumed and assigned to the Purchaser by the Debtors, in each case, pursuant to 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.

47. "***D&O Liability Insurance Policies***" means all insurance policies that cover current or former directors', members', managers', and officers' liability issued at any time to or providing coverage to, or for the benefit of, the Debtors, and all agreements, documents or instruments relating thereto (including any "tail policy") in effect or purchased on or prior to the Effective Date.

48. "***Debtor***" means one or more of the Debtors, as debtors and debtors in possession, each in its respective individual capacity as a debtor and debtor in possession in the Chapter 11 Cases.

49. "***Debtors***" means, collectively: (a) Salem Harbor Power Development LP (f/k/a Footprint Power Salem Harbor Development LP); (b) Highstar Salem Harbor Holdings GP, LLC (f/k/a Highstar Footprint Holdings GP, LLC); (c) Highstar Salem Harbor Power Holdings L.P. (f/k/a Highstar Footprint Power Holdings L.P.); (d) Salem Harbor Power FinCo GP, LLC (f/k/a Footprint Power Salem Harbor FinCo GP, LLC); (e) Salem Harbor Power FinCo, LP (f/k/a Footprint Power Salem Harbor FinCo, LP); and (f) SH Power DevCo GP LLC (f/k/a Footprint Power SH DevCo GP LLC).

50. "***Definitive Documents***" means, collectively, to the extent applicable: (a) the Plan; (b) the Confirmation Order and pleadings in support of the Confirmation Order; (c) the Disclosure Statement; (d) the motion seeking approval of the Disclosure Statement and the other Solicitation Materials; (e) the Solicitation Materials; (f) the Disclosure Statement Order; (g) the Sale Transaction Documents, including all motions, filings, documents, and agreements related to the Sale Transaction, if applicable; (h) the Cash Collateral Orders; (i) the New Organizational Documents; (j) the Plan Supplement and all documents, annexes, exhibits, schedules contained therein, including any schedules of assumed or rejected contracts; (k) the Exit Facility Documents, if applicable; (*l*) any other material agreements, motions, pleadings, briefs, applications, orders, and other filings with the Bankruptcy Court related to the Restructuring Transactions (excluding any retention applications and corresponding orders); and (m) any order, or amendment or modification of any order, entered by the Bankruptcy Court related to the foregoing items (a) through (*l*).

51. "***DevCo***" means Salem Harbor Power Development LP (f/k/a Footprint Power Salem Harbor Development LP).

52. "***DevCo GP***" means SH Power DevCo GP LLC (f/k/a Footprint Power SH DevCo GP LLC).

53. "***Disallowed***" means any Claim, or any portion thereof, that (a) has been disallowed by Final Order or settlement; (b) is scheduled at zero or as contingent, disputed, or unliquidated

on the Schedules and as to which a Bar Date has been established but no Proof of Claim has been timely filed or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely filed under applicable law; or (c) is not scheduled on the Schedules and as to which a Bar Date has been established but no Proof of Claim has been timely filed or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely filed under applicable law.

54. "***Disbursing Agent***" means (a) if the Standalone Restructuring is consummated, the Reorganized Debtors, or (b) if the Sale Transaction is consummated, the Plan Administrator on behalf of the Wind Down Debtors, as applicable, or any Entity that the Reorganized Debtors or Plan Administrator, as applicable, selects to make or to facilitate distributions in accordance with the Plan.

55. "***Disclosure Statement***" means the *Disclosure Statement for the Joint Chapter 11 Plan of Salem Harbor Power Development LP and Its Debtor Affiliates*, dated as of April 20, 2022, as may be amended, supplemented or modified from time to time, including all exhibits and schedules thereto and references therein that relate to the Plan, that is prepared and distributed in accordance with the Bankruptcy Code, the Bankruptcy Rules, and any other applicable law and approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

56. "***Disclosure Statement Order***" means the order [D.I. [●]], entered by the Bankruptcy Court approving the Disclosure Statement and the solicitation procedures with respect to the Plan.

57. "***Disputed***" means, with respect to a given Claim, the portion of such Claim that: (a) is neither Allowed nor Disallowed under the Plan or a Final Order nor deemed Allowed under section 502, 503, or 1111 of the Bankruptcy Code; (b) is subject to a timely objection by the Debtors or any party in interest before the Effective Date in accordance with the Plan, which objection has not been withdrawn or determined by a Final Order; or (c) is subject to a timely objection by the Debtors, the Reorganized Debtors, the Plan Administrator on behalf of the Wind Down Debtors, or any other party in interest after the Effective Date in accordance with the Plan, which objection has not been withdrawn or determined by a Final Order.

58. "***Distribution Record Date***" means the record date for purposes of determining which holders of Allowed Claims are eligible to receive distributions under the Plan, which date shall be the first day of the Confirmation Hearing, or such other date as is designated in a Final Order of the Bankruptcy Court.

59. "***DTC***" means The Depositary Trust Company, its nominee, Cede & Co., or any Affiliate thereof.

60. "***Effective Date***" means the date that is the first Business Day after the Confirmation Date on which (a) all conditions to the occurrence of the Effective Date have been satisfied or waived pursuant to Article X.A and Article X.B of the Plan, (b) no stay of the Confirmation Order is in effect, and (c) the Debtors declare the Plan effective. Any action to be taken on the Effective Date may be taken on or as soon as reasonably practicable thereafter.

61. "***Entity***" means an entity as such term is defined in section 101(15) of the Bankruptcy Code.

62. "***Equity Parties***" means, collectively, OCM-Highstar Footprint Aggregator LLC, in its capacity as a direct holder of limited partnership interests in TopCo, and any other direct holder of limited partnership interests in TopCo that become party to the RSA.

63. "***Estate***" means, as to each Debtor, the estate created under sections 301 and 541 of the Bankruptcy Code upon the commencement of the applicable Debtor's Chapter 11 Case and all property (as defined in section 541 of the Bankruptcy Code, including any Causes of Action) acquired by the Debtors after the Petition Date through the Effective Date.

64. *"**Exculpated Parties***" means the Debtors and their current and former directors, managers, officers (including Mr. John Castellano, the Debtors' Chief Restructuring Officer), predecessors, successors, and assigns, and each of their current and former officers, managers, directors, principals, employees, agents, managed accounts or funds, management companies, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals; *provided*, *however*, that financial advisors, attorneys, accountants, investment bankers, consultants, and other professionals shall only be Exculpated Parties to the extent such professionals are retained by the Debtors pursuant to an order of the Bankruptcy Court.

65. "***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.

66. "***Exit Facility***" means, if necessary to consummate the Standalone Restructuring, a new first-lien term loan credit facility in the aggregate amount of $[●] and a letter of credit facility whereby each of the Letters of Credit shall either be renewed in its entirety or replaced with a new letter of credit on substantially similar terms to those existing as of the Petition Date such that the Letters of Credit shall continue in full force and effect following the Effective Date under the Exit Facility, which shall be governed by the Exit Facility Agreement.

67. "***Exit Facility Agent***" means the administrative agent under the Exit Facility Agreement.

68. "***Exit Facility Agreement***" means, if necessary to consummate the Standalone Restructuring, the agreement to be entered into by the Reorganized Debtors, the Exit Facility Agent, and the Exit Facility Lenders, which shall govern the Exit Facility.

69. "***Exit Facility Documents***" means all agreements, documents, letters of credit, and instruments delivered or to be entered into in connection with the Exit Facility, if applicable, including the Exit Facility Agreement, any guarantee agreements, pledge and collateral agreements, intercreditor agreements, and other security documents.

70. "***Exit Facility Lenders***" means, the Persons party to the Exit Facility Agreement as "Lenders" and issuers of letters of credit thereunder, each in its capacity as such, and each of their respective successors and permitted assigns.

71. "***Exit Facility Loans***" means the loans and obligations incurred by the Reorganized Debtors under the Exit Facility Documents.

72. "***File***" or "***Filed***" or "***Filing***" means file, filed, or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases, or, with respect to the filing of a Proof of Claim, the Notice, Claims, and Balloting Agent.

73. "***Final Cash Collateral Order***" means the Final Order authorizing the Debtors' use of Cash Collateral on a final basis.

74. "***Final Order***" means, as applicable, an order or judgment of the Bankruptcy Court, or court of competent jurisdiction with respect to the subject matter, that has not been reversed, stayed, modified, or amended, as entered on the docket in any Chapter 11 Case or the docket of any court of competent jurisdiction, and as to which the time to appeal, or seek certiorari or move for a new trial, reargument, or rehearing has expired and no appeal or petition for certiorari or other proceedings 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 timely Filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument, or rehearing will have been denied, resulted in no stay pending appeal 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.

75. "***General Unsecured Claim***" means any Claim other than a Credit Facility Secured Claim, an Administrative Claim, a Priority Tax Claim, an Other Secured Claim, an Other Priority Claim, or an Intercompany Claim. For the avoidance of doubt, any Credit Facility Deficiency Claims and IEP Claims shall constitute General Unsecured Claims.

76. "***General Unsecured Claims Treatment***" means a complete waiver and release of any and all claims, Causes of Action, and other rights against a holder of an Allowed General Unsecured Claim based on claims pursuant to chapter 5 of the Bankruptcy Code or under similar or related state or federal statutes and common law, including fraudulent transfer laws, by the Debtors and their Estates, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other entities who may purport to assert any Cause of Action, directly or derivatively, by, through, for, or because of the foregoing entities.

77. "***Governmental Unit***" has the meaning set forth in section 101(27) of the Bankruptcy Code.

78. "***IEP***" means Iberdrola Energy Projects, Inc.

79. "***IEP Claim***" means any Claim held by IEP against the Debtors.

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

81. "***Intercompany Claim***" means any Claim held by a Debtor against another Debtor arising prior to the Petition Date.

82. "***Intercompany Interest***" means an Interest in one Debtor held by another Debtor. For the avoidance of doubt, Interests in TopCo and TopCo GP are not Intercompany Interests.

83. "***Interest***" means any equity security in a Debtor as defined in section 101(16) of the Bankruptcy Code, including all issued, unissued, authorized, or outstanding shares of capital stock of the Debtors, and any other general or limited partnership interests, limited liability company interests, rights, options, warrants, stock appreciation rights, phantom stock rights, restricted stock units, redemption rights, repurchase rights, convertible, exercisable, or exchangeable securities, or other agreements, arrangements, or commitments of any character relating to, or whose value is related to, any such interest or other ownership interest in any Debtor whether or not arising under or in connection with any employment agreement and whether or not certificated, transferable, preferred, common, voting, or denominated "stock" or a similar security, including any Claims against any Debtor subject to subordination pursuant to section 510(b) of the Bankruptcy Code arising from or related to any of the foregoing.

84. "***Interests in TopCo***" means, collectively, any equity security, including all issued, unissued, authorized, or outstanding shares of capital stock and any other common stock, preferred stock, limited liability company interests, limited partnership interests, general partnership interests (including the general partnership interests of TopCo GP in TopCo) and any other equity, ownership, or profit interests, including all options, warrants, rights, stock appreciation rights, phantom stock rights, restricted stock units, redemption rights, repurchase rights, convertible, exercisable, or exchangeable securities, or other agreements, arrangements, or commitments of any character relating to, or whose value is related to, any such interest or other ownership interest in TopCo or TopCo GP, whether or not arising under or in connection with any employment agreement and whether or not certificated, transferable, preferred, common, voting, or denominated "stock" or a similar security.

85. "***Interim Cash Collateral Order***" means the *Interim Order (A) Authorizing the Debtors to Use Cash Collateral, (B) Granting Adequate Protection, (C) Modifying the Automatic Stay, and (D) Granting Related Relief* [D.I. 54].

86. "***Interim Compensation Order***" means the *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals* [D.I. 121], as the same may be modified by a Bankruptcy Court order approving the retention of a specific Professional or otherwise.

87. "***Investigation***" means the investigation into certain potential claims and Causes of Action held by the Debtors' Estates conducted by the Special Committee and its counsel.

88. "***Judicial Code***" means title 28 of the United States Code, 28 U.S.C. §§ 1–4001, as now in effect or hereafter amended, and the rules and regulations promulgated thereunder.

89. "***Letters of Credit***" means, together, the Gas Lateral Letter of Credit (as defined in the Credit Agreement) and the letter of credit issued by the Prepetition Agent to secure DevCo's obligations under that certain Contractual Service Agreement, dated as of January 6, 2015.

90. "***Lien***" means a lien as defined in section 101(37) of the Bankruptcy Code.

91. "***Net Sale Proceeds***" means, in the event the Sale Transaction is consummated, the amount of Sale Proceeds, less the Unencumbered Assets Cash, available following: (a) satisfaction in full on the Effective Date of the Administrative Claims, Priority Tax Claims, Other Secured Claims, and Other Priority Claims; and (b) the funding of (i) the Administrative Claim Reserve Account, (ii) the Priority Tax Reserve Account, (iii) the Professional Fee Escrow Account, and (iv) the Wind Down Amount; *provided* that the portion of the Net Sale Proceeds paid to any Class of Claims shall not exceed the amount required for such Class of Claims to be satisfied in full.

92. "***New Board***" means, if the Standalone Restructuring is consummated, the initial board of directors, members, or managers, as applicable, of Reorganized Parent as of the Effective Date.

93. "***New Common Equity***" means, if the Standalone Restructuring is consummated, the newly issued class of common equity interests of Reorganized Parent.

94. "***New Organizational Documents***" means the documents providing for corporate governance of the Reorganized Debtors, including charters, bylaws, operating agreements, or other organizational documents or shareholders' agreements, as applicable, which shall be included in the Plan Supplement.

95. "***Notice, Claims, and Balloting Agent***" means Kroll Restructuring Administration LLC (f/k/a Prime Clerk LLC),[2] in its capacity as notice, claims, and balloting agent for the Debtors and any successor.

96. "***Other Priority Claim***" means any Claim, to the extent such Claim has not already been paid during the Chapter 11 Cases, 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.

97. "***Other Secured Claim***" means any Secured Claim that is (a) not a Credit Facility Secured Claim; and (b) senior in priority of payment to the Credit Facility Secured Claims pursuant to applicable law.

98. "***Permitted Encumbrances***" has the meaning set forth in Article IV.C.

99. "***Person***" means a person as such term as defined in section 101(41) of the Bankruptcy Code.

100. "***Petition Date***" means March 23, 2022, the date on which each of the Debtors commenced the Chapter 11 Cases.

101. "***Plan***" means this *Joint Chapter 11 Plan of Salem Harbor Power Development LP and Its Debtor Affiliates*, as may be altered, amended, modified, or supplemented from time to time in accordance with Article XI hereof, including the Plan Supplement (as modified, amended

[2] On March 29, 2022, Prime Clerk LLC changed its name to Kroll Restructuring Administration LLC.

or supplemented from time to time), which is incorporated herein by reference and made part of the Plan as if set forth herein.

102. "***Plan Administrator***" means, if the Sale Transaction is consummated, the person selected by the Debtors to administer the Wind Down Debtor Assets. All costs, liabilities, and expenses reasonably incurred by the Plan Administrator, and any personnel employed by the Plan Administrator in the performance of the Plan Administrator's duties, shall be paid from the Wind Down Debtor Assets in accordance with the Wind Down Budget.

103. "***Plan Supplement***" means the compilation of documents and forms of documents, agreements, schedules, and exhibits to the Plan (as may be altered, amended, modified, or supplemented from time to time in accordance with the terms hereof and in accordance with the Bankruptcy Code and Bankruptcy Rules) to be Filed by the Debtors on, or as soon as reasonably practicable after, the date that is ten (10) days before the deadline to object to Confirmation of the Plan, and additional documents or amendments to previously Filed documents, Filed before the Effective Date as amendments to the Plan Supplement, including the following, as applicable: (a) the New Organizational Documents, if applicable; (b) the Schedule of Assumed Executory Contracts and Unexpired Leases; (c) the Schedule of Rejected Executory Contracts and Unexpired Leases; (d) the Schedule of Retained Causes of Action; (e) the Asset Purchase Agreement, if applicable; (f) to the extent known and determined, the number and slate of directors or managers to be appointed to the New Board, and any information to be disclosed in accordance with section 1129(a)(5) of the Bankruptcy Code, including, if applicable, the identity of the Plan Administrator; (g) the Exit Facility Agreement, if applicable; (h) the Wind Down Budget, if applicable; (i) a list of Debtor entities to be dissolved on the Effective Date, if any; and (*l*) any other necessary documentation related to the Restructuring Transactions and the Wind Down as contemplated under the Plan, as applicable. The Debtors shall have the right to amend the documents contained in, and exhibits to, the Plan Supplement through the Effective Date subject in all respects to the consent rights set forth herein and the RSA.

104. "***Prepetition Agent***" means MUFG Union Bank, N.A., as administrative agent, collateral agent, and depositary bank under the Credit Facility.

105. "***Prepetition Lenders***" shall have the meaning ascribed to the term "Lenders" in the Credit Agreement.

106. "***Prepetition Secured Parties***" means, collectively, the Prepetition Agent and the holders of Credit Facility Secured Claims.

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

108. "***Priority Tax Reserve Account***" shall have the meaning ascribed to such term in Article II.C.

109. "***Priority Tax Reserve Amount***" shall have the meaning ascribed to such term in Article II.C.

110. "***Pro Rata***" means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in that Class.

111. "***Professional***" means an Entity retained pursuant to a Bankruptcy Court order in accordance with sections 327 or 1103 of the Bankruptcy Code and to be compensated for services rendered and expenses incurred pursuant to sections 327, 328, 329, 330, 331, and 363 of the Bankruptcy Code.

112. "***Professional Fee Claim***" means a Claim by a Professional seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Effective Date under sections 330, 331, 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code to the extent such fees and expenses have not been previously paid.

113. "***Professional Fee Escrow Account***" means an interest-bearing account funded by the Debtors with Cash on or before the Effective Date in an amount equal to the Professional Fee Escrow Amount.

114. "***Professional Fee Escrow Amount***" means the total amount of Professional Fee Claims estimated pursuant to Article II.B.3 of the Plan.

115. "***Proof of Claim***" means a written proof of claim Filed against any of the Debtors in the Chapter 11 Cases by the applicable Bar Date as established by the Bankruptcy Court.

116. "***Purchaser***" means, if applicable, the purchaser under the Asset Purchase Agreement, together with its successors and permitted assigns (including any and all of its wholly-owned Affiliates to which it assigns any of its rights or obligations under the Asset Purchase Agreement).

117. "***Reinstate***," "***Reinstated***," or "***Reinstatement***" means with respect to Claims and Interests, that the Claim or Interest shall be rendered unimpaired in accordance with section 1124 of the Bankruptcy Code.

118. "***Released Parties***" means, collectively, and in each case solely in its capacity as such: (a) the Debtors; (b) the Reorganized Debtors or the Wind Down Debtors, as applicable; (c) the Purchaser (if any); (d) each Consenting Stakeholder; (e) the Prepetition Agent; (f) the asset managers for the Salem Harbor Facility as of the Effective Date; (g) with respect to each of the foregoing (a) through (f), such Entities' respective current and former Affiliates, and such Entities' and their current and former Affiliates' current and former officers, managers, directors, limited partners, general partners, equity holders (regardless of whether such interests are held directly or indirectly), principals, members, predecessors, successors, assigns, subsidiaries, employees, agents, managed accounts or funds, management companies, fund advisors, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each strictly in their capacity as such; *provided*, *however*, that, any direct holder of Interests in TopCo that is not a Debtor nor a Consenting Stakeholder, and such Entity's current and former officers, managers, directors, limited partners, general partners, equity holders (regardless of whether such interests are held directly or indirectly), principals,

members, predecessors, successors, assigns, subsidiaries and employees, collectively, shall not be Released Parties.

119. "***Releasing Parties***" means, collectively, and in each case solely in its capacity as such: (a) the Debtors; (b) the Reorganized Debtors or the Wind Down Debtors, as applicable; (c) the Purchaser (if any); (d) each Consenting Stakeholder; (e) the Prepetition Agent; (f) the asset managers for the Salem Harbor Facility as of the Effective Date; (g) all holders of Claims who vote to accept the Plan; (h) all holders of Claims that are Unimpaired under the Plan that do not elect to opt out of granting the releases in Article IX.E; (i) all holders of Claims that are entitled to vote under the Plan but that (1) do not vote to accept or reject the Plan and (2) do not opt out of granting the releases in Article IX.E of the Plan; (j) all holders of Claims that vote to reject the Plan and do not opt out of granting the releases in Article IX.E of the Plan; and (k) with respect to each of the foregoing (a) through (j), such Entity and its current and former Affiliates, and such Entities' and their current and former Affiliates' current and former members, directors, limited partners, general partners, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, and assigns, subsidiaries, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, in each case, solely in their respective capacities as such with respect to such Entity; *provided* that in each case, an Entity shall not be a Releasing Party if it elects to opt out of the releases contained in the Plan.

120. "***Reorganized Debtor***" means, if the Standalone Restructuring is consummated, with respect to each Debtor, such Debtor as reorganized on or after the Effective Date in accordance with the Plan.

121. "***Reorganized Parent***" means, if the Standalone Restructuring is consummated, TopCo or such other Debtor as may be determined by the Debtors and the Required Consenting Lenders, or any successor thereto, as reorganized pursuant to the Confirmation Order upon the Effective Date, which shall issue the New Common Equity.

122. "***Required Consenting Lenders***" means, as of the date of determination, Consenting Lenders that represent more than fifty percent (50%) of the aggregate Credit Facility Claims held by the Consenting Lenders as of such date.

123. "***Restructuring Expenses***" means the prepetition and postpetition reasonable and documented fees and expenses of the Prepetition Agent, including the prepetition and postpetition reasonable and documented fees and expenses of Mayer Brown LLP, PJT Partners LP, and Potter Anderson & Corroon LLP, in their capacities as professionals retained by or on behalf of the Prepetition Agent in respect of these Chapter 11 Cases.

124. "***Restructuring Transactions***" means the transactions described in Article IV.B of the Plan, as applicable.

125. "***RSA***" means that certain Restructuring Support Agreement, dated as of March 23, 2022, by and among the Debtors and the Consenting Stakeholders, including all exhibits and attachments thereto, and as amended, restated, and supplemented from time to time in accordance with its terms.

126. "***Sale Proceeds***" means any Cash proceeds of a Sale Transaction.

127. "***Sale Transaction***" means a sale of all or substantially all of the Debtors' assets consummated in accordance with the Sale Transaction Documents.

128. "***Sale Transaction Documents***" means, collectively, the Bidding Procedures, the Bidding Procedures Order, the Asset Purchase Agreement, the Plan, the Confirmation Order, and any and all other agreements, documents, schedules, certificates, designations, and instruments delivered, relating to, executed in connection with the Sale Transaction, including, but not limited to, any agreement and plan of merger, or stock or asset purchase agreements, and any related pleadings or documents.

129. "***Salem Harbor Facility***" means, the Debtors' natural gas-fired, combined-cycle electric generating station located in Salem, Massachusetts.

130. "***Schedule of Assumed Executory Contracts and Unexpired Leases***" means the schedule of certain Executory Contracts and Unexpired Leases to be assumed or assumed and assigned by the Debtors pursuant to the Plan, as the same may be amended, modified, or supplemented from time to time by the Debtors, which shall be included in the Plan Supplement.

131. "***Schedule of Rejected Executory Contracts and Unexpired Leases***" means the schedule of certain Executory Contracts and Unexpired Leases to be rejected by the Debtors pursuant to the Plan, as the same may be amended, modified, or supplemented from time to time by the Debtors, which shall be included in the Plan Supplement.

132. "***Schedule of Retained Causes of Action***" means the schedule of certain Causes of Action of the Debtors that are not released, waived, or transferred pursuant to the Plan, as the same may be amended, modified, or supplemented from time to time by the Debtors.

133. "***Schedules***" means, collectively, the schedules of assets and liabilities, schedules of Executory Contracts and Unexpired Leases and statements of financial affairs Filed by the Debtors pursuant to section 521 of the Bankruptcy Code, as such schedules may be amended, modified, or supplemented from time to time.

134. "***Secured Claim***" means a Claim: (a) secured by a Lien on property in which the applicable Estate 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 setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor's interest in such Estate's 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 (b) otherwise Allowed pursuant to the Plan as a Secured Claim.

135. "***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.

136. "***Securities Act***" means the Securities Act of 1933, as amended, 15 U.S.C. §§ 77a–77aa, as now in effect or hereafter amended, and the rules and regulations promulgated thereunder, or any similar federal, state, or local law.

137. "***Security***" means a security as defined in section 2(a)(1) of the Securities Act.

138. "***Special Committee***" means, together, the independent special committee of each of the Board of Managers of TopCo GP and the Board of Managers of DevCo GP.

139. "***Standalone Restructuring***" means the transactions and reorganization contemplated by, and pursuant to, the Plan in accordance with Article IV.C of the Plan, which shall occur on the Effective Date if the Sale Transaction does not occur.

140. "***Successful Bid***" means one or more bids to purchase or acquire all or substantially all of the Debtors' assets that the Debtors determine, in an exercise of their business judgment, and in accordance with the Bidding Procedures and Bidding Procedures Order, constitutes the highest or best bid.

141. "***Surviving Case***" has the meaning set forth in Article XIII.M.

142. "***TopCo***" means Debtor Highstar Salem Harbor Power Holdings L.P. (f/k/a Highstar Footprint Power Holdings L.P.).

143. "***TopCo GP***" means Debtor Highstar Salem Harbor Holdings GP, LLC (f/k/a Highstar Footprint Holdings GP, LLC).

144. "***Transaction Election***" shall have the meaning set forth in Article IV.C of the Plan.

145. "***U.S. Trustee***" means the Office of the United States Trustee for the District of Delaware.

146. "***Unexpired Lease***" means a lease to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 or section 1123 of the Bankruptcy Code.

147. "***Unencumbered Assets Cash***" means Cash in an amount of $175,000, which is equal to the value of the Debtors' unencumbered assets as of the Petition Date.

148. "***Unimpaired***" means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is not Impaired.

149. "***Voting Deadline***" means 4:00 p.m. (prevailing Eastern Time) on July 6, 2022.

150. "***Wind Down***" means, if the Sale Transaction is consummated, the wind down of the assets of the Wind Down Debtors that are not acquired by the Purchaser, and the distribution of the Wind Down Debtors Assets consistent with the terms of the Plan, which shall be funded by the Wind Down Amount contemplated by the Wind Down Budget.

151. "***Wind Down Amount***" means the amount of Cash to be agreed between the Debtors and the Required Consenting Lenders, which shall fund the Wind Down, including the payment of professional and advisors fees, the reconciliation of Administrative Claims, Priority Tax Claims, General Unsecured Claims, and the distributions to be made in accordance with the terms of the Plan. For the avoidance of doubt, the Wind Down Amount, shall include the Administrative Claims Reserve Amount and the Priority Tax Reserve Amount.

152. "***Wind Down Budget***" means the budget with respect to the Wind Down, as agreed upon between the Debtors and the Required Consenting Lenders, which shall provide for the Wind Down Amount to fund the Plan Administrator's Wind Down of the Estates, including claim reconciliation with respect to Administrative Claims, Priority Tax Claims, and General Unsecured Claims.

153. "***Wind Down Debtor***" means, if the Sale Transaction is consummated, each of the Debtors, as reorganized, that is subject to the Wind Down upon Plan Consummation on the Effective Date.

154. "***Wind Down Debtor Assets***" means, if the Sale Transaction is consummated, all assets of the Debtors' Estates not acquired by the Purchaser pursuant to the Sale Transaction as of the Effective Date, plus the Wind Down Amount.

B. Rules of Interpretation

For purposes of the Plan: (1) 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; (2) 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 the referenced document shall be substantially in that form or substantially on those terms and conditions; (3) any reference herein to an existing document, schedule, or exhibit, whether or not Filed, having been Filed or to be Filed shall mean that document, schedule, or exhibit, as it may thereafter be amended, restated, supplemented, or otherwise modified; (4) any reference to an Entity as a holder of a Claim or Interest includes that Entity's successors and assigns; (5) unless otherwise specified, all references herein to "Articles" are references to Articles of the Plan or hereto; (6) unless otherwise specified, all references herein to exhibits are references to exhibits in the Plan Supplement; (7) unless otherwise specified, the words "herein," "hereof," and "hereto" refer to the Plan in its entirety rather than to a particular portion of the Plan; (8) subject to the provisions of any contract, certificate of incorporation, bylaw, instrument, release, or other agreement or document entered into in connection with the Plan, the rights and obligations arising pursuant to the Plan shall be governed by, and construed and enforced in accordance with, applicable federal law, including the Bankruptcy Code and the Bankruptcy Rules, or, if no rule of law or procedure is supplied by federal law (including the Bankruptcy Code and the Bankruptcy Rules) or otherwise specifically stated, the laws of the State of Delaware, without giving effect to the principles of conflict of laws; (9) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (10) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (11) all 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; (12) all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Cases, unless otherwise stated; (13) any effectuating provisions may be interpreted by the Debtors, the Reorganized Debtors, or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, in such a manner that is consistent with the overall purpose and intent of the Plan all without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity; (14) any references herein to the Effective Date shall mean the Effective Date or as soon as reasonably practicable thereafter; (15) all references herein to consent, acceptance, or approval shall be deemed to include the requirement that such consent, acceptance, or approval be evidenced by a writing, which may be conveyed by counsel for the respective parties that have such consent, acceptance, or approval rights, including by electronic mail; (16) 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 that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (17) 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".

C. 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.

D. Governing Law

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of Delaware, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control); *provided*, *however*, that corporate or limited liability company governance matters relating to the Debtors or the Reorganized Debtors, as applicable, not incorporated in Delaware (if any) shall be governed by the laws of the state of incorporation or formation of the applicable Debtor or the Reorganized Debtors, as applicable.

E. Reference to Monetary Figures

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

F. 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 the Reorganized Debtors shall mean the Debtors and the Reorganized Debtors, as applicable, to the extent the context requires.

G. Controlling Document

In the event of an inconsistency between the Plan and the Disclosure Statement, the terms of the Plan shall control in all respects. In the event of an inconsistency between the Plan and any document included in the Plan Supplement, the terms of the relevant provision in the Plan shall control (unless stated otherwise in such document or in the Confirmation Order). In the event of an inconsistency between the Confirmation Order and the Plan, the Confirmation Order shall control.

H. Nonconsolidated Plan

Although for purposes of administrative convenience and efficiency the Plan has been filed as a joint plan for each of the Debtors and presents together Classes of Claims against, and Interests in, the Debtors, the Plan does not provide for the substantive consolidation of any of the Debtors.

I. Certain Consent Rights

Notwithstanding anything in the Plan to the contrary, any and all consent rights set forth in the RSA, the Cash Collateral Orders, and the Sale Transaction Documents, if applicable, with respect to the form and substance of the Plan and the Plan Supplement, including any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in Article I.A of the Plan) and fully enforceable as if stated in full herein.

ARTICLE II.
ADMINISTRATIVE CLAIMS AND PRIORITY TAX CLAIMS

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, including 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.

A. Administrative Claims

Unless otherwise agreed to by the holder of an Allowed Administrative Claim and the Debtors, the Reorganized Debtors, or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, to the extent an Allowed Administrative Claim has not already been paid in full or otherwise satisfied during the Chapter 11 Cases, each holder of an Allowed Administrative Claim (other than holders of Professional Fee Claims, Claims subject to subject to 11 U.S.C. § 503(b)(1)(D), 11 U.S.C. § 503(b)(9), 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 Allowed Administrative Claim an amount of Cash equal to the amount of the unpaid portion of such Allowed Administrative Claim in accordance with the following: (1) if such 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 Administrative Claim is due or as soon as reasonably practicable thereafter); (2) if such Administrative Claim is not Allowed as of the Effective Date, no later than 30 days after the date on which an order Allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; (3) if

such Allowed 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 or course of business giving rise to such Allowed Administrative Claim, without any further action by the holder of such Allowed Administrative Claim; (4) at such time and upon such terms as may be agreed upon by the holder of such Allowed Administrative Claim and the Debtors, the Reorganized Debtors, or the Plan Administrator on behalf of the Wind Down Debtors, as applicable; or (5) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court.

Except for Claims subject to 11 U.S.C. § 503(b)(1)(D), 11 U.S.C. § 503(b)(9) (for which the general Bar Date applies) and Claims for fees and expenses pursuant to section 1930 of chapter 123 of the Judicial Code, and Professional Fee Claims, and unless previously Filed, requests for payment of Administrative Claims must be Filed and served no later than the Administrative Claim Bar Date pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order; *provided* that the Administrative Claim Bar Date does not apply to Administrative Claims incurred by the Debtors in the ordinary course of their business as conducted prior to the Petition Date. Objections to such requests must be Filed and served on the Reorganized Debtors or the Wind Down Debtors, as applicable, and the requesting party by the Administrative Claim Objection Bar Date. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code, the Bankruptcy Rules, and prior Bankruptcy Court orders, the Allowed amounts, if any, of Administrative Claims shall be determined by, and satisfied in accordance with an order that becomes a Final Order of, the Bankruptcy Court.

HOLDERS OF ADMINISTRATIVE CLAIMS THAT ARE REQUIRED TO FILE AND SERVE A REQUEST FOR PAYMENT OF SUCH ADMINISTRATIVE CLAIMS THAT DO NOT FILE AND SERVE SUCH A REQUEST BY THE ADMINISTRATIVE CLAIM BAR DATE SHALL BE FOREVER BARRED, ESTOPPED, AND ENJOINED FROM ASSERTING SUCH ADMINISTRATIVE CLAIMS AGAINST THE DEBTORS, THE REORGANIZED DEBTORS, THE WIND DOWN DEBTORS, THE PLAN ADMINISTRATOR, THE PURCHASER, OR THE PROPERTY OF ANY OF THE FOREGOING, AND SUCH ADMINISTRATIVE CLAIMS SHALL BE DEEMED DISCHARGED AS OF THE EFFECTIVE DATE WITHOUT THE NEED FOR ANY OBJECTION FROM THE REORGANIZED DEBTORS OR THE PLAN ADMINISTRATOR ON BEHALF OF THE WIND DOWN DEBTORS OR ANY NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT OR ANY OTHER ENTITY.

In the event the Transaction Election for the Sale Transaction is made and the Sale Transaction is consummated, on or prior to the Effective Date, the Debtors and Required Consenting Lenders shall agree upon an amount of Cash to be included as part of the Wind Down Amount, which shall be held in a segregated account (the "Administrative Claim Reserve Account"), that is sufficient for the Plan Administrator on behalf of the Wind Down Debtors to satisfy in Cash, in full, the anticipated Administrative Claims that are not paid on the Effective Date, or otherwise assumed by the Purchaser under the Sale Transaction Documents (the "Administrative Claim Reserve Amount"). To the extent the Administrative Claim Reserve Amount exceeds the amount of Allowed Administrative Claims payable by the Plan Administrator

pursuant to this Article II.A in connection with the Wind Down, following satisfaction of such Allowed Administrative Claims, the Plan Administrator shall distribute such excess Cash from the Administrative Claim Reserve Account to the Prepetition Agent for distribution to holders of Credit Facility Secured Claims.

B. Professional Fee Claims

1. Final Fee Applications and Payment of Professional Fee Claims

All final requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred through and including the Effective Date must be Filed no later than thirty (30) days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code, Bankruptcy Rules, and prior Bankruptcy Court orders. The Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, shall pay the amount of the Allowed Professional Fee Claims owing to the Professionals in Cash to such Professionals, including from funds held in the Professional Fee Escrow Account when such Professional Fee Claims are Allowed by entry of an order of the Bankruptcy Court.

2. Professional Fee Escrow Account

As soon as is reasonably practicable after the Confirmation Date and no later than the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Escrow Amount. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals and for no other Entities until all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the Professionals pursuant to one or more Final Orders of the Bankruptcy Court. No Liens, Claims, or Interests shall encumber the Professional Fee Escrow Account or Cash held in the Professional Fee Escrow Account in any way. Funds held in the Professional Fee Escrow Account shall not be considered property of the Estates of the Debtors, the Reorganized Debtors, or the Wind Down Debtors.

The amount of Professional Fee Claims owing to the Professionals shall be paid in Cash to the applicable Professionals from the funds held in the Professional Fee Escrow Account as soon as reasonably practicable after such Professional Fee Claims are Allowed by an order of the Bankruptcy Court. To the extent the funds held in the Professional Fee Escrow Account are insufficient to satisfy the Allowed amount of Professional Fee Claims owing to the Professionals, such Professionals shall have an Allowed Administrative Claim for any such deficiency, which shall be satisfied in accordance with Article II.A of the Plan. When all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the Professionals or Disallowed pursuant to one or more Final Orders of the Bankruptcy Court, any remaining funds held in the Professional Fee Escrow Account shall promptly be paid to the Reorganized Debtors or the Wind Down Debtors, as applicable, without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity; *provided* that if the Sale Transaction is consummated, and any excess funds from the Professional Fee Escrow Account are remitted to the Wind Down

Debtors in accordance with this Article II.B.2, the Plan Administrator shall distribute such excess Cash to the Prepetition Agent for distribution to holders of Credit Facility Secured Claims.

3. Professional Fee Escrow Amount

The Professionals shall provide a reasonable and good-faith estimate of their unpaid Professional Fee Claims incurred in rendering services to the Debtors before and as of the Effective Date projected to be outstanding as of the Effective Date, and shall deliver such estimate to the Debtors no later than five (5) days before the anticipated Effective Date; *provided, however*, that such estimate shall not be considered or deemed an admission or limitation with respect to the amount of the fees and expenses that are the subject of the Professional's final request for payment of Professional Fee Claims and such Professionals are not bound to any extent by the estimates. If a Professional does not provide an estimate, the Debtors may estimate the unpaid and unbilled fees and expenses of such Professional. The total aggregate amount so estimated as of the Effective Date shall be utilized by the Debtors to determine the amount to be funded to the Professional Fee Escrow Account.

4. Post-Effective Date Fees and Expenses

After the Effective Date, the Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses incurred by the Reorganized Debtors or the Plan Administrator, as applicable. 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 the Reorganized Debtors or the Wind Down Debtors, as applicable, 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.

C. 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, compromise, settlement, release, and discharge of, and in exchange for, each Allowed Priority Tax Claim, each holder of such Allowed Priority Tax Claim shall receive treatment in a manner consistent with section 1129(a)(9)(C) of the Bankruptcy Code. To the extent any Allowed Priority Tax Claim is not due and owing on the Effective Date, such Claim shall be paid 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 by the Reorganized Debtors or the Wind Down Debtors, as applicable.

In the event the Transaction Election is made and the Sale Transaction is consummated, on or prior to the Effective Date, the Debtors and Required Consenting Lenders shall agree upon an amount of Cash to be included as part of the Wind Down Amount, which shall be held in a segregated account (the "Priority Tax Reserve Account"), that is sufficient for the Plan Administrator to satisfy in Cash, in full, the anticipated Priority Tax Claims that are not paid on

the Effective Date, or otherwise assumed by the Purchaser under the Sale Transaction Documents (the "Priority Tax Reserve Amount"). To the extent the Priority Tax Reserve Amount exceeds the amount of Allowed Priority Tax Claims payable by the Plan Administrator pursuant to this Article II.D in connection with the Wind Down, the Plan Administrator shall distribute such excess Cash from the Priority Tax Reserve Account to the Prepetition Agent for distribution to holders of Credit Facility Secured Claims.

ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

A. Classification in General

Except for the Claims addressed in Article II of the Plan, all Claims and Interests are classified in the Classes set forth in this Article III for all purposes, including voting, Confirmation, and distributions pursuant to the Plan and in accordance with sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that such Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of such Claim or Interest qualifies within the description of such other Classes. A Claim or an Interest also is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

B. Formation of Debtor Groups for Convenience Only

The Plan (including, but not limited to, Article II and Article III of the Plan) groups the Debtors together solely for the purpose of describing treatment under the Plan and distributions to be made in respect of Claims against and Interests in the Debtors under the Plan. Such groupings shall not affect each Debtor's status as a separate legal entity, change the organizational structure of the Debtors' business enterprise, constitute a change of control of any Debtor for any purpose, cause a merger of consolidation of any legal entities, or cause the transfer of any assets. Except as otherwise provided by or permitted under the Plan, all Debtors shall continue to exist as separate legal entities. The Plan is not premised on, and does not provide for, the substantive consolidation of the Debtors with respect to the Classes of Claims or Interests set forth in the Plan, or otherwise.

The Plan constitutes a separate chapter 11 plan for each Debtor, and the classifications set forth in Classes 1 through 7 shall be deemed to apply to each Debtor, as may be applicable. For voting purposes, each Class of Claims against or Interests in the Debtors shall be deemed to constitute separate sub-Classes of Claims against and Interests in each of the Debtors, as applicable. Each such sub-Class shall vote as a single separate Class for each of the Debtors, as applicable.

C. Summary of Classification

The following table designates the Classes of Claims against and Interests in each of the Debtors and specifies which of those Classes are (i) Impaired or Unimpaired by the Plan, and (ii) entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims

(including 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 this Article III. All of the potential Classes for the Debtors are set forth herein. Certain of the Debtors may not have holders of Claims or Interests in a particular Class or Classes, and such Classes shall be treated as set forth in Article III.H.

Class	Claim/Interest	Status	Voting Rights
1	Other Secured Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
2	Other Priority Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
3	Credit Facility Secured Claims	Impaired	Entitled to Vote
4	General Unsecured Claims	Impaired	Entitled to Vote
5	Intercompany Claims	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept or Deemed to Reject)
6	Intercompany Interests	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept or Deemed to Reject)
7	Interests in TopCo	Impaired	Not Entitled to Vote (Deemed to Reject)

D. Treatment of Claims and Interests

Subject to Article IV hereof, each holder of an Allowed Claim or Allowed Interest, as applicable, shall receive under the Plan the treatment described below in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for, such holder's Allowed Claim or Allowed Interest, except to the extent different treatment is agreed to by the Debtors and the holder of such Allowed Claim or Allowed Interest, as applicable. Unless otherwise indicated, the holder of an Allowed Claim or Allowed Interest, as applicable, shall receive such treatment on the later of the Effective Date and the date such holder's Claim or Interest becomes an Allowed Claim or Allowed Interest or as soon as reasonably practicable thereafter.

1. Class 1 – Other Secured Claims

a. *Classification:* Class 1 consists of all Other Secured Claims.

b. *Treatment:* Each holder of an Allowed Other Secured Claim shall receive, at the option of the Debtors, the Reorganized Debtors, or the Plan Administrator on behalf of the Wind Down Debtors, as applicable:

(i) payment in full in Cash of such holder's Allowed Other Secured Claim;

(ii) the collateral securing such holder's Allowed Other Secured Claim;

(iii) Reinstatement of such holder's Allowed Other Secured Claim; or

(iv) such other treatment rendering such holder's Allowed Other Secured Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code.

c. *Voting:* Class 1 is Unimpaired under the Plan. Holders of Other Secured Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

2. Class 2 – Other Priority Claims

a. *Classification*: Class 2 consists of all Other Priority Claims.

b. *Treatment*: Each holder of an Allowed Other Priority Claim shall receive payment in full in Cash of such holder's Allowed Other Priority Claim or such other treatment in a manner consistent with section 1129(a)(9) of the Bankruptcy Code.

c. *Voting*: Class 2 is Unimpaired under the Plan. Holders of Other Priority Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

3. Class 3 – Credit Facility Secured Claims

a. *Classification*: Class 3 consists of all Credit Facility Secured Claims.

b. *Allowance*: On the Effective Date, the Credit Facility Secured Claims shall be Allowed in an aggregate amount of not less than $290 million, representing the aggregate principal amount outstanding under the Credit Facility, plus any accrued and unpaid interest, and all accrued and unpaid fees and other expenses payable under the Credit Facility.

c. *Treatment*: Except to the extent the holder of an Allowed Credit Facility Secured Claim agrees to less favorable treatment, each holder of an Allowed Credit Facility Secured Claim shall receive:

(i) **if the Standalone Restructuring is consummated**, its Pro Rata share of (A) 100 percent (100%) of the New Common Equity and (B) the Exit Facility Loans, if applicable; or

(ii) **if the Sale Transaction is consummated**, its Pro Rata share of the Net Sale Proceeds until all Allowed Credit Facility Secured Claims are satisfied in full in Cash.

d. *Voting*: Class 3 is Impaired under the Plan. Holders of Credit Facility Secured Claims are entitled to vote to accept or reject the Plan.

4. Class 4 – General Unsecured Claims

a. *Classification:* Class 4 consists of all General Unsecured Claims.

b. *Treatment:* Except to the extent the holder of an Allowed General Unsecured Claim agrees to less favorable treatment, each holder of an Allowed General Unsecured Claim shall receive:

(i) **if the Standalone Restructuring is consummated**, (A) solely to the extent such holder votes to accept the Plan, the General Unsecured Claims Treatment and (B) its Pro Rata share of the Unencumbered Assets Cash, subject to the rights of the Prepetition Secured Parties to assert adequate protection claims pursuant to the Cash Collateral Orders; or

(ii) **if the Sale Transaction is consummated**, (A) its Pro Rata share of the Unencumbered Assets Cash, subject to the rights of the Prepetition Secured Parties to assert adequate protection claims pursuant to the Cash Collateral Orders, and (B) solely to the extent the Credit Facility Claims are satisfied in full in Cash on the Effective Date, its Pro Rata share of the Net Sale Proceeds remaining until all Allowed General Unsecured Claims are satisfied in full in Cash.

c. *Voting:* Class 4 is Impaired under the Plan. Holders of General Unsecured Claims are entitled to vote to accept or reject the Plan.

5. Class 5 – Intercompany Claims

a. *Classification*: Class 5 consists of all Intercompany Claims.

b. *Treatment*: On the Effective Date, at the Debtors' election, in consultation with the Required Consenting Lenders, each holder of an Allowed Intercompany Claim shall have its Claim Reinstated or cancelled, released, and extinguished and without any distribution.

c. *Voting*: Class 5 is either Unimpaired, and such holders of Intercompany Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f), or Impaired, and such holders of Intercompany Claims are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

6. Class 6 – Intercompany Interests

a. *Classification:* Class 6 consists of all Intercompany Interests.

b. *Treatment*: On the Effective Date, at the Debtors' election in consultation with the Required Consenting Lenders, each holder of an Allowed Intercompany Interest shall have its Interest Reinstated in accordance with Article III.I of the Plan or cancelled, released, and extinguished and without any distribution.

c. *Voting*: Class 6 is either Unimpaired, and such holders of Intercompany Interests are conclusively presumed to have accepted the Plan pursuant to section 1126(f), or Impaired, and such holders of Intercompany Interests are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

7. Class 7 – Interests in TopCo

a. *Classification:* Class 7 consists of all Interests in TopCo.

b. *Treatment:* On the Effective Date, each holder of an Interest in TopCo shall have such Interest cancelled, released, and extinguished and without any distribution.

c. *Voting:* Class 7 is Impaired under the Plan. Holders of Interests in TopCo are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

E. Special Provision Governing Unimpaired Claims

Except as otherwise specifically provided herein, nothing herein shall be deemed to affect, diminish, or impair, as applicable, the Debtors', the Reorganized Debtors', or the Plan Administrator's rights and defenses, both legal and equitable, with respect to any Reinstated Claim or Unimpaired Claim, including, but not limited to, legal and equitable defenses to setoff or recoup against Reinstated Claims or Unimpaired Claims; and, except as otherwise specifically provided in the Plan, nothing herein shall be deemed to be a waiver or relinquishment of any Claim, Cause of Action, right of setoff or recoupment, or other legal or equitable defense which the Debtors had immediately prior to the Petition Date, against or with respect to any Claim left Unimpaired or Reinstated by the Plan. Except as otherwise specifically provided herein, the Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, shall have, retain, reserve, and be entitled to assert all such Claims, Causes of Action, rights of setoff or recoupment, and other legal or equitable defenses which they had immediately prior to the Petition Date fully as if the Chapter 11 Cases had not been commenced, and all of the Reorganized Debtors' or Wind Down Debtors' legal and equitable rights with respect to any Reinstated Claim or Unimpaired Claim may be asserted after the Confirmation Date and the Effective Date to the same extent as if the Chapter 11 Cases had not been commenced.

F. 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 at least one Impaired Class of Claims. 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 XI of the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by (1) modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or Interests Unimpaired to the extent permitted by the RSA, the Bankruptcy Code, and the Bankruptcy Rules and (2) withdrawing the Plan as to any Debtor at any time before the Confirmation Date upon filing notice with the Bankruptcy Court.

G. Subordinated Claims

Except as expressly provided herein, the allowance, classification, and treatment of all Allowed Claims and Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors, the Reorganized Debtors, and the Plan Administrator on behalf of the Wind Down Debtors, as applicable, reserve the right to reclassify any Allowed Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

H. Elimination of Vacant Classes; Presumed Acceptance by Non-Voting Classes

Any Class of Claims or Interests that does not have a holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court 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. 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.

I. Intercompany Interests

To the extent Reinstated under the Plan, distributions on account of 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, for the ultimate benefit of the holders of New Common Equity, and in exchange for the Debtors' and Reorganized Debtors' agreement under the Plan to use certain funds and assets as set forth in the Plan to make certain distributions to holders of Allowed Claims. 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 or Wind Down Debtor, as applicable, that corresponds with the Debtor that owned such Intercompany Interests prior to the Effective Date.

ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THE PLAN

A. Restructuring Transactions

On the Effective Date, the Debtors, Reorganized Debtors, or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, shall enter into any transaction and shall take any actions as may be necessary or appropriate to effectuate the Standalone Restructuring or the Sale Transaction, including, as applicable, entry into the Exit Facility Documents (if applicable), consummation of the transactions contemplated by the Sale Transaction Documents (if applicable), the issuance of all securities, notes, instruments, certificates, and other documents required to be issued pursuant to the Plan, and one or more intercompany mergers, consolidations, amalgamations, arrangements, continuances, restructurings, conversions, dispositions, dissolutions, transfers, liquidations, spinoffs, intercompany sales, purchases, or other corporate transactions (collectively, the "Restructuring Transactions"). The actions to implement the Restructuring Transactions may include: (1) the execution and delivery of appropriate agreements or other documents of merger, consolidation, amalgamation, arrangement, continuance, restructuring, conversion, disposition, dissolution, transfer, liquidation, spinoff, sale, or purchase containing terms that are consistent with the terms of the Plan and that satisfy the applicable requirements of applicable law and any other terms to which the applicable Entities may agree; (2) the execution and delivery of appropriate instruments of transfer, assignment, assumption, 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; (3) the filing of appropriate certificates or articles of incorporation, reincorporation, formation, merger, consolidation, conversion, amalgamation, arrangement, continuance, or dissolution pursuant to applicable state or provincial law; and (4) 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 in connection with the Plan. The Confirmation Order shall, and shall be deemed to, pursuant to sections 363 and 1123 of the Bankruptcy Code, authorize, among other things, all actions as may be necessary to effect any transaction described in, contemplated by, or necessary to effectuate the Plan.

B. The Standalone Restructuring

Unless the Transaction Election is made, the Debtors shall effectuate the Standalone Restructuring pursuant to the Plan. If the Standalone Restructuring is consummated, the following provisions shall govern:

1. Sources of Consideration for Plan Distributions

The Reorganized Debtors will fund distributions under the Plan with Cash held on the Effective Date by or for the benefit of the Debtors or Reorganized Debtors, including Cash from operations, proceeds from all Causes of Action not settled, released, discharged, enjoined, or exculpated under the Plan or otherwise on or prior to the Effective Date, the New Common Equity, and the Exit Facility Loans, if applicable.

2. Issuance and Distribution of New Common Equity

All Interests in TopCo shall be automatically cancelled on the Effective Date and Reorganized Parent shall issue the New Common Equity to Entities entitled to receive the New Common Equity pursuant to the Plan. The issuance of the New Common Equity is authorized without the need for any further corporate action and without any further action by the holders of Claims or Interests or the Debtors or the Reorganized Debtors, as applicable. The New Organizational Documents, as applicable, shall authorize the issuance and distribution on the Effective Date of the New Common Equity to the Disbursing Agent for the benefit of Entities entitled to receive the New Common Equity pursuant to the Plan. All of the New Common Equity issued under the Plan shall be duly authorized, validly issued, fully paid, and non-assessable. Each distribution and issuance of the New Common Equity under the Plan shall be governed by the terms and conditions set forth in the Plan applicable to such distribution or issuance and by the terms and conditions of the instruments evidencing or relating to such distribution or issuance, which terms and conditions shall bind each Entity receiving such distribution or issuance.

3. Exit Facility

On the Effective Date, the Reorganized Debtors shall enter into the Exit Facility, if applicable, the terms of which will be set forth in the Exit Facility Documents. To the extent undrawn as of the Effective Date, each of the Letters of Credit shall either be renewed in its entirety or replaced with a new letter of credit on substantially similar terms to those existing as of the Petition Date such that the Letters of Credit shall continue in full force and effect following the Effective Date under the Exit Facility and the Exit Facility Documents. On and after the Effective Date, the Exit Facility Documents shall constitute legal, valid, and binding obligations of the Reorganized Debtors and be enforceable in accordance with their respective terms.

Confirmation shall be deemed approval of the Exit Facility and the Exit Facility Documents (including the transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations and guarantees to be incurred and fees paid in connection therewith), and, to the extent not approved by the Bankruptcy Court previously, the Reorganized Debtors will be authorized to execute and deliver those documents necessary or appropriate to obtain the Exit Facility, including the Exit Facility Documents, as applicable, without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order or rule or vote, consent, authorization, or approval of any Person, subject to such modifications as the Debtors or Reorganized Debtors, as applicable, may deem to be necessary to consummate the Exit Facility.

On the Effective Date, all of the Claims, Liens, and security interests to be granted in accordance with the terms of the Exit Facility Documents, if any, (a) shall be deemed to be granted, (b) shall be legal, binding, and enforceable liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the Exit Facility Documents, (c) shall be deemed automatically attached and perfected on the Effective Date, subject only to such liens and security interests as may be permitted under the Exit Facility Documents, and (d) shall not be subject to avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever and shall not constitute preferential transfers, fraudulent conveyances, or other voidable transfers under the Bankruptcy Code or any applicable non bankruptcy law.

4. Corporate Existence

Except as otherwise provided in the Plan, each Debtor shall continue to exist after the Effective Date as a separate corporation, limited liability company, limited partnership, or other form of entity, as the case may be, with all the powers of a corporation, limited liability company, limited 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 bylaws (or other similar formation and governance documents) in effect prior to the Effective Date, except to the extent such certificate of incorporation and bylaws (or other similar formation and governance documents) are amended under the Plan or otherwise, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval (other than any requisite filings required under applicable state, provincial, or federal law).

5. Vesting of Assets in the Reorganized Debtors

Except as otherwise provided in the Plan or any agreement, instrument, or other document incorporated in the Plan, on the Effective Date, all property in each Estate, all Causes of Action, and any property acquired by any of the Debtors pursuant to the Plan 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 in the Plan, each Reorganized Debtor may operate its business and may use, acquire, or dispose of property and 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.

6. Corporate Action

Upon the Effective Date, all actions contemplated under the Plan, regardless of whether taken before, on or after the Effective Date, shall be deemed authorized and approved in all respects, including: (a) selection of the officers and directors or managers for the Reorganized Debtors; (b) the issuance and distribution of the New Common Equity; (c) implementation of the Restructuring Transactions; (d) if applicable, execution of the Exit Facility Documents and any and all other agreements, documents, securities, and instruments relating thereto; and (e) all other actions contemplated under the Plan (whether to occur before, on, or after the Effective Date). All matters provided for in the Plan or deemed necessary or desirable by the Debtors before, on, or after the Effective Date involving the corporate structure of the Debtors or the Reorganized Debtors, and any corporate action required by the Debtors or the Reorganized Debtors in connection with the Plan or corporate structure of the Debtors or Reorganized Debtors shall be deemed to have occurred and shall be in effect on the Effective Date, without any requirement of further action by the security holders, directors, managers, or officers of the Debtors or the Reorganized Debtors. Before, on, or after the Effective Date, the appropriate managers or officers of the Debtors or the Reorganized Debtors, as applicable, shall be authorized to issue, execute, and deliver the agreements, documents, securities, and instruments contemplated under the Plan (or necessary or desirable to effect the transactions contemplated under the Plan) in the name of and on behalf of the Reorganized Debtors, including, if applicable, the Exit Facility Documents and any and all other agreements, documents, securities, and instruments relating to the foregoing. The

authorizations and approvals contemplated by this Article IV.B.6 shall be effective notwithstanding any requirements under non-bankruptcy law.

7. New Organizational Documents

On the Effective Date, the New Organizational Documents shall be adopted automatically by the applicable Reorganized Debtors, and Reorganized Parent shall deliver the applicable New Organizational Documents for Reorganized Parent to each holder of New Common Equity, and such parties shall be bound thereby, in each case, without the need for execution by any party thereto other than Reorganized Parent, and the certificates of incorporation, bylaws, limited liability company agreements, limited partnership agreements, and other similar formation and constituent documents of the Reorganized Debtors (other than Reorganized Parent) shall be amended or amended and restated, as applicable, as may be required to be consistent with the provisions of the Plan and the Bankruptcy Code. To the extent required under the Plan or applicable nonbankruptcy law, the Reorganized Debtors will file their respective New Organizational Documents with the applicable Secretaries of State and/or other applicable authorities in their respective states, provinces, or countries of incorporation in accordance with the corporate laws of the respective states, provinces, or countries of incorporation. The New Organizational Documents shall, among other things: (a) authorize the issuance of the New Common Equity; and (b) 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. After the Effective Date, each Reorganized Debtor may amend and restate its limited liability company agreement, certificate of incorporation, limited partnership agreement, and other formation and constituent documents as permitted by the laws of its respective jurisdiction of formation and the terms of the New Organizational Documents, as applicable.

8. Insurance Policies

Each of the Debtors' insurance policies and any agreements, documents, or instruments relating thereto, are treated as Executory Contracts under the Plan. On the Effective Date, (a) the Debtors shall be deemed to have assumed all insurance policies and any agreements, documents, and instruments relating to coverage of all insured Claims and (b) such insurance policies and any agreements, documents, or instruments relating thereto shall revest in the Reorganized Debtors.

9. Directors, Managers, and Officers of the Reorganized Debtors

As of the Effective Date, the term of the current members of the boards of managers of the Debtors shall expire, and the initial boards of directors or managers, including the New Board, and the officers of each of the Reorganized Debtors, as applicable, shall be appointed in accordance with the respective New Organizational Documents. The existing officers (including the Debtors' Chief Restructuring Officer, Mr. John Castellano), boards of managers, and other governing bodies of the Debtors, as applicable, will be deemed to have resigned on and as of the Effective Date, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order or rule or vote, consent, authorization or approval of any Person or Entity.

Pursuant to section 1129(a)(5) of the Bankruptcy Code, the Debtors will disclose in advance of the Confirmation Hearing as part of the Plan Supplement, to the extent known at such

time, the identity and affiliations of any Person proposed to serve on the New Board or as an officer of any of the Reorganized Debtors. To the extent any such director, manager, or officer of the Reorganized Debtors is an "insider" under the Bankruptcy Code, the Debtors also will disclose the nature of any compensation to be paid to such director, manager, or officer. Each such officer and director or manager shall serve from and after the Effective Date pursuant to the terms of the New Organizational Documents and other constituent documents of the Reorganized Debtors.

10. Section 1145 Exemption

Pursuant to section 1145 of the Bankruptcy Code, the offering, issuance, and distribution of the New Common Equity pursuant to and under the Plan will be exempt from the registration requirements of Section 5 of the Securities Act and any other applicable U.S. state or local law requiring registration prior to the offering, issuance, distribution, or sale of securities. The shares of New Common Equity to be issued under the Plan (a) will not be "restricted securities" as defined in Rule 144(a)(3) under the Securities Act, and (b) subject to the terms of the New Organizational Documents, will be freely tradable unless the holder is an "underwriter" as defined in subsection (b) of section 1145 of the Bankruptcy Code with respect to such securities.

In the event Reorganized Parent elects, on or after the Effective Date, to reflect any ownership of the New Common Equity issued pursuant to the Plan through the facilities of DTC, Reorganized Parent need not provide to DTC any further evidence other than the Plan or the Confirmation Order with respect to the treatment of such securities under the applicable securities laws. Notwithstanding anything to the contrary in the Plan, no Entity, including, for the avoidance of doubt, DTC or any transfer agent, 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 initial sale and delivery by the issuer to the holders of the New Common Equity are exempt from registration and/or eligible for DTC book-entry delivery, settlement, and depository services. The Confirmation Order shall provide that DTC or any transfer agent shall be required to accept and conclusively rely upon the Plan or Confirmation Order in lieu of a legal opinion regarding whether the New Common Equity are exempt from registration and/or eligible for DTC-book-entry delivery, settlement, and depositor services.

C. The Sale Transaction

The Debtors will conduct, or have conducted, a postpetition marketing and sale process and solicited bids in furtherance of the Sale Transaction in accordance with the terms and conditions of the RSA and the Bidding Procedures Order. If the Debtors are able to obtain a Successful Bid (as defined in the Bidding Procedures) that the Debtors, in consultation with the Consultation Parties (as defined in the Bidding Procedures), determine in good faith and in an exercise of their business judgment will maximize value for the Debtors' estates as compared to the Standalone Restructuring, the Debtors will elect to consummate the Sale Transaction (such election, the "Transaction Election") pursuant to and in accordance with the Sale Transaction Documents, and holders of Allowed Claims will receive the Net Sale Proceeds in accordance with Article III of the Plan. At any point prior to Transaction Election, the Debtors may terminate pursuit of the Sale Transaction in accordance with the terms of the RSA and the Bidding Procedures Order. The Transaction Election, if any, shall be made in connection with the filing of

the Plan Supplement, and shall be made no later than ten (10) days prior to the deadline to object to Confirmation of the Plan and the Voting Deadline.

In the event that the Debtors determine to effectuate the Sale Transaction, upon the Effective Date, including pursuant to sections 363, 365, 1123(a)(5)(B), 1123(a)(5)(D), and 1141 of the Bankruptcy Code, the Debtors are authorized to execute and deliver, and to consummate the transactions contemplated by the Sale Transaction Documents 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, rule, or the vote, consent, authorization, or approval of any Entity, and (a) the Debtors are authorized and directed to consummate, and shall be deemed for all purposes to have consummated, the sale, transfer, and assignment of all of the Debtors' rights, title, and interest in the Debtors' assets acquired by the Purchaser (the "Acquired Assets") pursuant to the Asset Purchase Agreement to the Purchaser free and clear of all Claims, Liens, interests, and encumbrances (other than the liabilities expressly assumed by the Purchaser pursuant to the Sale Transaction Documents (the "Assumed Liabilities") and any permitted encumbrances on the Acquired Assets permitted pursuant to the Sale Transaction Documents (the "Permitted Encumbrances")), and (b) except as otherwise expressly provided in the Sale Transaction Documents, all encumbrances and liabilities (other than the Assumed Liabilities and Permitted Encumbrances) shall not be enforceable as against the Purchaser or the Acquired Assets. Unless otherwise expressly included in the Assumed Liabilities and the Permitted Encumbrances, or as otherwise provided in the Confirmation Order, the Purchaser shall not be responsible for any Claims, Liens, liabilities, obligations, interests or encumbrances, including, without limitation: (a) any mortgages, deeds, of trust and security interests against the Acquired Assets, (b) any intercompany loans and receivables between one or more of the Debtors and any other Debtor, (c) any bulk sales or similar laws, (d) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, and (e) any other liabilities expressly excluded in the Sale Transaction Documents. Upon the Effective Date and consummation of the Sale Transaction, the Purchaser shall not, and shall be deemed not to, (w) have any common law successorship liability, (x) have, de facto, or otherwise, merged or consolidated with or into the Debtors, (y) be a mere continuation or substantial continuation of the Debtors, or (z) be liable for any acts or omissions of the Debtors in connection with the conduct of the Debtors' business or arising under or related to the Acquired Assets, except as expressly provided in the Sale Transaction Documents.

1. Sources of Consideration for Plan Distributions

The Debtors will fund distributions under the Plan with Cash held on the Effective Date by or for the benefit of the Debtors and the Sale Proceeds, as well as any Cash generated during the Wind Down from the liquidation of the Debtors' assets not acquired by the Purchaser.

2. Vesting of Wind Down Amount and Excluded Assets in the Wind Down Debtors

On the Effective Date, upon consummation of the Sale Transaction, the Wind Down Debtor Assets, including all Causes of Action that do not constitute Acquired Assets, shall vest in each respective Wind Down Debtor, free and clear of all Liens, Claims, charges, or other encumbrances except as otherwise specifically provided in the Plan or in the Confirmation Order. On and after

the Effective Date, except as otherwise provided in the Plan, each Wind Down Debtor, at the direction of the Plan Administrator, shall effectuate the Wind Down and 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.

After the Effective Date, pursuant to the Plan, and on behalf of the Wind Down Debtors, the Plan Administrator, as part of the Wind Down, shall sell, liquidate, and may operate, use, acquire, or dispose of property without approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules and compromise or settle any Claims, Interests, or Causes of Action remaining with the Wind Down Debtors after consummation of the Sale Transaction contemplated by the Asset Purchase Agreement.

3. The Plan Administrator Effectuating Wind Down

On and after the Effective Date, the Plan Administrator will be authorized and directed to implement the Plan and any applicable orders of the Bankruptcy Court, and to effectuate the Wind Down of the Wind Down Debtors. On and after the Effective Date, the Plan Administrator shall have the power and authority to take any action necessary to conduct the Wind Down of the Wind Down Debtors' Estates.

As soon as practicable after the Effective Date, the Plan Administrator shall: (a) cause the Wind Down Debtors to comply with, and abide by, the terms of the Plan, the Confirmation Order, and any other documents contemplated thereby including, the Sale Transaction Documents; and (b) take such other actions as the Plan Administrator may determine to be necessary or desirable to carry out the purposes of the Plan.

The Plan Administrator shall succeed to such powers as would have been applicable to the Wind Down Debtors' officers, directors, managers, and equityholders, and the Wind Down Debtors shall be authorized to be (and, upon the conclusion of the Wind Down, shall be) dissolved by the Plan Administrator, as applicable, in accordance with applicable state law. The Plan Administrator shall act for the Wind Down Debtors in the same capacity and shall have the same rights and powers as are applicable to a manager, managing member, board of managers, board of directors or equivalent governing body, as applicable, and to officers, subject to the provisions hereof (and all certificates of formation and limited liability company agreements and certificates of incorporation or by-laws, or equivalent governing documents and all other related documents (including membership agreements, stockholders agreements or other similar instruments), as applicable, are deemed amended pursuant to the Plan to permit and authorize the same). From and after the Effective Date, the Plan Administrator shall be the sole representative of and shall act for the Wind Down Debtors.

The Plan Administrator shall effectuate the Wind Down with the amounts reserved in the Wind Down Budget.

All costs, liabilities, and expenses reasonably incurred by the Plan Administrator, and any personnel employed by the Plan Administrator in the performance of the Plan Administrator's duties, as set forth in Article VI, shall be paid from the Wind Down Debtor Assets in accordance with the Wind Down Budget. Any fees, costs, or expenses of the Notice, Claims, and Balloting

Agent in connection with the administration of Administrative Claims, Priority Tax Claims, and/or General Unsecured Claims as requested by the Wind Down Debtors after the Effective Date shall be the sole responsibility of the Wind Down Debtors and shall be paid from the Wind Down Debtor Assets.

4. Cooperation and Access

At the Wind Down Debtors' sole expense, to the extent applicable with respect to this subsection, the Purchaser shall cooperate in good faith with the Wind Down Debtors, including by (i) affording the Plan Administrator and its representatives reasonable access to its properties, books, and records in connection with the Wind Down Debtors' satisfaction of its duties and responsibilities under the Plan and (ii) using commercially reasonable efforts to make available to the Plan Administrator and its representatives the employees or representatives of the Purchaser whose assistance, expertise, testimony, notes, recollections, or presence are reasonably necessary in connection with the Plan Administrator's satisfaction of its duties and responsibilities under the Plan; *provided* that the Purchaser may require the Plan Administrator on behalf of the Debtors to execute a non-disclosure agreement in form and substance reasonably acceptable to the Purchaser prior to providing such materials or information to the Plan Administrator and its representatives; *provided further*, that the provision of any such documents and information will be without waiver of any confidentiality obligations or evidentiary privileges, including without limitation, the attorney-client privilege, work-product privilege or other privilege or immunity attaching to any such documents or information (written or oral). For the avoidance of doubt, nothing in this Article IV.C.4 shall require the Purchaser to provide or disclose anything subject to attorney-client privilege or any other privilege to the Plan Administrator; *provided* that to the extent there is a dispute regarding whether such documentation or information is privileged, the Purchaser and the Plan Administrator shall negotiate in good faith to resolve such dispute, taking into account the reasonableness and necessity of such information to the Plan Administrator's duties and responsibilities under the Plan. Absent a resolution, the Plan Administrator may seek a determination by the Bankruptcy Court.

Any reasonable and documented out-of-pocket expenses of the Purchaser incurred in connection with complying with this Article IV.C.4 shall be reimbursed from the Wind Down Debtor Assets. Such out-of-pocket expenses shall not include general overhead expenses of the Purchaser. To the extent the Wind Down Debtors or Plan Administrator seek discovery or document production from any other Released Party, the Wind Down Debtors shall reimburse such Released Party for its reasonable and documented out-of-pocket expenses in connection therewith.

5. Deemed Consolidation of Class 4

For the purpose of holders of Allowed General Unsecured Claims receiving distributions from the Wind Down Debtors in accordance with the terms of the Plan, (i) all assets and liabilities of the Debtors shall be deemed merged, (ii) all guarantees or responsibility of one Debtor of the obligations of any other Debtor shall be deemed eliminated, and all guarantees or responsibility executed by multiple Debtors of the obligations of any other Entity shall be deemed consolidated into a single obligation, and (c) each and every General Unsecured Claim Filed or to be Filed in the Chapter 11 Case of any Debtor shall be Filed against, and shall be a single obligation of, the Debtors with respect to any distribution from the Wind Down Debtors to the holder of such General

Unsecured Claim. Notwithstanding anything to the contrary herein, in no event shall holders of Allowed General Unsecured Claims recover more than the full amount of their Allowed General Unsecured Claims from the Wind Down Debtors.

D. Restructuring Expenses

The accrued and unpaid Restructuring Expenses incurred, or estimated to be incurred, up to and including the Effective Date (whether incurred prepetition or postpetition) 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) without the need for any further notice or approval by the Bankruptcy Court or otherwise. All Restructuring Expenses to be paid on the Effective Date shall be estimated in good faith prior to and as of the Effective Date and such estimates shall be delivered to the Debtors no later than five (5) days before the anticipated Effective Date.

E. Section 1146 Exemption

To the maximum extent permitted pursuant to section 1146(a) of the Bankruptcy Code, any transfer of property pursuant hereto, including the Sale Transaction (if any) or any transaction that is deemed or treated as equivalent to a transfer of property under applicable nonbankruptcy law as a result of a change of ownership or control, shall not be subject to any tax under a law imposing a stamp tax or similar tax, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents pursuant to such transfers of property without the payment of any such tax, recordation fee, or governmental assessment. The Bankruptcy Court shall retain specific jurisdiction with respect to these matters.

F. Director and Officer Liability Insurance

The Debtors' D&O Liability Insurance Policies shall be Reinstated under the Plan to the fullest extent possible under applicable Law. Notwithstanding anything in the Plan or the Confirmation Order to the contrary, effective as of the Effective Date, the Reorganized Debtors or Wind Down Debtors (including the Plan Administrator acting on behalf of the Wind Down Debtors), as applicable, shall be deemed to have assumed all D&O Liability Insurance Policies with respect to the Debtors' directors, managers, and officers serving on or prior to the Effective Date pursuant to section 365(a) of the Bankruptcy Code. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the assumption of each of the D&O Liability Insurance Policies by the Reorganized Debtors or the Wind Down Debtors, as applicable. Notwithstanding anything to the contrary contained in the Plan or the Confirmation Order, Confirmation of the Plan shall not discharge, impair, or otherwise modify any indemnity obligations assumed by the foregoing assumption of the D&O Liability Insurance Policies, and each such indemnity obligation will be deemed and treated as an Executory Contract that has been assumed by the Reorganized Debtors or Wind Down Debtors (including the Plan Administrator acting on behalf of the Wind Down Debtors), as applicable, under the Plan or the Confirmation Order, and no Proof of Claim, Administrative Claim, or Cure Claim need be Filed with respect thereto. For the avoidance of doubt, the D&O Liability Insurance Policies will continue to apply

with respect to actions, or failures to act, that occurred on or prior to the Effective Date, subject to the terms and conditions of the D&O Liability Insurance Policies.

G. Dissolution of Certain Debtors

On or after the Effective Date and, if the Sale Transaction is consummated, solely to the extent each of the Debtors' requisite obligations to the Purchaser have been met in accordance with the Sale Transaction Documents, certain of the Debtors may be dissolved without further action under applicable law, regulation, order, or rule, including any action by the stockholders, members, the board of directors, or board of directors or similar governing body of the Debtors, Reorganized Debtors, or Wind Down Debtors; *provided* that, subject in all respects to the terms of the Plan, the Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, shall have the power and authority to take any action necessary to wind down and dissolve the foregoing Debtors, and shall, to the extent applicable: (1) file a certificate of dissolution for such Debtors, together with all other necessary corporate and company documents, to effect such Debtors' dissolution under the applicable laws of their states of formation; (2) complete and file all final or otherwise required federal, state, and local tax returns and pay taxes required to be paid for such Debtors, and pursuant to section 505(b) of the Bankruptcy Code, request an expedited determination of any unpaid tax liability of any such Debtors or their Estates, as determined under applicable tax laws; and (3) represent the interests of the Debtors or their Estates before any taxing authority in all tax matters, including any action, proceeding or audit. The Plan Supplement shall identify what, if any, of the Debtors will be dissolved as of the Effective Date.

H. Cancellation of Securities and Agreements

On the Effective Date, except as otherwise specifically provided for in the Plan: (1) the obligations of the Debtors under any certificate, security, share, note, bond, credit agreement, 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 (except such certificates, notes, or other instruments or documents evidencing indebtedness or obligation of or ownership interest in the Debtors that are Reinstated pursuant to the Plan) shall be cancelled solely as to the Debtors and their affiliates, and the Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, shall not have any continuing obligations thereunder; and (2) the obligations of the Debtors and their affiliates 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, indentures, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors (except such agreements, certificates, notes, or other instruments evidencing indebtedness or obligation of or ownership interest in the Debtors that are specifically Reinstated pursuant to the Plan) shall be released and discharged. Notwithstanding the foregoing, no Executory Contract or Unexpired Lease that (i) has been, or will be, assumed pursuant to Section 365 of the Bankruptcy Code or (ii) relating to a Claim that was paid in full prior to the Effective Date, shall be terminated or cancelled on the Effective Date.

I. Effectuating Documents; Further Transactions

On and after the Effective Date, the Reorganized Debtors and the officers and members of the boards of directors or managers thereof, or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, are 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 Sale Transaction Documents, the Restructuring Transactions, and the Securities issued pursuant to the Plan in the name of and on behalf of the Debtors or the Reorganized Debtors, without the need for any approvals, authorization, or consents except for those expressly required pursuant to the Plan.

J. Preservation of Causes of Action

In accordance with section 1123(b) of the Bankruptcy Code, but subject to Article IX hereof, the Reorganized Debtors, if the Standalone Restructuring is consummated, or the Wind Down Debtors, if the Sale Transaction is consummated, shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, including any actions specifically enumerated in the Schedule of Retained Causes of Action, and the rights of the Reorganized Debtors or Plan Administrator on behalf of the Wind Down Debtors, as applicable, to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date, other than the Causes of Action released by the Debtors pursuant to the releases and exculpations contained in the Plan, including in Article IX hereof, or otherwise transferred pursuant to the Sale Transaction Documents.

The Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, may pursue such Causes of Action, as appropriate, in accordance with the best interests of the Reorganized Debtors or the Wind Down Debtors, as applicable. **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 against it as any indication that the Debtors, the Reorganized Debtors, or the Wind Down Debtors, as applicable, will not pursue any and all available Causes of Action against it. The Debtors, the Reorganized Debtors, or the Wind Down Debtors, as applicable, expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the Plan, including Article IX of the Plan, or the Sale Transaction Documents.** Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Bankruptcy Court order, the Reorganized Debtors or Wind Down Debtors, 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 Confirmation or Consummation.

The Reorganized Debtors or Wind Down Debtors, as applicable, reserve and shall retain such Causes of Action notwithstanding the rejection or repudiation of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that a Debtor may hold against

any Entity shall vest in the Reorganized Debtors or the Wind Down Debtors, as applicable, except as otherwise expressly provided in the Plan, including Article IX of the Plan. The applicable Reorganized Debtors or Wind Down Debtors, as applicable, through their authorized agents or representatives, including the Plan Administrator, shall retain and may exclusively enforce any and all such Causes of Action. The Reorganized Debtors or Wind Down Debtors (including through the Plan Administrator), 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 and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court.

ARTICLE V.
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption and Rejection of Executory Contracts and Unexpired Leases

1. Standalone Restructuring

If the Standalone Restructuring is consummated, on the Effective Date, except as otherwise provided in the Plan or in any contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan, all Executory Contracts and Unexpired Leases shall be deemed assumed, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, as of the Effective Date under section 365 of the Bankruptcy Code, and regardless of whether or not such Executory Contract or Unexpired Lease is identified on the Schedule of Assumed Executory Contracts and Unexpired Leases, unless such Executory Contract or Unexpired Lease: (a) was previously assumed or rejected by the Debtors, pursuant to a Final Order of the Bankruptcy Court; (b) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (c) is the subject of a motion to assume, assume and assign, or reject filed by the Debtors on or before the date of entry of the Confirmation Order; or (d) with the consent of the Required Consenting Lenders and the Prepetition Agent, is specifically designated as a contract or lease to be rejected on the Schedule of Rejected Executory Contracts and Unexpired Leases. Each Executory Contract and Unexpired Lease assumed pursuant to this Article V.A.1 of the Plan or by any order of the Bankruptcy Court, which has not been assigned to a third party prior to the Effective Date, shall revest in and be fully enforceable by the Reorganized Debtors in accordance with its terms, except as such terms are modified by the provisions of the Plan or any order of the Bankruptcy Court authorizing and providing for its assumption under applicable federal law.

Entry of the Confirmation Order by the Bankruptcy Court shall, subject to and upon the occurrence of the Effective Date, constitute a Bankruptcy Order approving the assumptions, assumptions and assignments, and/or rejections of the Executory Contracts and Unexpired Leases assumed, assumed and assigned, and/or rejected pursuant to the Plan. Any motions to reject Executory Contracts or Unexpired Leases pending on the Effective Date shall be subject to approval by the Bankruptcy Court on or after the Effective Date by a Final Order.

Notwithstanding anything to the contrary in the Plan, the Debtors reserve the right, with the consent of the Required Consenting Lenders and the Prepetition Agent, to alter, amend,

modify, or supplement the Schedule of Assumed Executory Contracts and Unexpired Leases and/or the Schedule of Rejected Executory Contracts and Unexpired Leases to add or remove any Executory Contract or Unexpired Lease at any time prior to the Effective Date. The Debtors shall provide notice of any amendments to the Schedule of Assumed Executory Contracts and Unexpired Leases and/or the Schedule of Rejected Executory Contracts and Unexpired Leases to the parties to the Executory Contracts or Unexpired Leases affected thereby.

2. Sale Transaction

If the Sale Transaction is consummated, on the Effective Date, except as otherwise provided herein, each Executory Contract or Unexpired Lease not previously assumed, assumed and assigned, or rejected pursuant to a Final Order of the Bankruptcy Court shall be deemed automatically rejected, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, as of the Effective Date under section 365 and 1123 of the Bankruptcy Code, and regardless of whether or not such Executory Contract or Unexpired Lease is identified on the Schedule of Rejected Executory Contracts and Unexpired Leases, unless such Executory Contract or Unexpired Lease: (a) is assumed by the Debtors and assigned to the Purchaser pursuant to the Sale Transaction, the Plan, and the Confirmation Order and in accordance with the Sale Transaction Documents; or (b) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto. Notwithstanding anything to the contrary in the Plan, the Debtors reserve the right, with the consent of the Required Consenting Lenders and the Prepetition Agent, to alter, amend, modify, or supplement the Schedule of Assumed Executory Contracts and Unexpired Leases and/or the Schedule of Rejected Executory Contracts and Unexpired Leases to add or remove any Executory Contract or Unexpired Lease at any time prior to the Effective Date. The Debtors shall provide notice of any amendments to the Schedule of Assumed Executory Contracts and Unexpired Leases and/or the Schedule of Rejected Executory Contracts and Unexpired Leases to the counterparties to the Executory Contracts or Unexpired Leases affected thereby. For the avoidance of doubt, any Executory Contract or Unexpired Lease not assumed by the Debtors and assigned to the Purchaser in connection with the Sale Transaction pursuant to the Sale Transaction Documents shall be deemed rejected as of the Effective Date.

Entry of the Confirmation Order by the Bankruptcy Court shall, subject to and upon the occurrence of the Effective Date, constitute a Bankruptcy Order approving the assumptions and assignments or rejections of the Executory Contracts and Unexpired Leases assumed and assigned or rejected pursuant to the Plan and the other Sale Transaction Documents.

B. Director and Officer Liability Insurance

The Debtors' D&O Liability Insurance Policies shall be Reinstated under the Plan to the fullest extent possible under applicable Law. Notwithstanding anything in the Plan or the Confirmation Order to the contrary, effective as of the Effective Date, the Reorganized Debtors or Wind Down Debtors (including the Plan Administrator acting on behalf of the Wind Down Debtors), as applicable, shall be deemed to have assumed all D&O Liability Insurance Policies with respect to the Debtors' directors, managers, and officers serving on or prior to the Effective Date pursuant to section 365(a) of the Bankruptcy Code. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the assumption of each of the D&O Liability Insurance Policies by the Reorganized Debtors or the Wind Down Debtors, as applicable.

Notwithstanding anything to the contrary contained in the Plan or the Confirmation Order, Confirmation of the Plan shall not discharge, impair, or otherwise modify any indemnity obligations assumed by the foregoing assumption of the D&O Liability Insurance Policies, and each such indemnity obligation will be deemed and treated as an Executory Contract that has been assumed by the Reorganized Debtors or Wind Down Debtors (including the Plan Administrator acting on behalf of the Wind Down Debtors), as applicable, under the Plan or the Confirmation Order, and no Proof of Claim, Administrative Claim, or Cure Claim need be Filed with respect thereto. For the avoidance of doubt, the D&O Liability Insurance Policies will continue to apply with respect to actions, or failures to act, that occurred on or prior to the Effective Date, subject to the terms and conditions of the D&O Liability Insurance Policies.

C. Indemnification Obligations

Except as expressly provided by the Confirmation Order or the Plan, or unless otherwise determined by the Debtors, consistent with applicable law, all indemnification provisions in place as of the Effective Date, including any tail policies (whether in the by-laws, certificates of incorporation or formation, limited liability company agreements, other organizational documents, board resolutions, indemnification agreements, employment contracts, or otherwise), for current and former directors, officers, managers, employees, attorneys, accountants, investment bankers, and other professionals of the Debtors, in each case solely in their capacity as such, as applicable, shall be (1) be deemed Executory Contracts, (2) be Reinstated or otherwise assumed (or assumed and assigned) by either the Reorganized Debtors or the Wind Down Debtors, as applicable, (3) remain intact and irrevocable, and (4) survive the Effective Date on terms no less favorable to such current and former directors, officers, managers, employees, attorneys, accountants, investment bankers, and other professionals of the Debtors than the indemnification provisions in place prior to the Effective Date.

D. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Unless otherwise provided by a Final Order of the Bankruptcy Court, all Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, pursuant to the Plan or the Confirmation Order, if any, must be Filed with the Bankruptcy Court within 30 days after the later of (1) the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection, (2) the effective date of such rejection, or (3) the Effective Date. **Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtors or the Reorganized Debtors or the Wind Down Debtors, the Estates, or their property without the need for any objection by the Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of such Executory Contract or Unexpired Lease shall be deemed fully satisfied, released, and discharged, notwithstanding anything in the Schedules or a Proof of Claim to the contrary.** All Allowed Claims arising from the rejection of the Debtors' Executory Contracts or Unexpired Leases shall be classified as General Unsecured Claims.

E. Cure of Defaults for Executory Contracts and Unexpired Leases Assumed

Any monetary defaults under each Executory Contract and Unexpired Lease to be assumed or assumed and assigned pursuant to the Plan, Confirmation Order, and/or Sale Transaction Documents shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the default amount in Cash on the Effective Date, subject to the limitation described below, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree (the "Cure Amount"). In the event of a dispute regarding (1) the amount of any payments to cure such a default, (2) the ability of the Debtors, Reorganized Debtors, or Purchaser, as applicable, to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assumed and assigned, or (3) any other matter pertaining to assumption, the cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assumption and assignment. At least ten (10) calendar days prior to the deadline to object to Confirmation of the Plan, the Debtors shall provide for notices of proposed assumption or assumption and assignment and proposed Cure Amounts to be sent to applicable counterparties and for procedures for objecting thereto and resolution of disputes by the Bankruptcy Court. **Any objection by a counterparty to an Executory Contract or Unexpired Lease to a proposed assumption or assumption and assignment or related Cure Amount must be Filed, served, and actually received by the Debtors by the deadline to object to confirmation of the Plan. Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption, or proposed assumption and assignment, or Cure Amount will be deemed to have consented to such matters and will be deemed to have forever released and waived any objection to such proposed assumption, proposed assumption and assignment, and Cure Amount.**

Assumption or assumption and assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or the Sale Transaction Documents shall result in the full release and satisfaction of any 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 or assumed and assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assumption and assignment, as applicable. Any counterparty to an Executory Contract or Unexpired Lease that does not timely object to the notice of the proposed assumption or assumption and assignment of such Executory Contract or Unexpired Lease shall be deemed to have consented to the assumption or assumption and assignment, as applicable, of the applicable Executory Contract or Unexpired Lease notwithstanding any provision thereof that purports to: (1) prohibit, restrict, or condition the transfer or assignment of such contract or lease; (2) terminate or modify, or permit the termination or modification of, a contract or lease as a result of any direct or indirect transfer or assignment of the rights of any Debtor under such contract or lease or a change, if any, in the ownership or control of any Debtor under such contract or lease to the extent contemplated by the Plan; (3) increase, accelerate, or otherwise alter any obligations or liabilities of any Debtor, Reorganized Debtor, or Purchaser under such Executory Contract or Unexpired Lease; or (4) create or impose a Lien upon any property or asset of any Debtor, Reorganized Debtor, or Purchaser, as applicable. Each such provision shall be deemed to not apply to the assumption or assumption and assignment of such Executory Contract or Unexpired Lease pursuant to the Plan

and counterparties to assumed Executory Contracts or Unexpired Leases that fail to object to the proposed assumption or assumption and assignment in accordance with the terms set forth in this Article V.D, shall forever be barred and enjoined from objecting to the proposed assumption or assumption and assignment or to the validity of such assumption or assumption and assignment (including with respect to any Cure Amounts or the provision of adequate assurance of future performance), or taking actions prohibited by the foregoing or the Bankruptcy Code on account of transactions contemplated by the Plan.

F. Preexisting Obligations to the Debtors under Executory Contracts and Unexpired Leases

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of preexisting obligations owed to the Debtors, Reorganized Debtors, or Wind Down Debtors, as applicable, under such Executory Contracts or Unexpired Leases. In particular, notwithstanding any non-bankruptcy law to the contrary, the Reorganized Debtors or the Wind Down Debtors, as applicable, expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties or continued maintenance obligations on goods previously purchased by the Debtors contracting from non-Debtor counterparties to rejected Executory Contracts or Unexpired Leases.

G. Modifications, Amendments, Supplements, Restatements, or Other Agreements

Unless otherwise provided in the Plan, each Executory Contract or Unexpired Lease that is assumed or assumed and assigned shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and Executory Contracts and Unexpired Leases related thereto, if any, including easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan.

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.

H. Reservation of Rights

Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease on the Schedule of Assumed Executory Contracts and Unexpired Leases or the Schedule of Rejected Executory Contracts and Unexpired Leases, nor anything contained in the Plan, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any of the Reorganized Debtors or the Wind Down Debtors 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 or assumption and assignment or rejection, the Debtors, the Reorganized Debtors, the Plan Administrator, or the Purchaser, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter its treatment of such contract or lease under the Plan.

I. 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, assuming and assigning, or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

J. Contracts and Leases Entered Into After the Petition Date

Contracts and leases entered into after the Petition Date by any Debtor, including any Executory Contracts and Unexpired Leases assumed or assumed and assigned by such Debtor, will be performed by the applicable Debtor, Reorganized Debtor, Wind Down Debtor, or the Purchaser, as applicable, in the ordinary course of their business. Accordingly, such contracts and leases (including any assumed or assumed and assigned Executory Contracts and Unexpired Leases) will survive and remain unaffected by entry of the Confirmation Order.

ARTICLE VI.
THE PLAN ADMINISTRATOR

A. Plan Administrator Rights and Powers

If the Sale Transaction is consummated, upon and following the Effective Date, the Plan Administrator shall have any and all powers and authority, without the need for Bankruptcy Court approval (unless otherwise indicated), to carry out and implement all provisions of the Plan and Confirmation Order, administer and distribute the Wind Down Debtor Assets and wind down the business and affairs of the Wind Down Debtors, including: (1) except to the extent Claims have been previously Allowed, controlling and effectuating the Claims reconciliation process, including to objecting to, seeking to subordinate, compromising or settling any and all Claims against the Debtors (for the avoidance of doubt, the Plan Administrator shall be responsible for objecting to, reconciling, or settling (i) Administrative Claims and Priority Tax Claims not otherwise satisfied on the Effective Date and (ii) General Unsecured Claims not otherwise Allowed and satisfied as of and on the Effective Date); (2) liquidating, receiving, holding, investing, supervising, and protecting the assets of the applicable Wind Down Debtors; (3) making distributions to holders of Allowed Claims in accordance with the Plan and taking all steps to execute all instruments and documents necessary to effectuate the distributions to be made under the Plan, each in its capacity as Disbursing Agent (for the avoidance of doubt, the Plan Administrator shall be responsible for making distributions to holders of (i) Administrative Claims and Priority Tax Claims not otherwise satisfied on the Effective Date and (ii) Allowed General Unsecured Claims); (4) to the extent not released pursuant to the Plan, including pursuant to Article IV.J hereof, prosecuting all Causes of Action on behalf of the Debtors, electing not to pursue any Causes of Action, and determining whether and when to compromise, settle, abandon, dismiss, or otherwise dispose of any such Causes of Action, as the Plan Administrator may determine is in the best interests of the Wind Down Debtors; (5) establishing and maintaining bank accounts in the name of the applicable Wind Down Debtors; (6) maintaining the books, records, and accounts of the Wind Down Debtors; (7) subject to the terms set forth herein, employing, retaining, terminating, or replacing professionals to represent the Plan Administrator with respect to the Plan Administrator's responsibilities or otherwise effectuating the Plan to the extent necessary; (8) paying all reasonable fees, expenses, debts, charges, and liabilities of the applicable

Wind Down Debtors; (9) administering and paying taxes of the applicable Wind Down Debtors, including filing tax returns; (10) representing the interests of the applicable Wind Down Debtors or the Estates, as applicable, before any taxing authority in all matters, including any action, suit, proceeding, or audit; (11) closing the sale pursuant to the Asset Purchase Agreement, if applicable; and (12) exercising such other powers as may be vested in it pursuant to order of the Bankruptcy Court or pursuant to the Plan, or as it reasonably deems to be necessary and proper to carry out the provisions of the Plan.

The Plan Administrator may resign at any time; *provided* that such resignation shall only become effective upon the appointment of a permanent or interim successor Plan Administrator. Upon its appointment, the successor Plan Administrator, without any further act, shall become fully vested with all of the rights, powers, duties, and obligations of its predecessor, and all responsibilities of the predecessor Plan Administrator relating to the Wind Down Debtors shall be terminated.

The filing of the final monthly report (for the month in which the Effective Date occurs) and all subsequent quarterly reports shall be the responsibility of the Plan Administrator, except as otherwise provided herein.

1. Retention of Professionals

The Plan Administrator shall have the right to retain the services of attorneys, accountants, and other professionals that, in the discretion of the Plan Administrator, are necessary to assist the Plan Administrator in the performance of its duties. The reasonable fees and expenses of such professionals shall be paid upon the monthly submission of statements to the Plan Administrator. The payment of the reasonable fees and expenses of the Plan Administrator's retained professionals shall be made in the ordinary course of business in accordance with the Wind Down Budget and shall be satisfied exclusively from the Wind Down Debtor Assets. Any such payments shall not be subject to the approval of the Bankruptcy Court.

2. Compensation of the Plan Administrator

The Plan Administrator's compensation, on a post-Effective Date basis, shall be as described in the Plan Supplement and shall be in accordance with the Wind Down Budget. Except as otherwise ordered by the Bankruptcy Court, the fees and expenses incurred by the Plan Administrator on or after the Effective Date (including taxes imposed on the applicable Wind Down Debtors) and any reasonable compensation and expense reimbursement Claims (including attorney fees and expenses) made by the Plan Administrator in connection with such Plan Administrator's duties shall be paid without any further notice to, or action, order, or approval of, the Bankruptcy Court in Cash in accordance with the Wind Down Budget, if such amounts relate to any actions taken hereunder.

3. Plan Administrator Expenses

All reasonable costs, expenses, and obligations incurred by the Plan Administrator in administering the Plan, the applicable Wind Down Debtors, or in any manner connected, incidental, or related thereto, shall be incurred and paid in accordance with the Wind Down Budget.

B. Indemnification, Insurance, and Liability Limitation

The Plan Administrator and all professionals retained by the Plan Administrator, each in their capacities as such, shall be deemed indemnified, except for fraud, willful misconduct, or gross negligence, in all respects by the Wind Down Debtors. The Plan Administrator may obtain, at the expense of the applicable Wind Down Debtors and in accordance with the Wind Down Budget, commercially reasonable liability or other appropriate insurance with respect to the indemnification obligations of the applicable Wind Down Debtors. The Plan Administrator may rely upon written information previously generated by the Debtors.

Notwithstanding anything to the contrary contained herein, the Plan Administrator in its capacity as such, shall have no liability whatsoever to any party for the liabilities and/or obligations, however created, whether direct or indirect, in tort, contract, or otherwise, of the Debtors.

C. Tax Returns

After the Effective Date, the Plan Administrator shall complete and file all final or otherwise required federal, state, and local tax returns for each of the Wind Down Debtors and, pursuant to section 505(b) of the Bankruptcy Code, may request an expedited determination of any unpaid tax liability of such Wind Down Debtor or its Estate, for any tax incurred during the administration of such Wind Down Debtor's Chapter 11 Case, as determined under applicable tax laws.

ARTICLE VII.
PROVISIONS GOVERNING DISTRIBUTIONS

A. Timing and Calculation of Amounts to Be Distributed

Unless otherwise provided in the Plan, on the Effective Date (or if a Claim is not an Allowed Claim on the Effective Date, on the date that such Claim becomes an Allowed Claim, or as soon as reasonably practicable thereafter), or as soon as is reasonably practicable thereafter, each holder of an Allowed Claim shall receive the full amount of the distributions that the Plan provides for Allowed Claims in the applicable Class. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in Article VIII hereof. Except as otherwise provided in the Plan, holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date.

B. Disbursing Agent

If the Standalone Restructuring is consummated, the Reorganized Debtors shall be the Disbursing Agent; *provided* that the Reorganized Debtors may hire professionals or consultants to assist with making disbursements or to act as the Disbursing Agent. If the Sale Transaction is

consummated, the Plan Administrator shall be the Disbursing Agent; *provided* that the Plan Administrator may hire professionals or consultants to assist with making disbursements or to act as the Disbursing Agent. After the Effective Date, distributions under the Plan shall be made by the Disbursing Agent. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court.

C. Rights and Powers of Disbursing Agent

1. Powers of the Disbursing Agent

The Disbursing 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 Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof.

2. Expenses Incurred On or After the Effective Date

Except as otherwise provided herein or ordered by the Bankruptcy Court, the amount of any reasonable fees and out-of-pocket expenses incurred by the Disbursing Agent on or after the Effective Date (including taxes) and any reasonable compensation and out-of-pocket expense reimbursement claims (including reasonable attorney fees and expenses) made by the Disbursing Agent shall be paid in Cash by the Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable.

D. Delivery of Distributions and Undeliverable or Unclaimed Distributions

1. Record Date for Distribution

On the Distribution Record Date, the Claims Register shall be closed and any party responsible for making distributions shall instead be authorized and entitled to recognize only those record holders listed on the Claims Register as of the close of business on the Distribution Record Date.

2. Delivery of Distributions

Except as otherwise provided herein, the Disbursing Agent shall make distributions to holders of Allowed Claims on the Effective Date at the address for each such holder as indicated on the Debtors' records as of the date of any such distribution; *provided*, *however*, that the manner of such distributions shall be determined at the discretion of the Disbursing Agent; *provided further*, *however*, that the address for each holder of an Allowed Claim shall be deemed to be the address set forth in any Proof of Claim Filed by that holder.

3. Minimum Distributions

Notwithstanding any other provision of the Plan, the Disbursing Agent will not be required to make distributions of less than $500 in value (whether Cash or otherwise), and each such Claim

to which this limitation applies shall be discharged pursuant to Article IX of the Plan and its holder is forever barred pursuant to Article IX of the Plan from asserting that Claims against the Debtors, Reorganized Debtors, or Wind Down Debtors, as applicable, or their respective property.

4. No Fractional Distributions

No fractional shares or units of New Common Equity shall be distributed and no Cash shall be distributed in lieu of such fractional amounts. When any distribution pursuant to the Plan on account of an Allowed Claim would otherwise result in the issuance of a number of shares or units of New Common Equity that is not a whole number, the actual distribution of shares of New Common Equity shall be rounded as follows: (i) fractions of one-half (1/2) or greater shall be rounded to the next higher whole number and (ii) fractions of less than one-half (1/2) shall be rounded to the next lower whole number with no further payment therefore. The total number of authorized shares or units of New Common Equity to be distributed to holders of Allowed Claims shall be adjusted as necessary to account for the foregoing rounding.

No payment of fractional cents shall be made pursuant to the Plan, including to holders of Allowed General Unsecured Claims by the Disbursing Agent. Whenever any payment of a fraction of a cent under the Plan would otherwise be required, the distribution shall reflect a rounding of such fraction to the nearest whole penny (up or down), with half cents or more being rounded up and fractions less than half of a cent being rounded down.

5. Undeliverable Distributions and Unclaimed Property

In the event that any distribution to any holder is returned as undeliverable, no distribution to such holder shall be made unless and until the Disbursing Agent has determined the then-current address of such holder, at which time such distribution shall be made to such holder without interest; *provided*, *however*, that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of six months from the Effective Date. After such date, all unclaimed property or interests in property shall revert to the Reorganized Debtors or the Wind Down Debtors, as applicable, automatically and without need for a further order by the Bankruptcy Court (notwithstanding any applicable federal, provincial, or state escheat, abandoned, or unclaimed property laws to the contrary), and the Claim of any holder to such property or interest in property shall be discharged and forever barred.

E. Compliance with Tax Requirements

In connection with the Plan, to the extent applicable, the Debtors, the Reorganized Debtors, the Plan Administrator on behalf of the Wind Down Debtors, as applicable, shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Disbursing Agent shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Debtors, Reorganized Debtors, or

Plan Administrator on behalf of the Wind Down Debtors, as applicable, reserve the right to allocate all distributions made under the Plan in compliance with applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances.

F. Allocations

Distributions in respect of Allowed Claims shall be allocated first to the principal amount of such Claims (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claims, to any portion of such Claims for accrued but unpaid interest.

G. No Postpetition Interest on Claims

Unless otherwise specifically provided for in the Cash Collateral Orders, the Plan or the Confirmation Order, or required by applicable bankruptcy and non-bankruptcy law, postpetition interest shall not accrue or be paid on any prepetition Claims against the Debtors, and no holder of a prepetition Claim against the Debtors shall be entitled to interest accruing on or after the Petition Date on any such prepetition Claim.

H. 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.

I. Setoffs and Recoupment

The Debtors, the Reorganized Debtors or Wind Down Debtors, as applicable, may, but shall not be required to, set off against or recoup any payments or distributions to be made pursuant to the Plan in respect of any Claims of any nature whatsoever that the Debtors, the Reorganized Debtors or Wind Down Debtors, as applicable, may have against the claimant, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors, the Reorganized Debtors or the Wind Down Debtors, as applicable, of any such Claim it may have against the holder of such Claim. In no event shall any holder of Claims be entitled to set off or recoup any such Claim against any claim, right, or Cause of Action of the Debtor, Reorganized Debtor, or the Wind Down Debtors, as applicable, unless such holder has filed a motion with the Bankruptcy Court requesting the authority to perform such setoff or recoupment 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 or recoupment pursuant to section 553 of the Bankruptcy Code or otherwise.

J. Claims Paid or Payable by Third Parties

1. Claims Paid by Third Parties

A Claim shall be reduced in full, and such Claim shall be disallowed without a Claim objection 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 payment in full on account of such Claim from a party that is not a Debtor, a Reorganized Debtor, a Wind Down Debtor, or the Disbursing Agent, as applicable. 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, a Reorganized Debtor, a Wind Down Debtor, or the Disbursing Agent, as applicable on account of such Claim, such holder shall, within two (2) weeks of receipt thereof, repay or return the distribution to the applicable Debtor, Reorganized Debtor, Wind Down Debtor, or the Disbursing Agent, as applicable, 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.

2. Claims Payable by Third Parties

The availability, if any, of insurance policy proceeds for the satisfaction of an Allowed Claim shall be determined by the terms of the insurance policies of the Debtors, Reorganized Debtors, or Wind Down Debtors, as applicable. 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 Claims objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

3. 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. Except as otherwise provided in the Plan or Confirmation Order, nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors or any Entity may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

ARTICLE VIII.
PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS

A. Allowance of Claims

Prior to the Effective Date, the Debtors shall be entitled to object to Claims. After the Effective Date, each of the Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, shall have the right to object to Claims and shall retain any and all rights and defenses that the Debtors had with respect to any Claim immediately before the Effective Date, including the Causes of Action retained pursuant to Article IV.J of the Plan. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Cases before the Effective Date (including the Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is deemed Allowed under the Plan or the Bankruptcy Code, or the Bankruptcy Court has entered a Final Order, including the Confirmation Order (when it becomes a Final Order), in the Chapter 11 Cases allowing such Claim.

B. Claims Administration Responsibilities

Except as otherwise specifically provided in the Plan, after the Effective Date, the Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, shall have the authority: (1) to File, withdraw, or litigate to judgment objections to Claims; (2) to settle, compromise, withdraw, litigate to judgment, or otherwise resolve objections to any and all Claims, regardless of whether such Claims are in a Class or otherwise; (3) to settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; and (4) 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.

C. Estimation of Claims

Before or after the Effective Date, the Debtors, Reorganized Debtors, or Plan Administrator on behalf of the Wind Down Debtors, as applicable, may (but are not required to) at any time request that the Bankruptcy Court estimate any 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. 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 Plan Administrator, as applicable, may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim.

D. Adjustment to Claims Without Objection

Upon and following the Effective Date, any Claim that has been paid or satisfied, or any Claim that has been amended or superseded, cancelled or otherwise expunged (including pursuant to the Plan or the Confirmation Order), may be adjusted or expunged (including on the Claims Register, to the extent applicable) by the Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, without a Claim objection having to be Filed and without any further notice to or action, order or approval of the Bankruptcy Court.

E. Time to File Objections to Claims

Any objections to Claims shall be Filed on or before the later of (1) 180 days after the Effective Date and (2) such other period of limitation as may be specifically fixed by the Debtors, Reorganized Debtors, or Plan Administrator on behalf of the Wind Down Debtors, as applicable, or by a Final Order of the Bankruptcy Court for objecting to such Claims.

F. Disallowance of Claims

Any Claims held by Entities from which property is recoverable under section 542, 543, 550, or 553 of the Bankruptcy Code, or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed Disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims may not receive any distributions on account of such Claims until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, to the Debtors by that Entity have been turned over or paid to the Reorganized Debtors or the Wind Down Debtors, as applicable. All Claims Filed on account of an indemnification obligation to a director, manager, officer, or employee of the Debtors as of the Effective Date shall be deemed satisfied and expunged from the Claims Register as of the Effective Date to the extent such indemnification obligation is assumed by the Reorganized Debtors or the Wind Down Debtors, as applicable, or honored or reaffirmed, as the case may be pursuant to the Plan, without any further notice to or action, order, or approval of the Bankruptcy Court.

Except as provided herein or otherwise agreed, any and all holders of Claims for which Proofs of Claim were Filed after the Bar Date shall not receive any distributions on account of such Claims, which shall be deemed Disallowed and expunged as of the Effective Date, unless on or before the first day of the Confirmation Hearing such late Claim has been deemed timely Filed by a Final Order; *provided* that such limitation shall not apply to Proofs of Claim filed by any Governmental Unit.

G. No Distributions Pending Allowance

If an objection to a Claim or portion thereof is Filed, no payment or distribution provided under the Plan shall be made on account of such Claim or portion thereof unless and until such Disputed Claim becomes an Allowed Claim.

H. Distributions 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 Disbursing 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, dividends, or accruals to be paid on account of such Claim unless required under applicable bankruptcy law.

ARTICLE IX.
SETTLEMENT, RELEASE, INJUNCTION AND RELATED PROVISIONS

A. Compromise and Settlement of Claims, Interests, and Controversies

Pursuant to sections 363 and 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a holder

of a Claim or Interest may have, or any distribution to be made on account of such Allowed Claim. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all 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 reasonable. 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 or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, may compromise and settle any Claims and Causes of Action against other Entities.

B. Discharge of Claims and Termination of Interests

To the maximum extent provided by section 1141(d) of the Bankruptcy Code and except as otherwise specifically provided in the Definitive Documents, Plan or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims, Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability to the extent such Claims or Interests relate to services that employees of the Debtors performed prior to the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not (1) a Proof of Claim based upon such debt or right is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code, (2) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code, or (3) the holder of such a Claim or Interest has accepted the Plan. Any default by the Debtors with respect to any Claim or Interest that existed immediately prior to or on account of the filing of the Chapter 11 Cases shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the occurrence of the Effective Date.

*C. **Release of Liens***

Except as otherwise provided in the Exit Facility Documents, if applicable, the Plan, the Plan Supplement, the Confirmation Order, or 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, except for Other Secured Claims that the Debtors elect to Reinstate in accordance with Article III.D.1 hereof, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, compromised, 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

automatically to the applicable Debtor and its successors and assigns. Any holder of such Secured Claim (and the applicable agents for such holder) shall be authorized and directed to release any collateral or other property of any Debtor (including any cash collateral and possessory collateral) held by such holder (and the applicable agents for such holder), and to take such actions as may be reasonably requested by the Debtors, Reorganized Debtors, or Wind Down Debtors (or the Plan Administrator on behalf of the Wind Down Debtors) to evidence the release of such Lien, including the execution, delivery, and filing or recording of such releases. The presentation or filing of the Confirmation Order to or with any federal, state, provincial, or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens.

In the event the Sale Transaction is consummated, for the avoidance of doubt, and consistent with Article IV.C, the Purchaser shall acquire the Acquired Assets free and clear of all Claims, Liens, interests and encumbrances other than those Assumed Liabilities and Permitted Encumbrances that are expressly contemplated by the Sale Transaction Documents.

D. ***Releases by the Debtors***

Notwithstanding anything contained in the Plan to the contrary, pursuant to section 1123(b) of the Bankruptcy Code, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, on and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtors, the Reorganized Debtors, the Wind Down Debtors, their respective Estates, and any person seeking to exercise the rights of the Debtors or their Estates, including the Plan Administrator, and any successors to the Debtors or any Estates or any Estates representatives appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other Entities who may purport to assert any Cause of Action, directly or derivatively, by, through, for, or because of the foregoing Entities, from any and all Claims and Causes of Action, including any derivative claims, asserted or assertable on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, contingent or non-contingent, in law, equity, contract, tort or otherwise, that the Debtors, the Reorganized Debtors, the Wind Down Debtors, or their Estates, including the Plan Administrator, and any successors to the Debtors or any Estates representatives appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code, would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Entity, or that any holder of any Claim against, or Interest in, a Debtor or other Entity could have asserted on behalf of the Debtors, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the capital structure, management, ownership, or operation thereof), any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Credit Facility, the assertion or enforcement of rights and remedies against the Debtors, the Debtors' in- or out-of-court restructuring efforts, the Investigation, any Avoidance Actions, intercompany transactions between or among a

Debtor and another Debtor, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or Filing of the RSA, the Disclosure Statement, the Bidding Procedures, the Plan (including, for the avoidance of doubt, the Plan Supplement), the Cash Collateral Orders, the Exit Facility (if applicable), the Sale Transaction, Standalone Restructuring, or any portion of the Restructuring Transactions, contract, instrument, release, or other agreement or document (including 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 RSA, the Disclosure Statement, the Bidding Procedures, the Plan, the Plan Supplement, the Cash Collateral Orders, the Exit Facility (if applicable), the Sale Transaction, Standalone Restructuring, or any portion of the Restructuring Transactions, before or during the Chapter 11 Cases, the Filing of the Chapter 11 Cases, the Disclosure Statement or the Plan, the solicitation of votes with respect to the Plan, 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 any other related agreement, or upon any other act or omission, transaction, agreement, event, or other occurrence related or relating to any of the foregoing taking place on or before the Effective Date, including all Avoidance Actions or other relief obtained by the Debtors in the Chapter 11 Cases, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes actual fraud, willful misconduct, or gross negligence, each solely to the extent as determined by a Final Order of a court of competent jurisdiction. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any post Effective Date obligations of any party or Entity under the Plan, the Confirmation Order, any Restructuring Transaction, any Definitive Document, the Sale Transaction Documents (if applicable), or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan or any Claim or obligation arising under the Plan.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Debtors' release, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Bankruptcy Court's finding that the Debtors' release is: (1) in exchange for the good and valuable consideration provided by the Released Parties, including, without limitation, the Released Parties' contributions to facilitating the Restructuring Transactions and implementing the Plan; (2) a good faith settlement and compromise of the Claims released by the Debtors' release; (3) in the best interests of the Debtors and all holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Debtors, the Reorganized Debtors, the Wind Down Debtors, the Plan Administrator, or the Debtors' Estates asserting any Claim or Cause of Action released pursuant to the Debtors' release.

E. ***Releases by Holders of Claims and Interests***

Except as otherwise expressly set forth in the Plan or the Confirmation Order, on and after the Effective Date, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is, and is deemed to be, hereby conclusively,

absolutely, unconditionally, irrevocably and forever, released and discharged by each Releasing Party from any and all Causes of Action, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, contingent or non-contingent, in law, equity, contract, tort, or otherwise, including any derivative claims asserted on behalf of the Debtors, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the capital structure, management, ownership, or operation thereof), any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Credit Facility, the assertion or enforcement of rights and remedies against the Debtors, the Debtors' in- or out-of-court restructuring efforts, the Investigation, any Avoidance Actions, intercompany transactions between or among a Debtor and another Debtor, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or Filing of the RSA, the Disclosure Statement, the Bidding Procedures, the Plan (including, for the avoidance of doubt, the Plan Supplement), the Cash Collateral Orders, the Exit Facility (if applicable), the Sale Transaction, Standalone Restructuring, or any portion of the Restructuring Transactions, contract, instrument, release, or other agreement or document created or entered into in connection with the RSA, the Disclosure Statement, the Bidding Procedures, the Plan, the Plan Supplement, the Cash Collateral Orders, the Exit Facility (if applicable), the Sale Transaction, Standalone Restructuring, or any portion of the Restructuring Transactions, before or during the Chapter 11 Cases, the Filing of the Chapter 11 Cases, the Disclosure Statement or the Plan, the solicitation of votes with respect to the Plan, 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 any other related agreement, or upon any other act or omission, transaction, agreement, event, or other occurrence related or relating to any of the foregoing taking place on or before the Effective Date, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes actual fraud, willful misconduct, or gross negligence, each solely to the extent as determined by a Final Order of a court of competent jurisdiction. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (1) any party of any obligations related to customary banking products, banking services or other financial accommodations (except as may be expressly amended or modified by the Plan or any other financing document under and as defined therein), (2) any post Effective Date obligations of any party or Entity under the Plan, the Confirmation Order, any Restructuring Transaction, any Definitive Document, the Sale Transaction Documents, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, including the Exit Facility documents, if any, or any Claim or obligation arising under the Plan, or (3) any claims or causes of action against any Equity Party by any Entity that is, was or becomes a holder of a Credit Facility Claim for contribution or indemnification in respect of (a) any claims or causes of action asserted by IEP (or any successor or successor in interest thereto) against a holder of a Credit Facility Claim related to DevCo or the Credit Agreement or (b) solely to the extent any such claims for contribution or indemnification are applicable to an Equity Party in such context, obligations associated with the demolition or remediation of real property assets of DevCo ((a) and (b) together, the "Lender Preserved

Indemnity and Contribution Claims"); *provided* that the release set forth in this Article IX.E shall not release any claims, counterclaims, defenses or any rights related thereto of any Equity Party with respect to the Lender Preserved Indemnity and Contribution Claims.

Except to the extent a third party has opted out of the third-party releases in accordance with the terms of the Plan, entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the third-party releases, which includes by reference each of the related provisions and definitions contained herein, and, further, shall constitute the Bankruptcy Court's finding that the third-party releases are: (1) consensual; (2) essential to the confirmation of the Plan; (3) given in exchange for the good and valuable consideration provided by the Released Parties; (4) a good faith settlement and compromise of the Claims released by the third-party releases; (5) in the best interests of the Debtors and their Estates; (6) fair, equitable, and reasonable; (7) given and made after due notice and opportunity for hearing; and (8) a bar to any of the Releasing Parties asserting any claim or Cause of Action released pursuant to the third-party releases.

F. ***Exculpation***

Except as otherwise specifically provided in the Plan or the Confirmation Order, no Exculpated Party shall have or incur liability for, and each Exculpated Party is hereby released and exculpated from, any Claims and Cause of Action for any claim related to any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or Filing of the RSA, the Disclosure Statement, the Bidding Procedures, the Investigation, the Plan, the Plan Supplement, the Cash Collateral Orders, the Exit Facility (if applicable), the Sale Transaction, Standalone Restructuring, or any portion of the Restructuring Transactions, contract, instrument, release or other agreement or document, including any Definitive Document, created or entered into before or during the Chapter 11 Cases, any preference, fraudulent transfer, or other avoidance claim arising pursuant to chapter 5 of the Bankruptcy Code or other applicable law, 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 any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, except for claims related to any act or omission that is determined in a Final Order by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan.

The Exculpated Parties and other parties set forth above have, and upon Confirmation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

*G. **Injunction***

Except as otherwise expressly provided in the Plan or the Confirmation Order or for obligations or distributions issued or required to be paid pursuant to the Plan or the Confirmation Order, all Entities who have held, hold, or may hold Claims or Interests that have been released, discharged, or are subject to exculpation are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, the Wind Down Debtors, the Plan Administrator, the Exculpated Parties, or the Released Parties: (i) 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 or Interests; (ii) 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 or Interests; (iii) creating, perfecting, or enforcing any Lien or encumbrance of any kind against such Entities or the property or the Estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; (iv) asserting any right of setoff, subrogation, or recoupment 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 or Interests unless such holder has Filed a motion requesting the right to perform such setoff on or before the Effective Date, and notwithstanding an indication of a Claim or Interest or otherwise that such holder asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and (v) 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 or Interests released or settled pursuant to the Plan.

Upon entry of the Confirmation Order, all holders of Claims and Interests and their respective current and former employees, agents, officers, directors, managers, principals, and direct and indirect affiliates shall be enjoined from taking any actions to interfere with the implementation or Consummation of the Plan. Except as otherwise set forth in the Confirmation Order, each holder of an Allowed Claim or Allowed Interest, as applicable, by accepting, or being eligible to accept, distributions under or Reinstatement of such Claim or Interest, as applicable, pursuant to the Plan, shall be deemed to have consented to the injunction provisions set forth in the Plan.

H. Protections Against Discriminatory Treatment

To the maximum extent provided by section 525 of the Bankruptcy Code and the Supremacy Clause of the U.S. Constitution, all Entities, including Governmental Units, shall not discriminate against the Reorganized Debtors or Wind Down Debtors, as applicable, or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Reorganized Debtors or Wind Down Debtors, as applicable, or another Entity with whom the Reorganized Debtors or Wind Down Debtors have been associated, solely because each Debtor has been a debtor under chapter 11 of the Bankruptcy Code, has been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before the Debtors are granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

I. Reimbursement or Contribution

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the time of allowance or disallowance, such Claim shall be forever disallowed and expunged notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Confirmation Date: (1) such Claim has been adjudicated as non-contingent or (2) the relevant holder of a Claim has Filed a non-contingent Proof of Claim on account of such Claim and a Final Order has been entered prior to the Confirmation Date determining such Claim as no longer contingent.

*J. **Term of Injunctions or Stays***

Unless otherwise provided in the Plan 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 extant 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.

ARTICLE X.
CONDITIONS PRECEDENT TO CONFIRMATION AND CONSUMMATION OF THE PLAN

A. Conditions Precedent to the Effective Date

It shall be a condition to the Effective Date of the Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of Article X.B hereof:

1. The RSA shall remain in full force and effect and shall not have been terminated, no termination event thereunder shall have occurred, and there shall be no default thereunder;

2. The Bankruptcy Court shall have entered the Confirmation Order, which shall be a Final Order, in form and substance consistent in all respects with the RSA and otherwise in form and substance reasonably acceptable to the Debtors and Required Consenting Lenders, and, if the Equity Party Consent Right (as defined in the RSA) is applicable, the Consenting Equity Parties, and which shall:

a. authorize the Debtors to take all actions necessary to enter into, implement, and consummate the contracts, instruments, releases, leases, indentures, and other agreements or documents created in connection with the Plan;

b. decree that the provisions in the Confirmation Order and the Plan are nonseverable and mutually dependent;

c. authorize the Debtors, as applicable/necessary, to: (i) implement the Restructuring Transactions; (ii) distribute the New Common Equity, if

applicable, pursuant to the exemption from registration under the Securities Act provided by section 1145 of the Bankruptcy Code or other exemption from such registration or pursuant to one or more registration statements; (iii) make all distributions and issuances as required under the Plan, including cash and the New Common Equity, if applicable; and (iv) enter into any agreements, transactions, and sales of property as set forth in the Plan Supplement;

d. if applicable, authorize the consummation of the Sale Transaction and the Purchaser's acquisition of the Acquired Assets free and clear of all Claims, Liens, interests and encumbrances other than those Assumed Liabilities and Permitted Encumbrances expressly contemplated by the Sale Transaction Documents;

e. authorize the implementation of the Plan in accordance with its terms; and

f. provide that, pursuant to section 1146 of the Bankruptcy Code, the assignment or surrender of any lease or sublease, and the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with the Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of assets contemplated under the Plan, shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax; and

3. the Debtors and the Purchaser, as applicable, shall have obtained all authorizations, consents, regulatory approvals, rulings, or documents that are necessary to implement and effectuate the Plan;

4. the final version of each of the Plan, the Definitive Documents, and all documents contained in any supplement to the Plan, including the Plan Supplement and any exhibits, schedules, amendments, modifications, or supplements thereto or other documents contained therein shall have been executed or Filed, as applicable, in form and substance consistent in all material respects with the RSA;

5. the Final Cash Collateral Order shall remain in full force and effect and no event of default shall have occurred and be continuing thereunder;

6. to the extent an Exit Facility is entered into, all conditions precedent to the effectiveness of the Exit Facility shall have been satisfied or duly waived, and the Exit Facility, including all documentation related thereto, shall be in effect (which may occur substantially contemporaneously with the occurrence of the Effective Date);

7. all conditions precedent to the closing of the Sale Transaction, if applicable, shall have been satisfied or waived in accordance with the terms of the Asset Purchase Agreement and the Sale Transaction Documents (which may occur substantially contemporaneously with the occurrence of the Effective Date);

8. the Restructuring Expenses shall have been paid in full in Cash;

9. the Professional Fee Escrow Account shall have been established and funded with the Professional Fee Escrow Amount;

10. the Administrative Claim Reserve Account shall have been established and funded with the Administrative Claims Reserve Amount;

11. the Priority Tax Reserve Account shall have been established and funded with the Priority Tax Reserve Amount;

12. the Debtors shall have implemented the Restructuring Transactions in a manner consistent with the RSA and the Plan (which may occur substantially contemporaneously with the occurrence of the Effective Date);

13. all governmental and third-party approvals and consents, including Bankruptcy Court approval, necessary in connection with the transactions contemplated by the Plan shall have been obtained, not be subject to unfulfilled conditions, and be in full force and effect, and all applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain, prevent, or otherwise impose materially adverse conditions on such transactions; and

14. all conditions precedent to the issuance of the New Common Equity, if applicable, other than any conditions related to the occurrence of the Effective Date, shall have occurred.

B. Waiver of Conditions

The conditions to Confirmation and to Consummation set forth in this Article X may be waived by the Debtors, with the prior written consent of the Required Consenting Lenders and, if the Equity Party Consent Right (as defined in the RSA) is applicable, the Consenting Equity Parties (not to be withheld unreasonably, conditioned, or delayed), without notice, leave, or order of the Bankruptcy Court or any formal action other than proceeding to confirm or consummate the Plan.

The stay of the Confirmation Order pursuant to Bankruptcy Rule 3020(e) shall be deemed waived by and upon the entry of the Confirmation Order, and the Confirmation Order shall take effect immediately upon its entry.

C. Substantial Consummation

"Substantial Consummation" of the Plan, as defined in 11 U.S.C. § 1101(2), shall be deemed to occur on the Effective Date.

D. Effect of Nonoccurrence of Conditions

If Consummation does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any Claims by the Debtors, any holders, or any other Entity; (2) prejudice in any manner the rights of the Debtors, any holders, or any other Entity; or (3) constitute an admission, acknowledgment, offer or undertaking by the Debtors, any holders, or any other Entity in any respect; *provided* that

all provisions of the RSA that survive termination thereof shall remain in effect in accordance with the terms thereof.

ARTICLE XI.
MODIFICATION, REVOCATION OR WITHDRAWAL OF THE PLAN

A. Modification and Amendments

Subject to the terms of the RSA and with the consent of the Required Consenting Lenders and, if the Equity Party Consent Right (as defined in the RSA) is applicable, the Consenting Equity Parties, except as otherwise specifically provided in the Plan, the Debtors reserve the right to modify the Plan, whether such modification is material or immaterial, and seek Confirmation consistent with the Bankruptcy Code and, as appropriate, not re-solicit votes on such modified Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 (as well as those restrictions on modifications set forth in the Plan), the Debtors expressly reserve their respective rights to revoke or withdraw, to alter, amend or modify the Plan with respect to such Debtor, one or more times, before or after Confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend or modify the Plan, or remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan.

B. Effect of Confirmation on Modifications

Entry of the Confirmation Order shall mean that all modifications or amendments to the Plan since the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or re-solicitation under Bankruptcy Rule 3019.

C. Revocation or Withdrawal of Plan

Subject to the terms of the RSA, the Debtors reserve the right to revoke or withdraw the Plan before the Confirmation Date and to file subsequent plans of reorganization, in each case, with respect to any Debtor or Debtors, upon filing notice with the Bankruptcy Court. If the Debtors revoke or withdraw the Plan with respect to any Debtor or Debtors, or if Confirmation or Consummation does not occur, then with respect to such applicable Debtor or Debtors: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of the Claims or Interests or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (3) nothing contained in the Plan shall: (i) constitute a waiver or release of any Claims or Interests; (ii) prejudice in any manner the rights of such Debtor, any holder, or any other Entity; or (iii) constitute an admission, acknowledgement, offer or undertaking of any sort by such Debtor, any holder, or any other Entity.

ARTICLE XII.
RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after 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 or Interest, including the resolution of any request for payment of any Administrative 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: (i) the assumption, assumption and assignment, or rejection 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 Claims arising therefrom, including Claims related to the rejection of an Executory Contract or Unexpired Lease, Cure Claims pursuant to section 365 of the Bankruptcy Code, or any other matter related to such Executory Contract or Unexpired Lease; (ii) amending, modifying, or supplementing, after the Effective Date, pursuant to Article V hereof, any Executory Contracts or Unexpired Leases to the list of Executory Contracts and Unexpired Leases to be assumed and assigned or rejected or otherwise; and (iii) any dispute regarding whether a contract or lease is or was executory, expired, or terminated;

4. ensure that distributions to holders of Allowed Claims and Interests are accomplished pursuant to the provisions of 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. adjudicate, decide, or resolve any and all matters related to sections 1141 and 1145 of the Bankruptcy Code;

7. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan, the Plan Supplement, or the Disclosure Statement, including the RSA;

8. enter and enforce any order for the sale of property pursuant to section 363, 1123, or 1146(a) of the Bankruptcy Code;

9. resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with Consummation, including interpretation or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;

10. 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;

11. resolve any cases, controversies, suits, disputes or Causes of Action with respect to the releases, injunctions, exculpations, and other provisions contained in Article IX of the Plan, and enter such orders as may be necessary or appropriate to enforce or implement such releases, injunctions, exculpations, and other provisions;

12. resolve any cases, controversies, suits, disputes or Causes of Action 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 VII.J.1 of the Plan;

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

14. determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created in connection with the Plan or the Disclosure Statement;

15. enter an order or final decree concluding or closing any of the Chapter 11 Cases;

16. adjudicate any and all disputes arising from or relating to distributions under the Plan;

17. 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;

18. determine requests for the payment of Claims entitled to priority pursuant to section 507 of the Bankruptcy Code;

19. hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with the Plan;

20. hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Restructuring Transactions, whether they occur before, on or after the Effective Date;

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

22. hear and determine all disputes involving the existence, nature, scope, or enforcement of any exculpations, discharges, injunctions, and releases granted in connection with and under the Plan, including under Article IX;

23. enforce all orders previously entered by the Bankruptcy Court; and

24. hear any other matter not inconsistent with the Bankruptcy Code.

ARTICLE XIII.
MISCELLANEOUS PROVISIONS

A. Immediate Binding Effect

Subject to Article X.A 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, the Wind Down Debtors, and the Plan Administrator, as applicable, and any and all holders of Claims or Interests (irrespective of whether their 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.

B. Additional Documents

On or before the Effective Date and subject to the terms of the RSA, 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. The Debtors, the Reorganized Debtors, or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, and all holders receiving distributions pursuant to the Plan and all other parties in interest may, 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.

C. Payment of Statutory Fees

All fees payable pursuant to section 1930(a) of the Judicial Code shall be paid by each of the Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or closed, whichever occurs first; *provided* that on and after the Effective Date, the Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, shall (1) pay in full in cash when due and payable, and shall be solely responsible for paying, any and all such fees and interest with respect to any and all disbursements (and any other actions giving rise to such fees and interest) of the Reorganized Debtors or the Wind Down Debtors, as applicable, and (2) File in the Chapter 11 Cases (to the extent they have not yet been closed, dismissed, or converted) quarterly reports as required by the Bankruptcy Code, Bankruptcy Rules, and Local Rules, as applicable, in connection therewith. The U.S. Trustee shall not be required to file any proof of claim or request for payment for quarterly fees.

D. Statutory Committee and Cessation of Fee and Expense Payment

On the Effective Date, if appointed, any statutory committee in the Chapter 11 Cases shall dissolve and members thereof shall be released and discharged from all rights and duties from or related to the Chapter 11 Cases, except for the filing of applications for compensation. The Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, shall no longer be responsible for paying any fees or expenses incurred by any statutory committees, if appointed, after the Effective Date.

E. Reservation of Rights

Except as expressly set forth in the Plan, the Plan shall have no force or effect unless the Bankruptcy Court enters the Confirmation Order, and the Confirmation Order shall have no force or effect if the Effective Date does not occur. 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 unless and until the Effective Date has occurred.

F. 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, manager, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

G. Notices

To be effective, all notices, requests and demands to or upon the Debtors shall be in writing (including by facsimile transmission). Unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed to the following:

1. <u>If to the Debtors, to:</u>

Salem Harbor Power Development LP
c/o Tateswood Energy Company, LLC
480 Wildwood Forest Drive, Suite 475
Spring, Texas 77380
Attention: John Lambert
Email: jlambert@tateswood.com

with copies (which shall not constitute notice) to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 6th Avenue
New York, New York 10019
Attention: Brian S. Hermann, John T. Weber, and Alice Nofzinger

E-mail address: bhermann@paulweiss.com
jweber@paulweiss.com
anofzinger@paulweiss.com

- and -

Young Conaway Stargatt & Taylor, LLP
1000 North King Street
Wilmington, Delaware 19801
Attention: Pauline K. Morgan and Andrew L. Magaziner
E-mail address: pmorgan@ycst.com
amagaziner@ycst.com

2. If to the Consenting Lenders, to:

Mayer Brown LLP
1221 Avenue of the Americas
New York, New York 10020
Attention: Brian Trust and Joaquin M. C De Baca
E-mail address: btrust@mayerbrown.com
jcdebaca@mayerbrown.com

- and -

Potter Anderson & Corroon LLP
1313 N. Market Street, 6th Floor
Wilmington, Delaware 19801
Attention: Christopher M. Samis and L. Katherine Good
E-mail address: csamis@potteranderson.com
kgood@potteranderson.com

After the Effective Date, the Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, may notify Entities that, in order to continue to receive documents pursuant to Bankruptcy Rule 2002, such Entity must File a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, are authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities who have Filed such renewed requests.

H. Entire Agreement

Except as otherwise indicated, the Plan and the Plan Supplement supersede 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.

I. Exhibits

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. After the exhibits and documents are Filed, copies of such exhibits and documents shall be available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from the website of the Notice, Claims, and Balloting Agent at https://cases.primeclerk.com/Salemharbor or the Bankruptcy Court's website at http://www.deb.uscourts.gov/. To the extent any exhibit or document is inconsistent with the terms of the Plan, unless otherwise ordered by the Bankruptcy Court, the non-exhibit or non-document portion of the Plan shall control.

J. Non-Severability of Plan Provisions

The provisions of the Plan, including its release, injunction, exculpation, and compromise provisions, are mutually dependent and non-severable. 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: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the consent of the Debtors, consistent with the terms set forth herein; and (3) non-severable and mutually dependent.

K. 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 their respective affiliates, agents, representatives, members, principals, shareholders, 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, as applicable, and any previous plan and, therefore, no such parties 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 or any previous plan, as applicable.

L. 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, or papers filed with the Bankruptcy Court prior to the Confirmation Date.

M. Closing of Chapter 11 Cases

The Reorganized Debtors or the Wind Down Debtors, as applicable, 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. As of the Effective Date, the Debtors, the Reorganized Debtors, or the Wind Down Debtors, as applicable, may submit separate orders to the Bankruptcy Court under

certification of counsel closing the Chapter 11 Cases of substantially all of the Debtors (collectively, the "Closing Cases"), with the exception of a single Chapter 11 Case designated by the Debtors, the Reorganized Debtors, or the Plan Administrator on behalf of the Wind Down Debtors, as applicable (the "Surviving Case"), (1) otherwise resolving Disputed Claims in accordance with Article VIII and reporting distributions on Allowed Claims in accordance with Article VII; and (2) administratively consolidating the claims registers of the Closing Cases under the claims register for the Surviving Case. Nothing in the Plan shall authorize the closing of any case *nunc pro tunc* to a date that precedes the date any such order is entered. Any request for *nunc pro tunc* relief shall be made on motion served on the U.S. Trustee, and the Bankruptcy Court shall rule on such request after notice and a hearing. Upon the Filing of a motion to close the Surviving Case, the Reorganized Debtors or the Plan Administrator on behalf of the Wind Down Debtors, as applicable, shall file a final report with respect to all of the Chapter 11 Cases pursuant to Local Rule 3022-1(c).

[*Remainder of this page intentionally left blank*]

Respectfully submitted, as of April 20, 2022

Salem Harbor Power Development LP (f/k/a Footprint Power Salem Harbor Development LP)

Highstar Salem Harbor Holdings GP, LLC (f/k/a Highstar Footprint Holdings GP, LLC)

Highstar Salem Harbor Power Holdings L.P. (f/k/a Highstar Footprint Power Holdings L.P.)

Salem Harbor Power FinCo GP, LLC (f/k/a Footprint Power Salem Harbor FinCo GP, LLC)

Salem Harbor Power FinCo, LP (f/k/a Footprint Power Salem Harbor FinCo, LP)

SH Power DevCo GP LLC (f/k/a Footprint Power SH DevCo GP LLC)

By: /s/ *John R. Castellano*
Name: John R. Castellano
Title: Chief Restructuring Officer

Exhibit B

Restructuring Support Agreement

Execution Version

THIS RESTRUCTURING SUPPORT AGREEMENT IS NOT AN OFFER, NOR A SOLICITATION FOR AN OFFER, WITH RESPECT TO ANY SECURITIES, NOR IS IT A SOLICITATION OF ACCEPTANCES OF A CHAPTER 11 PLAN WITHIN THE MEANING OF SECTIONS 1125 AND 1126 OF THE BANKRUPTCY CODE. ANY SUCH OFFER OR SOLICITATION WILL COMPLY WITH ALL APPLICABLE SECURITIES LAWS AND PROVISIONS OF THE BANKRUPTCY CODE.

THIS RESTRUCTURING SUPPORT AGREEMENT IS A PART OF A COMPREHENSIVE COMPROMISE AND SETTLEMENT, EACH ELEMENT OF WHICH IS CONSIDERATION FOR THE OTHER ELEMENTS AND AN INTEGRAL ASPECT OF THE RESTRUCTURING. THIS RESTRUCTURING SUPPORT AGREEMENT IS CONFIDENTIAL AND SUBJECT TO FEDERAL RULE OF EVIDENCE 408. NOTHING IN THIS RESTRUCTURING SUPPORT AGREEMENT SHALL CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, A STIPULATION OR A WAIVER, AND EACH STATEMENT CONTAINED HEREIN IS MADE WITHOUT PREJUDICE SOLELY FOR SETTLEMENT PURPOSES, WITH A FULL RESERVATION AS TO ALL RIGHTS, REMEDIES, CLAIMS OR DEFENSES OF THE PARTIES.

THE TRANSACTIONS DESCRIBED HEREIN WILL BE SUBJECT TO THE NEGOTIATION AND COMPLETION OF DEFINITIVE DOCUMENTATION INCORPORATING THE TERMS SET FORTH HEREIN, AND THE CLOSING OF ANY TRANSACTION SHALL BE SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN SUCH AGREED DEFINITIVE DOCUMENTATION.

FOOTPRINT POWER SALEM HARBOR DEVELOPMENT LP, ET AL.

RESTRUCTURING SUPPORT AGREEMENT

March 23, 2022

This RESTRUCTURING SUPPORT AGREEMENT (together with the exhibits and schedules attached hereto, as each may be amended, restated, supplemented, or otherwise modified from time to time in accordance with the terms hereof, this "Agreement"), dated as of March 23, 2022, is entered into by and among: (i) Footprint Power Salem Harbor Development LP ("DevCo") and its undersigned affiliates (collectively with DevCo, the "Salem Harbor Entities" or the "Debtors" and each a "Salem Harbor Entity"); (ii) the undersigned lenders (the "Consenting Lenders") that are party to that certain Credit Agreement, dated as of January 9, 2015 (as amended, restated, supplemented or otherwise modified and in effect from time to time, the "Credit Agreement" and, together with the collateral and ancillary documents related thereto, the "Prepetition Credit Documents" and, the loans provided to DevCo thereunder, the "Prepetition Secured Loans"), by and among DevCo, as Borrower, MUFG Union Bank, N.A., as Administrative Agent, Collateral Agent, and Depositary Bank (the "Prepetition Agent"), BNP Paribas, as Issuing Bank, and the lenders party thereto), and any holder of Prepetition Secured Loans that may become a party hereto in accordance with Section 14 hereof;

and (iii) the undersigned Equity Parties (as defined below), together with their respective successors and permitted assigns (collectively, the "Consenting Equity Parties," and together with the Consenting Lenders, the "Consenting Stakeholders"). This Agreement collectively refers to the Salem Harbor Entities and the Consenting Stakeholders as the "Parties" and each individually as a "Party."

RECITALS

WHEREAS, the Parties have engaged in good faith, arm's-length negotiations regarding certain restructuring transactions (the "Restructuring Transactions") pursuant to the terms and conditions set forth in this Agreement that is consistent with the terms and conditions of the term sheet attached hereto as **Exhibit A** (the "Restructuring Term Sheet");

WHEREAS, it is anticipated that the Restructuring Transactions will be implemented through a pre-arranged plan of reorganization (as may be amended, restated, supplemented, or otherwise modified from time to time in accordance with its terms and this Agreement, the "Plan") to be consummated in jointly administered voluntary cases commenced by the Salem Harbor Entities (the "Chapter 11 Cases") under chapter 11 of the Bankruptcy Code[1] in the Bankruptcy Court, pursuant to the Plan, which will be filed by the Salem Harbor Entities in the Chapter 11 Cases; and

WHEREAS, the Parties have agreed to take certain actions in support of the Restructuring Transactions on the terms and conditions set forth in this Agreement and the Restructuring Term Sheet.

NOW, THEREFORE, in consideration of the promises, mutual covenants, and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the Parties, intending to be legally bound, hereby agrees as follows:

AGREEMENT

1. Certain Definitions. The following terms used in this Agreement shall have the following definitions:

(a) "Agreement" has the meaning set forth in the preamble hereof and includes, for the avoidance of doubt, all Exhibits and Schedules.

(b) "Alternative Transaction" has the meaning set forth in Section 6(b) hereof.

(c) "Bankruptcy Code" means title 11 of the United States Code, 11 U.S.C. §§ 101–1532.

[1] Unless otherwise noted, capitalized terms used but not defined herein shall have the meanings given to such terms in the Restructuring Term Sheet (including any schedules thereto).

(d) "Bankruptcy Court" means the United States Bankruptcy Court for the District of Delaware.

(e) "Bidding Procedures" means the bidding procedures and deadlines, including the auction timing and related rules and limitations, in form and substance reasonably acceptable to the Prepetition Agent, that are approved by the Bankruptcy Court pursuant to the Bidding Procedures Order.

(f) "Bidding Procedures Order" means an order of the Bankruptcy Court approving the Bidding Procedures.

(g) "Cash Collateral" means "cash collateral" as that term is defined in section 363(a) of the Bankruptcy Code.

(h) "Cash Collateral Orders" means the Interim Cash Collateral Order and any order entered on a final basis approving the Debtors' use of Cash Collateral.

(i) "Chapter 11 Cases" has the meaning set forth in the recitals hereof.

(j) "Claim" means any claim against the Debtors, whether or not asserted, as that term is defined in section 101(5) of the Bankruptcy Code.

(k) "Credit Agreement" has the meaning set forth in the preamble hereof.

(l) "Credit Facility Claims" has the meaning set forth in Section 2(a)(ii) hereof.

(m) "Confirmation Hearing" means the hearing held by the Bankruptcy Court to consider confirmation of the Plan pursuant to sections 1128 and 1129 of the Bankruptcy Code.

(n) "Confirmation Order" means an order of the Bankruptcy Court confirming the Plan in the Chapter 11 Cases.

(o) "Consenting Equity Parties" has the meaning set forth in the preamble hereof.

(p) "Consenting Stakeholder Affiliate" means an affiliate of a Consenting Stakeholder.

(q) "Consenting Lenders" has the meaning set forth in the preamble hereof.

(r) "Consenting Stakeholders" has the meaning set forth in the preamble hereof.

(s) "Counsel to the Prepetition Agent" means Mayer Brown LLP, as counsel to the Prepetition Agent.

(t) "Debtors" has the meaning set forth in the preamble hereof.

(u) "Definitive Documentation" has the meaning set forth in Section 4(a) hereof.

(v) "Defaulting Stakeholder" has the meaning set forth in Section 9(a) hereof.

(w) "DevCo" has the meaning set forth in the preamble hereof.

(x) "Disclosure Statement" means the disclosure statement in respect of the Plan, including all exhibits and schedules thereto, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

(y) "Effective Date" means the date upon which all conditions precedent to the effectiveness of the Plan have been satisfied or are expressly waived in accordance with the terms hereof, as the case may be, and on which the Restructuring Transactions become effective or are consummated pursuant to the Plan and the Confirmation Order.

(z) "Equity Party Consent Right" has the meaning set forth in Section 4(b) hereof.

(aa) "Equity Parties" means, collectively, OCM-Highstar Footprint Aggregator LLC, in its capacity as a direct holder of limited partnership interests in TopCo, and any other direct holder of limited partnership interests in TopCo that become party to this Agreement after the RSA Effective Date.

(bb) "Equity Party Counsel" means Munger Tolles & Olson LLP, in its capacity as counsel to OCM-Highstart Footprint Aggregator LLC.

(cc) "Exit Facility" has the meaning set forth in the Restructuring Term Sheet.

(dd) "Exit Facility Credit Agreement" has the meaning set forth in the Restructuring Term Sheet.

(ee) "Exit Facility Documents" means, collectively, if applicable, the Exit Facility Credit Agreement, including any amendments, modifications, or supplements thereto, and together with any related notes, certificates, agreements, letters of credit, security agreements, documents, and instruments (including any amendments, modifications, or supplements of any of the foregoing) related to or executed in connection therewith.

(ff) "Exhibits and Schedules" means, collectively, each of the exhibits attached to this Agreement, including the Restructuring Term Sheet, and any schedules to such exhibits.

(gg) "Interests" means the common stock, preferred stock, limited liability company interests, partnership interests, and any other equity, ownership, or profits interests of any Debtor and options, warrants, rights, or other securities or agreements to acquire the common stock, preferred stock, limited liability company interests, or other equity, ownership, or profits interests of any Debtor.

(hh) "Interim Cash Collateral Order" means the proposed form of order approving the Debtors' use of Cash Collateral on an interim basis, in form and substance reasonably acceptable to the Required Consenting Lenders both as a Definitive Documentation or otherwise.

(ii) "Lender/IEP State Court Action" means that certain action pending before the Supreme Court of the State of New York, captioned as *Iberdrola Energy Projects v. MUFG Union Bank, N.A.*, *et al.*, Case No. 653515/2021.

(jj) "Lender Termination Event" has the meaning set forth in Section 8 hereof.

(kk) "Milestones" has the meaning set forth in Section 5 hereof.

(ll) "New Common Equity" has the meaning set forth in the Restructuring Term Sheet.

(mm) "New Governance Documents" has the meaning set forth in the Restructuring Term Sheet.

(nn) "Parties" has the meaning set forth in the preamble hereof.

(oo) "Petition Date" means the date on which the Salem Harbor Entities commence the Chapter 11 Cases by filing voluntary petitions under chapter 11 of the Bankruptcy Code with the Bankruptcy Court.

(pp) "Prepetition Agent" has the meaning set forth in the preamble hereof.

(qq) "Prepetition Agent Advisors" means, collectively, Counsel to the Prepetition Agent, Potter Anderson & Corroon LLP, as Delaware counsel to the Prepetition Agent, Goodwin Procter LLP, as Massachusetts counsel to the Prepetition Agent, and PJT Partners LP, as financial advisor to the Prepetition Agent.

(rr) "Prepetition Credit Documents" has the meaning set forth in the preamble hereof.

(ss) "Prepetition Secured Loans" has the meaning set forth in the preamble hereof.

(tt) "Required Consenting Lenders" means Consenting Lenders that represent more than fifty percent (50%) of the aggregate Credit Facility Claims held by the Consenting Lenders. Unless otherwise specified, any item or issue requiring a decision by Consenting Lenders, including, without limitation the Transaction Election, shall require the approval of lenders constituting the Required Consenting Lenders.

(uu) "Restructuring Term Sheet" has the meaning set forth in the recitals hereof.

(vv) "Restructuring Transactions" has the meaning set forth in the recitals hereof.

(ww) "RSA Effective Date" has the meaning set forth in Section 2 hereof.

(xx) "Sale Process" has the meaning set forth in the Restructuring Term Sheet.

(yy) "Sale Transaction" has the meaning set forth in the Restructuring Term Sheet.

(zz) "Salem Harbor Entities" has the meaning set forth in the preamble hereof.

(aaa) "Salem Harbor Termination Event" has the meaning set forth in Section 9 hereof.

(bbb) "Securities Act" means the Securities Act of 1933, 15 U.S.C. §§ 77a–77aa, as amended.

(ccc) "Solicitation Materials" means all solicitation materials with respect to the Plan, including the Disclosure Statement, the Solicitation Order, the related ballots, related notices, and any other forms related to solicitation of acceptances of the Plan.

(ddd) "Solicitation Motion" means the motion seeking entry of the Solicitation Order.

(eee) "Solicitation Order" means the order entered by the Bankruptcy Court (1) granting approval of the Solicitation Materials and the Disclosure Statement as containing, among other things, "adequate information" as required by section 1125 of the Bankruptcy Code and (2) scheduling a hearing for confirmation of the Plan.

(fff) "Termination Date" has the meaning set forth in Section 12(a) hereof.

(ggg) "Transaction Election" has the meaning set forth in the Restructuring Term Sheet.

(hhh) "Transfer" has the meaning set forth in Section 14(a) hereof.

(iii) "Transferee Joinder" means a joinder substantially in the form attached hereto as **Exhibit B**.

(jjj) "Transferor" has the meaning set forth in Section 14(a) hereof.

2. RSA Effective Date. This Agreement shall become effective, and the obligations contained herein shall become binding upon the Parties, upon the first date (such date, the "RSA Effective Date") that:

(a) this Agreement has been executed and delivered by all of the following:

(i) each Salem Harbor Entity;

(ii) Consenting Lenders holding, in aggregate, at least two-thirds in principal amount of all Claims and commitments (including, without limitation, Letter of Credit Loan commitments under the Prepetition Credit Documents) (the "Credit Facility Claims"); and

(iii) the Equity Parties.

(b) the reasonable and documented fees and out-of-pocket expenses of the Prepetition Agent Advisors invoiced and outstanding as of the date hereof have been paid in full in cash.

3. Exhibits and Schedules Incorporated by Reference. The Exhibits and Schedules are expressly incorporated herein and made a part of this Agreement, and all references to this Agreement shall include the Exhibits and Schedules. In the event of any inconsistency between this Agreement (excluding the Exhibits and Schedules) and the Exhibits and Schedules, the Exhibits and Schedules shall govern. In the event of any inconsistency between the terms of this Agreement (including the Exhibits and Schedules) and the Plan, the terms of the Plan shall govern.

4. Definitive Documentation.

(a) The definitive documents and agreements governing the Restructuring Transactions (collectively, the "Definitive Documentation") shall include, without limitation:

(i) this Agreement (as amended, modified, or otherwise supplemented);

(ii) the Plan and any exhibit to the Plan or document contained in a supplement to the Plan that is not otherwise identified herein or in the Restructuring Term Sheet;

(iii) the Confirmation Order and any motion or other pleadings related to the Plan, all exhibits thereto, or confirmation of the Plan;

(iv) the Disclosure Statement, Solicitation Motion and the Solicitation Materials;

(v) the motion by the Debtors seeking entry of the Solicitation Order and the Solicitation Order;

(vi) the Cash Collateral Orders and any motions or other pleadings or documents to be filed in support of the entry of the Cash Collateral Orders;

(vii) the (A) Bidding Procedures and any amendments, modifications, or supplements thereto, (B) motion by the Debtors seeking entry of the Bidding Procedures Order, (C) the Bidding Procedures Order, and (D) any asset purchase agreement entered into by the Debtors in connection with the Sale Process and the Sale Transaction, if any;

(viii) the Exit Facility Documents, if applicable; and

(ix) the New Governance Documents, if applicable.

(b) Except as set forth herein, the Definitive Documentation (and any modifications, restatements, supplements or amendments to any of them) will, after the RSA Effective Date, remain subject to negotiation and shall, upon completion, contain terms, conditions, representations, warranties, and covenants, as applicable, consistent in all material respects with the terms of this Agreement (including the Exhibits and Schedules) and be in form and substance reasonably acceptable in all respects to each of: (i) the Salem Harbor Entities, (ii) the Required Consenting Lenders and (iii) subject to the Equity Party Consent Right, the Consenting Equity Parties. Notwithstanding anything to the contrary herein, the Definitive Documentation executed or in a form attached to this Agreement as of the RSA Effective Date are deemed to be in form and substance reasonably acceptable to each of the Salem Harbor Entities, the Required Consenting Lenders, and, subject to the Equity Party Consent Right, the Consenting Equity Parties. The "Equity Party Consent Right" means any of the Consenting Equity Parties' right to consent or approve any of the Definitive Documentation or other documents referenced herein (or any amendments, modifications or supplements to any of the foregoing), as applicable, which right shall apply solely to the extent such Definitive Documentation or such other documents referenced herein (or such amendments, modifications or supplements), as applicable, (A) adversely affects, directly or indirectly, in any respect the economic rights, waivers, or releases proposed to be granted to, or received by, the Consenting Equity Parties pursuant to the Plan (including, but not limited to, through the treatment (or change to the treatment) under the Plan of any claim or interest), other than such different treatment that may be consented to by

any Consenting Equity Party, or (B) adversely affects, directly or indirectly, in any respect any obligation any of the Consenting Equity Parties may have pursuant to the Plan.

5. Milestones. The Salem Harbor Entities shall implement the Restructuring Transactions in accordance with the following milestones (the "Milestones"); provided that the Salem Harbor Entities may extend a Milestone only with the express prior written consent of the Required Consenting Lenders:

(a) No later than March 23, 2022 at 11:59 p.m. (Prevailing Eastern Time), the Petition Date shall occur.

(b) No later than three (3) business days following the Petition Date, the Bankruptcy Court shall have entered the Interim Cash Collateral Order.

(c) No later than 9 days following the Petition Date, the Salem Harbor Entities shall have filed a motion seeking entry of the Bidding Procedures Order.

(d) No later than 28 days following the Petition Date, the Salem Harbor Entities shall have filed the Plan, Disclosure Statement and Solicitation Motion.

(e) No later than 30 days following the Petition Date, the Bankruptcy Court shall have entered a Cash Collateral Order approving the Debtors' use of Cash Collateral on a final basis.

(f) No later than 30 days following the Petition Date, the Bankruptcy Court shall have entered the Bidding Procedures Order.

(g) No later than 65 days following the Petition Date, the Bankruptcy Court shall have entered the Solicitation Order approving the Disclosure Statement and Solicitation Materials.

(h) No later than 14 days prior to the Confirmation Hearing, the Debtors shall make the Transaction Election.

(i) No later than 110 days following the Petition Date, the Bankruptcy Court shall have entered the Confirmation Order.

(j) No later than 150 days following the Petition Date, the Effective Date shall have occurred; *provided*, *however*, to the extent additional time is required for obtaining approval from the Federal Energy Regulatory Commission, this Milestone shall be automatically extended to no later than 185 days following the Petition Date.

6. Commitment of Consenting Stakeholders. Each Consenting Stakeholder shall (severally and not jointly and severally) from the RSA Effective Date until the occurrence of a Termination Date (as defined in Section 12):

(a) support and cooperate with the Salem Harbor Entities and make reasonable best efforts to consummate the Restructuring Transactions in accordance with the Plan and the terms and conditions of this Agreement, the Restructuring Term Sheet, and the other Definitive Documentation (but without limiting the applicable consent and approval rights provided in this Agreement and the Definitive Documentation), by: (i) voting all of its Claims and/or Interests, as applicable, now or hereafter owned by such Consenting Stakeholder (or for which such Consenting Stakeholder now or hereafter serves as the nominee, investment manager, or advisor for holders thereof) to accept the Plan; (ii) timely returning a duly-executed ballot in connection therewith in accordance with the Solicitation Order; (iii) not "opting out" of or objecting to any releases, indemnity and exculpation under the Plan (and to the extent required by the ballot, affirmatively "opting in" to such releases, indemnity and exculpation) (except such Consenting Stakeholder shall no longer be prohibited from "opting out" of, or required to "opt in" to, granting such a release, indemnity, or exculpation to any Party that has materially breached or terminated this Agreement); and (iv) provide any consents as may be necessary or required, including under any organizational documents or governance agreements applicable to the Salem Harbor Entities, to effectuate the Restructuring Transactions as set forth herein and in the Restructuring Term Sheet;

(b) not, directly or indirectly, seek, support, negotiate, engage in any discussions relating to, or solicit an Alternative Transaction (as defined below);

(c) not withdraw, amend, or revoke (or cause to be withdrawn, amended, or revoked) its consent or vote with respect to the Plan; provided however, that upon the occurrence of a Termination Date all consents and votes tendered by the Consenting Stakeholders shall be immediately revoked and deemed void *ab initio*, without any further notice to or action, order, or approval of the Bankruptcy Court;

(d) support, and not object to, or delay or impede, or take any other action to interfere, directly or indirectly, with the Restructuring Transactions;

(e) support, and not object to, or delay or impede, or take any other action to interfere, directly or indirectly, with the entry by the Bankruptcy Court of any of the Cash Collateral Orders, the Bidding Procedures Order, the Solicitation Order, or the Confirmation Order;

(f) solely with respect to the Consenting Lenders and subject to the Lender Voluntary Financing Right, negotiate with the Debtors in good faith regarding the sizing and terms of the Exit Facility, if any; provided, that the Debtors and Required Consenting Lender shall agree upon the sizing of the Exit Facility, if any, by no later than forty-five (45) days after the Petition Date;

(g) timely seek any required regulatory, governmental or third-party approvals that may be necessary to effectuate the Restructuring as contemplated by this Agreement;[2] and

(h) to the extent any legal or structural impediment arises that would prevent, hinder, or delay the consummation of the Restructuring Transactions, negotiate in good faith appropriate additional or alternative provisions to address any such impediment; provided that the economic outcome for the Parties, the anticipated timing of the Effective Date and other material terms of this Agreement must be substantially preserved in any such alternate provisions.

Notwithstanding the foregoing, (i) nothing in this Agreement and neither a vote to accept the Plan by any Consenting Stakeholder nor the acceptance of the Plan by any Consenting Stakeholder shall (x) be construed to prohibit any Consenting Stakeholder from contesting whether any matter, fact, or thing is a breach of, or is inconsistent with, this Agreement or the Definitive Documentation, or exercising any consent rights provided with respect to the Required Consenting Lenders or the Consenting Equity Parties hereunder or its rights or remedies specifically reserved herein or in the Prepetition Credit Documents or the Definitive Documentation; (y) be construed to prohibit or limit any Consenting Stakeholder from appearing as a party in interest in any matter to be adjudicated in the Chapter 11 Cases, so long as, from the RSA Effective Date until the occurrence of a Termination Date, such appearance and the positions advocated in connection therewith are not inconsistent with this Agreement, are not prohibited by this Agreement and are not for the purpose of hindering, delaying, or preventing the consummation of the Restructuring Transactions; or (z) limit the ability of a Consenting Stakeholder to sell or enter into any transactions in connection with any Claims or Interests or any other claims against or interests in the Salem Harbor Entities, subject to Section 14 of this Agreement, and (ii) except as otherwise expressly provided in this Agreement, nothing in this Agreement shall require any Consenting Stakeholder to incur any expenses, liabilities, or other obligations, or agree to any commitments, undertakings, concessions, indemnities, or other arrangements that would reasonably be expected to result in expenses, liabilities, or other obligations to any Consenting Stakeholder.

[2] It being understood that no individual Consenting Lender shall be required to consummate a Stand-Alone Restructuring (as defined in the Restructuring Term Sheet) which would require participation in an ownership or governance structure inconsistent with applicable state or federal regulatory requirements.

7. Commitment of the Salem Harbor Entities.

(a) Subject to clause (c) of this Section 7, the Salem Harbor Entities shall, from the RSA Effective Date until the occurrence of a Termination Date:

(i) (A) support and take all reasonable actions necessary to implement and consummate the Restructuring in as timely a manner as practicable under applicable law and on the terms and conditions contemplated by this Agreement, the Restructuring Term Sheet, and the Definitive Documentation, (B) not take any actions, directly or indirectly, inconsistent with this Agreement, the Restructuring Term Sheet, or the Definitive Documentation, including, without limitation, actions (including motions and other filings in the Bankruptcy Court) to hinder or delay the Restructuring Transactions, and (C) negotiate in good faith, execute, perform their obligations under, and consummate the transactions contemplated by, the Definitive Documentation to which the Salem Harbor Entities are (or will be) parties;

(ii) timely file a formal objection, in form and substance reasonably acceptable to the Required Consenting Lenders, to any motion filed with the Bankruptcy Court by a third-party seeking the entry of an order (A) directing the appointment of a trustee or examiner with enlarged powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code with respect to any Salem Harbor Entity or their respective properties, (B) converting the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, (C) dismissing the Chapter 11 Cases, (D) modifying or terminating the Salem Harbor Entities' exclusive right to file or solicit acceptances of a plan of reorganization; or (E) that would hinder, impede, or delay the implementation of the Restructuring as contemplated by this Agreement;

(iii) timely file a formal objection, in form and substance reasonably acceptable to the Required Consenting Lenders, to any motion filed with the Bankruptcy Court by a third-party seeking the entry of an order challenging the validity, enforceability, perfection, or priority of, or seeking avoidance or subordination of, any portion of the Credit Facility Claims, as applicable, or asserting any other cause of action against or with respect or relating to such claims or any liens securing such claims (if applicable);

(iv) timely comply with all Milestones;

(v) timely seek any required regulatory, governmental or third-party approvals that may be necessary to effectuate the Restructuring as contemplated by this Agreement;

(vi) to the extent that any legal or structural impediment arises that would prevent, hinder, or delay the consummation of the transactions contemplated in this Agreement or the Plan, negotiate in good faith appropriate additional or alternative provisions to address any such impediment, in consultation with the Required Consenting Lenders and the Consenting Equity Parties; provided that the economic outcome for the Parties, the anticipated timing of the Effective Date and other material terms of this Agreement must be substantially preserved in any such alternate provisions.

(vii) except in connection with the Sale Process, the Sale Transaction, and the Bidding Procedures, not sell, or file any motion or application seeking to sell, any assets other than in the ordinary course of business without the prior written consent of the Required Consenting Lenders (not to be unreasonably withheld or delayed);

(viii) (A) not make or declare any dividends, distributions, or other payments on account of their equity and (B) not make any transfers (whether by dividend, distribution, or otherwise) to any direct or indirect parent entity or equityholder that is not a Salem Harbor Entity;

(ix) maintain their good standing under the laws of the state or other jurisdiction in which they are incorporated or organized;

(x) promptly notify Counsel to the Prepetition Agent and the Equity Party Counsel in writing of the commencement of any governmental or third party complaints, litigations, investigations, or hearings (or communications indicating that the same may be contemplated or threatened);

(xi) to the extent consistent with the exercise of the fiduciary duties of the Salem Harbor Entities, seek to avoid any preferential payments or liens made or imposed within the 90-day period prior to the Petition Date;

(xii) if the Salem Harbor Entities know of a breach by any Party of such Party's obligations, undertakings, representations, warranties, or covenants set forth in this Agreement, furnish prompt written notice (and in any event within two (2) business days of such actual knowledge) to Counsel to the Prepetition Agent and the Consenting Equity Parties;

(xiii) negotiate with the Consenting Lenders in good faith regarding the sizing and terms of the Exit Facility, if any; provided, that the Debtors and Required Consenting Lender shall agree upon the

sizing of the Exit Facility (in all cases subject to the Lender Voluntary Financing Right), if any, by no later than forty-five (45) days after the Petition Date, and thereafter the Debtors shall file modified or amended Solicitation Materials incorporating the sizing of the Exit Facility, if any, with the Bankruptcy Court as necessary to comply with the Milestones; and

(xiv) pay in cash (A) prior to the Petition Date, all reasonable and documented fees and out-of-pocket expenses accrued prior to the Petition Date for which invoices or receipts are furnished by the Prepetition Agent Advisors, (B) after the Petition Date, subject to any applicable orders of the Bankruptcy Court but without the need to file fee or retention applications, all reasonable and documented fees and out-of-pocket expenses incurred prior to (to the extent not previously paid), on, and after the Petition Date by the Prepetition Agent Advisors, and (C) on the Effective Date, reimbursement to the Prepetition Agent Advisors for all reasonable and documented fees and out-of-pocket expenses incurred and outstanding in connection with the Restructuring Transactions (including any estimated fees and out-of-pocket expenses estimated to be incurred through the Effective Date pursuant to the terms and conditions of the Plan).

(b) Except as otherwise contemplated by the Bidding Procedures, the Salem Harbor Entities shall not, directly or indirectly, at any time prior to consummation of the Restructuring Transactions, solicit, encourage or initiate any offer or proposal from, or actively negotiate term sheets or other definitive documentation, or enter into any agreement (other than a confidentiality agreement permitted under this Section 7(b)) with, any person or entity concerning any actual or proposed transaction involving any or all of any dissolution, winding up, liquidation, reorganization (including a competing plan of reorganization or other financial and/or corporate restructuring of the Salem Harbor Entities), assignment for the benefit of creditors, transaction, merger, consolidation, tender offer, exchange offer, business combination, joint venture, partnership, sale of a material portion of assets, sale, issuance, or other disposition of any equity or debt interests, financing (debt or equity), or recapitalization or restructuring of any of the Debtors, other than the Restructuring Transactions (each, an "Alternative Transaction"); provided, however, that, except as otherwise provided in the Bidding Procedures, if any of the Salem Harbor Entities receives a proposal or expression of interest regarding any Alternative Transaction from the RSA Effective Date until the occurrence of a Termination Date, the Salem Harbor Entities shall, (A) within twenty-four (24) hours, (i) notify Counsel to the Prepetition Agent and the Consenting Equity Parties of any proposals for, or expressions of interest in, an Alternative Transaction, with such notice to include the material terms thereof, including the identity of the person or group of

persons involved, and (ii) furnish Counsel to the Prepetition Agent and the Consenting Equity Parties with copies of any written offer, oral offer, or any other information that they receive relating to the foregoing and shall promptly inform Counsel to the Prepetition Agent and the Consenting Equity Parties of any material changes to such proposals, and (B) not enter into any confidentiality agreement with a party interested in an Alternative Transaction unless such party consents to identifying and providing to Counsel to the Prepetition Agent and the Consenting Equity Parties (under a reasonably acceptable confidentiality agreement) the information contemplated under this Section 7(b). Notwithstanding anything to the contrary in this Agreement, the solicitation, encouragement or initiation of any offer or proposal from, or active negotiation of term sheets or other definitive documentation with, any third-party in connection with the Bidding Procedures and Sale Process is expressly permitted under this Agreement, and any such proposed transaction shall not constitute an Alternative Transaction as defined herein.

(c) Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall require the Salem Harbor Entities or any directors, officers, managers, or members of the Salem Harbor Entities, each in its capacity as a director, officer, manager, or member of the Salem Harbor Entities, to take any action or to refrain from taking any action, to the extent inconsistent with the exercise of their fiduciary duties under applicable law, rule, or regulation (as reasonably determined by them in good faith after receiving written advice from outside counsel).

(d) From and after the RSA Effective Date, the Salem Harbor Entities will operate the business of the Salem Harbor Entities in the ordinary course (including preserving all rights and assets necessary for such operation), maintain current payment with all contracts necessary for continued operation and keep the Consenting Lenders reasonably informed about the operations of the Salem Harbor Entities, and the Salem Harbor Entities shall provide to the Prepetition Agent Advisors, and shall direct their asset manager, officers, advisors, and other representatives to provide the Prepetition Agent Advisors, (A) reasonable access (without material disruption to the conduct of the Salem Harbor Entities' businesses) to the Salem Harbor Entities' books and records during normal business hours; (B) reasonable access to the asset manager and advisors of the Salem Harbor Entities during normal business hours; and (C) timely and reasonable responses to all reasonable diligence requests, in each case, for the purposes of evaluating the Salem Harbor Entities' assets, liabilities, operations, businesses, finances, strategies, prospects, and affairs.

8. Lender Termination Events. The obligations of the Consenting Lenders under this Agreement shall automatically terminate upon the occurrence of any of the following events, unless waived, in writing (with email from counsel to the Prepetition Agent being sufficient), by

the Required Consenting Lenders on a prospective or retroactive basis (each, a "Lender Termination Event"):

(a) the failure to meet any of the Milestones unless (i) such failure is the result of any act, omission, or delay on the part of the Consenting Lenders, as the case may be, in violation of their obligations under this Agreement or (ii) such Milestone is extended in accordance with Section 5 of this Agreement; provided that, a Party in breach of any of its respective undertakings, obligations, representations, warranties, or covenants set forth in this Agreement cannot enforce this Section 8(a);

(b) the occurrence of a material breach of this Agreement by any Salem Harbor Entity that has not been cured (if susceptible to cure) before the earlier of (i) five (5) business days after written notice to the Salem Harbor Entities of such material breach from the Prepetition Agent and the Required Consenting Lenders, as the case may be, asserting such termination and (ii) one (1) day prior to any proposed Effective Date;

(c) the conversion of one or more of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code;

(d) the dismissal of one or more of the Chapter 11 Cases;

(e) the appointment of a trustee, receiver, or examiner with expanded powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code in one or more of the Chapter 11 Cases;

(f) (i) any Definitive Documentation does not comply with Section 4 of this Agreement or (ii) any other document or agreement necessary to consummate the Restructuring Transactions is not reasonably acceptable (as applicable) to the Required Consenting Lenders;

(g) the Salem Harbor Entities (i) amend or modify, or file a pleading seeking authority to amend or modify, any Definitive Documentation in a manner that is materially inconsistent with this Agreement, (ii) suspend, withdraw, or revoke their support for the Restructuring Transactions, (iii) actively negotiate term sheets or other definitive documentation regarding an Alternative Transaction, or (iv) publicly announce their intention to take any such action listed in clauses (i) through (iii) of this subsection;

(h) any Salem Harbor Entity (i) files or publicly announces that it will file any plan of reorganization other than the Plan or (ii) withdraws or publicly announces its intention not to support the Plan;

(i) other than in connection with the Sale Process, the Sale Transaction, and the Bidding Procedures, any Salem Harbor Entity files any motion or application seeking authority to sell any material assets without the prior written consent of the Required Consenting Lenders;

(j) the issuance by any governmental authority, including the Bankruptcy Court, any regulatory authority, or any other court of competent jurisdiction, of any ruling or order enjoining the substantial consummation of any of the Restructuring Transactions, which ruling or order has become final and non-appealable;

(k) the Bankruptcy Court enters any order authorizing the use of cash collateral that is not in the form of the applicable Cash Collateral Orders or otherwise consented to by the Required Consenting Lenders (such consent not to be unreasonably withheld);

(l) the occurrence of any Event of Default under the Cash Collateral Orders (as defined therein, respectively) that has not been cured (if susceptible to cure) or waived in accordance with the terms of the Cash Collateral Orders;

(m) a breach by any Salem Harbor Entity of any representation, warranty, or covenant of such Salem Harbor Entity set forth in Section 18 of this Agreement that could reasonably be expected to have a material adverse impact on the consummation of the Restructuring Transactions that (to the extent curable) has not been cured before the earlier of (i) five (5) business days after the receipt by the Salem Harbor Entities of written notice and description of such breach from any other Party and (ii) one (1) day prior to any proposed Effective Date;

(n) either (i) any Salem Harbor Entity, or any other party acting on behalf, of the Salem Harbor Entities, files a motion, application, or adversary proceeding (or any Salem Harbor Entity supports any such motion, application, or adversary proceeding filed or commenced by any third party) challenging the validity, enforceability, perfection, or priority of, or seeking avoidance or subordination of, any portion of the Credit Facility Claims or asserting any other cause of action against the Consenting Lenders with respect or relating to such Credit Facility Claims; (ii) the Bankruptcy Court (or any court with jurisdiction over the Chapter 11 Cases) enters an order that could reasonably be expected to have a material adverse impact on the Parties' ability to consummate the Restructuring Transactions and such order has become final and non-appealable, or (iii) any court enters a final non-appealable order in connection with the Lender/IEP State Court Action affecting the validity, enforceability, perfection or priority of the Credit Facility Claims that could reasonably be expected to have a material adverse impact on the Parties' ability to consummate the Restructuring Transactions;

(o) any Salem Harbor Entity terminates its obligations under and in accordance with Section 9 of this Agreement;

(p) the Bankruptcy Court enters an order in the Chapter 11 Cases terminating any of the Salem Harbor Entities' exclusive right to file a plan or plans of reorganization or to solicit acceptances thereof pursuant to section 1121 of the Bankruptcy Code;

(q) the Bankruptcy Court enters an order granting relief from the automatic stay imposed by section 362 of the Bankruptcy Code authorizing any party to proceed against any material asset of any of the Salem Harbor Entities that would materially and adversely affect any of the Salem Harbor Entities' ability to operate their business in the ordinary course or which would otherwise cause the Restructuring to become infeasible;

(r) the commencement of an involuntary case against any Salem Harbor Entity or the filing of an involuntary petition seeking bankruptcy, winding up, dissolution, liquidation, administration, moratorium, reorganization or other relief in respect of such Salem Harbor Entity, or their debts, or of a substantial part of their assets, under any federal, state or foreign bankruptcy, insolvency, administrative receivership or similar law now or hereafter in effect, provided, that such involuntary proceeding is not dismissed or converted by the Salem Harbor Entities to a voluntary case within a period of thirty (30) days after the filing thereof, or if any court grants the relief sought in such involuntary proceeding;

(s) any Salem Harbor Entity (i) voluntarily commences any case or files any petition seeking bankruptcy, winding up, dissolution, liquidation, administration, moratorium, reorganization or other relief under any federal, state, or foreign bankruptcy, insolvency, administrative receivership or similar law now or hereafter in effect except the voluntary cases contemplated under this Agreement, (ii) consents to the institution of, or failing to contest in a timely and appropriate manner, any involuntary proceeding or petition described above, (iii) applies for or consents to the appointment of a receiver, administrator, administrative receiver, trustee, custodian, sequestrator, conservator or similar official, (iv) makes a general assignment or arrangement for the benefit of creditors, or (v) takes any corporate action for the purpose of authorizing any of the foregoing;

(t) if (i) any of the Cash Collateral Orders are reversed, stayed, dismissed, vacated, reconsidered, modified, or amended without the consent of the Required Consenting Lenders, or (ii) a motion for reconsideration, reargument, or rehearing with respect to any such order has been filed and the Salem Harbor Entities have failed to timely object to such motion; or

(u) if (i) the Solicitation Order or the Confirmation Order are reversed, stayed, dismissed, vacated, reconsidered, modified, or amended without the consent of the Required Consenting Lenders, or (ii) a motion for reconsideration, reargument, or rehearing with respect to any such order

has been filed and the Salem Harbor Entities have failed to timely object to such motion.

For the avoidance of doubt, subject to Section 10, any written waiver of the occurrence of a Lender Termination Event granted in writing (with email from counsel to the Prepetition Agent being sufficient) by the Required Consenting Lenders shall bind all Consenting Lenders with respect to such written waiver.

9. Salem Harbor Entities' Termination Events. Each Salem Harbor Entity may, upon notice to the Consenting Stakeholders, terminate its obligations under this Agreement upon the occurrence of any of the following events (each, a "Salem Harbor Termination Event"), subject to the rights of the Salem Harbor Entities to fully or conditionally waive, in writing, on a prospective or retroactive basis, the occurrence of a Salem Harbor Termination Event:

(a) a breach by a Consenting Lender or a Consenting Equity Party (such Consenting Stakeholder in breach, a "Defaulting Stakeholder") of any obligation, representation, warranty, or covenant of such Consenting Lender or Consenting Equity Party, as applicable, set forth in this Agreement that could reasonably be expected to have a material adverse impact on the consummation of the Restructuring Transactions that (to the extent curable) has not been cured before the earlier of (i) five (5) business days after notice to all Parties of such breach and a description thereof and (ii) one (1) day prior to any proposed Effective Date; provided, however, that notwithstanding the foregoing, (x) it shall not be a Salem Harbor Termination Event if the non-breaching Consenting Lenders hold more than two-thirds in principal amount of the aggregate Credit Facility Claims then outstanding, and (y) a breach by a Consenting Equity Party shall result in only termination of this Agreement as to the Consenting Equity Parties;

(b) if the board of managers (or equivalent governing body) of any Salem Harbor Entity determines, and notifies Counsel to the Prepetition Agent and the Equity Party Counsel within twenty-four (24) hours of such determination, after receiving written advice from outside counsel, that (i) proceeding with the Restructuring Transactions (including, without limitation, the Plan or solicitation of the Plan) would be inconsistent with the exercise of its fiduciary duties, or (ii) an Alternative Transaction is more favorable than the Plan to maximize value for the benefit of the Salem Harbor Entities' stakeholders and continued support of the Plan would be inconsistent with the exercise of its fiduciary duties; or

(c) the issuance by any governmental authority, including the Bankruptcy Court, any regulatory authority, or any other court of competent jurisdiction, of any ruling or order enjoining the substantial consummation of any of the Restructuring Transactions, which ruling or order has become final and non-appealable; provided, however, that the Salem Harbor Entities have made commercially reasonable, good faith efforts to

cure, vacate, or have overruled such ruling or order prior to terminating this Agreement.

10. Individual Termination.

(a) Any Consenting Stakeholder may terminate this Agreement as to itself only, upon written notice to the other Parties, in the event that:

(i) such Consenting Stakeholder has transferred all (but not less than all) of its Credit Facility Claims or Interests in accordance with Section 14 of this Agreement (such termination shall be effective on the date on which such Consenting Stakeholder has effected such transfer, satisfied the requirements of Section 14, and provided the written notice required above in this Section 10); or

(ii) this Agreement is amended without its consent in such a way as to alter any of the material terms hereof in a manner that is disproportionately adverse or that results in non-pro rata treatment to such Consenting Stakeholder as compared to similarly situated Consenting Stakeholders by giving ten (10) business days written notice to the Salem Harbor Entities and the other Consenting Stakeholders; provided, that such written notice shall be given by the applicable Consenting Stakeholder within five (5) business days of such amendment.

(b) In addition to the termination rights set forth in Section 10(a) above, each Consenting Equity Party may terminate this Agreement as to itself only, upon written notice to the other Parties, in the event that:

(i) this Agreement is terminated by the Required Consenting Lenders pursuant to Section 8 hereof; or

(ii) absent the prior written consent of the Consenting Equity Parties, the provisions of any Definitive Documentation, including any amendments, supplements or modifications thereto, do not comply with the Equity Party Consent Right; provided, that such written notice shall be given by the applicable Consenting Equity Party within five (5) business days of such amendment, filing, or approval.

11. Mutual Termination; Automatic Termination. This Agreement and the obligations of all Parties hereunder may be terminated by mutual written agreement by each of the Salem Harbor Entities and the Required Consenting Lenders. Notwithstanding anything in this Agreement to the contrary, this Agreement shall terminate automatically without further required action upon the occurrence of the Effective Date.

12. Effect of Termination.

(a) The earliest date on which termination of this Agreement as to a Party is effective in accordance with Sections 8, 9, 10 or 11 of this Agreement shall be referred to, with respect to such Party, as a "Termination Date".

(b) Upon the occurrence of a Termination Date, the terminating Party's obligations under this Agreement shall be terminated effective immediately, and such Party or Parties shall be released from its commitments, undertakings, and agreements; provided, however, that each of the following shall survive any such termination: (a) any claim for breach of this Agreement that occurs prior to such Termination Date, and all rights and remedies with respect to such claims shall not be prejudiced in any way; and (b) Sections 3, 12, 16 (for purposes of enforcement of obligations accrued through the Termination Date), 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, the last sentence of 32, 33, 34, 35, and 36. For the avoidance of doubt, to the extent a Consenting Equity Party terminates this Agreement pursuant to Section 10 hereof, this Agreement shall not be terminated as to any other Party, and this Agreement shall remain in full force and effect as to all other Parties. The automatic stay imposed by section 362 of the Bankruptcy Code shall not prohibit a Party from taking any action necessary to effectuate the termination of and otherwise enforce this Agreement pursuant to and in accordance with the terms hereof.

13. Cooperation and Support. The Salem Harbor Entities shall provide draft copies of all material "first day" motions, applications, and other material documents related to the Definitive Documentation that any Salem Harbor Entity intends to file with the Bankruptcy Court in any of the Chapter 11 Cases to Counsel to the Prepetition Agent, the Prepetition Agent Advisors and the Equity Party Counsel two (2) business days (or as soon as is reasonably practicable under the circumstances) prior to the date when such Salem Harbor Entity intends to file such document and shall consult in good faith with Counsel to the Prepetition Agent and, solely to the extent the Equity Party Consent Right is applicable, the Equity Party Counsel regarding the form and substance of any such proposed filing. The Salem Harbor Entities will use commercially reasonable efforts to provide draft copies of all other material pleadings any Salem Harbor Entity intends to file with the Bankruptcy Court to Counsel to the Prepetition Agent and the Equity Party Counsel prior to filing such pleading and shall consult in good faith with Counsel to the Prepetition Agent and, solely to the extent the Equity Party Consent Right is applicable, the Equity Party Counsel regarding the form and substance of any such proposed pleading. For the avoidance of doubt, the Parties agree, consistent with clause (b) of Section 4 hereof, (a) to negotiate in good faith the Definitive Documentation that remain subject to negotiation and completion on the RSA Effective Date and (b) that, notwithstanding anything

herein to the contrary, the Definitive Documentation, including any motions or orders related thereto, shall be consistent with this Agreement and otherwise subject to the consent rights set forth in clause (b) of Section 4.

14. Transfers of Claims.

(a) No Consenting Stakeholder shall (i) sell, transfer, assign, pledge, grant a participation interest in, or otherwise dispose of, directly or indirectly, any of its right, title, or interest in respect of any of such Consenting Stakeholder's Credit Facility Claims or Interests in whole or in part, or (ii) deposit any of such Consenting Stakeholder's Credit Facility Claims or Interests into a voting trust, or grant any proxies, or enter into a voting agreement with respect to any such claims (the actions described in Clauses (i) and (ii) are collectively referred to herein as a "Transfer" and the Consenting Stakeholder making such Transfer is referred to herein as the "Transferor"), unless such Transfer is to or with another Consenting Stakeholder or any other entity (a "Transferee") that first agrees in writing to be bound by the terms of this Agreement by executing and delivering to the Salem Harbor Entities and Counsel to the Prepetition Agent a Transferee Joinder. With respect to Credit Facility Claims or Interests held by the relevant Transferee upon consummation of a Transfer in accordance herewith, such Transferee is deemed to make all of the representations, warranties, and covenants of a Consenting Stakeholder set forth in this Agreement as of the date of such Transfer. Upon compliance with the foregoing, the Transferor shall be deemed to relinquish its rights and be released from its obligations (except for any claim for breach of this Agreement that occurs prior to such Transfer and any remedies with respect to such claim) under this Agreement to the extent of such transferred rights and obligations.

(b) Notwithstanding anything herein to the contrary, the foregoing Clause (a) of this Section 14 shall not preclude any Consenting Stakeholder from transferring Credit Facility Claims or Interests to a Consenting Stakeholder Affiliate, which Consenting Stakeholder Affiliate shall be automatically bound by this Agreement upon the transfer of such Credit Facility Claims or Interests.

(c) Any Transfer made in violation of this Section 14 shall be deemed null and void *ab initio* and of no force or effect, regardless of any prior notice provided to the Salem Harbor Entities and/or any Consenting Stakeholder, and shall not create any obligation or liability of any Salem Harbor Entity or any other Consenting Stakeholder to the purported transferee.

(d) This Section 14 shall not impose any obligation on the Salem Harbor Entities to issue any "cleansing letter" or otherwise publicly disclose information for the purpose of enabling a Consenting Stakeholder to transfer any of its Credit Facility Claims or Interests. Notwithstanding

anything to the contrary herein, to the extent the Salem Harbor Entities and any another Party have entered into a confidentiality agreement, the terms of such confidentiality agreement shall continue to apply and remain in full force and effect according to its terms, and this Agreement does not supersede any rights or obligations otherwise arising under such confidentiality agreement.

15. Further Acquisition of Claims or Interests. Except as set forth in Section 14, nothing in this Agreement shall be construed as precluding any Consenting Stakeholder or any of its affiliates from acquiring any Claims, Interests, or Credit Facility Claims; provided, however, that any such additional Claims, Interests, or Credit Facility Claims acquired by any Consenting Stakeholder or by any of its affiliates shall automatically be subject to the terms and conditions of this Agreement. Upon any such further acquisition by a Consenting Stakeholder or any of its affiliates, such Consenting Stakeholder shall promptly notify counsel to the Salem Harbor Entities, who will then promptly notify Counsel to the Prepetition Agent.

16. Fees and Expenses. In accordance with and subject to Section 7(a)(xiii) hereof and the Cash Collateral Orders, the Salem Harbor Entities shall pay or reimburse when due all reasonable and documented fees and out-of-pocket expenses (including reasonable and documented travel costs and out-of-pocket expenses) of the Prepetition Agent Advisors (regardless of whether such fees and out-of-pocket expenses were incurred before or after the Petition Date) incurred through and including the date on which a Termination Date has occurred.

17. Consents and Acknowledgments.

(a) Each Party irrevocably acknowledges and agrees that this Agreement is not and shall not be deemed to be a solicitation for acceptances of the Plan. The acceptance of the Plan by each of the Consenting Stakeholder will not be solicited until such Consenting Stakeholder has received the Disclosure Statement and Solicitation Materials in accordance with the Solicitation Order or applicable law, and will be subject to sections 1125, 1126, and 1127 of the Bankruptcy Code.

(b) By executing this Agreement, each Consenting Lender (including, for the avoidance of doubt, any entity that may execute this Agreement or a Transferee Joinder after the RSA Effective Date) forbears from exercising remedies with respect to any Default or Event of Default as defined under the Prepetition Credit Documents that has occurred and is continuing as of the RSA Effective Date or is caused by the Salem Harbor Entities' entry into this Agreement or the other documents related to this Agreement and the transactions contemplated in this Agreement. For the avoidance of doubt, the forbearance set forth in this Section 17(b) shall not constitute a waiver with respect to any Default or Event of Default under the Prepetition Credit Documents and shall not bar any Consenting Lenders from filing a proof of claim or taking action to establish the amount of such claim. Except as expressly provided in this Agreement, nothing

herein is intended to, or does, in any manner waive, limit, impair, or restrict any right of any holder of the Credit Facility Claims to protect and preserve any right, remedy, condition, or approval requirement under this Agreement or the Definitive Documentation. Upon the termination of this Agreement, the agreement of the Consenting Lenders to forbear from exercising rights and remedies in accordance with this Section 17(b) shall immediately terminate without requirement of any demand, presentment or protest of any kind, all of which the Salem Harbor Entities hereby waive.

18. Representations and Warranties.

(a) Each Consenting Lender and Consenting Equity Party, as applicable, hereby represents and warrants on a several and not joint and several basis for itself and not any other person or entity that the following statements are true, correct, and complete, to the best of its actual knowledge, as of the date hereof:

(i) it has the requisite organizational power and authority to enter into this Agreement and to carry out the transactions contemplated by, and perform its respective obligations under, this Agreement;

(ii) the execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary corporate or other organizational action on its part;

(iii) the execution and delivery by it of this Agreement does not (A) violate its certificates of incorporation, or bylaws, or other organizational documents, or (B) result in a breach of, or constitute (with due notice or lapse of time or both) a default under any material contractual obligation to which it or any of its affiliates is a party;

(iv) this Agreement is its legally valid and binding obligation, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to or limiting creditors' rights generally, or by equitable principles relating to enforceability;

(v) the execution, delivery, and performance by it of this Agreement does not require any registration or filing with, the consent or approval of, notice to, or any other action with any federal, state, or other governmental authority or regulatory body, except (A) any of the foregoing as may be necessary and/or required for disclosure by the Securities and Exchange Commission and applicable state securities laws, (B) any of the foregoing as may be necessary

and/or required in connection with the Chapter 11 Cases, including the approval of the Disclosure Statement and confirmation of the Plan, and (C) any other registrations, filings, consents, approvals, notices, or other actions, the failure of which to make, obtain or take, as applicable, would not be reasonably likely, individually or in the aggregate, to materially delay or materially impair the ability of any Party hereto to consummate the Restructuring Transactions contemplated hereby;

(vi) such Consenting Lender is an "accredited investor" within the meaning of Rule 501 of Regulation D promulgated under the Securities Act;

(vii) such Consenting Stakeholder has sufficient knowledge and experience to evaluate properly the terms and conditions of this Agreement, and has been afforded the opportunity to consult with its legal and financial advisors with respect to its decision to execute this Agreement, and it has made its own analysis and decision to enter into this Agreement and otherwise investigated this matter to its full satisfaction;

(viii) such Consenting Lender acknowledges the Salem Harbor Entities' representation and warranty that the issuance and any resale of the New Common Equity pursuant to the Plan is intended to be exempt from registration under the Securities Act pursuant to Section 4(a)(2) of the Securities Act and Regulation D thereunder or pursuant to section 1145 of the Bankruptcy Code, as applicable; and

(ix) it (A) either (1) is the sole owner of the Credit Facility Claims and/or Interests identified below its name on its signature page hereof and in the amounts set forth therein, free and clear of all claims, liens, encumbrances, charges, equity options, proxy, voting restrictions, rights of first refusal or other limitations on dispositions of any kind, or (2) has all necessary investment or voting discretion with respect to the principal amount of Credit Facility Claims and/or Interests identified below its name on its signature page hereof, and has the power and authority to bind the owner(s) of such claims and interests to the terms of this Agreement; (B) is entitled (for its own accounts or for the accounts of such other owners) to all of the rights and economic benefits of such claims and interests; and (C) to the knowledge of the individuals working on the Restructuring Transactions, does not directly or indirectly own any Credit Facility Claims or Interests, other than as identified below its name on its signature page hereof.

(b) Each Salem Harbor Entity hereby represents and warrants on a joint and several basis (and not any other person or entity other than the Salem Harbor Entities) that the following statements are true, correct, and complete, to the best of its actual knowledge, as of the date hereof:

(i) it has the requisite corporate or other organizational power and authority to enter into this Agreement and to carry out the transactions contemplated by, and perform its respective obligations under, this Agreement;

(ii) the execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary corporate or other organizational action on its part;

(iii) the execution and delivery by it of this Agreement does not (A) violate its certificates of incorporation, or bylaws, or other organizational documents, or those of any of its affiliates in any material respect, or (B) result in a breach of, or constitute (with due notice or lapse of time or both) a default (other than, for the avoidance of doubt, a breach or default that would be triggered as a result of the Chapter 11 Cases of any Salem Harbor Entity's undertaking to implement the Restructuring Transactions through the Chapter 11 Cases) under any material contractual obligation to which it or any of its affiliates is a party;

(iv) the execution, delivery, and performance by it of this Agreement does not require any registration or filing with, the consent or approval of, notice to, or any other action with any federal, state, or other governmental authority or regulatory body, except (A) any of the foregoing as may be necessary and/or required for disclosure by the Securities and Exchange Commission and applicable state securities or "blue sky" laws, (B) any of the foregoing as may be necessary and/or required in connection with the Chapter 11 Cases, including the approval of the Disclosure Statement and confirmation of the Plan, (C) filings of amended certificates of incorporation or articles of formation or other organizational documents with applicable state authorities, and other registrations, filings, consents, approvals, notices, or other actions that are reasonably necessary to maintain permits, licenses, qualifications, and governmental approvals to carry on the business of the Salem Harbor Entities, and (D) any other registrations, filings, consents, approvals, notices, or other actions, the failure of which to make, obtain or take, as applicable, would not be reasonably likely, individually or in the aggregate, to materially delay or materially impair the ability of any Party hereto to consummate the Restructuring Transactions contemplated hereby;

(v) the issuance of and any resale of the New Common Equity pursuant to the Plan is intended to be exempt from registration under the Securities Act pursuant to Section 4(a)(2) of the Securities Act and Regulation D thereunder or pursuant to section 1145 of the Bankruptcy Code;

(vi) subject to the provisions of sections 1125 and 1126 of the Bankruptcy Code, this Agreement is its legally valid and binding obligation, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to or limiting creditors' rights generally, or by equitable principles relating to enforceability; and

(vii) it has sufficient knowledge and experience to evaluate properly the terms and conditions of the Plan and this Agreement, and has been afforded the opportunity to consult with its legal and financial advisors with respect to its decision to execute this Agreement, and it has made its own analysis and decision to enter into this Agreement and otherwise investigated this matter to its full satisfaction.

19. Survival of Agreement. Each of the Parties acknowledges and agrees that this Agreement is being executed in connection with negotiations concerning a possible financial restructuring of the Salem Harbor Entities and in contemplation of possible chapter 11 filings by the Salem Harbor Entities and the rights granted in this Agreement are enforceable by each signatory hereto without approval of any court, including, without limitation, the Bankruptcy Court.

20. Settlement Discussions. The Parties acknowledge that this Agreement, the Plan, and all negotiations relating hereto are part of a proposed settlement of matters that could otherwise be the subject of litigation. Pursuant to Rule 408 of the Federal Rules of Evidence, any applicable state rules of evidence, and any other applicable law, foreign or domestic, the Restructuring Term Sheet, this Agreement, the Plan, any related documents, and all negotiations relating thereto shall not be construed as or deemed to be an admission of any kind or be admissible into evidence in any proceeding other than a proceeding to enforce its terms.

21. Relationship Among Parties.

(a) None of the Consenting Lenders shall have any fiduciary duty, any duty of trust or confidence in any form, or other duties or responsibilities to each other, the Salem Harbor Entities or their affiliates, or any of the Salem Harbor Entities' or their affiliates' creditors or other stakeholders, including any holders of Credit Facility Claims, and, other than as expressly set forth in this Agreement, there are no commitments among or between the Consenting Lenders. It is understood and agreed that any Consenting Stakeholders may trade in any debt or equity securities of the

Salem Harbor Entities without the consent of the Salem Harbor Entities or any other Consenting Lender, subject to applicable securities laws and Sections 14 and 15 of this Agreement. No prior history, pattern, or practice of sharing confidences among or between any of the Consenting Lenders or the Salem Harbor Entities shall in any way affect or negate this understanding and agreement.

(b) The obligations of each Consenting Stakeholder are several and not joint with the obligations of any other Consenting Stakeholder. Nothing contained herein and no action taken by any Consenting Stakeholder shall be deemed to constitute the Consenting Stakeholders as a partnership, an association, a joint venture, or any other kind of group or entity, or create a presumption that the Consenting Stakeholders are in any way acting in concert. The decision of each Consenting Stakeholder to enter into this Agreement has been made by each such Consenting Stakeholder independently of any other Consenting Stakeholder.

(c) The Consenting Stakeholder are not part of a "group" (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Securities Exchange Act of 1934, as amended or any successor provision), including any group acting for the purpose of acquiring, holding, or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Securities Exchange Act of 1934, as amended), with any other Party. For the avoidance of doubt, neither the existence of this Agreement, nor any action that may be taken by a Consenting Stakeholder pursuant to this Agreement, shall be deemed to constitute or to create a presumption by any of the Parties that the Consenting Stakeholders are in any way acting in concert or as such a "group" within the meaning of Rule 13d-5(b)(1).

(d) The Salem Harbor Entities understand that the Consenting Stakeholders are engaged in a wide range of financial services and businesses, and in furtherance of the foregoing, the Salem Harbor Entities acknowledge and agree that the obligations set forth in this Agreement shall only apply to the trading desk(s) or business group(s) of the Consenting Stakeholders that principally manage or supervise such Consenting Stakeholder's investment in the Salem Harbor Entities, and shall not apply to any other trading desk or business group of the Consenting Stakeholder so long as they are not acting at the direction or for the benefit of such Consenting Stakeholder.

22. Specific Performance. It is understood and agreed by the Parties that money damages may be an insufficient remedy for any breach of this Agreement by any Party and each non-breaching Party shall be entitled to seek specific performance and injunctive or other equitable relief as a remedy of any such breach of this Agreement, including, without limitation, an order of the Bankruptcy Court or other court of competent jurisdiction requiring any Party to comply promptly with any of its obligations hereunder.

23. Governing Law & Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to such state's choice of law provisions which would require the application of the law of any other jurisdiction, except where preempted by the Bankruptcy Code. By its execution and delivery of this Agreement, each Party irrevocably and unconditionally agrees for itself that any legal action, suit, or proceeding against it with respect to any matter arising under or arising out of or in connection with this Agreement or for recognition or enforcement of any judgment rendered in any such action, suit, or proceeding, may be brought in the United States District Court for the Southern District of New York, and by executing and delivering this Agreement, each of the Parties irrevocably accepts and submits itself to the exclusive jurisdiction of such court, generally and unconditionally, with respect to any such action, suit or proceeding. Notwithstanding the foregoing consent to New York jurisdiction, if the Chapter 11 Cases are commenced, each Party agrees that the Bankruptcy Court shall have exclusive jurisdiction of all matters arising out of or in connection with this Agreement. By executing and delivering this Agreement, and upon commencement of the Chapter 11 Cases, each of the Parties irrevocably and unconditionally submits to the personal jurisdiction of the Bankruptcy Court solely for purposes of any action, suit, proceeding, or other contested matter arising out of or relating to this Agreement, or for recognition or enforcement of any judgment rendered or order entered in any such action, suit, proceeding, or other contested matter.

24. WAIVER OF RIGHT TO TRIAL BY JURY. EACH OF THE PARTIES WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, BETWEEN ANY OF THE PARTIES ARISING OUT OF, CONNECTED WITH, RELATING TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN ANY OF THEM IN CONNECTION WITH THIS AGREEMENT. INSTEAD, ANY DISPUTES RESOLVED IN COURT SHALL BE RESOLVED IN A BENCH TRIAL WITHOUT A JURY.

25. Successors and Assigns. Subject to Section 14, neither this Agreement nor any of the rights or obligations hereunder may be assigned by any Party hereto without the prior written consent of the other Parties hereto, and then only to a Person who has agreed to be bound by the provisions of this Agreement. Except as otherwise provided in this Agreement, this Agreement is intended to bind and inure to the benefit of each of the Parties and each of their respective permitted successors, assigns, heirs, executors, administrators, and representatives.

26. No Third-Party Beneficiaries. Unless expressly stated herein, this Agreement shall be solely for the benefit of the Parties and no other person or entity shall be a third-party beneficiary of this Agreement.

27. Notices. All notices (including, without limitation, any notice of termination or breach) and other communications from any Party hereunder shall be in writing and shall be deemed to have been duly given if personally delivered by courier service, messenger, email, or facsimile to the other Parties at the applicable addresses below, or such other addresses as may be furnished hereafter by notice in writing. Any notice of termination or breach shall be delivered to all other Parties.

(a) If to any Salem Harbor Entity:

c/o Tateswood Energy Company, LLC
480 Wildwood Forest Drive, Suite 475
Spring, Texas 77380
Attn.: John Castellano; John Lambert
Email: jcastellano@alixpartners.com; jlambert@tateswood.com

With a copy to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
Attn.: Brian S. Hermann
John T. Weber
Alice Nofzinger
Email: bhermann@paulweiss.com
jweber@paulweiss.com
anofzinger@paulweiss.com

(b) If to the Consenting Lenders, to the notice address provided on such Consenting Lender's signature page

With a copy to:

Mayer Brown LLP
1221 Avenue of the Americas
New York, New York 10020
Attn.: Brian Trust
Joaquin M. C De Baca
Email: btrust@mayerbrown.com
jcdebaca@mayerbrown.com

(c) If to the Consenting Equity Parties, to the notice address provided on such Consenting Equity Party's signature page

With a copy to:

Munger Tolles & Olson LLP
355 South Grand Avenue, Suite 3500
Los Angeles, California 90071-1560
Attn.: Seth Goldman
Daniel Levin
Email: seth.goldman@mto.com;
daniel.levin@mto.com

28. Entire Agreement. This Agreement (including the Exhibits and Schedules) constitutes the entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements, and understandings, whether written or oral, among the Parties with respect to the subject matter of this Agreement; provided that any confidentiality agreement between or among the Parties shall remain in full force and effect in accordance with its terms; provided further that the Parties intend to enter into the Definitive Documentation after the date hereof to consummate the Restructuring Transactions.

29. Waivers; Amendments. Except as otherwise provided herein, this Agreement may not be modified, amended, or supplemented, and no term or provision hereof or thereof waived, without the prior written consent of the Salem Harbor Entities and the Required Consenting Lenders and, solely to the extent the Equity Party Consent Right is applicable, the Consenting Equity Parties; provided that, (i) the written consent of each Consenting Stakeholder and the Salem Harbor Entities shall be required for any amendments, amendments and restatements, modifications, or other changes to Section 10 and this Section 29, (ii) the definition of "Required Consenting Lenders" may not be amended or otherwise modified without the written consent of each Consenting Lender and the Salem Harbor Entities, (iii) the written consent of each Consenting Lender shall be required for any amendments, amendments and restatements, modifications, or other changes to Section 14, (iv) the definition of "Equity Party Consent Right" may not be amended or otherwise modified without the written consent of each Consenting Equity Party and the Salem Harbor Entities, and (v) the written consent of the respective issuing bank shall be required for any amendments, amendments and restatements, modifications, or other changes to any provisions on the Letters of Credit. In determining whether any consent or approval has been given or obtained by the Required Consenting Lenders, the Consenting Lenders or the Consenting Equity Parties, as applicable, each then existing Defaulting Stakeholders and its respective Credit Facility Claims or Interests, as applicable, shall be excluded from such determination. Notwithstanding anything to the contrary set forth herein, where written consent is required pursuant to or contemplated by this Agreement, such written consent shall be deemed to have occurred if it is conveyed in writing (with email being sufficient) between Counsel to the Prepetition Agent, Paul, Weiss, Rifkind, Wharton & Garrison LLP, as counsel to the Salem Harbor Entities, and counsel to the Consenting Equity Parties (to the extent applicable), and without representations or warranties of any kind on behalf of such counsel.

30. Reservation of Rights.

(a) Except as expressly provided in this Agreement or the Restructuring Term Sheet, including, without limitation, Section 6(a) of this Agreement, nothing herein is intended to, or does, in any manner waive, limit, impair, or restrict the ability of any Party to protect and preserve its rights, remedies and interests, including, without limitation, its claims against any of the other Parties.

(b) Without limiting clause (a) of this Section 30 in any way, if this Agreement is terminated for any reason, nothing shall be construed herein as a waiver by any Party of any or all of such Party's rights, remedies, claims, and defenses and the Parties expressly reserve any and all of their

respective rights, remedies, claims and defenses, subject to Section 20 of this Agreement. This Agreement, the Plan, and any related document shall in no event be construed as or be deemed to be evidence of an admission or concession on the part of any Party of any claim or fault or liability or damages whatsoever. Each of the Parties denies any and all wrongdoing or liability of any kind and does not concede any infirmity in the claims or defenses which it has asserted or could assert.

31. Counterparts. This Agreement may be executed in one or more counterparts, each of which, when so executed, shall constitute the same instrument, and the counterparts may be delivered by facsimile transmission or by electronic mail in portable document format (.pdf).

32. Public Disclosure. The Salem Harbor Entities shall deliver drafts to Counsel to the Prepetition Agent and the Consenting Equity Parties of any press releases and public documents that constitute disclosure of the existence or terms of this Agreement or any amendment to the terms of this Agreement to the general public (each a "Public Disclosure") before making any such disclosure and shall otherwise consult with Counsel to the Prepetition Agent and the Consenting Equity Parties with respect to any Public Disclosure. Under no circumstances may any Party make any public disclosure of any kind that would disclose either: (i) the holdings of any Consenting Lender (including on the signature pages of the Consenting Lenders, which shall not be publicly disclosed or filed) or (ii) the identity of any Consenting Lender without the prior written consent of such Consenting Lender or the order of a Bankruptcy Court or other court with competent jurisdiction; provided, however, that notwithstanding the foregoing, the Salem Harbor Entities shall not be required to keep confidential the aggregate holdings of all Consenting Lenders, and each Consenting Stakeholder hereby consents to the disclosure of the execution of this Agreement by the Salem Harbor Entities, and the terms and contents hereof, in the Plan, the Disclosure Statement filed therewith, and any filings by the Salem Harbor Entities with the Bankruptcy Court, or as otherwise required by applicable law or regulation, or the rules of any applicable regulatory body.

33. Severability. If any portion of this Agreement shall be held to be invalid, unenforceable, void or voidable, or violative of applicable law, the remaining portions of this Agreement insofar as they may practicably be performed shall remain in full force and effect and binding on the Parties.

34. Headings. The section headings of this Agreement are for convenience of reference only and shall not, for any purpose, be deemed a part of this Agreement.

35. Interpretation. This Agreement is the product of negotiations among the Parties, and the enforcement or interpretation hereof, is to be interpreted in a neutral manner, and any presumption with regard to interpretation for or against any Party by reason of that Party having drafted or caused to be drafted this Agreement or any portion hereof, shall not be effective in regard to the interpretation hereof. For purposes of this Agreement, unless otherwise specified: (a) 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; (b) all references herein to "Articles," "Sections," and "Exhibits" are references to Articles, Sections, and Exhibits of this Agreement; (c) the words

"herein," "hereof," "hereunder," and "hereto," refer to this Agreement in its entirety rather than to a particular portion of this Agreement; and (d) 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". The phrase "reasonable best efforts", "commercially reasonable best efforts", "commercially reasonable efforts" or words or phrases of similar import as used herein shall not be deemed to require any party to enforce or exhaust their appellate rights in any court of competent jurisdiction, including, without limitation, the Bankruptcy Court.

36. Computation of Time. Rule 9006(a) of the Federal Rules of Bankruptcy Procedure applies in computing any period of time prescribed or allowed herein only to the extent such period of time governs a Milestone pertaining to the entry of an order by the Bankruptcy Court in the Chapter 11 Cases.

37. Remedies Cumulative; No Waiver. All rights, powers, and remedies provided under this Agreement or otherwise available in respect hereof at law or in equity shall be cumulative and not alternative, and the exercise of any right, power, or remedy thereof by any Party shall not preclude the simultaneous or later exercise of any other such right, power, or remedy by such Party. The failure of any Party hereto to exercise any right, power, or remedy provided under this Agreement or otherwise available in respect hereof at law or in equity, or to insist upon strict compliance by any other Party hereto with its obligations hereunder, and any custom or practice of the parties at variance with the terms hereof, shall not constitute a waiver by such Party of its right to exercise any such or other right, power, or remedy or to demand such strict compliance.

38. Additional Parties. Without in any way limiting the provisions hereof, additional holders of Credit Facility Claims may elect to become Parties by executing and delivering to the Salem Harbor Entities and Counsel to the Prepetition Agent a counterpart hereof. Such additional holders of Credit Facility Claims shall become a Party to this Agreement as a Consenting Lender in accordance with the terms of this Agreement.

[*Signature pages follow*]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date and year first written above.

Footprint Power Salem Harbor Development LP
Footprint Power SH DevCo GP LLC
Footprint Power Salem Harbor FinCo, LP
Footprint Power Salem Harbor FinCo GP, LLC
Highstar Footprint Power Holdings L.P.
Highstar Footprint Holdings GP, LLC

By: 
Name: John R. Castellano
Title: Chief Restructuring Officer

[Signature Pages Intentionally Omitted]

Exhibit A to the Restructuring Support Agreement

Restructuring Term Sheet

Execution Version

FOOTPRINT POWER SALEM HARBOR DEVELOPMENT LP, ET AL.

RESTRUCTURING TERM SHEET

March 23, 2022

This non-binding indicative term sheet (the "Term Sheet") sets forth the principal terms of a comprehensive restructuring (the "Restructuring") of the existing debt and other obligations of the Salem Harbor Entities. The Restructuring will be consummated through the commencement by the Salem Harbor Entities of the Chapter 11 Cases in the Bankruptcy Court, in accordance with the terms of the RSA (as defined below) to be executed by the Salem Harbor Entities and the Consenting Stakeholders and to which this Term Sheet is appended. Capitalized terms used but not otherwise defined herein have the meaning given to such terms in the RSA. To the extent of any conflict between this Term Sheet and the RSA, this Term Sheet shall govern.

THIS TERM SHEET DOES NOT CONSTITUTE AN OFFER OF SECURITIES OR A SOLICITATION OF THE ACCEPTANCE OR REJECTION OF A CHAPTER 11 PLAN FOR PURPOSES OF SECTIONS 1125 AND 1126 OF THE BANKRUPTCY CODE. ANY SUCH OFFER OR SOLICITATION WILL ONLY BE MADE IN COMPLIANCE WITH ALL APPLICABLE SECURITIES, BANKRUPTCY, AND OTHER APPLICABLE LAWS.

THIS TERM SHEET IS BEING PROVIDED AS PART OF A COMPREHENSIVE COMPROMISE AND SETTLEMENT, EACH ELEMENT OF WHICH IS CONSIDERATION FOR THE OTHER ELEMENTS AND AN INTEGRAL ASPECT OF THE RESTRUCTURING. THIS TERM SHEET IS CONFIDENTIAL AND SUBJECT TO FEDERAL RULE OF EVIDENCE 408. NOTHING IN THIS TERM SHEET SHALL CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, A STIPULATION OR A WAIVER, AND EACH STATEMENT CONTAINED HEREIN IS MADE WITHOUT PREJUDICE SOLELY FOR SETTLEMENT PURPOSES, WITH A FULL RESERVATION AS TO ALL RIGHTS, REMEDIES, CLAIMS OR DEFENSES OF THE SALEM HABROR ENTITIES AND CONSENTING STAKEHOLDERS, AS APPLICABLE.

THE TRANSACTIONS DESCRIBED HEREIN WILL BE SUBJECT TO THE NEGOTIATION AND COMPLETION OF DEFINITIVE DOCUMENTATION INCORPORATING THE TERMS SET FORTH HEREIN, AND THE CLOSING OF ANY TRANSACTION SHALL BE SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN SUCH AGREED DEFINITIVE DOCUMENTATION.

Material Terms of the Restructuring	
Term	**Description**
Overview of the Restructuring	This Term Sheet contemplates the Restructuring of the Salem Harbor Entities. To effectuate the Restructuring, certain parties, including: (a) the Salem Harbor Entities and (b) the Consenting Stakeholders will enter into a Restructuring Support Agreement (as amended, restated, supplemented or otherwise modified in accordance with the terms hereof and thereof, the "RSA") consistent in all respects with the material terms set forth herein and to which this Term Sheet is or shall be attached. The Restructuring will be consummated pursuant to a joint "pre-arranged" chapter 11 plan of reorganization (as amended, restated, modified, or otherwise supplemented, the "Plan" and, the supplement thereto, the "Plan Supplement") to be confirmed by the Bankruptcy Court. Pursuant to the Plan, the Restructuring may be effectuated either as: (a) a sale involving all, or substantially all, of the Debtors' assets (the "Sale Transaction"); or (b) a stand-alone reorganization (the "Stand-Alone Restructuring") that is consistent with the provisions set forth in this Term Sheet. The Debtors, in consultation with the Required Consenting Lenders, shall make the election to consummate the Stand-Alone Restructuring or the Sale Transaction as part of the Plan Supplement (such election, the "Transaction Election").
Overview of Stand-Alone Restructuring	The Debtors shall seek to consummate the Plan consistent with the Milestones set forth in the RSA. The Plan shall provide that on the Effective Date, or as soon as reasonably practicable thereafter, pursuant to and in accordance with the Plan, the Debtors (on and after the Effective Date, collectively, the "Reorganized Debtors") shall (a) issue the New Common Equity (as defined below), (b) enter into the Exit Facility Credit Agreement (as defined below), if applicable, (c) execute any New Governance Documents (as defined below), as may be necessary, (d) own and have vested in them all of the Debtors' assets, and (e) consummate any other transactions necessary or appropriate in connection with the foregoing.
Overview of Sale Transaction	Prior to the Petition Date, the Debtors commenced a sale and marketing process for all, or substantially all, of the Debtors' assets (the "Sale Process"), and will continue the Sale Process on a post-petition basis to solicit bids for a potential Sale Transaction in accordance with the Milestones, the Bidding Procedures, and other terms set forth in the RSA and this Term Sheet. The Sale Process may be terminated at any time by the Debtors, in consultation with the Required Consenting Lenders. The Debtors may consummate the Sale Transaction with the successful bidder (together with its successors and permitted assigns, including any and all of its wholly-owned affiliates to which it assigns any of its rights or obligations under an asset purchase agreement, the "Purchaser") if the Debtors, in consultation with the Required Consenting Lenders, make a good-faith determination that the Sale Transaction will result in higher or otherwise better value for the Debtors' stakeholders as compared to the Stand-Alone Restructuring.

	The Prepetition Agent, on behalf of the Consenting Lenders, preserves the right to credit bid all or any portion of the Credit Facility Claims in connection with the Sale Transaction. If the Sale Transaction is consummated, the Debtors and the Required Consenting Lenders shall agree prior to, or contemporaneously with, the Transaction Election (defined below), on a budget (the "Wind Down Budget"), which as of the Effective Date shall provide the Debtors with an amount of cash sufficient to fund the wind down the Debtors' estates (the "Wind Down Amount"). Following the completion of the Wind Down (defined below), any excess amount of the Wind Down Amount after completion of the Wind Down shall be distributed by the Plan Administrator (defined below) to the Prepetition Agent for distribution to the Prepetition Lenders.
Cash Collateral	To implement the Restructuring, the Consenting Lenders shall consent to the Debtors' use of Cash Collateral on the terms set forth in the Cash Collateral Orders, including the Interim Cash Collateral Order, which shall be in form and substance reasonably acceptable to the Required Lenders (as defined in the Credit Agreement) both as a Definitive Documentation or otherwise.
Exit Facility	In the event the Stand-Alone Restructuring is consummated, on the Effective Date, the Reorganized Debtors may enter into a new credit agreement (the "Exit Facility Credit Agreement" and, collectively with any other definitive documentation in connection therewith, the "Exit Facility Documents") evidencing new first-lien term loans (the "Exit Facility Loans") in an aggregate principal amount to be agreed among the Debtors and the Required Consenting Lenders, which shall be comprised of converted Prepetition Secured Loans in a like amount, and any new money financing as may be agreed among the Debtors and the Required Consenting Lenders. The terms of the Exit Facility Documents shall be on terms reasonably acceptable to the Debtors and the Required Consenting Lenders. For the avoidance of doubt, and notwithstanding anything in this Term Sheet or the RSA to the contrary, the terms of any new money financing as may be agreed by the Required Consenting Lenders shall not bind or otherwise force any Lender that has not consented to the terms of such financing to participate in such financing or any other similar funding, or create or imply any type of drag-along right requiring Lenders to participate in any new money financing (the "Lender Voluntary Financing Right").
Letters of Credit	In the event the Stand-Alone Restructuring is consummated, on the Effective Date, each of the Debtors' two (2) undrawn outstanding Letters of Credit shall either be renewed in its entirety or replaced with a new letter of credit on substantially similar terms to those existing as of the Petition Date such that the Letters of Credit shall continue in full force and effect following the Effective Date. "Letters of Credit" means, together, the Gas Lateral Letter of Credit (as defined in the Prepetition Credit Documents) and the cash collateralized letter of credit issued by the Prepetition Agent to secure DevCo's obligations under the Contractual Service Agreement, dated as of January 6, 2015.
New Common Equity	In the event the Stand-Alone Restructuring is consummated, on the Effective Date, Highstar Footprint Power Holdings L.P. ("TopCo"), or such other Salem Harbor Entity as may be determined by the Debtors and the Required Consenting Lenders, as a Reorganized Debtor ("Reorganized TopCo"), shall issue a single class of common equity interests (the "New Common Equity"). The New Common Equity

	will be distributed in accordance with the Plan.
Plan Administrator	If the Restructuring is implemented through the Sale Transaction, the Plan shall provide that a plan administrator (the "Plan Administrator") shall oversee the wind down (the "Wind Down") of the Debtors' estates consistent with the Wind Down Budget.
Treatment of Claims and Interests Under the Restructuring and the Plan	
Claim	**Proposed Treatment**
Unclassified Claims	
Administrative Claims	**Treatment.** Except to the extent that a holder of an Allowed administrative claim (collectively, the "Administrative Claims") and the Debtors agree in writing to less favorable treatment for such Administrative Claim, such holder shall receive payment in full, in cash, of the unpaid portion of its Allowed Administrative Claim (a) if such Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date or as soon thereafter as reasonably practicable (or, if payment is not then due, on the due date of such Allowed Administrative Claim or as soon as reasonably practicable thereafter); (b) if such Administrative Claim is not allowed as of the Effective Date, the date on which an order allowing such Administrative Claim becomes a final order, or as soon as reasonably practicable thereafter; (c) if such Allowed 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 or course of business giving rise to such Allowed Administrative Claim, without any further action by the holder of such Allowed Administrative Claim; (d) at such time and upon such terms as may be agreed upon by the holder of such Allowed Administrative Claim and the Debtors; or (e) at such time and upon such terms as set forth in a final order of the Bankruptcy Court. To the extent necessary, if the Sale Transaction is implemented, the Plan shall provide for a reserve to be established on the Effective Date from the proceeds of the Sale Transaction (the "Sale Proceeds") or otherwise from Cash Collateral to provide for payment of any Administrative Claims not otherwise satisfied on the Effective Date (the "Administrative Claim Reserve"). Any excess amount from the Administrative Claim Reserve after satisfaction of the Administrative Claims shall be distributed to the Prepetition Agent for distribution to the Prepetition Lenders. Administrative Claims shall include, among other things: (a) the actual and necessary costs and expenses incurred on or after the Petition Date until and including the Effective Date of preserving the Estates and operating the Debtors' businesses; (b) Allowed claims of professionals retained pursuant to a Bankruptcy Court order seeking an award of compensation for services rendered or reimbursement of expenses incurred through and including the Effective Date; (c) Allowed Restructuring Expenses (as defined below); and (d) all fees and charges assessed against the Estates pursuant to section 1930 of chapter 123 of the Judicial Code. For the avoidance of doubt, a Claim arising under section 503(b)(9) of the Bankruptcy Code is an Administrative Claim. **Voting.** Not classified; non-voting.
Priority Tax Claims	**Treatment.** All Allowed claims against the Debtors under section 507(a)(8) of the Bankruptcy Code (collectively, the "Priority Tax Claims") shall be treated in

	accordance with section 1129(a)(9)(C) of the Bankruptcy Code, except to the extent that a holder of an Allowed Priority Tax Claim agrees to a less favorable treatment. To the extent necessary, if the Sale Transaction is implemented, the Plan shall provide for a reserve to be established on the Effective Date from the Sale Proceeds or otherwise from Cash Collateral to provide for payment of any Priority Tax Claims not otherwise satisfied on the Effective Date (the "Priority Tax Claim Reserve"). Any excess amount from the Priority Tax Claim Reserve after satisfaction of any Priority Tax Claims shall be distributed to the Prepetition Agent for distribution to the Prepetition Lenders. **Voting.** Not classified; non-voting.
Classified Claims and Interests	
Other Secured Claims[1]	**Treatment.** On the Effective Date, each holder of an Allowed secured claim other than a Credit Facility Claim (collectively, the "Other Secured Claims") shall receive, at the Debtors' option: (a) payment in full in cash; (b) the collateral securing its Allowed Other Secured Claim; (c) reinstatement of its Allowed Other Secured Claim; or (d) such other treatment rendering its Allowed Other Secured Claim unimpaired in accordance with section 1124 of the Bankruptcy Code. **Voting.** Unimpaired. Each holder of an Allowed Other Secured Claim will be conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, each holder of an Allowed Other Secured Claim will not be entitled to vote to accept or reject the Plan.
Other Priority Claims	**Treatment.** Each holder of an Allowed claim described in section 507(a) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim (collectively, the "Other Priority Claims"), shall receive payment in full in cash or treatment in a manner consistent with section 1129(a)(9) of the Bankruptcy Code. **Voting.** Unimpaired. Each holder of an Other Priority Claim will be conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, each holder of an Allowed Other Priority Claim will not be entitled to vote to accept or reject the Plan.
Credit Facility Claims	**Treatment.** Each holder of an Allowed secured claim arising under the Prepetition Credit Documents, including any accrued and unpaid interest and fees (collectively, the "Credit Facility Claims"), except to the extent that a holder of an Allowed Credit Facility Claim agrees to less favorable treatment of its Allowed Credit Facility Claim, shall receive, on the Effective Date, it *pro rata* share of: **If the Stand-Alone Restructuring is consummated**: (i) 100% percent of the New Common Equity and (ii) the Exit Facility Loans (if applicable). **If the Sale Transaction is consummated**: the net Sale Proceeds received by the Debtors upon consummation of the Sale Transaction after satisfaction of the Administrative Claims (including the Administrative Claim Reserve), Priority Tax Claims (including the Priority Tax Claim Reserve), Other Priority Claims and Other Secured Claims, as well as the funding of the Wind Down Amount (the "Net Sale Proceeds") until all Allowed Credit Facility Claims are satisfied in full in

[1] For the avoidance of doubt, this class of claims is comprised solely of holders of "Permitted Encumbrances" as defined in the Credit Agreement, excluding clauses (h) and (p) of the definition.

	cash. **Voting.** Impaired. Each holder of an Allowed Credit Facility Claim will be entitled to vote to accept or reject the Plan.
General Unsecured Claims	**Treatment.** Each holder of an Allowed unsecured claim that is not (a) an Administrative Claim, (b) a Priority Tax Claim, or (c) an Other Priority Claim (collectively, the "General Unsecured Claims"), except to the extent that a holder of an Allowed General Unsecured Claim agrees to less favorable treatment of its Allowed General Unsecured Claim, shall receive the following on the Effective Date: **If the Stand-Alone Restructuring is consummated**: (i) in the event that a holder of a Allowed General Unsecured Claim votes to accept and/or do not opt-out of Plan's third-party releases, they will receive a complete waiver and release of any and all claims, causes of action, and other rights based on claims pursuant to chapter 5 of the Bankruptcy Code or under similar or related state or federal statutes and common law including fraudulent transfer laws from the Debtors and their estates, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other entities who may purport to assert any cause of action, directly or derivatively, by, through, for, or because of the foregoing entities, subject to and in accordance with the Plan; and (ii) its *pro rata* share of proceeds from the disposition of unencumbered assets. **If the Sale Transaction is consummated**, its *pro rata* share of (i) proceeds from the disposition of unencumbered assets and (ii) solely to the extent the Credit Facility Claims are paid in full in cash on the Effective Date, the Net Sale Proceeds remaining until all Allowed General Unsecured Claims are satisfied in full in cash. **Voting.** Impaired. Each holder of an Allowed General Unsecured Claim will be entitled to vote to accept or reject the Plan. For the avoidance of doubt, General Unsecured Claims shall include any unsecured deficiency claim arising under the Credit Agreement, and any claims held by Iberdrola Energy Projects, Inc. against any Debtor.
Intercompany Claims	**Treatment.** On the Effective Date, each Debtor holding a claim against another Debtor arising before the Petition Date (collectively, the "Intercompany Claims") shall have its claim reinstated or cancelled, released, and extinguished without any distribution. **Voting.** Either unimpaired or impaired. Each holder of an Allowed Intercompany Claim will either be conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code or deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, each holder of an Allowed Intercompany Claim will not be entitled to vote to accept or reject the Plan.
Section 510(b) Claims	**Treatment.** On the Effective Date, holders of any claim subject to subordination under section 510(b) of the Bankruptcy Code (collectively, the "Section 510(b) Claims") shall receive no recovery on account of their Section 510(b) Claims. **Voting.** Impaired. Each holder of a Section 510(b) Claim will be deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, each holder of a Section 510(b) Claim will not be entitled to vote to accept or reject the Plan.

Interests in TopCo	**Treatment**. On the Effective Date, each holder of an Interest in TopCo shall have such interest cancelled, released, and extinguished and without any distribution. "Interests in TopCo" means any equity security, including all issued, unissued, authorized, or outstanding shares of capital stock and any other common stock, preferred stock, limited liability company interests, limited partnership interests, general partnership interests (including the general partnership interests of Highstar Footprint Holdings GP, LLC in TopCo) and any other equity, ownership, or profit interests, including all options, warrants, rights, stock appreciation rights, phantom stock rights, restricted stock units, redemption rights, repurchase rights, convertible, exercisable, or exchangeable securities, or other agreements, arrangements, or commitments of any character relating to, or whose value is related to, any such interest or other ownership interest in TopCo, whether or not arising under or in connection with any employment agreement and whether or not certificated, transferable, preferred, common, voting, or denominated "stock" or a similar security. **Voting.** Impaired. Holders of Interests in TopCo will be deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, will not be entitled to vote to accept or reject the Plan.
General Provisions	
Capital Structure	If the Stand-Alone Restructuring is consummated, on the Effective Date, the debt and equity capital structure of the Reorganized Debtors will be consistent in all material respects with the capital structure of the Reorganized Debtors as set forth in this Term Sheet, unless otherwise agreed to by the Required Consenting Lenders. Neither the New Common Equity nor any other interests in any Reorganized Debtor will be listed for trading on a securities exchange, and none of the Reorganized Debtors will be required to file reports with the United States Securities and Exchange Commission unless it is required to do so pursuant to the Exchange Act.
Interests in TopCo Subsidiaries	All existing equity interests in the Salem Harbor Entities other than the Interests in TopCo shall remain effective and outstanding on the Effective Date and shall be owned and held by the same applicable entities that held or owned such interests immediately before the Effective Date.
Executory Contracts and Unexpired Leases	The Debtors reserve the right, with the consent of the Prepetition Agent and Required Consenting Lenders, to reject or amend certain executory contracts and unexpired leases. If the Stand-Alone Restructuring is consummated, all executory contracts and unexpired leases not expressly assumed will be deemed rejected pursuant to the Plan as of the Effective Date. If the Sale Transaction is consummated, all executory contracts and unexpired leases not expressly assumed and assigned to the Purchaser pursuant to the Plan shall be deemed rejected as of the Effective Date.
D&O Tail Policy	On or prior to the Effective Date, the Debtors shall purchase tail policies related to the Debtors' directors' and officers' insurance policies as of the Petition Date providing for coverage for at least a six-year period after the Effective Date for directors', managers' and officers' liability.
Cancellation of	On the Effective Date, except to the extent otherwise provided above or in the

Instruments, Certificates and Other Documents	Plan, all instruments, certificates, and other documents evidencing indebtedness or debt securities of, or interests in, any of the Debtors shall be cancelled, and the obligations of the Debtors thereunder, or in any way related thereto, shall be discharged.
Restructuring Expenses	The prepetition and postpetition reasonable and documented fees and expenses of the Prepetition Agent, including the prepetition and postpetition reasonable and documented fees and expenses of the Prepetition Agent Advisors (collectively, the "Restructuring Expenses"), shall be paid in full in cash in accordance with the terms of the Cash Collateral Orders and the terms hereof, as applicable, without any requirement to file a fee application with the Bankruptcy Court, without the need for itemized time detail, and without any requirement for Bankruptcy Court review or approval consistent with the terms of the Interim Cash Collateral Order. All Restructuring Expenses to be paid on the Effective Date shall be estimated in good faith prior to and as of the Effective Date and such estimates shall be delivered to the Debtors no later than five (5) days before the anticipated Effective Date; *provided*, *however*, that such estimates shall not be considered or deemed an admission or limitation with respect to such Restructuring Expenses, which are payable in full by the Debtors regardless of any estimation with any excess of estimated amounts over actual amounts to be reverted to the Reorganized Debtors.
Exemption from SEC Registration	The issuance of all securities under the Plan will be exempt from registration under (a) section 1145 of the Bankruptcy Code to the extent permitted pursuant to section 1145 of the Bankruptcy Code, or (b) such other applicable securities law exemption.
Definitive Documentation	The Definitive Documentation, including the Plan Supplement, shall be in form and substance reasonably acceptable to the Debtors and the Required Consenting Lenders. The Plan and each of the Definitive Documentation shall contain conditions precedent that are usual and customary for the transactions contemplated thereby.
Tax Issues	The terms of the Restructuring shall, to the extent practicable, be structured to (a) preserve or otherwise maximize favorable tax attributes (including tax basis) of the Salem Harbor Entities, and (b) achieve the most optimal and efficient tax outcomes for the Salem Harbor Entities taking into account applicable tax, applicable regulations, and business and cost considerations, in a manner acceptable to the Debtors and the Required Consenting Lenders.
Fiduciary Out	Notwithstanding anything to the contrary herein, the terms of this Term Sheet shall be subject to the "fiduciary out" provisions set forth in the RSA.
Milestones	The Debtors shall implement the Restructuring in accordance with the Milestones.
Retention of Jurisdiction	The Plan will provide that the Bankruptcy Court shall retain jurisdiction for usual and customary matters.
Company Governance/Organizational Documents/Release	
New Board	If a Stand-Alone Restructuring is consummated, the initial board of directors of Reorganized TopCo (the "New Board") shall consist of five (5) directors or managers in total, which shall be designated by the Required Consenting Lenders prior to the Effective Date and disclosed in the Plan Supplement.
New Governance	Corporate governance for the Reorganized Debtors, including charters, bylaws,

Documents	operating agreements, or other organizational documents, as applicable (the "New Governance Documents"), shall be consistent with this Term Sheet and section 1123(a)(6) of the Bankruptcy Code and shall be in form and substance acceptable to the Required Consenting Lenders.
Releases	The Plan and order confirming the Plan shall provide customary mutual releases, with a customary exclusion for criminal acts, gross negligence, willful misconduct, and fraud, in each case, to the fullest extent permitted by law, for the benefit of the Debtors, the Reorganized Debtors, the Plan Administrator, the Purchaser (if any), each Consenting Stakeholder, the Prepetition Agent and the Debtors' asset managers for the Salem Harbor facility as of the Effective Date, and with respect to each of the foregoing, such entity's respective current and former affiliates, and such entity's and its current and former affiliates' current and former officers, managers, directors, equity holders (regardless of whether such interests are held directly or indirectly), principals, members, limited partners, general partners, predecessors, successors, assigns, subsidiaries, and each of their current and former officers, managers, directors, equity holders, principals, members, employees, agents, managed accounts or funds, management companies, fund advisors, advisory board members, financial advisors attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such (collectively, the "Released Parties"); provided, however, that notwithstanding the forgoing or anything else to the contrary in this Term Sheet or the RSA, such releases shall not extinguish claims against any Equity Party by any entity that is, was or becomes a holder of Credit Facility Claims for contribution or indemnification in respect of (i) any claims or causes of action asserted by Iberdrola Energy Projects, Inc. (or any successor or successor-in-interest thereto) against a holder of a Credit Facility Claim related to DevCo or the Credit Agreement or (ii) solely to the extent any such claims for contribution or indemnification are applicable to an Equity Party in such context, obligations associated with the demolition or remediation of real property assets of DevCo ((i) and (ii) together, the "Lender Preserved Indemnity and Contribution Claims"); provided, that the releases contemplated herein shall not release any claims, counterclaims, defenses or any rights related thereto of any Equity Party with respect to the Lender Preserved Indemnity and Contribution Claims. Such releases shall include, without limitation, releases by the Releasing Parties (defined below) of the Released Parties of any and all claims, obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, including any derivative claims and avoidance actions, of the Salem Harbor Entities and such other Releasing Party, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that the Salem Harbor Entities or such other Releasing Party would have been legally entitled to assert in its own right (whether individually or collectively), or on behalf of the holder of any claim or equity interest (whether individually or collectively) or other entity, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances existing or taking place at any time prior to or on the Effective Date arising from or related in any way in whole or in part to the Salem Harbor Entities or their affiliates or subsidiaries, the Prepetition Secured Loans, the Cash Collateral Orders, the Exit Facility Loans (if applicable), the Restructuring, the Bidding Procedures, the Sale Process, the Chapter 11 Cases, the purchase, sale, or rescission of the purchase or

	sale of any security of the Salem Harbor Entities, the subject matter of, or the transactions or events giving rise to, any claim or equity interest that is treated in the Plan, or the negotiation, formulation, or preparation of the Definitive Documentation or related agreements, instruments, or other documents. "Releasing Parties" shall include the Debtors, the Reorganized Debtors, the Plan Administrator, each Consenting Stakeholder, the Prepetition Agent, all holders of claims who vote to accept the Plan, all holders of claims that are unimpaired under the Plan that do not elect to opt out of granting the releases, all holders of claims that are entitled to vote under the Plan but that (i) do not vote to accept or reject the Plan and (ii) do not opt out of granting the releases, all holders of claims that vote to reject the Plan and do not opt out of granting the releases, and with respect to the Debtors, the Reorganized Debtors, the Plan Administrator and the Equity Parties, such entity's and its current and former affiliates, and such entity's and its current and former affiliates' current and former members, directors, limited partners, general partners, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, and assigns, subsidiaries, and each of their respective current and former members, equity holders, officers, directors, managers, principals, members, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, in each case, solely in their respective capacities as such with respect to such entity.
Exculpation	Customary exculpation provisions.
Discharge	Customary discharge provisions.
Injunction	Customary injunction provisions.

* * *

Exhibit B to the Restructuring Support Agreement

Form of Transferee Joinder

Form of Transferee Joinder

This joinder (this "Joinder") to the Restructuring Support Agreement (the "Agreement"), dated as of [●], 2022, by and among: (i) the Salem Harbor Entities and (ii) Consenting Stakeholders, is executed and delivered by [_____] (the "Joining Party") as of [_____]. Each capitalized term used herein but not otherwise defined shall have the meaning ascribed to it in the Agreement.

1. Agreement to be Bound. The Joining Party hereby agrees to be bound by all of the terms of the Agreement, a copy of which is attached to this Joinder as Annex 1 (as the same has been or may be hereafter amended, restated, or otherwise modified from time to time in accordance with the provisions thereof). The Joining Party shall hereafter be deemed to be a Party for all purposes under the Agreement and one or more of the entities comprising the Consenting Stakeholders.

2. Representations and Warranties. The Joining Party hereby represents and warrants to each other Party to the Agreement that, as of the date hereof, such Joining Party (a) is the legal or beneficial holder of, and has all necessary authority (including authority to bind any other legal or beneficial holder) with respect to, the Credit Facility Claims and/or Interests identified below its name on the signature page hereof, and (b) makes, as of the date hereof, the representations and warranties set forth in Section 18(a) of the Agreement to each other Party.

3. Governing Law. This Joinder shall be governed by and construed in accordance with the internal laws of the State of New York without regard to any conflicts of law provisions which would require the application of the law of any other jurisdiction.

4. Notice. All notices and other communications given or made pursuant to the Agreement shall be sent to:

To the Joining Party at:

[JOINING PARTY]
[ADDRESS]
Attn:
Facsimile:
Email:

IN WITNESS WHEREOF, the Joining Party has caused this Joinder to be executed as of the date first written above.

[JOINING PARTY]

_____

By:
Name:
Title:

Principal Amount of Credit Facility Claims: $_____

Interests
Interests in Highstar Footprint Holdings GP, LLC: _____
Class A LP Interests in Highstar Footprint Power Holdings L.P. _____
Class B LP Interests in Highstar Footprint Power Holdings L.P. _____

Notice Address:

Fax:
Attention:
Email:

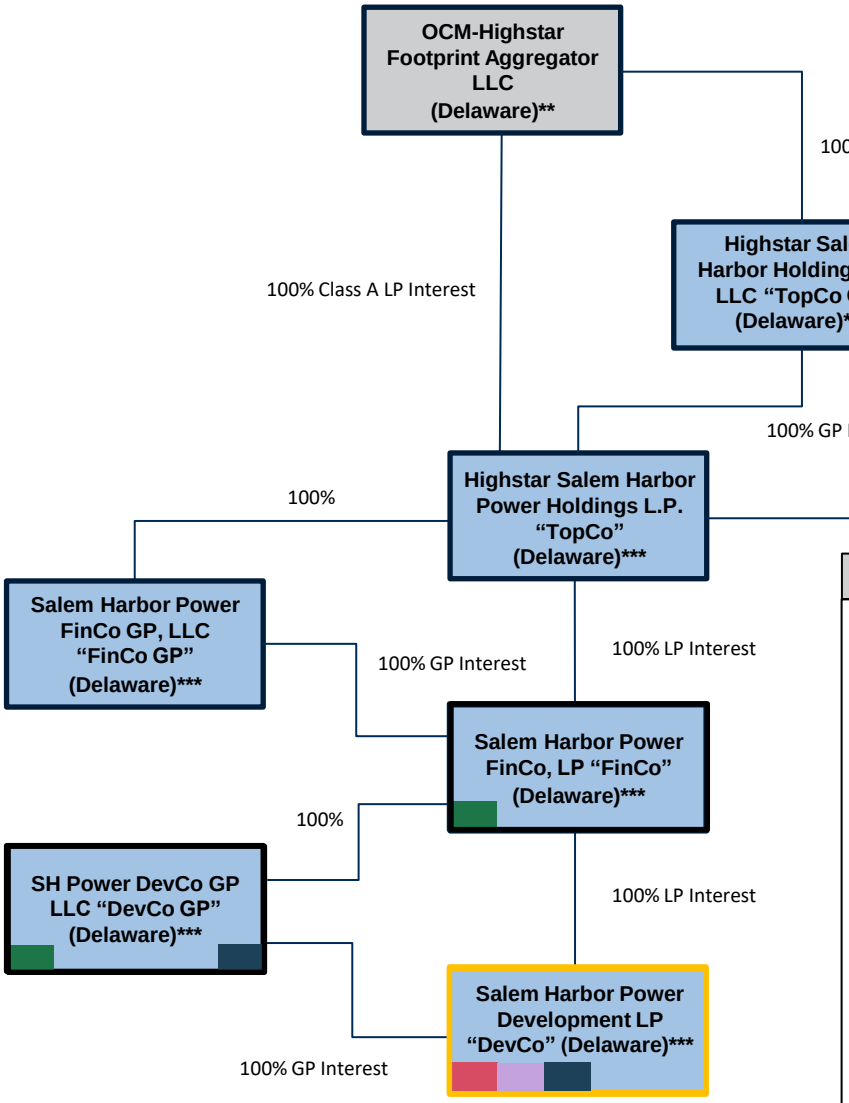
Annex 1 to the Form of Transferee Joinder

Restructuring Support Agreement

Exhibit C

Corporate Structure Chart

Salem Harbor Power Development LP and Debtor Affiliates Organizational Chart*



Legend

- Debtor Entity
- Non-Debtor Entity
- Borrower under Credit Agreement
- Equity pledged under Pledge Agreement
- Assets pledged under Pledge Agreement
- The following interests are pledged in accordance with the Pledge Agreement: (1) all rights of the entity as a limited partner, general partner, or member, as applicable, including any rights to money or property acquired in respect of pledged partnership interests; (2) all indebtedness owed to the entity by its respective subsidiaries, in their capacity as issuers, and any instruments evidencing such indebtedness; and (3) any proceeds of the foregoing, including all interest, earnings, and other proceeds of the foregoing
- IEP Arbitration Award

* Each of the Debtor entities is a pass-through business for tax purposes

** 100% of the equity interests in OCM-Highstar Footprint Aggregator LLC are indirectly owned by funds that are managed or advised by Oaktree Capital Management or its affiliates

*** On March 25, 2022, following the termination of the Debtors' trademark license, each of the Debtor entities filed a certificate of amendment with the Delaware Secretary of State formally changing its name. Each Debtor's name prior to March 25, 2022 is set forth below:

- Highstar Salem Harbor Holdings GP, LLC (f/k/a Highstar Footprint Holdings GP, LLC)
- Highstar Salem Harbor Power Holdings L.P. (f/k/a Highstar Footprint Power Holdings L.P.)
- Salem Harbor Power FinCo GP, LLC (f/k/a Footprint Power Salem Harbor FinCo GP, LLC)
- Salem Harbor Power FinCo, LP (f/k/a Footprint Power Salem Harbor FinCo, LP)
- SH Power DevCo GP LLC (f/k/a Footprint Power SH DevCo GP LLC)
- Salem Harbor Power Development LP (f/k/a Footprint Power Salem Harbor Development LP)

Exhibit D

Valuation Analysis

[To Come]

Exhibit E

Liquidation Analysis

[To Come]

Exhibit F

Financial Projections

[To Come]