IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
BURGESS BIOPOWER, LLC, *et al.*[1]	Case No. 24-10235 (LSS)
	(Joint Administration Requested)
Debtors.	

DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED PARTIES, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF

Burgess BioPower, LLC ("Burgess") and Berlin Station, LLC ("Berlin" or the "Borrower"), the debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"), hereby submit this *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* (the "Motion"). In support of the Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider and adjudicate the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference of the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are Burgess BioPower, LLC (0971) and Berlin Station, LLC (1913). The Debtors' corporate headquarters are located at c/o CS Operations, Inc., 631 US Hwy 1, #300, North Palm Beach, FL 33408.

within the meaning of 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The predicates for the relief sought herein are sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503, and 507 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 4001, 6003, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure for the District of Delaware (the "Local Rules").

3. Pursuant to Rule 9013-1(f) of the Local Rules, the Debtors consent to the entry of final orders or judgments with respect to the Motion if it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

BACKGROUND

I. The Chapter 11 Cases

4. On the date hereof (the "Petition Date"), the Debtors commenced the above-captioned chapter 11 cases (the "Chapter 11 Cases") by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the Court.

5. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession, pursuant to Bankruptcy Code Sections 1107(a) and 1108. As of the date of this Motion, no trustee, examiner or statutory committee has been appointed in these Chapter 11 Cases.

6. Additional information regarding the circumstances leading to the commencement of these Chapter 11 Cases and information regarding the Debtors' business and capital structure is set forth in detail in the *Declaration of Dean Vomero Pursuant to 28 U.S.C. § 1746 in Support*

of the Debtors' Chapter 11 Petitions and First Day Pleadings ("First Day Declaration"), filed contemporaneously with this Motion and incorporated herein by reference.[2] In support of this Motion, the Debtors also rely on the *Declaration of J. Scott Victor in Support of the Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief*, attached hereto as **Exhibit B** (the "Victor Declaration," and together with the First Day Declaration, the "Declarations"), each filed concurrently herewith and incorporated herein for reference.

7. The Debtors own and operate a 75-megawatt biomass-fueled power plant (the "Facility") located on an approximately 62-acre site in Berlin, New Hampshire (the "Facility Site"). For over a decade, the Debtors have been supplying power to energy users in New England pursuant to the Amended and Restated Power Purchase Agreement entered into by and between Berlin and Public Service Company of New Hampshire, doing business as Eversource Energy ("Eversource"), dated as of May 18, 2011 and amended on November 19, 2019 and August 18, 2022 (the "PPA").

8. The Debtors produce renewably-sourced energy that powers ten percent (10%) of the homes in the state of New Hampshire and provide employment – directly or indirectly – to 28 individuals. Not only do families in the Granite State rely on the Debtors for their livelihood, but trade vendors have consistently been able to depend upon the Debtors for many years. The Facility, directly or indirectly provides over 240 jobs, mostly in Coos County, New Hampshire,

[2] The First Day Declaration and other relevant case information are available on the following website maintained by the Debtors' proposed claims and noticing agent, Epiq: https://dm.epiq11.com/Burgess

and is responsible for more than $15 million in labor income on an annual basis. The Debtors' operations are regularly acknowledged as being among the best in the industry. The Facility's capacity factor, which is a measurement of run time and efficiency, has historically averaged over 90 percent. Operationally, and as a reliable contributor to the families and companies that rely upon the Debtors, the Debtors are central to the economy in Berlin, New Hampshire. However, due to a PPA that will result in losses for years to come and a counterparty that refuses to honor its contractual obligations, the Debtors have recently been forced to operate at a significant loss, essentially producing and selling its energy for free. Because this is unsustainable, the Debtors – with the support of and funding by their Prepetition Noteholders – have commenced these Chapter 11 Cases to (a) provide for the continued and in-full payment of their vendors and employees, (b) conduct an open, fair, and public sale process, and (c) in the event that the sale process is unsuccessful, confirm a plan of reorganization with the support of the Prepetition Noteholders in a debt to equity conversion with administrative claims to be paid in accordance with the DIP Budget. Particularly given the refusal of the Debtors' counterparty to make payments for the Energy it consumes or RECs and Capacity it receives, the proposed DIP Facility is a critical lifeline for the Debtors, without which these Chapter 11 Cases are almost certain to convert.

II. Prepetition Capital Structure and Indebtedness

9. As of the Petition Date, the Debtors' prepetition capital structure includes approximately $143.4 million in outstanding funded debt. The Debtors' funded debt obligations are summarized below:

A. Senior Secured Debt

10. In September 2011, the Debtors closed on senior secured debt financing in the amount of $200 million consisting of three tranches of *pari passu* debt. The prepetition senior secured financing documents are as follows:

(i) *Prepetition Senior Notes*. Pursuant to that certain (a) *Note Purchase Agreement* dated as of September 2, 2011 (as amended, restated, supplemented, or otherwise modified from time to time, the "Prepetition Senior Secured NPA"),[3] by and among the Borrower and the various financial institutions from time to time party thereto, as purchasers (collectively, the "Prepetition Noteholders"), (b) *Collateral Agency, Subordination, and Intercreditor Agreement*, dated as of September 2, 2011, as amended by that certain *Amended and Restated Collateral Agency, Subordination and Intercreditor Agreement*, dated as of October 25, 2012, the "Prepetition Collateral Agency Agreement"), by and among the Borrower, the Prepetition Noteholders, Deutsche Bank Trust Company Americas, in its capacity as collateral agent for the Prepetition Noteholders and the Subordinated Lenders (as defined herein) and as Depositary under the Prepetition Senior Secured NPA (in such capacities and in its capacity as a party to any other Prepetition Senior Secured Notes Documents (as defined below), collectively, the "Prepetition Agent," and together with the Prepetition Noteholders, the "Prepetition Secured Parties"), the Prepetition Secured Parties provided for the issuance by Berlin of the Prepetition Senior Notes (as defined below) and other financial accommodations to the Prepetition Secured Parties (the "Prepetition Financing").

(ii) *Facility Lease.* Pursuant to that certain *Lease* dated as of September 2, 2011 (as amended, restated, supplemented, or otherwise modified from time to time, the "Facility Lease," and collectively with the Prepetition Senior Secured NPA, the Prepetition Collateral Agency Agreement, the Prepetition Security Documents (as defined below), the other Financing Documents (as defined in the Prepetition Senior Secured NPA) and any other agreements and documents executed or delivered in connection with any of the foregoing, each as may be amended, restated, supplemented, waived or otherwise modified from time to time, the "Prepetition Senior Secured Note Documents"), among Berlin, as lessor, and Burgess, as lessee, Berlin leased to Burgess the Premises (as defined in the Facility Lease). All obligations of Burgess arising under the Facility Lease shall collectively be referred to herein as the "Facility Lease Obligations."

[3] The Prepetition Senior Secured NPA has been amended on six (6) separate occasions by (a) that certain Consent and Amendment dated as of October 25, 2012; (b) that certain Amendment No. 2 to the Note Purchase Agreement dated as of March 30, 2015; (c) that certain Amendment No. 1 to Amended and Restated Depositary and Security Agreement dated as of March 30, 2015; (d) that certain Amendment No. 1 to Depositary and Security Agreement dated March 30, 2015; (e) that certain Waiver, Consent and Amendment dated April 11, 2016; and (f) that certain Waiver, Consent and Amendment dated March 17, 2017.

(iii) *Prepetition Obligations*. The Prepetition Financing provided Berlin with, among other things, up to $200 million in aggregate principal amount of Notes comprised of (a) 7.00% Series A Senior Secured Fixed Rate Notes in the initial aggregate principal amount of $57,000,000 which mature on September 30, 2031 (the "Series A Fixed Rate Notes"), (b) 7.50% Series B Senior Secured Fixed Rate Notes in the initial aggregate principal amount of $93,000,000 which mature on September 30, 2031 (the "Series B Fixed Rate Notes"), and (c) Senior Secured Floating Rate Notes in the aggregate principal amount of $50,000,000 which matured on September 30, 2022 (the "Floating Rate Notes" and, together with the Series A Fixed Rate Notes and the Series B Fixed Rate Notes, the "Prepetition Senior Notes"). As of the Petition Date, the aggregate principal amount outstanding on the Prepetition Financing was not less than approximately $115 million as follows: Series A Fixed Rate Notes – $41 million, Series B Fixed Rate Notes – $67 million, Floating Rate Notes – $7.3 million [4] (collectively, together with accrued and unpaid interest, outstanding letters of credit, any reimbursement obligations (contingent or otherwise) in respect of letters of credit, any fees, expenses and disbursements (including, without limitation, attorneys' fees, accountants' fees, auditor fees, appraisers' fees and financial advisors' fees, and related expenses and disbursements), treasury, cash management, bank product and derivative obligations, indemnification obligations, guarantee obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Debtors' obligations pursuant to, or secured by, the Prepetition Senior Secured Note Documents and all interest, fees, prepayment premiums, costs and other charges allowable under section 506(b) of the Bankruptcy Code, collectively, the "Prepetition Obligations").

(iv) *Prepetition Liens and Prepetition Collateral*. Pursuant to the:

(a) *First Mortgage with Assignment of Leases, Contracts and Rents, and Fixture Filing*, dated as of September 2, 2011 ("First Mortgage"), Berlin granted to the Prepetition Agent, for itself and for the benefit of the Prepetition Secured Parties, to secure the Prepetition Obligations, a continuing first-priority mortgage lien and security interest in on all real property and fixtures located at the Premises and an assignment of leases and rents pursuant to which Berlin absolutely assigned all rents, income and profits from the Premises to the Prepetition Agent (collectively, as defined under the First Mortgage, the "Property");

(b) *Security Agreement*, dated as of September 2, 2011 (as amended, restated, supplemented, or otherwise modified from time to time, the "Berlin Security Agreement"),[5] Berlin granted to the Prepetition Agent, for the

[4] Such amount does not include all secured obligations under the Prepetition Senior Notes, including, without limitation, costs, expenses, fees (including attorneys' fees), indemnities, reimbursement obligations and other charges and obligations that may be due and payable under the Prepetition Senior Secured Note Documents.

[5] The Berlin Security Agreement was amended by that certain Amended and Restated Security Agreement dated as of October 25, 2012.

benefit of itself in its capacity as a Depository under the Berlin Depository and Security Agreement and Burgess Depository and Security Agreement (each term as defined below) and the Prepetition Secured Parties, to secure the Prepetition Obligations, a continuing first-priority lien and security interest in substantially all of the property and assets of Berlin, and the proceeds thereof, whether now owned or existing or hereafter acquired or arising, regardless of where located, other than the Excluded Collateral (as defined in the Berlin Security Agreement), (collectively, the "Berlin Collateral");

(c) *Security Agreement*, dated as of September 2, 2011 (as amended, restated, supplemented, or otherwise modified from time to time, the "Burgess Security Agreement"), Burgess granted to Berlin, to secure the Facility Lease Obligations, a continuing first-priority lien and security interest in substantially all of the property and assets of Burgess, and the proceeds thereof, whether now owned or existing or hereafter acquired or arising, regardless of where located, other than the Excluded Collateral (as defined in the Burgess Security Agreement), (collectively, the "Burgess Collateral");

(d) *Depository and Security Agreement*, dated as of September 2, 2011 (as amended, restated, supplemented, or otherwise modified from time to time, the "Berlin Depository and Security Agreement"), Berlin granted to the Prepetition Agent, for the benefit of itself as Depository and the Prepetition Secured Parties, to secure the Prepetition Obligations, a continuing first-priority lien and security interest in, among other things, certain accounts of Berlin and any cash balances, securities and other investment property, supporting property and other property from time to time credited to such accounts and any and all proceeds thereof (collectively, the "Berlin Account Collateral");

(e) *Depository and Security Agreement*, dated as of September 2, 2011 (as amended, restated, supplemented, or otherwise modified from time to time, the "Burgess Depository and Security Agreement"),[6] Burgess granted to the Prepetition Agent, for the benefit of itself as Depository and the Prepetition Secured Parties, to secure the Facility Lease Obligations, a continuing first-priority lien and security interest in, among other things, certain accounts of Burgess and any cash balances, securities and other investment property, supporting property and other property from time to time credited to such accounts and any and all proceeds thereof (collectively, the "Burgess Account Collateral");

[6] The Burgess Depositary and Security Agreement has been amended by that certain Consent, Amendment No. 2 to Note Purchase Agreement, Amendment No. 1 to Amended and Restated Depositary and Security Agreement and Amendment No. 1 to Depositary and Security Agreement, dated March 30, 2015.

(f) *Pledge and Security Agreement*, dated as of September 2, 2011 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "Berlin Pledge Agreement"), BBP #1, LLC and BBP #2, LLC pledged to the Prepetition Agent, for its benefit as Depository under the Berlin Depository and Security Agreement and the Burgess Depository and Security Agreement and the benefit of the Prepetition Noteholders, to secure the Prepetition Obligations, a continuing first-priority lien and security interest in all of the Pledged Collateral (as defined in the Berlin Pledge Agreement), which includes, among other things, 100% of all shares in Berlin (collectively, the "Berlin Pledged Collateral"); and

(g) *Pledge and Security Agreement*, dated as of September 2, 2011 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "Burgess Pledge Agreement" and together with the First Mortgage, the Berlin Security Agreement, the Burgess Security Agreement, Berlin Depository and Security Agreement, the Burgess Depository and Security Agreement, the Berlin Pledge Agreement, the Burgess Pledge Agreement and any other security agreement or document executed or delivered in connection therewith or in connection with the Prepetition Senior Notes, collectively, the "Prepetition Security Documents"), Burgess Holding, LLC pledged to the Prepetition Agent, for its benefit as Depository under the Berlin Depository and Security Agreement and the Burgess Depository and Security Agreement and the benefit of the Prepetition Noteholders, to secure the Prepetition Obligations, a continuing first-priority lien and security interest in all of the Pledged Collateral (as defined in the Burgess Pledge Agreement), which includes, among other things, 100% of all shares in Burgess (collectively, the "Burgess Pledged Collateral").

All security interests and liens granted under and pursuant to the Prepetition Security Documents shall collectively be referred to herein as the "Prepetition Liens."

All Property (as defined in the First Mortgage), Berlin Collateral, Burgess Collateral, Berlin Account Collateral, Burgess Account Collateral, Berlin Pledged Collateral, Burgess Pledged Collateral and any other collateral granted, assigned or pledged under the Prepetition Security Documents shall collectively be referred to herein as the "Prepetition Collateral."

Pursuant to the Prepetition Collateral Agency Agreement, certain subordinated lenders thereunder agreed that, among other things, their liens and claims against the Prepetition Collateral are junior to the Prepetition Liens and claims of the Prepetition Secured Parties.

11. The Prepetition Senior Notes are held by a group of insurance companies, including The Prudential Insurance Company of America, Pruco Life Insurance Company, Prudential Legacy Insurance Company of New Jersey, Pacific Life Insurance Company, Pacific Life & Annuity Company, Athene Annuity and Life Company (f/k/a Aviva Life and Annuity Company) and Royal Neighbors of America (collectively, the "Prepetition Noteholders"). The Prepetition Senior Notes are secured by a continuing lien and security interest on the Prepetition Collateral. The Prepetition Senior Secured Note Documents exclude certain assets from the Prepetition Collateral, including (a) the cash grant in lieu of electricity production credits under Section 45 of the Internal Revenue Code, 26 U.S.C. §§ 1 *et seq.*, issued by the U.S. Department of Treasury under Section 1603 of the American Recovery and Reinvestment Act of 2009, resulting from the Debtors' investment into the Facility (the "Section 1603 Grant"); (b) the right to receive proceeds from the Section 1603 Grant; (c) the Section 1603 Grant application and any proceeds of such application; (d) any tax credits or tax attributes of any kind relating to the 1603 Grant; (e) any required approval which by its terms or by operation of law would become void, voidable, terminable or revocable or would constitute a breach of default thereunder if a security interest therein was granted; or (f) any lease, license, contract or agreement to which Berlin is a party, or any of its rights or interests thereunder, if and for so long as the grant of such lien or security interest shall result in the unenforceability of any right therein or a breach thereof.

12. The Prepetition Agent filed a UCC financing statement in New Hampshire on September 2, 2011 to perfect the lien on the Prepetition Collateral of Berlin Station (the "Initial NH Berlin Financing Statement"). The Prepetition Agent thereafter amended the Initial NH Berlin Financing Statement on October 31, 2012 and filed a continuation thereof on September

1, 2016. On September 16, 2021, The Prepetition Agent refiled the Initial NH Berlin Financing Statement in New Hampshire.

13. The Prepetition Agent filed a UCC financing statement in Delaware on the Prepetition Collateral of Berlin on September 10, 2021 (the "Initial DE Berlin Financing Statement"). DBTCA thereafter amended the Initial DE Berlin Financing Statement on May 31, 2022. The Prepetition Agent has not made any financing statement filings against Burgess related to the Prepetition Senior Notes.

14. The Debtors notified the Prepetition Noteholders of certain occurrences and continuing defaults and events of default under the Prepetition Senior Secured Note Documents pursuant to that certain Waiver, Consent and Amendment dated as of April 11, 2016 and that certain Waiver, Consent and Amendment dated as of March 17, 2017 (collectively, the "Waivers"). Pursuant to the Waivers, the Prepetition Noteholders had waived each of the existing defaults and consented to extending certain payable obligations through fiscal year 2018. The Debtors are currently in default under the Prepetition Senior Secured Note Documents.

15. While the Debtors have other outstanding prepetition obligations that are junior to the Prepetition Obligations, it is unlikely that the Prepetition Obligations of the Prepetition Secured Parties will be paid in full. *See* Victor Declaration ¶ 8.

B. Subordinated Secured Debt

16. In addition to the Prepetition Senior Notes, the Debtors issued subordinated secured debt in the principal amount of approximately $74,734,671 to finance the construction and development of the Facility and certain related expenses (the "Subordinated Debt") pursuant to the CDE Subordinated Loan Agreement and the Greenline Subordinated Loan Agreement

(each as defined below, and together the "Subordinated Loan Agreements"). Approximately $30 million remains outstanding in the aggregate on account of the Subordinated Debt.

17. CDE Subordinated Loan Agreement. Pursuant to that certain CDE Subordinated Loan Agreement made by and between Berlin Station; CCM Community Development XIX LLC, a Delaware limited liability company ("CCM"); RBC Community Development Sub 6, LLC, a Delaware limited liability company ("RBC"); Empowerment Reinvestment Fund XV, LLC, a Delaware limited liability company ("ERF"); NHBFA Sub-CDE II, LLC, a New Hampshire limited liability company ("NHBFA") and CTA CDE Sub 4, LLC, a Florida limited liability company ("CTA," and together with CCM, RBC, ERF and NHBFA, the "CDE Subordinated Lenders," and each a "CDE Subordinated Lender") dated as of September 2, 2011 (the "CDE Subordinated Loan Agreement"), the CDE Subordinated Lenders extended a loan in the aggregate principal amount of $63,552,071 to Berlin to finance the construction and development of the Facility and certain related expenses, with a maturity date of September 1, 2033. The obligations under the CDE Subordinated Loan are secured by liens on all of Berlin Station's right, title, and interest in and to the Facility. The CDE Subordinated Lenders assigned their rights and obligations to the notes under the CDE Subordinated Loan Agreement to Berlin BioPower Investment Fund, LLC, a Missouri limited liability company, and nondebtor affiliate of the Debtors, in accordance with those certain Allonges to Notes dated September 5, 2018. (collectively, the "QLICI Berlin Bio Investment Notes"). As of the Petition Date, approximately $16.3 million remains outstanding on the QLICI Berlin Bio Investment Notes.

18. Greenline Subordinated Loan Agreement. Pursuant to the Subordinated Loan Agreement by and between Greenline CDF Subfund XVIII LLC ("Greenline," and together with the CDE Subordinated Lenders, the "Subordinated Lenders"), a Delaware limited liability

company, as lender, and Berlin Station, as borrower, dated as of October 25, 2012 (the "Greenline Subordinated Loan Agreement"), Greenline extended a loan in the aggregate principal amount of $11,182,600 to Berlin to finance the construction and development of the Facility, to repay certain outstanding obligations and to pay certain transaction costs and expenses, as reflected by those certain Notes issued by Berlin with a maturity date of October 25, 2033 (the "Greenline Notes"). The Greenline Notes are payable semi-annually on the 15th of every July and January, and have an interest rate of 1.262190%. The obligations under the Greenline Subordinated Loan Agreement and the Greenline Notes are secured by liens on all of Berlin's right, title and interest in and to the Facility. Pursuant to the Amended and Restated Subordination and Intercreditor Agreement dated as of October 25, 2012, Greenline's security interest in the collateral is subordinated to the CDE Subordinated Lenders' security interest in the collateral.

19. The Prepetition Agent, in its capacity as Collateral Agent for the Subordinated Lenders, filed an amendment to the Initial NH Berlin Financing Statement in New Hampshire on October 31, 2012 to perfect the security interest in the assets of Berlin made pursuant to the Subordinated Debt, which was continued on September 1, 2016. Prepetition Agent then filed an updated UCC financing statement in New Hampshire related to the Subordinated Debt on September 16, 2021. Prepetition Agent also filed an amendment to the Initial DE Berlin Financing Statement in Delaware on May 31, 2022 in the assets of Berlin Station made pursuant to the Subordinated Debt. Prepetition Agent has not made any financing statement filings against Burgess related to the Subordinated Loan Agreements.

20. The Collateral Agent filed the following mortgages against the real estate of Berlin: the First Mortgage, recorded in Book 1333, Page 949 in the Coos County Registry of

Deeds (the "Senior Mortgage") for the benefit of the Prepetition Secured Parties (as defined below); Second Mortgage with Assignment of Leases, Contracts and Rents, and Fixture Filing from Berlin Station, LLC to the Collateral Agent, dated September 2, 2011, recorded in Book 1333, Page 976 in the Coos County Registry of Deeds (the "Second Mortgage") for the benefit of the Subordinated Lenders and subject to the Subordination and Attornment Agreement dated as of September 2, 2011; and Third Mortgage with Assignment of Leases, Contracts and Rents and Fixture Filing from Berlin Station, LLC to the Collateral Agent, dated October 25, 2012, recorded in Book 1362, Page 672 in the Coos County Registry of Deeds for the benefit of the Subordinated Secured Lenders (the "Third Mortgage," and together with the Senior Mortgage and the Second Mortgage, the "DB Mortgages").

21. Pursuant to that certain Subordination Agreement dated as of November 19, 2013, the Collateral Agent purportedly subordinated the DB Mortgages, including all mortgage interests, security interest and other liens of the Collateral Agent, for the benefit of the Prepetition Secured Parties, to the terms and conditions of the Option Agreement and the Agreement Creating Certain Easement over Property of Berlin Station, dated as of November 25, 2013 (the "PSNH-DB Subordination Agreement"). The PSNH-DB Subordination Agreement was filed with the Coos County Registry of Deeds.

22. Pursuant to the Prepetition Collateral Agency Agreement, the Prepetition Noteholders retain a first lien over any shared collateral securing the payment and performance of the obligations under the Prepetition Senior Secured Note Documents, and the Subordinated Lenders retain a second lien over any shared collateral securing the payment and performance of the obligations under the Subordinated Loan Documents. The Prepetition Collateral Agency Agreement provides that the liens on any shared collateral are separate and distinct and must be

separately classified in any plan of reorganization proposed or adopted in any insolvency proceeding. Additionally, the Prepetition Collateral Agency Agreement grants the exclusive right to enforce or exercise rights and remedies related to the collateral to the Prepetition Agent, in its capacity as Collateral Agent, without any consultation or consent of the Subordinated Lenders.

III. Events Leading Up to the DIP Facility and Negotiation of the DIP Facility

23. In this case, obtaining access to debtor-in-possession financing was difficult because all or nearly all of the Debtors' assets are encumbered under the existing prepetition capital structure, which, along with the Debtors' anticipated cash shortfalls, restricts the availability of, and options for, debtor in possession financing. Victor Declaration ¶ 8. To avoid a protracted and expensive priming fight, which the Debtors could not afford, particularly as they have no alternate lenders and cannot provide adequate protection to the Prepetition Noteholders, the Debtors and their advisors believed that their only alternatives were to: (1) obtain the Prepetition Noteholders' consent to the priming of their liens by a third-party lender; (2) locate a third-party lender willing to provide debtor-in-possession financing on an unsecured basis with priority over that of administrative expenses; (3) find lenders willing to refinance out Prepetition Noteholders and provide incremental liquidity; or (4) find junior financing and a new secured lender. *Id.* Not one of these alternatives was possible or feasible. *See id.* Instead, given that no other party was willing to provide postpetition financing to the Debtors and that the Debtors could not, under any circumstances, provide adequate protection to the Prepetition Noteholders, the Debtors are of the view that there is not an equity cushion available for the Debtors to obtain debtor-in-possession financing based on priming the Prepetition Noteholders' liens over their

objections, nor would the Debtors' business be able to sustain its value during a contested priming fight. *Id.*

24. The Debtors, with the assistance of SSG Advisors, LLC ("SSG"), solicited proposals for third-party debtor-in-possession financing in parallel with discussions with the Prepetition Noteholders. Victor Declaration ¶ 9. Beginning on January 24, 2024, the Debtors and SSG reached out to several private credit investors that make investments in the amount required by the Debtors to gauge their interest in providing debtor-in-possession financing to the Debtors. *Id*. Due to the Debtors' financial position, their existing leveraged capital structure, and the size of the financing need, the Debtors were unable to identify any interested third-party financing parties. *Id.* Potential financing parties were not willing to provide financing junior to Prepetition Noteholders due to the amount of existing secured debt relative to the Debtors' financial position, and the Prepetition Noteholders made it clear they were not willing to subordinate their lien position to a third-party lender. *Id* at ¶ 10. In addition, any senior financing that did not include Prepetition Noteholders' consent would have inevitably resulted in a non-consensual priming fight, which the Debtors do not believe they would win and would result in increased professional costs, threatening the Debtors' ability to emerge as a viable reorganized entity. *Id.* Any lender willing to lend on cash flow would need a signed power purchase agreement with pricing to support the Debtors' business plan, and prospective lenders would be sizing the Debtors' facility based off a conservative loan-to-value ratio on the liquidation value of the assets. *Id.* However, at this time there is no power purchase agreement that is accretive to the Debtors' estates. *See id.* Instead, the Debtors have been trapped under the thumb of Eversource, which in January took the Debtors' energy without paying for it, hurtling the Debtors toward a

crash landing. The Debtors and their Prepetition Noteholders have reached an agreement to avoid this result selling into the general market.

25. As difficult as it seemed, the Debtors attempted to find new sources of financing. Victor Declaration ¶ 9. This was unsuccessful. *Id.* at ¶ 10. Accordingly, in parallel with the solicitation of proposals from new sources of financing, the Debtors and their advisors continued negotiating with the Prepetition Noteholders on the terms of a debtor-in-possession credit facility to be provided by them. *Id.* at ¶ 11. The Debtors' negotiations with the Prepetition Noteholders ultimately led to an agreement on the terms of a senior secured postpetition financing on a superpriority basis consisting of a senior secured superpriority debtor-in-possession priming credit facility (the "DIP Facility") to be provided by certain of the Prepetition Noteholders (in each case, including any successors and permitted assignees, each, a "DIP Lender" and, collectively, the "DIP Lenders"), pursuant to that Senior Secured Superpriority Debtor In Possession Credit Agreement, attached to this Motion as **Exhibit C** (the "DIP Credit Agreement"), by and among the Borrower, the Guarantor, the DIP Lenders, and DBTCA in its capacity as the Collateral Agent and Administrative Agent, (in such capacity, the "DIP Agent," and together with the DIP Lenders, the "DIP Secured Parties"). *Id.*

RELIEF REQUESTED

26. The Debtors respectfully request entry of an interim order substantially in the form attached hereto as **Exhibit A** (the "Interim Order") and a final order (the "Final Order"[7] and together with the Interim Order, the "DIP Orders"):

(i) authorizing the Debtors to obtain the DIP Facility in the aggregate principal amount of up to $54 million consisting of: (a) a new money delayed-draw term loan facility in the aggregate principal amount of up to $18 million including (i) up to up to $4.4 million available to the Borrower on an interim basis (the

[7] The Debtors will file the form of Final Order prior to the Final Hearing.

"Interim DIP Term Loan") and (ii) up to $18 million (inclusive of all amounts funded by the DIP Lenders on account of the Interim DIP Term Loan), on a final basis (the "Final DIP Term Loans," and together with the Interim DIP Term Loan, the "DIP Term Loans"), and (b) roll-up loans to refinance on a pro rata basis across the holdings of the Prepetition Obligations of the DIP Lenders, (x) upon entry of the Interim Order, on a 2:1 ratio times the principal amount of the committed Interim DIP Term Loans (the "Interim Roll-Up Loans") and (y) upon entry of the Final Order, on a 2:1 ratio times the committed principal amount of the Final DIP Term Loans on a final basis (the "Final Roll-Up Loans" and, together with the Interim Roll-Up Loans, the "Roll-Up Loans;" and the DIP Term Loans, together with the Roll-Up Loans, collectively, the "DIP Loans");

(ii) authorizing the Debtors, as applicable, to execute and deliver the DIP Credit Agreement and each of the other agreements, documents, notes and instruments as shall be required by the DIP Secured Parties to be entered into in connection with the DIP Credit Agreement, each in form and substance acceptable to the DIP Secured Parties (collectively, and as the same may be amended or otherwise modified from time to time, the "DIP Loan Documents," and together with the DIP Orders and any other agreements, instruments, pledge agreements, guarantees, control agreements and other loan documents and documents related thereto (including any security agreements, mortgages, intellectual property security agreements, control agreements, or notes) (as amended, restated, supplemented, waived, and/or modified from time to time, and collectively, with the DIP Credit Agreement, the "DIP Documents"))) and to perform such other acts as may be necessary or desirable in connection with the DIP Documents;

(iii) granting the DIP Facility and all obligations owing thereunder and under, or secured by, the DIP Documents to the DIP Secured Parties (collectively, including all obligations described in the DIP Documents, the "DIP Obligations") allowed superpriority administrative expense claim status in each of the Chapter 11 Cases and any Successor Cases (as defined in the Interim Order);

(iv) granting to the DIP Agent, for the benefit of itself and the DIP Lenders under the DIP Documents, automatically perfected security interests in and liens on all of the DIP Collateral (as defined in the Interim Order), including, without limitation, all property of the Debtors constituting "Cash Collateral" as defined in section 363(a) of the Bankruptcy Code ("Cash Collateral"), which liens shall be subject to the priorities set forth herein;

(v) authorizing and directing the Debtors to pay the principal, interest, fees, expenses and other amounts payable under the DIP Documents as such become due and payable, including, without limitation, collateral agent's fees, the reasonable fees and disbursements of the DIP Lenders' and the DIP Agent' attorneys, advisors, accountants and other consultants, all to the extent provided in, and in accordance with, the DIP Documents;

(vi) authorizing the Debtors to use, on the terms described in the Interim Order, the Prepetition Collateral (as defined in the Interim Order), including the Cash Collateral of the Prepetition Secured Parties under the Prepetition Senior Secured Note Documents;

(vii) providing adequate protection to the Prepetition Agent, for the benefit of itself and the Prepetition Noteholders, for any diminution in value of their interests in the Prepetition Collateral, including Cash Collateral, for any reason provided for under the Bankruptcy Code, including the imposition of the automatic stay, the Debtors' use, sale, or lease of the Prepetition Collateral, including Cash Collateral, and the priming of their respective interests in the Prepetition Collateral (including by the Carve-Out (as defined herein)) pursuant to the terms and conditions set forth in the Interim Order ("Diminution in Value");

(viii) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Documents and the Interim Order;

(ix) deeming a portion of the Prepetition Senior Notes to be Roll-Up Loans issued and outstanding under the DIP Documents and all obligations in connection with such Rolled-up Loans to constitute DIP Obligations for all purposes thereof;

(x) scheduling a final hearing (the "Final Hearing") to consider the relief requested herein on a final basis and approving the form of notice with respect to the Final Hearing; and

(xi) granting related relief.

I. The Debtors Have Urgent Liquidity Needs.

27. The Debtors are out of money and their revenue stream has been cut off by Eversource. They are entering these Chapter 11 Cases with the support of the DIP Lenders as their sole source of financing. This support is contingent upon, among other things, meeting the obligations in the DIP Documents and consummating the restructuring transactions contemplated thereunder. One of the Debtors' principal obligations under the DIP Documents is to obtain an order approving the DIP Facility pursuant to the terms of the Interim Order within the first three (3) business days of the Petition Date.

28. As described more fully in the Declarations, the continued and viable operation of the Debtors' business through and upon emergence from Chapter 11 will not be possible absent

the Court's entry of the Interim Order. Without immediate access to the new financing and Cash Collateral (which is quite limited), the Debtors will suffer substantial and irreparable harm. The Debtors' need for access to additional liquidity is, therefore, urgent. Approval of the Interim Order will ensure that the Debtors can (a) continue their business operations without interruption, (b) maintain ordinary course relationships with vendors, customers, and plant personnel, and (c) satisfy other working capital needs in the ordinary course, and (d) consummate the broader set of restructuring transactions.

II. The DIP Facility Has Been Heavily Negotiated.

29. The Debtors and their advisors and professionals were actively involved throughout the negotiations with the Prepetition Noteholders for debtor-in-possession financing, which were conducted vigorously, at arms' length and in good faith. The DIP Facility represents a negotiated resolution with the Prepetition Noteholders, whereby the Debtors can obtain a substantial financing package on market terms, without overly burdensome case controls, without the risk of a priming fight, and with a clear path to expedited emergence. *See* Victor Declaration ¶¶ 11-13.

III. The Terms of the DIP Facility are Fair and Reasonable.

30. Given that the Debtors have limited cash on hand and are currently operating at a loss that increases daily given the refusal of their off-taker to make payments under the pre-petition PPA, the DIP Facility provides the Debtors with fair, reasonable and the only possible financing terms under the Debtors' circumstances. *See* Victor Declaration ¶ 15. The DIP Facility will provide critically needed liquidity to pay all trade creditors, vendors and plant personnel, fund these cases, run a parallel sale and plan process backstopped by the Prepetition Noteholders, and maximize value for the Debtors and their stakeholders. *Id.*

31. As a condition to entry into the DIP Credit Agreement and other DIP Documents, the extension of credit under the DIP Facility and the authorization to use Cash Collateral, the DIP Secured Parties and the Prepetition Secured Parties require, and the Debtors have agreed, that proceeds of the DIP Facility and the Cash Collateral shall be used, in each case in a manner consistent with the terms and conditions of the DIP Orders, the DIP Credit Agreement, and the other DIP Documents and in accordance with the budget (as the same may be modified from time to time consistent with the terms of the DIP Orders and the DIP Documents and subject to such variances and other exclusions as permitted in the Interim Order and the DIP Credit Agreement, the "Budget"). Victor Declaration ¶ 17.

32. The Debtors have agreed, subject to Court approval, to pay certain fees to the DIP Agent and DIP Lenders. Victor Declaration ¶ 18. These fees were the subject to negotiation between the Debtors, the DIP Lenders and the DIP Agent, are an integral component of the overall terms of the DIP Facility and were required by the DIP Agent and DIP Lenders as consideration for the extension of postpetition financing. *Id.* The fees reflected in the DIP Credit Agreement are consistent with the those found in similar financing. *Id.* As such, the proposed terms of the DIP Facility are fair, reasonable, and appropriate under the circumstances. *Id.*

33. The Prepetition Noteholders' agreement to provide the DIP Facility was conditioned on the roll-up of the Prepetition Obligations under the DIP Facility as set forth in the DIP Credit Agreement, which is fair and reasonable given the Prepetition Noteholders' agreement to provide significant new financing and to backstop administrative expenses in accordance with the DIP Budget. *See* Victor Declaration ¶ 19. The DIP Facility also contemplates certain milestones (the "Milestones"), as detailed in Section 5.17 of the RSA and Annex I to the DIP Credit Agreement, that the Debtors have agreed to and believe are critical to the orderly

administration of these Chapter 11 Cases. *Id.* at ¶ 20. Among other provisions of the DIP Credit Agreement, the Milestones were negotiated among the Debtors, the Prepetition Noteholders, the DIP Lenders, and the Debtors' affiliated non-debtor entities that provide management and operation services to the Debtors. They are critical to keeping the case on track and were negotiated by all the parties at arms' length within the parameters of the Debtors' anticipated liquidity needs. *See id.*

III. Material Terms of the Postpetition Financing

34. In accordance with Bankruptcy Rule 4001 and Local Rule 4001-2, below is a summary of the terms of the DIP Agreement and interim Order.

SUMMARY OF MATERIAL TERMS OF THE POSTPETITION FINANCING[8]		
Borrower Bankruptcy Rule 4001(c)(1)(B)	Berlin Station, LLC	DIP Credit Agreement, Preamble
Guarantor Bankruptcy Rule 4001(c)(1)(B)	Burgess Biopower, LLC	DIP Credit Agreement, Preamble
Administrative Agent Bankruptcy Rule 4001(c)(1)(B)	Deutsche Bank Trust Company Americas	DIP Credit Agreement, Preamble
DIP Lenders Bankruptcy Rule 4001(c)(1)(B)	Each lender from time to time party to the DIP Credit Agreement	DIP Credit Agreement, Preamble

[8] The summary of the DIP Facility is qualified in its entirety by reference to the applicable provisions of the DIP Credit Agreement or the Interim Order, as applicable. If there are any inconsistencies between this summary and the provisions of the DIP Credit Agreement or the Interim Order, the provisions of the DIP Credit Agreement or the Interim Order, as applicable, shall control. Any capitalized terms used but not otherwise defined in this summary shall have the respective meanings ascribed to such terms in the DIP Credit Agreement or the Interim DIP Order, as applicable.

Commitment Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	A new money delayed-draw term loan facility in the aggregate principal amount of up to $18 million including (i) up to $4.4 million available to the Borrower on an interim basis (the "Interim DIP Term Loan") and (ii) up to $18 million (inclusive of all amounts funded by the DIP Lenders on account of the Interim DIP Term Loan), on a final basis	Interim Order, p. 2.
Maturity Date Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	"Maturity Date" means, the earliest of (a) 180 Days after Closing Date, (b) the earlier of the date (i) any Loan Party enters into (or files a motion with the Bankruptcy Court or otherwise supports another Person taking action to pursue the Bankruptcy Court for approval of) a purchase agreement relative to any assets or Equity Interests of a Loan Party, unless such purchase agreement is entered into in connection with the Auction conducted pursuant to the Bidding Procedures Order or expressly consented to in writing by all Lenders, and (ii) any Loan Party files a motion or otherwise supports another person taking action to pursue the Bankruptcy Court for approval of a sale relative to any assets or Equity Interests of a Loan Party (other than an Auction conducted pursuant to the Bidding Procedures Order) unless expressly consented to in writing by all Lenders, (c) the consummation of a sale of all or substantially all of the assets of any of the Loan Parties or any Equity Interests of a Loan Party pursuant to section 363 of the Bankruptcy Code or otherwise, (d) the effective date of a Plan of Reorganization or plan of liquidation in the Cases, or (e) the date of filing or support by any Loan Party of a Plan of Reorganization that (i) does not provide for indefeasible payment in full in cash of all Obligations in connection with the Facility and all outstanding obligations in connection with the Prepetition Senior Secured Note Documents or (ii) is not otherwise acceptable to all Lenders in their sole discretion.	DIP Credit Agreement, § 1.01 pp. 13-14.

Use of Proceeds Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(6)-(a)(7)	The proceeds of the Loans will be used exclusively to pay expenditures set forth in the DIP Budget, expressly permitted by the DIP Orders and by Sections 6.11 and 7.20 of the DIP Credit Agreement. Use any proceeds from the Loans or any cash collateral, directly or indirectly, for any purposes other than to pay or fund: (a) [reserved];(b) Adequate Protection Fees and Expenses; (c) the Carve-Out; and (d) the working capital needs of the Loan Parties during the Case; in each case, solely in accordance with the DIP Budget and the DIP Orders. Notwithstanding anything to the contrary contained in any Loan Document, none of the proceeds of the Loans and none of the Obligations, the cash collateral, the Collateral or the Carve-Out may be used for the following purposes: (i) to object, contest or raise any defense to, the validity or priority of the Prepetition Indebtedness or the Prepetition Senior Secured Note Documents, the Obligations, the Loan Documents or the liens, security interests or claims granted under the Interim DIP Order, the Final DIP Order, the DIP Credit Agreement, the other Loan Documents or the Prepetition Senior Secured Note Documents, (ii) investigate, initiate or prosecute any claims and defenses or causes of action against any of the Administrative Agent, the Collateral Agent, the Lenders, the Prepetition Noteholders, the Prepetition Secured Parties, or their respective agents, affiliates, representative, attorneys, or advisors under or relating to the Prepetition Indebtedness, the Prepetition Senior Secured Note Documents, the Prepetition Collateral, the Collateral, the Obligations or the Loan Documents, (iii) prevent, hinder or otherwise delay the Collateral Agent's or any Lender's assertion, enforcement or realization on the cash collateral or the Collateral in accordance with the Loan Documents, (iv) seek to modify any of the rights granted to the Collateral	DIP Credit Agreement, §§ 5.19, 7.20.

	Agent, the Lenders, the Prepetition Noteholders or the Prepetition Secured Parties hereunder or under the Loan Documents or the Prepetition Senior Secured Note Documents, in each of the foregoing cases without such parties' prior written consent, (v) seek to sell or otherwise dispose of the Collateral (other than as permitted under Section 7.05) without the prior written consent of the Lenders, (vi) pay any amount on account of any claims arising prior to the Petition Date, to fund acquisitions, capital expenditures, capital lease, or any other expenditure, unless such payments or expenditures are (A) approved by an order of the Bankruptcy Court and (B) in accordance with the DIP Credit Agreement and any relevant DIP Budget (viii) to pay Past Due O&M Obligations and Past Due PMA Obligations as defined in that certain Motion for Interim and Final Orders (I) Authorizing the Debtors to Continue Performing Under Certain Shared Services Agreements and Honor Obligations Related Thereto; and (II) Granting Related Relief filed with the Bankruptcy Court on the Petition Date; provided that, notwithstanding the foregoing to the contrary, advisors to a Committee, if any, may investigate (but not prosecute) the Prepetition Indebtedness and the Prepetition Liens to the extent and in the manner set forth in the applicable DIP Order.	
Interest Rate Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	**Interest Rate**. Each Loan under the Facility shall bear interest on the outstanding principal amount thereof from the applicable Borrowing date at a rate per annum equal to 12.0%. **Default Rate**. An interest rate per annum equal to 2.0% in excess of the interest rate otherwise applicable thereto, in each case, to the fullest extent permitted by applicable Laws. Interest on each Loan shall be due and payable in cash in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein and shall be due on the Maturity Date; provided that subject to the	DIP Credit Agreement, §§ 1.01 p. 6, 2.06.

	immediately following proviso, the Borrower may elect to not make such payment of interest in cash on any Interest Payment Date and such interest shall continue to accrue; provided, however, that notwithstanding the foregoing, at any time the amount of the Borrower's Excess Cash on any Interest Payment Date is greater than $0, the Borrower shall immediately pay any accrued but unpaid interest in cash in an amount equal to the lesser of: (x) the amount of Excess Cash and (y) the amount of accrued but unpaid interest at such time. Payments in cash with respect to accrued interest shall be applied in the order as elected by the Lenders. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment.	
Fees Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	Upfront Fee. The Borrowers will pay to the Administrative Agent, for the account of each Lender, an upfront fee (the "Upfront Fee") equal to $250,000, to be distributed to each Lender on a pro rata basis based on such Lender's Applicable Percentage of the Commitments. The entire amount of the Upfront Fee shall be fully earned, due and owing on the Closing Date and shall be payable in cash on the Maturity Date. Unused Line Fee. The Borrowers will pay to the Administrative Agent for the account of each Lender, on a pro rata basis based on such Lender's Applicable Percentage, an unused line fee equal the actual daily amount by which the Commitments exceed the outstanding principal amount of the Loans times 0.50% per annum (the "Unused Line Fee"). The Unused Line Fee shall be fully earned, due and owing on the first day after the end of each fiscal month and on the Maturity Date and shall be payable in cash on the Maturity Date. The unused line fee shall accrue at all times from the Closing Date until the Maturity Date, including at any time during which one or more of the conditions in Article IV is not met. Agency Fee. The initial agency fees as set forth in the service proposal, dated February 8, 2024 and executed by the Borrower (the "Services Proposal") which are set forth as	DIP Credit Agreement, § 2.07

	payable at closing, shall be due and payable on the Closing Date. Additional agency fees as set forth in the Services Proposal shall be due and payable by the Borrower to the Agents on each semi-annual anniversary of the Closing Date.	
Provisions Deeming Prepetition Debt To Be Postpetition Debt Local Rule 4001- 2(a)(i)(O)	Roll-up loans to refinance on a pro rata basis across the holdings of the Prepetition Obligations of the Prepetition Noteholders who choose to participate as DIP Lenders: **Interim Roll-Up Loans**: Following entry of the Interim Order, on a 2:1 ratio times the principal amount of the funded Interim DIP Term Loans; and **Final Roll-Up Loans**: Following entry of the Final DIP Order, on a 2:1 ratio times the funded principal amount of the Final DIP Term Loans on a final basis.	Interim Order, p. 2.
Priority Under the DIP Facility Bankruptcy Rule 4001(c)(1)(B)(i), 4001(c)(1)(B)(ii)	First priority liens on substantially all assets of the Debtors, subject to the Carve-Out and any Permitted Prior Liens, if any.	Interim Order, ¶ 6.
Carve Out Bankruptcy Rule 4001(b)(1)(B)(iii)	The "Carve-Out" means the sum of: (i)all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to $50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code at any time before or on the first business day following delivery by the DIP Agent or the Prepetition Agent of a	Interim Order, ¶ 39(a).

	Carve-Out Trigger Notice, whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice, not to exceed the lesser of (x) the actual amounts, and (y) the amounts set forth for such professionals in the Approved Budget for such period (including any permitted variances) (the "Allowed Professional Fees"), such Allowed Professional Fees not to include any restructuring, sale, success, or other transaction fee of any investment bankers or financial advisors of the Debtors; and (iv) Allowed Professional Fees in an aggregate amount not to exceed $300,000 incurred after the first business day following delivery of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the "Post-Carve-Out Trigger Notice Cap"). For purposes of the foregoing, "Carve-Out Trigger Notice" shall mean a written notice delivered by email (or other electronic means) by the DIP Lenders or the Prepetition Agent to the Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to a Committee, if appointed, which notice may be delivered following the occurrence and during the continuation of a DIP Event of Default and acceleration of the DIP Obligations under the DIP Facility, stating that the Post-Carve-Out Trigger Notice Cap has been invoked.	
Adequate Protection Bankruptcy Rules 4001(b)(l)(B)(iv), 4001(c)(1)(B)(ii)	Prepetition Adequate Protection Liens. Pursuant to sections 361, 363(e), and 364(d) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition Secured Parties in the Prepetition Collateral to the extent of any Diminution in Value of such interests in the Prepetition Collateral, the Debtors hereby grant to the Prepetition Agent, for itself and for the benefit of the Prepetition Secured Parties, continuing, valid, binding, enforceable, and perfected postpetition security interests in and liens (the "Adequate Protection Liens") on the DIP Collateral.	Interim Order, ¶¶ 12-17.

	Priority of Adequate Protection Liens. The Adequate Protection Liens shall be subject to the Carve Out and otherwise shall be immediately junior only to: (i) the DIP Liens and (ii) Permitted Prior Liens. The Adequate Protection Liens shall be senior to all other security interests in, liens on, or claims against any of the DIP Collateral. Except as provided herein, the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter in the Chapter 11 Cases or any Successor Cases, and shall be valid and enforceable against any trustee appointed in any of the Chapter 11 Cases or any Successor Cases, or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The Adequate Protection Liens shall not be subordinated to or made *pari passu* with any lien, security interest or administrative claim under section 364 of the Bankruptcy Code or otherwise; provided, however, that the Debtors shall not create, incur or suffer to exist any postpetition liens or security interests other than: (i) those granted pursuant to the DIP Credit Agreement Interim Order; (ii) carriers', mechanics', operators', warehousemen's, repairmen's or other similar ordinary course liens arising in the ordinary course of business; (iii) pledges and deposits in connection with any applicable social security legislation]; and (iv) deposits to secure the payment of any postpetition statutory obligations and performance bonds. For the avoidance of doubt, notwithstanding anything contained in the Interim Order to the contrary, the Adequate Protection Liens and the Adequate Protection Superpriority Claims shall not prime, affect, impair, or limit any Permitted Prior Liens. The Adequate Protection Liens shall not be subject to sections 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the Prepetition Liens or the Adequate Protection Liens.	

	Adequate Protection Superpriority Claims. As further adequate protection of the interests of the Prepetition Secured Parties in the Prepetition Collateral to the extent of any Diminution in Value of such interests in the Prepetition Collateral, the Debtors shall grant to the Prepetition Agent, on behalf of itself and the Prepetition Secured Parties, as and to the extent provided by section 507(b) of the Bankruptcy Code, an allowed superpriority administrative expense claim in the Chapter 11 Cases and any successor cases (the "Adequate Protection Superpriority Claims"). Priority of the Adequate Protection Superpriority Claims. Except as set forth in the Interim Order, the Adequate Protection Superpriority Claims shall have priority, to the extent provided by section 507(b) of the Bankruptcy Code, over all administrative expense claims and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 364, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113 and 1114 of the Bankruptcy Code; *provided, however*, the Adequate Protection Superpriority Claims shall be subject to the Carve-Out and shall have priority in the following order: (a) the DIP Superpriority Claims, and (b) the Adequate Protection Superpriority Claims. Adequate Protection Fees and Expenses and Protections for Prepetition Secured Parties. As further adequate protection (the "Adequate Protection Fees and Expenses"), the Debtors are authorized and directed to provide adequate protection to the Prepetition Secured Parties in the form of payment in cash (and as to fees and expenses, without the need for the filing of a formal fee application) immediately upon entry of the DIP Credit Agreement Interim Order, payment of the reasonable and documented fees, out-of-pocket expenses, and	

	disbursements (including the reasonable and documented fees, out-of-pocket expenses, and disbursements of counsel, financial advisors, auditors, third-party consultants, and other vendors) incurred by the Prepetition Secured Parties (a) arising prior to the Petition Date and reimbursable under the Prepetition Senior Secured Note Documents including reasonable and documented fees and expenses of, including, without limitation (1) Greenberg Traurig, LLP, (2) Hogan Lovells, LLP, (3) Bernstein Shur Sawyer & Nelson, P.A.LLP, (4) Richards, Layton & Finger, PA and (5) FTI Consulting, LLP (the "Prepetition Senior Secured Party Advisors"), and (b) in accordance with the procedures set forth in Paragraph 34 hereof, arising subsequent to the Petition Date and reimbursable under the Prepetition Senior Secured Note Documents, including reasonable and documented fees and expenses of the Prepetition Secured Party Advisors.	
Milestones Bankruptcy Rule 4001(c)(1)(B)(vi)	1. The Loan Parties shall commence the Chapter 11 Cases in the Bankruptcy Court no later than February 9, 2024. 2. The Loan Parties shall commence the Marketing Process no later than the day after the first-day hearing in the Chapter 11 Cases. 3. The Loan Parties shall provide the Consenting Lenders with all due diligence information requested by the Consenting Lenders and/or by the Lender Group Advisors as of the Agreement Effective Date within ten (10) Business Days of the Agreement Effective Date. 4. On the Petition Date, the Loan Parties shall file: (i) the First Day Pleadings, and (ii) the DIP Motion (including the proposed Interim DIP Order). 5. The Loan Parties shall file the Bidding Procedures Motion no later than four (4)	DIP Credit Agreement, Annex I.

	calendar days after the Petition Date. 6. The Loan Parties shall have obtained entry of orders from the Bankruptcy Court granting interim relief on the First Day Pleadings, including an interim order granting LMP Relief, and the Interim DIP Order, no later than three (3) Business Days after the Petition Date; 7. The Loan Parties shall file the Disclosure Statement Motion, together with the proposed Plan, Disclosure Statement, Disclosure Statement Order, no later than fourteen (14) calendar days after the Petition Date. 8. The Loan Parties shall have delivered to the Consenting Lenders a Phase I Environmental Assessment by TRC Environmental Corp. and a detailed engineering and technical report by Black & Veatch Management Consulting (and which reports in greater detail than the annual engineering reports routinely performed by the Debtors), in each case in form and substance acceptable to the Consenting Lenders in their sole discretion, no later than ten (10) calendar days after the Petition Date. 9. No later than twenty-eight (28) calendar days after the Petition Date, the Loan Parties shall have obtained entry by the Bankruptcy Court of: (i) the Bidding Procedures Order, (ii) orders, each in form and substance acceptable to the Consenting Lenders, granting final relief on the First Day Pleadings, including an order granting LMP Relief on a final basis, (iii) the Final DIP Order; and (iv) an order, in form and substance acceptable to the Consenting Lenders, setting a general claims bar date that is no more than sixty (60) calendar days after the Petition Date and a governmental claims bar date that is no more than one-hundred-and-eighty (180) calendar days after the Petition Date.	

	10. The Loan Parties shall have obtained entry by the Bankruptcy Court of the Disclosure Statement Order, in form and substance acceptable to the Consenting Lenders, no later than fifty (50) calendar days after the Petition Date. 11. The Loan Parties shall have commenced Solicitation no later than two (2) Business Days after entry of the Disclosure Statement Order. 12. The auction for the Sale Transaction shall occur (if triggered under the Plan) no later than eighty-two (82) calendar days after the Petition Date; provided, that the auction can be cancelled at any time by the Consenting Lenders in accordance with the RSA and the Plan. 13. The confirmation hearing for the Plan, including to consider approval of the Sale Transaction (if triggered under the Plan), shall occur no later than ninety (90) calendar days after the Petition Date. 14. The Loan Parties shall have obtained entry by the Bankruptcy Court of the Confirmation Order, including approving the Stand-Alone Restructuring Scenario or the Sale Transaction (if triggered under the Plan), no later than ninety-two (92) calendar days after the Petition Date. 15. The Plan Effective Date (i) under a Stand-Alone Restructuring Scenario shall occur no later than one hundred and twenty (120) calendar days after the Petition Date, provided, however, that if, at the end of such period, the occurrence of the Plan Effective Date is dependent upon receipt of the necessary approval from FERC under Federal Power Act Section 203 for the Consenting Lenders to own the Berlin Facility, the	

	Consenting Lenders may, in their sole discretion, extend such deadline and (ii) under a Sale Transaction, if triggered under the Plan, shall occur no later than one hundred and sixty (160) calendar days after the Petition Date. 16. The Loan Parties shall have filed any and all applications, notifications and other documents that are necessary or required in connection with obtaining the applicable approvals of from FERC, PUC, ISO New England, Inc. ("ISO-NE"), New Hampshire Department of Environmental Services ("NHDES"), New Hampshire Department of Energy ("NHDOE") and New Hampshire Site Evaluation Committee ("NHSEC") and as otherwise may be required under applicable Law (x) in support of a Restructuring in the Stand-Alone Restructuring Scenario,[9] no later than three (3) calendar days after the filing of the Disclosure Statement and Plan, and (y) if applicable, in support of a Restructuring in the Sale Scenario, seven (7) calendar days after a purchaser is declared a successful bidder (or back-up bidder) pursuant to the Bidding Procedures, in each case, unless such application or notification is required to be filed on an earlier date under applicable Law.	
Loan Covenants Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	The DIP Documents contain customary and appropriate affirmative and negative covenants for DIP financings of the DIP Credit Agreement type, including: (i) provision of and compliance with the DIP Budget; (ii) use of proceeds of the DIP Facility in accordance with the terms of the DIP Credit Agreement;(iii) satisfaction of the Milestones; (iv) payment of taxes; (v) compliance with applicable law and regulations; (vi) maintenance of all federal,	DIP Credit Agreement, Articles VI and VII.

[9] In the Stand-Alone Restructuring Scenario, these shall include, but not be limited to, all filings in support of Federal Power Act Section 203 approval of the Stand-Alone Restructuring Scenario transactions, NHDES's approval of ownership change per the Title V Air Permit (TV-0065), notification of ownership change to the City of Berlin, New Hampshire pursuant to the Low Strength Wastewater Treatment Agreement, notice of ownership change to the NHDES under the Alteration of Terrain Permit, and any requisite federal, state, or local filings, registrations, notifications, applications for approval of change in ownership as may be necessary.

	state, local and other licenses and permits; (vii) maintenance of insurance; (viii) reporting of financial information; (ix) maintenance of collateral; (x) prohibition of incurring any indebtedness other than the DIP Obligations or as otherwise permitted by the DIP Credit Agreement; and (xi) prohibition of incurring any lien or other encumbrance, except as contemplated by the DIP Credit Agreement.	
Events of Default Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	Events of Default. An Event of Default under the DIP Credit Agreement include the following: (a) Non-Payment. any Loan Party fails to (i) pay when and as required to be paid herein, any amount of principal of or interest on any Loan, or any fee due hereunder, or (ii) pay within three (3) days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or (b) Specific Covenants. Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Section 6.01, 6.02, 6.03, 6.05, 6.07, 6.10, 6.11, 6.15, 6.17, 6.22, 6.23, 6.24, or Article VII, Article X or Article 15, XII; or (c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for fifteen (15) days; or (d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Loan Party, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading when made or deemed made; or (e) Cross-Default. (i) Any Loan Party (A) fails to make any payment when due (whether by scheduled maturity, required prepayment,	DIP Credit Agreement, § 8.01.

	acceleration, demand, or otherwise) in respect of any post-petition Indebtedness or Guarantee (other than Indebtedness hereunder) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such post-petition Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such post-petition Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such post-petition Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such post-petition Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; (ii) [reserved]; or (iii) any Loan Party fails to pay any Adequate Protection Fees and Expenses; or (f) Judgments. There is entered against any Loan Party (i) one or more final judgments or orders that are not subject to the Automatic Stay for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding the Threshold Amount (to the extent not pursuant to an order of the Bankruptcy Court or covered by independent third-party insurance as to which the insurer is rated at least "A-" by A.M. Best Company, has been notified of the potential claim and does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are	

commenced by any creditor upon such judgment or order, or (B) there is a period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or the Automatic Stay or otherwise, is not in effect; or

(g) Invalidity of Loan Documents. Any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document; or

(h) Guaranty. The Guaranty shall fail to remain in full force or effect or any action shall be taken to discontinue or to assert the invalidity or unenforceability of the Guaranty, or any Guarantor shall fail to comply with any of the terms or provisions of the Guaranty, or any Guarantor shall deny that it has any further liability under the Guaranty, or shall give notice to such effect, including, but not limited to notice of termination delivered pursuant to Section 10.08; or

(i) Liens and Super-Priority Claims. Any Lien or super-priority claims granted to the Collateral Agent for the benefit of the Secured Parties with respect to any material portion of the Collateral intended to be secured thereby (i) ceases to be, or is not at any time, valid, perfected and prior to all other Liens and claims (other than Liens and claims granted in respect of the Carve-Out and the Prepetition Priority Liens) or (ii) is terminated, revoked, or declared void (unless released or terminated pursuant to the terms of the DIP Credit Agreement

	Agreement); or (j) Subordination. (i) The subordination provisions (including, without limitation, the provisions set forth in the Prepetition Subordinated Loan Documents) of the documents evidencing or governing any subordinated Indebtedness (including the Prepetition Subordinated Debt) (collectively, the "Subordination Provisions") shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable subordinated Indebtedness; or (ii) any Loan Party or any holder of subordinated Indebtedness shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any of the Subordination Provisions, (B) that the Subordination Provisions exist for the benefit of the Prepetition Secured Parties or the Agents and the Lenders, as applicable or (C) that all payments of principal of or premium and interest on applicable subordinated Indebtedness, or realized from the liquidation of any property of any Loan Party, shall be subject to any of the Subordination Provisions; or (k) Default under Material Contracts. There occurs any "default", "event of "default", other breach or termination or words of similar import under (i) any Material Contract or (ii) any other contract. license or agreement which, in the case of clause (ii) only, (x) individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or (y) enforcement under which is not subject to the Automatic Stay; or (l) Licenses and Permits. There occurs the loss, suspension or revocation of, or failure to renew, any license (including liquor licenses) or permit now held or hereafter acquired by any Loan Party which loss could be reasonably expected to result in a Material Adverse Effect;	

	or (m) Material Uninsured Loss. Any Loan Party shall suffer a loss or casualty of any of its assets exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer is rated at least "A-" by A.M. Best Company, has been notified of the potential claim and does not dispute coverage) (n) Additional Events of Default related to the Cases. . . . (ix) failure of the Loan Parties to satisfy any of the Milestones by the applicable date set forth on Annex I to the DIP Credit Agreement.	
Conditions of Borrowing Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	Certain customary conditions to extensions under the DIP Facility, including: (i) each Loan Party shall have executed and/or delivered the requisite agreements, instruments, documents and/or certificates to the DIP Agent; (ii) entry of the Interim Order; (iii) no default or event of default under the DIP Facility shall have occurred and be continuing; and (v) all representations and warranties of the Debtors shall be true and correct in all material respects.	DIP Credit Agreement, Article IV.
Indemnification Bankruptcy Rule 4001(c)(1)(B)(ix)	The Loan Parties shall indemnify the Indemnified Parties and hold them harmless from any and all liabilities based upon or arising out of the transactions contemplated by the DIP Credit Agreement, any of the Obligations, any DIP Collateral, or any other matter in connection with execution or performance of the DIP Agent or the DIP Lenders pursuant to the DIP Documents, other than as a result the gross negligence or willful misconduct of the applicable Indemnified Party.	DIP Credit Agreement, § 11.04(b).
Budget Bankruptcy Rule 4001(c)(1)(B)	No later 5:00 p.m. on Thursday of each week (commencing on the second Thursday following the Petition Date), a proposed DIP Budget for the following rolling 13-week period (the "Proposed DIP Budget"), which	DIP Credit Agreement, § 6.01(d).

Local Rule 4001-2(a)(ii)	shall be consistent in form and subject (other than dollar amounts) with the Initial DIP Budget, and that shall be subject to the approval of the Lenders in their sole discretion. If such Proposed DIP Budget is approved it shall then become the "DIP Budget" then in effect; provided, however, that if such Proposed DIP Budget is not approved by the Lenders, then the last approved DIP Budget will be rolled forward on a week-to-week basis. Such Proposed DIP Budget shall be certified by the Chief Restructuring Officer as being accurate in all material respects and shall include: an updated thirteen week cash flow forecast setting forth all sources and uses of cash and beginning and ending cash balances, and with a reasonable disclosure of the key assumptions and drivers with respect to such forecast, and a written update regarding material operational, business and financial developments relating the Loan Parties, a cash balance report showing the aggregate cash balance amount held in all accounts of the Loan Parties as of close of business on Friday of the prior week (such report as of any date, the "Cash Balance Report"), a variance report reconciling the most recent DIP Budget for the prior week (or, in the case of the initial such report, for the prior two week period) to the actual sources and uses of cash for such prior period on an aggregate basis, along with a line-by-line reconciliation and detailed explanation of variances in excess of the greater of 10% and $20,000 from such DIP Budget (the "Variance Report"), in each case, in form and detail acceptable to the Lenders and certified by the Chief Restructuring Officer of the Loan Parties and that the Variance Report is in compliance with Section 7.23; and such other information as any Agent or any Lender may reasonably request.	

Variance Covenant Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	As of the fourth (4th) Business Day of every calendar week after the Closing Date (each such date, a "Test Date"), with the first Test Date being the fourth (4th) Business Day of the first full calendar week after the Closing Date, cause or permit (i) the actual amount of cash disbursements of the Loan Parties for the preceding Measurement Period (with each weekly period ending on the preceding Sunday), to be on an aggregate basis, more than 110% of the projected corresponding disbursements (excluding any variance related to (A) fees and expense reimbursements of professional persons required to be paid by the Loan Parties, or (B) an Investment permitted by Section 7.03(d)) for the corresponding Measurement Period set forth in the DIP Budget and (ii) the actual amount of cash receipts of the Loan Parties for the preceding Measurement Period (with each weekly period ending on the preceding Sunday), to be on an aggregate basis, less than 90% of the projected corresponding receipts for the corresponding Measurement Period set forth in the DIP Budget (such permitted variances, the "Allowed Variance"). As used in this Section 7.25, "Measurement Period" shall mean with respect to each Test Date, (i) initially, for the first three (3) Test Dates following the Petition Date, the one week, two week or three week cumulative periods most recently ended prior to such Test Date, and (ii) thereafter, the rolling four-week period ending immediately prior to such Test Date.	DIP Credit Agreement, § 7.25(b).
Use of Cash Collateral; Entities with Interest in Cash Collateral Bankruptcy Rule 4001(b)(l)(B)(i)	The Debtors are authorized to use Cash Collateral subject to and in accordance with the terms, conditions, and limitations set forth in the Interim Order and the DIP Documents.	Interim Order, ¶ 1.
Liens on Avoidance Actions Bankruptcy Rule 4001(c)(1)(b)	Upon entry of the Final Order, the DIP Liens shall extend to all avoidance actions and the proceeds thereof.	Interim Order, ¶ 5.

Credit Bid Rights Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	In connection with any sale process authorized by the Court, (a) the DIP Secured Parties (or any such party's designee), and (b) subject to the rights preserved in Paragraph 42, the Prepetition Secured Parties (or any such party's designee) may credit bid, consistent with the applicable DIP Documents and/or Prepetition Senior Secured Note Documents, some or all of their claims for their respective priority collateral (each a "Credit Bid") pursuant to section 363(k) of the Bankruptcy Code. Each of the DIP Secured Parties (or any such party's designee) and, subject to the rights preserved in Paragraph 42, the Prepetition Secured Parties (or any such party's designee) shall each be considered a "Qualified Bidder" with respect to its respective rights to acquire all or any of their collateral by Credit Bid.	Interim Order, ¶ 25.
Challenge Period Bankruptcy Rule 4001(c)(1)(B), 4001(c)(1)(B)(viii)	The Debtors' Stipulations made in the Interim Order are subject to the rights of parties to assert standing to bring a Challenge by no later than the earlier of (I) April 24, 2024, or (II) the deadline established by order of the Court for objections to any motion seeking the entry of an order confirming a plan of the Debtors or the sale of all or substantially all the assets of the Debtors (as applicable, the "Challenge Deadline"). Failure of any in interest to file such a pleading with the Court shall forever bar such party from making such a Challenge.	Interim Order, ¶ 42(a).
Waivers/Modification of Automatic Stay Bankruptcy Rule 4001(c)(1)(B)(iv)	Without the prior written consent of each of the DIP Secured Parties and the Prepetition Secured Parties, unless all DIP Obligations and Prepetition Obligations (excluding contingent indemnification obligations for which no claim has been asserted) have been, or contemporaneously will be, Paid in Full and the lending commitments under the DIP Facility have terminated, in any of the Chapter 11 Cases, any Successor Cases, the Debtors shall neither seek entry of, nor support any motion or application seeking entry of, and otherwise shall object to any motion or application seeking entry of, any order (including any order confirming any plan of reorganization or	Interim Order, ¶ 24(a)-(b).

	liquidation) that authorizes any of the following: (i) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the DIP Collateral or Prepetition Collateral and/or that is entitled to administrative priority status, in each case that is superior to or *pari passu* with the DIP Liens, the DIP Superpriority Claims, the Prepetition Liens, the Adequate Protection Liens, and/or the Adequate Protection Superpriority Claims except as expressly set forth in this Interim DIP Order or the DIP Documents; (ii) the use of Cash Collateral for any purpose other than as permitted in the DIP Documents and this Interim DIP Order; or (iii) any modification of any of the DIP Secured Parties' or the Prepetition Secured Parties' rights under this Interim DIP Order, the DIP Documents or the Prepetition Senior Secured Note Documents with respect any DIP Obligations or Prepetition Obligations. It shall be an Event of Default under the DIP Documents under this Interim DIP Order if, in any of the Chapter Cases or any Successor Cases, the Debtors take or fail to take any of the actions contemplated with respect to provisions (i) through (iii) of the previous sentence or if any order is entered granting any of the relief enumerated in provisions (i) through (iii) of the previous sentence without the prior written consent of each of the DIP Secured Parties and the Prepetition Secured Parties, unless all DIP Obligations and Prepetition Obligations (excluding contingent indemnification obligations for which no claim has been asserted) have been, or contemporaneously will be, Paid in Full and the lending commitments under the DIP Facility have terminated, in any of the Chapter 11 Cases, any Successor Cases, the Debtors shall neither seek entry of, nor support any motion or application seeking entry of, and otherwise shall object to any motion or application seeking entry of, any order (including any order confirming any plan of reorganization or liquidation) that authorizes	

	any of the following: (i) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the DIP Collateral or Prepetition Collateral and/or that is entitled to administrative priority status, in each case that is superior to or *pari passu* with the DIP Liens, the DIP Superpriority Claims, the Prepetition Liens, the Adequate Protection Liens, and/or the Adequate Protection Superpriority Claims except as expressly set forth in this Interim DIP Order or the DIP Documents; (ii) the use of Cash Collateral for any purpose other than as permitted in the DIP Documents and this Interim DIP Order; or (iii) any modification of any of the DIP Secured Parties' or the Prepetition Secured Parties' rights under this Interim DIP Order, the DIP Documents or the Prepetition Senior Secured Note Documents with respect any DIP Obligations or Prepetition Obligations. It shall be an Event of Default under the DIP Documents under this Interim DIP Order if, in any of the Chapter Cases or any Successor Cases, the Debtors take or fail to take any of the actions contemplated with respect to provisions (i) through (iii) of the previous sentence or if any order is entered granting any of the relief enumerated in provisions (i) through (iii) of the previous sentence. No Debtor shall object to any DIP Secured Parties, or any Prepetition Secured Parties (subject to the rights preserved in Paragraph **Error! Reference source not found.**), credit bidding up to the full amount of the applicable outstanding DIP Obligations and Prepetition Obligations, in each case including any accrued interest, fees, and expenses, in any sale of any DIP Collateral or Prepetition Collateral, as applicable, whether such sale is effectuated through sections 363 or 1129 of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise.	
Section 506(c), 552(b) "Equities of the	Subject to entry of a Final DIP Order, the Debtors waive any rights to surcharge against	Interim Order,

Case," and Marshalling Waivers Bankruptcy Rule 4001(c)(1)(B)(x); Local Rule 4001-2(a)(i)(C)	the DIP Collateral or the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code without prior consent of the DIP Secured Parties or the Prepetition Secured Parties, as applicable. Subject to entry of a Final Order, the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Secured Parties with respect to the proceeds of any of the DIP Collateral or the Prepetition Collateral, as applicable. Subject to the entry of a Final DIP Order, in no event shall the DIP Secured Parties or the Prepetition Secured Parties be subject to the equitable doctrine of "marshalling" or any similar equitable doctrine with respect to the Prepetition Collateral or the DIP Collateral.	¶¶ 44-46.

BASIS FOR RELIEF

I. The Debtors Should Be Permitted to Obtain Postpetition Financing Pursuant to Section 364(c) and (d) of the Bankruptcy Code.

35. Section 364(c) of the Bankruptcy Code requires a finding, made after notice and a hearing, that the debtors seeking postpetition financing on a secured basis cannot "obtain unsecured credit allowable under section 503(b)(1) of [the Bankruptcy Code] as an administrative expense . . ." 11 U.S.C. § 364(c).

36. Section 364(d) of the Bankruptcy Code requires a finding, made after notice and a hearing, that the debtors seeking postpetition financing on a secured basis senior or equal in priority to existing secured debt cannot "obtain such credit otherwise . . . [and] there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted." 11 U.S.C. § 364(d)(1).

37. In evaluating proposed postpetition financing under section 364(c) and (d) of the Bankruptcy Code, courts perform a qualitative analysis and generally consider similar factors, including whether:

> (1) [The debtor is] unable to obtain unsecured credit per 11 U.S.C. § 364(b), i.e., by allowing a lender only an administrative claim per 11 U.S.C. § 503(b)(1)(A);
>
> (2) The credit transaction is necessary to preserve the assets of the estate; and
>
> (3) The terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender.

In re Los Angeles Dodgers LLC, 457 B.R. 308, 312 (Bankr. D. Del. 2011) (citing *In re St. Mary Hosp.*, 86 B.R. 393, 401 (Bankr. E.D. Pa. 1988)); *see In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 37 (Bankr. S.D.N.Y. 1990).

38. For the reasons discussed below, the Debtors satisfy the standards required to obtain postpetition financing under section 364(c) and (d) of the Bankruptcy Code.

A. <u>The Debtors Were Unable to Obtain Financing on More Favorable Terms.</u>

39. Whether debtors were unable to obtain unsecured credit is determined by application of a good faith effort standard, and debtors must make a good faith effort to demonstrate that credit was not available without granting a security interest. *See In re YL W. 87th Holdings I LLC*, 423 B.R. 421, 441 (Bankr. S.D.N.Y. 2010) ("Courts have generally deferred to a debtor's business judgment in granting section 364 financing."). The required showing under section 364 of the Bankruptcy Code that unsecured credit was not available is not rigorous. *See, e.g., Bray v. Shenandoah Fed. Sav. & Loan Ass'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986) (stating that section 364(d) of the Bankruptcy Code imposes no duty to seek credit from every possible lender, particularly when "time is of the essence in an effort to preserve a vulnerable seasonal enterprise").

40. Here, as detailed above, due to the Debtors' financial position, their existing leveraged capital structure, and the size of the financing need, the Debtors were unable to identify any interested third-party financing parties and thus determined that reaching out to any additional third-party financing sources would be fruitless and unlikely to result in any financing proposals. *See* Victor Declaration ¶¶ 8-10. Only the DIP Lenders were willing to provide postpetition financing. *See id.* at ¶¶ 7-10.

41. The Debtors respectfully submit that their efforts to obtain postpetition financing therefore satisfy the standards required under section 364(c) and (d) of the Bankruptcy Code. *See, e.g., In re Simasko Prod. Co.*, 47 B.R. 444, 448-49 (Bankr. D. Colo. 1985) (authorizing interim financing stipulation where debtor's best business judgment indicated financing was necessary and reasonable for benefit of its estates); *In re Ames Dep't Stores*, 115 B.R. at 38 (providing that courts "permit debtors-in-possession to exercise their basic business judgment consistent with their fiduciary duties"); *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988) (where few lenders can or will extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing") *aff'd sub nom. Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117 (N.D. Ga. 1989).

B. <u>The DIP Facility Is Necessary to Preserve the Assets of the Estates.</u>

42. As described above, the Debtors intend to operate their business in the ordinary course while they run a sale and/or plan process. The Debtors require the proposed financing and use of cash collateral to provide the necessary capital with which to operate their business and to preserve their business for the benefit of their estates and creditors pending the outcome of the Debtors' sale and/or plan process. *See* Victor Declaration ¶ 15.

43. Cash is necessary for working capital, operating costs and expenses incurred during these Chapter 11 Cases. The Debtors do not have sufficient sources of working capital, financing or cash to carry on the operation of their business without additional financing. *See* Victor Declaration ¶ 15. The Debtors' ability to maintain their business pending the outcome of the sale and/or plan process is dependent on their ability to continue to operate, and the Debtors cannot operate unless they can fund payments for postpetition rent, payroll, goods, services and other operating expenses. *See id.* at ¶ 21. The DIP Facility is thus essential to the Debtors' continued operational viability and will provide the Debtors with the opportunity to preserve their business for purposes of the ongoing sale and/or plan process. *See id.* at ¶ 22.

44. As debtors in possession, the Debtors have a fiduciary duty to protect and maximize their estates' assets. *See Burtch v. Ganz (In re Mushroom Transp. Co.),* 382 F.3d 325,339 (3d Cir. 2004). As noted above, the Debtors require postpetition financing and the use of Cash Collateral under the terms of the DIP Agreement and the DIP Orders to continue their operations pending the outcome of an orderly sale and/or plan process.

C. The Terms of the Proposed Financing Are Fair, Reasonable, and Appropriate.

45. In considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances and disparate bargaining power of both the debtor and the potential lender. *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank &Trust Co. (Matter of Ellingsen MacLean Oil Co.)*, 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (providing that a debtor may have to enter into hard bargains to acquire funds), *aff'd sub nom. In re Ellingsen MacLean Oil Co.*, 834 F.2d 599 (6th Cir. 1987).

46. The terms of the DIP Agreement and the proposed DIP Orders were highly negotiated between the Debtors and the DIP Lenders (including their respective counsel and other advisors), resulting in agreements designed to permit the Debtors to obtain the needed liquidity to maximize the value of their assets through a sale and/or plan process. *See* Victor Declaration ¶ 14. The DIP Facility will provide critically needed liquidity to the Debtors in order to run a process that the Debtors and their advisors believe will maximize value and is on terms and conditions that are fair and reasonable and consistent with the market given the circumstances of this case. *See id.* at ¶14, 15.

47. The Debtors have agreed, subject to Court approval, to pay certain fees to the DIP Agent and the DIP Lenders in connection with the DIP Facility. *See* Victor Declaration ¶ 18. The fees payable to the DIP Agent and other obligations under the DIP Documents are reasonable and appropriate and give the Debtors access to DIP financing on the most favorable terms on which the DIP Lenders would agree to make the DIP Facility available. *Id.* The Debtors considered these fees when determining in the exercise of their sound business judgment that the DIP Facility constitutes the best terms on which the Debtors could obtain postpetition financing necessary to continue operating their business in these Chapter 11 Cases. *See id.* Consequently, paying these fees to obtain the DIP Facility is in the best interests of the Debtors' estates, creditors and other parties in interest.

48. As further described above, the DIP Agreement also contains the Milestones and other bankruptcy-related terms, and the Debtors believe that these terms provide sufficient flexibility for the Debtors to maximize the value of their operations and assets. *See* Victor Declaration ¶ 20. The terms of the DIP Documents are fair, reasonable and appropriate under the circumstances, and should be approved.

II. Entry Into the Proposed Financing Reflects the Debtors' Sound Business Judgment.

49. A debtor's decision to enter into a postpetition lending facility under section 364 of the Bankruptcy Code is governed by the business judgment standard. *See, L.A. Dodgers,* 457 B.R. at 313 ("[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender."); *Ames Dep't Stores*, 115 B.R. at 40 (holding that a court's discretion under section 364 [of the Bankruptcy Code] "is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest."). One court has noted that "[m]ore exacting scrutiny [of the debtors' business decisions] would slow the administration of the debtor's estate and increase its cost, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten the court's ability to control a case impartially." *Richmond Leasing Co. v. Cap. Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

50. Here, the Debtors' determination to secure the DIP Facility is an exercise of sound business judgment. As further discussed in the Declarations, the DIP Facility was a product of extensive good faith negotiations and a careful evaluation of alternatives, as well as evaluation of the Debtors financial needs. *See* Victor Declaration ¶ 14. Specifically, the Debtors, in consultation with their counsel and advisors, including SSG, determined that the Debtors required immediate liquidity to fund the administrative costs of the Chapter 11 Cases and the ongoing needs of the business. *See id.* at ¶¶ 15, 23-24. Without immediate new liquidity, the Debtors would be unable to preserve their business nor maximize value, to the detriment of the Debtors' stakeholders. *See id.* The Debtors determined that the proposed DIP Facility was an appropriate step given that the DIP Facility: (a) allows the Debtors to avoid a value-destructive

priming fight; (b) provides a path forward in chapter 11 by allowing the Debtors to implement a plan and/or sale process; and (c) allows the Debtors to operate in the ordinary course of business postpetition and fund the administration of the Chapter 11 Cases for the benefit of the estates and all of the Debtors' stakeholders. *See id* at ¶¶ 8, 15, 19. The Debtors, in consultation with their counsel and advisors, therefore determined that entry into the DIP Facility was the best path available and they have obtained the best terms currently achievable under the circumstances. *See generally id.*

III. The DIP Lenders Should Be Deemed Good Faith Lenders Under Section 364(e) of the Bankruptcy Code.

51. Section 364(e) of the Bankruptcy Code protects a good-faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Section 364(e) of the Bankruptcy Code provides that:

> The reversal or modification on appeal of an authorization under this section to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

11 U.S.C. § 364(e).

52. As set forth in the Declarations, the Debtors and the DIP Lenders negotiated the DIP Agreement and Interim Order at arms' length and good faith. *See* Victor Declaration ¶ 14. The terms and conditions of the DIP Facility are not only fair and reasonable, but the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code. *See* Victor Declaration ¶¶ 14-20. Accordingly, the Court should find that the DIP Secured

Parties are "good faith" lenders within the meaning of section 364(e) of the Bankruptcy Code and are entitled to all of the protections afforded by that section.

IV. Section 363 of the Bankruptcy Code Authorizes the Debtors' Use of Cash Collateral.

53. Section 363(c)(2) of the Bankruptcy Code provides that a debtor in possession may not use cash collateral unless (i) each entity that has an interest in such cash collateral provides consent, or (ii) the court approves the use of cash collateral after notice and a hearing. *See* 11 U.S.C. § 363(c).

54. Section 363(e) of the Bankruptcy Code provides that, "on request of an entity that has an interest in property used . . . or proposed to be used . . . by the [debtor in possession], the court . . . shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e).

55. Section 361 of the Bankruptcy Code provides that:

> When adequate protection is required under section 362, 363, or 364 of this title of an interest of an entity in property, such adequate protection may be provided by—
>
> 1. requiring the [debtor in possession] to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or anyg rant of a lien under section 364 of this title results in a decrease in the value of such entity's interest in such property;
>
> 2. providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of such entity's interest in such property; or
>
> 3. granting such other relief, other than entitling such entity to compensation allowable under section 503(b)(1) of this title as an administrative expense, as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property.

11 U.S.C. § 361. "The determination of adequate protection is a fact-specific inquiry" to be decided on a case-by-case basis. *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996) ("Its application is left to the vagaries of each case ... but its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process." (internal quotation marks and citation omitted)).

56. Here, the interests of the Prepetition Secured Parties are adequately protected for purposes of section 363(e) of the Bankruptcy Code for the following reasons. First, the Prepetition Secured Parties consent to the Debtors' use of property, including cash collateral, on the terms of the DIP Agreement and proposed DIP Orders. Second, the Debtors intend to preserve value by maintaining operations pending the outcome of an orderly sale and/or plan process. Third, the Prepetition Secured Parties will be adequately protected through the grant of adequate protection (which adequate protection they have consented to or deemed to consent to).

57. Section 361 of the Bankruptcy Code authorizes a debtor to provide adequate protection by granting replacement liens, making periodic cash payments, or granting such other relief "as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property." *See* 11 U.S.C. § 361. Pursuant to the DIP Orders, the Prepetition Secured Parties will have the benefit of, among other things, continuing, valid, binding, enforceable, and perfected postpetition security interests in and liens on the DIP Collateral.

58. The Debtors submit that the adequate protection measures are to protect the Prepetition Secured Parties from any diminution in value to the Cash Collateral. The Debtors believe that such protections are appropriate and adequate under the circumstances. Further, given the significant value that the Debtors stand to lose in the event they are denied access to continued use of Cash Collateral, such protections are wholly appropriate and justified. Thus, the

Debtors' provision of adequate protection is not only necessary to protect against any diminution in value, but is fair and appropriate under the circumstances of these Chapter 11 Cases to ensure that the Debtors are able to continue using the Cash Collateral, subject to the terms and limitations set forth in the Interim Order, for the benefit of all parties in interest and their estates.

V. The Roll-Up Loans Are Appropriate.

59. Section 363(b) of the Bankruptcy Code permits a debtor to use, sell, or lease property, other than in the ordinary course of business, with court approval. Repaying prepetition debt (*i.e.*, a "roll-up") is a common feature in debtor-in-possession financing. As the United States District Court for the District of Delaware observed:

> [P]repetition secured claims can be paid off through a 'roll-up.' Most simply, a [roll up] is the payment of a pre-petition debt with the proceeds of a post-petition loan. Roll-ups most commonly arise where a pre-petition secured creditor is also providing a post- petition DIP loan under section 364(c) and/or (d) of the Bankruptcy Code. The proceeds of the DIP loan are used to pay off or replace the pre-petition debt, resulting in a post-petition debt equal to the pre-petition debt plus any new money being lent to the debtor. As a result, the entirety of the pre-petition and post- petition debt enjoys the post-petition protection of section 364(c) and/or (d) as well as the terms of the DIP order. In both a refinancing and a roll-up, the pre-petition secured claim is paid through the issuance of new debt rather than from unencumbered cash.

Del. Trust Co. v. Energy Future Intermediate Holdings, LLC (In re Energy Future HoldingCorp.), 527 B.R. 157, 167 (D. Del. 2015) (quoting *In re Capmark Fin.Grp., Inc.*, 438 B.R. 471, 511 (Bankr. D. Del. 2010)), *aff'd sub nom. In re Energy Future Holdings Corp.*, 648 F. App'x 277 (3d Cir. 2016).

60. Refinancing the Prepetition Obligations in accordance with the DIP Orders is necessary and appropriate and is a sound exercise of the Debtors' business judgment because the DIP Secured Parties have not otherwise consented to the use of Cash Collateral and are not otherwise willing to provide the DIP Facility unless the Prepetition Obligations are afforded senior, secured superpriority administrative claim status, and it will not prejudice the Debtors'

stakeholders. The Debtors agreed to refinance the Prepetition Obligations into the DIP Facility because, among other things, it (a) will not prejudice the Debtors' stakeholders and (b) provides significant benefits to the Debtors' estates.

61. Such payments will not prejudice the Debtors or their estates, because such payments are subject to the rights of parties in interest under Paragraph 42 of the Interim Order to assert a Challenge. If a Challenge is successful, the Court may grant appropriate relief. In light of the foregoing, the Debtors submit that approval of the repayment of the Prepetition Obligations as set forth in the DIP Orders is necessary, appropriate and in the best interest of creditors.

62. The importance of "roll-up" features in debtor-in-possession financing has been repeatedly recognized by courts in this district and others, and such courts have granted relief similar to the relief requested herein. *See, e.g.*, *In re Restoration Forest Prods. Group, LLC*, No. 24-10110 (KBO) (Bankr. D. Del. Feb. 1, 2024) [D.I. 44] (authorizing a $64 million roll-up of the prepetition term loan); *In re SiO2 Medical Prods., Inc.*, No. 23-10366 (JTD) (Bankr. D. Del. Apr. 26, 2023) [D.I. 216] (authorizing an approximately $120 million DIP facility, including a $60 million roll-up of the prepetition term loan); *In re Phoenix Servs. Topco LLC*, Case No. 22-10906 (MFW) (Bankr. D. Del. Sept. 29, 2022) [D.I. 73] (approving a $100 million interim DIP facility with a 3:1 roll-up ratio consisting of $75 million of prepetition debt and $25 million of new money); *see also In re Charlotte Russe Holding, Inc.*, Case No. 19-10210 (LSS) (Bankr. Del. Feb. 5, 2019) [D.I. 92]; *In re Bon-Ton Stores, Inc.*, Case No. 18-10248 (MFW) (Bankr. D. Del. Feb. 6, 2018) [D.I. 120]; *In re Charming Charlie Holdings Inc.*, Case No. 17-12906 (CSS) (Bankr. D. Del. Dec. 13, 2017) [D.I. 86].

63. Given these circumstances, repayment of the Prepetition Obligations with proceeds of the DIP Facility, as set forth in the DIP Credit Agreement and the DIP Orders, is reasonable, appropriate, and a sound exercise of the Debtors' business judgment.

VI. The Section 506(c) and "Equities of the Case" Waivers are Appropriate.

64. In connection with consenting to priming liens or the use of Cash Collateral, secured parties commonly request a waiver of (i) section 506(c) of the Bankruptcy Code, which permits the Debtors to surcharge collateral, and (ii) the "equities of the case" exception from the general rule of section 552 of the Bankruptcy Code that prepetition liens that attach to proceeds of collateral will continue to attach to postpetition proceeds.

65. Subject to entry of a Final Order, the Prepetition Secured Parties are each entitled to a waiver of the "equities of the case" exception under section 552(b) of the Bankruptcy Code, and the DIP Secured Parties are entitled to a waiver of the provisions of section 506(c) of the Bankruptcy Code in light of the DIP Secured Parties' agreement that their liens and superpriority claims shall be subject the Carve-Out, and the payment of expenses set forth in the Budget in accordance with and subject to the terms and conditions of the Interim Order and the DIP Documents.

VII. The Automatic Stay Should be Vacated or Modified to the Extent Necessary.

66. The DIP Documents and the Interim Order contemplate that the automatic stay arising under section 362 of the Bankruptcy Code shall be vacated or modified to the extent necessary to permit the DIP Agent to exercise, upon the occurrence and during the continuation of any Event of Default, but subject to any applicable notice requirements in the Interim Order, all rights and remedies provided for in the DIP Documents, without further order of or application to the Court.

67. Stay modification provisions of this sort are ordinary features of debtor-in-possession financing and, in the Debtors' sound business judgment, are reasonable under the circumstances. *See, e.g., In re PGX Holdings, Inc.*, No. 23-10718 (CTG) (Bankr. D. Del. Aug. 4, 2023) [D.I. 332] (modifying automatic stay as necessary to effectuate the terms of the order and following occurrence of an Event of Default); *In re SiO2 Medical Prods., Inc.*, No. 23-10366 (JTD) (Bankr. D. Del. Apr. 26, 2023) [D.I. 216] (same); *In re Carestream Health, Inc.*, No. 22-10778 (JKS) (Bankr. D. Del. Aug. 24, 2022) [D.I. 65] (same); *In re Akorn, Inc.*, No. 20-11177 (KBO) (Bankr. D. Del. May 22, 2020) [D.I. 65] (same).

INTERIM ORDER AND FINAL HEARING

68. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable and fix the time and date prior to the final hearing for parties to file objections to the Motion.

69. The urgent need to preserve the Debtors' business, and thereby avoid immediate and irreparable harm to the Debtors' estates, makes it imperative that the Debtors be authorized to obtain postpetition financing and use cash collateral as soon as possible, pending the Final Hearing. Without the ability to obtain access to such funding and use Cash Collateral, the Debtors would be unable to meet their postpetition obligations and otherwise would be unable to fund their working capital needs, thus causing irreparable harm to the value of the Debtors' estates and ending the Debtors' efforts to maintain operations through a chapter 11 plan or an orderly sale process. *See* Victor Declaration ¶¶ 23-24.

70. Accordingly, the Debtors respectfully request that, pending the hearing on the Final Order, the Interim Order be approved in all respects and that the terms and provisions of the Interim Order be implemented and be deemed binding and that, after the Final Hearing, the

Final Order be approved in all respects and the terms and provisions of the Final Order be implemented and be deemed binding.

IMMEDIATE RELIEF IS NECESSARY

71. Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted if the "relief is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P.6003. The Debtors submit that for the reasons already set forth herein, the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors. *See* Victor Declaration ¶¶ 23-24.

WAIVER OF ANY APPLICABLE STAY

72. The Debtors also request that the Court waive any applicable stay of the DIP Orders, including any stay that may be imposed by Bankruptcy Rule 4001(a)(3) and Bankruptcy Rule 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate their business without interruption and to preserve value for their estates.

73. As explained above and in the Declarations, the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors. *See* Victor Declaration ¶¶ 23-24. Accordingly, ample cause exists to justify finding that the notice requirements under Bankruptcy Rule 6004(a) have been satisfied and to grant a waiver of the fourteen day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and such stay apply.

RESERVATION OF RIGHTS

74. Nothing contained in this Motion or any actions taken by the Debtors pursuant to the relief granted in the DIP Orders is intended or should be construed as: (a) an admission as to the validity of any particular claim against a Debtor entity; (b) a waiver of the Debtors' rights to

dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to 11 U.S.C. § 365; or (f) a waiver or limitation of any of Debtors' rights under the Bankruptcy Code or any other applicable law.

NOTICE AND NO PRIOR REQUEST

13. Notice of the Motion has been or will be provided to (a) the U.S. Trustee (Attn: Jane M. Leamy); (b) the holders of the twenty (20) largest unsecured claims against each Debtor; (c) counsel to DBTCA in its capacity as Collateral Agent, Hogan Lovells US LLP; (d) counsel to the Prepetition Noteholders and DIP Lenders, Greenberg Traurig, LLP; (e) Berlin Bio Investment Fund LLC; (f) Greenline CDF Subfund XVIII LLC, with a copy to Kutak Rock LLP, U.S. Bancorp Community Development Corporation and Leverage Law Group, LLC; (g) Public Service of New Hampshire d/b/a Eversource Energy; (h) the United States Attorney's Office for the District of Delaware; (i) the United States Attorney's Office for the District of New Hampshire; (j) the United States Environmental Protection Agency; (k) the Nuclear Regulatory Commission; (l) the United States Department of Energy; (m) the Federal Energy Regulatory Commission; (n) New Hampshire Department of Environmental Services; (o) New Hampshire Public Utilities Commission; (p) New Hampshire Site Evaluation Committee; (q) New Hampshire Department of Energy; (r) City of Berlin; (s) ISO New England, Inc.; (t) the United States Securities and Exchange Commission; (u) the Internal Revenue Service; and (v) any party that has requested notice pursuant to Bankruptcy Rule 2002. As this Motion is seeking "first day" relief, the Debtors will serve copies of this Motion and any order entered in response of this

Motion as required by Local Rule 9013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

14. No prior request for the relief sought in this Motion has been made to this or any other court.

[*Remainder of page intentionally left blank*.]

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: February 9, 2024

/s/ Katharina Earle
Katharina Earle (No. 6348)
Chantelle D. McClamb (No. 5978)
GIBBONS P.C.
300 Delaware Avenue, Suite 1015
Wilmington, Delaware 19801
Telephone: (302) 518-6300
E-mail: kearle@gibbonslaw.com
cmcclamb@gibbonslaw.com

-and-

Robert K. Malone (pro hac vice pending)
Kyle P. McEvilly (pro hac vice pending)
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
Telephone: (973) 596-4500
E-mail: rmalone@gibbonslaw.com
kmcevilly@gibbsonlaw.com

Proposed Co-Counsel for Debtors Burgess BioPower, LLC and Berlin Station, LLC

Alison D. Bauer (pro hac vice pending)
William F. Gray, Jr. (pro hac vice pending)
Jiun-Wen Bob Teoh (pro hac vice pending)
FOLEY HOAG LLP
1301 Avenue of the Americas, 25th Floor
New York, New York 10019
Telephone: (212) 812-0400
Email: abauer@foleyhoag.com
wgray@foleyhoag.com
jteoh@foleyhoag.com

-and-

Kenneth S. Leonetti (pro hac vice pending)
Jonathan Bard (pro hac vice pending)
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, Massachusetts 02210
Telephone: (617) 832-1000
Email: ksl@foleyhoag.com
ybard@foleyhoag.com

Proposed Co-Counsel for Debtors Burgess BioPower, LLC and Berlin Station, LLC

EXHIBIT A

Interim Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
BURGESS BIOPOWER, LLC, *et al.*[1]	Case No. 24-10235 (LSS)
Debtors.	(Joint Administration Requested)

INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED PARTIES, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF

The Court has considered the *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* (the "DIP Motion")[2] of Burgess BioPower, LLC ("Burgess") and Berlin Station, LLC ("Berlin" or the "Borrower"), the debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (collectively, the "Chapter 11 Cases"), seeking entry of an order (this "Interim DIP Order") pursuant to sections 105, 361, 362, 363, 364(c)(l), 364(c)(2), 364(c)(3), 364(d), 364(e), 506, 507, and 552 of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), Rules 2002, 4001, 6003, 6004, and 9014 of

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number are: Burges BioPower, LLC (0971) and Berlin Station, LLC (1913). The Debtors' corporate headquarters are located at c/o CS Operations, Inc., 631 US Hwy 1, #300, North Palm Beach, FL 33408.

[2] Capitalized terms used herein but not otherwise defined have the meanings ascribed to such terms in the DIP Motion, the DIP Credit Agreement, or the Prepetition Senior Secured NPA, each as defined herein, as applicable.

the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Rules 2002-1 and 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), *inter alia*:

(i) authorizing the Debtors to obtain senior secured postpetition financing on a superpriority basis consisting of a senior secured superpriority debtor-in-possession priming credit facility (the "DIP Facility") in the aggregate principal amount of up to $54 million (the "DIP Facility") consisting of: (a) a new money delayed-draw term loan facility in the aggregate principal amount of up to $18 million including (i) up to $4.4 million available to the Borrower on an interim basis (the "Interim DIP Term Loan") and (ii) up to $18 million (inclusive of all amounts funded by the DIP Lenders on account of the Interim DIP Term Loan), on a final basis (the "Final DIP Term Loans," and together with the Interim DIP Term Loan, the "DIP Term Loans"), and (b) roll-up loans to refinance on a pro rata basis across the holdings of the Prepetition Obligations (as defined below) of the Prepetition Noteholders (as defined below) who choose to participate in the DIP Facility as lenders (in each case, including any successors and permitted assignees, each, a "DIP Lender" and, collectively, the "DIP Lenders"), (x) upon entry of this Interim DIP Order, on a 2:1 ratio times the principal amount of the committed Interim DIP Term Loans (the "Interim Roll-Up Loans") and (y) upon entry of a final order (the "Final DIP Order," and together with this Interim DIP Order, the "DIP Orders"), on a 2:1 ratio times the committed principal amount of the Final DIP Term Loans on a final basis (the "Final Roll-Up Loans" and, together with the Interim Roll-Up Loans, the "Roll-Up Loans;" and the DIP Term Loans, together with the Roll-Up Loans, collectively, the "DIP Loans"), pursuant to that certain *Senior Secured Superpriority Debtor-In-Possession Credit Agreement* (the "DIP Credit Agreement"), substantially in the form attached as Exhibit C to the DIP Motion, by and among the Borrower, Deutsche Bank Trust Company Americas ("DBTCA" in its capacities as the Administrative Agent and Collateral Agent (in such capacities, collectively, the "DIP Agent")), and the Prepetition Noteholders (as defined below) who participate in the DIP Facility as lenders (in each case, including any successors and permitted assignees, each, a "DIP Lender" and, collectively, the "DIP Lenders" and together with the DIP Agent, the "DIP Secured Parties");

(ii) authorizing the Debtors, as applicable, to execute and deliver the DIP Credit Agreement and each of the other agreements, documents, notes and instruments as shall be required by the DIP Secured Parties to be entered into in connection with the DIP Credit Agreement, each in form and substance acceptable to the DIP Secured Parties (collectively, and as the same may be amended or otherwise modified from time to time, the "DIP Loan Documents," and together with the DIP Orders and any other agreements, instruments, pledge agreements, guarantees, control agreements and other loan documents and documents related thereto (including any security agreements, mortgages, intellectual property security agreements, control agreements, or notes) (as amended, restated,

supplemented, waived, and/or modified from time to time, and collectively, with the DIP Credit Agreement, the ("DIP Documents"))) and to perform such other acts as may be necessary or desirable in connection with the DIP Documents;

(iii) granting the DIP Facility and all obligations owing thereunder and under, or secured by, the DIP Documents to the DIP Secured Parties (collectively, including all obligations described in the DIP Documents, the "DIP Obligations") allowed superpriority administrative expense claim status in each of the Chapter 11 Cases and any Successor Cases (as defined herein);

(iv) granting to the DIP Agent, for the benefit of itself and the DIP Lenders under the DIP Documents, automatically perfected security interests in and liens on all of the DIP Collateral (as defined herein), including, without limitation, all property of the Debtors constituting "Cash Collateral" as defined in section 363(a) of the Bankruptcy Code ("Cash Collateral"), which liens shall be subject to the priorities set forth herein;

(v) authorizing and directing the Debtors to pay the principal, interest, fees, expenses and other amounts payable under the DIP Documents as such become due and payable, including, without limitation, letter of credit fees (including issuance and other related charges), DIP Agent's fees, the reasonable fees and disbursements of the DIP Lenders' and the DIP Agent's attorneys, advisors, accountants and other consultants, all to the extent provided in, and in accordance with, the DIP Documents and DIP Orders;

(vi) authorizing the Debtors to use, on the terms described herein, the Prepetition Collateral (as defined herein), including the Cash Collateral of the Prepetition Secured Parties under the Prepetition Senior Secured Note Documents (each as defined herein);

(vii) providing adequate protection to the Prepetition Agent (as defined below), for the benefit of itself and the Prepetition Noteholders, for any diminution in value of their interests in the Prepetition Collateral, including Cash Collateral, for any reason provided for under the Bankruptcy Code, including the imposition of the automatic stay, the Debtors' use, sale, or lease of the Prepetition Collateral, including Cash Collateral, and the priming of their respective interests in the Prepetition Collateral (including by the Carve-Out (as defined herein)) pursuant to the terms and conditions set forth herein ("Diminution in Value");

(viii) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Documents and this Interim DIP Order;

(ix) deeming a portion of the Prepetition Senior Notes (as defined below) to be Roll-Up Loans issued and outstanding under the DIP Documents and all obligations in connection with such Rolled-up Notes to constitute DIP Obligations for all purposes thereof; and

(x) scheduling a final hearing (the "Final Hearing") to consider the relief requested in the DIP Motion on a final basis and approving the form of notice with respect to the Final Hearing.

The Court having considered the DIP Motion, the exhibits attached thereto, the Vomero Declaration, the Victor Declaration, the DIP Documents, and the evidence submitted and arguments made at the interim hearing (the "Interim Hearing"); and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable Local Rules; and the Interim Hearing having been held and concluded; and all objections, if any, to the interim relief requested in the DIP Motion having been withdrawn, resolved or overruled by the Court; and it appearing that approval of the interim relief requested in the DIP Motion is necessary for the Debtors and their estates, and otherwise is fair and reasonable and in the best interests of the Debtors, their estates, and all parties in interest, and is essential for the continued operation of the Debtors' businesses and the maximization of the value of the Debtors' assets; and it appearing that the Debtors' entry into the DIP Documents, including the DIP Credit Agreement, is a sound and prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:[3]

A. **Petition Date**. February 9, 2024 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States

[3] The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

Bankruptcy Court for the District of Delaware (the "Court").

B. **Debtors in Possession**. The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

C. **Jurisdiction and Venue**. This Court has jurisdiction over the Chapter 11 Cases, the DIP Motion, and the parties and property affected hereby pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. Venue for the Chapter 11 Cases and proceedings on the DIP Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The predicates for the relief set forth herein are sections 105, 361, 362, 363, 364(c)(l), 364(c)(2), 364(c)(3), 364(d), 364(e), 506, 507, and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004, and 9014 and Local Rules 2002-1 and 4001-2.

D. **Committee Formation**. As of the date hereof, the United States Trustee for the District of Delaware (the "U.S. Trustee") has not appointed an official committee of unsecured creditors in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (a "Committee").

E. **Notice**. Notice of the DIP Motion and the Interim Hearing have been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules, and no other or further notice of the DIP Motion with respect to the relief requested at the Interim Hearing or the entry of this Interim DIP Order shall be required.

F. **Debtors' Stipulations**. After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties in interest as set forth in Paragraph 42

herein, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree as follows (Paragraphs F(i)through F(viii) below are referred to herein, collectively, as the "Debtors' Stipulations"):

(i) *Prepetition Senior Notes*. Pursuant to that certain (a) *Note Purchase Agreement* dated as of September 2, 2011 (as amended, restated, supplemented, or otherwise modified from time to time, the "Prepetition Senior Secured NPA"),[4] by and among the Borrower and the various financial institutions from time to time party thereto, as purchasers (collectively, the "Prepetition Noteholders"), (b) *Collateral Agency, Subordination, and Intercreditor Agreement*, dated as of September 2, 2011, as amended by that certain *Amended and Restated Collateral Agency, Subordination and Intercreditor Agreement*, dated as of October 25, 2012, the "Prepetition Collateral Agency Agreement"), by and among the Borrower, the Prepetition Noteholders, DBTCA, in its capacity as collateral agent for the Prepetition Noteholders and the Subordinated Lenders (as defined herein) and as Depositary under the Prepetition Senior Secured NPA (in such capacities and in its capacity as a party to any other Prepetition Senior Secured Notes Documents (as defined below), collectively, the "Prepetition Agent," and together with the Prepetition Noteholders, the "Prepetition Secured Parties"), the Prepetition Secured Parties provided for the issuance by Berlin of the Prepetition Senior Notes (as defined below) and other financial accommodations to the Prepetition Secured Parties (the "Prepetition Financing").

(ii) *Facility Lease.* Pursuant to that certain *Lease* dated as of September 2, 2011 (as amended, restated, supplemented, or otherwise modified from time to time, the "Facility Lease," and collectively with the Prepetition Senior Secured NPA, the Prepetition Collateral Agency Agreement, the Prepetition Security Documents (as defined below), the other Financing Documents (as defined in the Prepetition Senior Secured NPA) and any other agreements and documents executed or delivered in connection with any of the foregoing, each as may be amended, restated, supplemented, waived or otherwise modified from time to time, the "Prepetition Senior Secured Note Documents"), among Berlin, as lessor, and Burgess, as lessee, Berlin leased to Burgess the Premises (as defined in the Facility Lease). All obligations of Burgess arising under the Facility Lease shall collectively be referred to herein as the "Facility Lease Obligations."

[4] The Prepetition Senior Secured NPA has been amended on six (6) separate occasions by (a) that certain Consent and Amendment dated as of October 25, 2012; (b) that certain Amendment No. 2 to the Note Purchase Agreement dated as of March 30, 2015; (c) that certain Amendment No. 1 to Amended and Restated Depositary and Security Agreement dated as of March 30, 2015; (d) that certain Amendment No. 1 to Depositary and Security Agreement dated March 30, 2015; (e) that certain Waiver, Consent and Amendment dated April 11, 2016; and (f) that certain Waiver, Consent and Amendment dated March 17, 2017.

(iii) *Prepetition Obligations*. The Prepetition Financing provided Berlin with, among other things, up to $200 million in aggregate principal amount of Notes comprised of (a) 7.00% Series A Senior Secured Fixed Rate Notes in the initial aggregate principal amount of $57,000,000 (the "Series A Fixed Rate Notes"), (b) 7.50% Series B Senior Secured Fixed Rate Notes in the initial aggregate principal amount of $93,000,000 (the "Series B Fixed Rate Notes"), and (c) Senior Secured Floating Rate Notes in the aggregate principal amount of $50,000,000 (the "Floating Rate Notes" and, together with the Series A Fixed Rate Notes and the Series B Fixed Rate Notes, the "Prepetition Senior Notes"). As of the Petition Date, the aggregate principal amount outstanding on the Prepetition Financing was not less than approximately $115 million[5] (collectively, together with accrued and unpaid interest, outstanding letters of credit, any reimbursement obligations (contingent or otherwise) in respect of letters of credit, any fees, expenses and disbursements (including, without limitation, attorneys' fees, accountants' fees, auditor fees, appraisers' fees and financial advisors' fees, and related expenses and disbursements), treasury, cash management, bank product and derivative obligations, indemnification obligations, guarantee obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Debtors' obligations pursuant to, or secured by, the Prepetition Senior Secured Note Documents and all interest, fees, prepayment premiums, costs and other charges allowable under section 506(b) of the Bankruptcy Code, collectively, the "Prepetition Obligations").

(iv) *Prepetition Liens and Prepetition Collateral*. Pursuant to the:

(a) *First Mortgage with Assignment of Leases, Contracts and Rents, and Fixture Filing*, dated as of September 2, 2011 ("First Mortgage"), Berlin granted to the Prepetition Agent, for itself and for the benefit of the Prepetition Secured Parties, to secure the Prepetition Obligations, a continuing first-priority mortgage lien and security interest in on all real property and fixtures located at the Premises and an assignment of leases and rents pursuant to which Berlin absolutely assigned all rents, income and profits from the Premises to the Prepetition Agent (collectively, as defined under the First Mortgage, the "Property");

(b) *Security Agreement*, dated as of September 2, 2011 (as amended, restated, supplemented, or otherwise modified from time to time, the "Berlin Security Agreement"),[6] Berlin granted to the Prepetition Agent, for the benefit of itself in its capacity as a Depository under the Berlin Depository and Security Agreement and Burgess Depository and Security Agreement

[5] Such amount does not include all secured obligations under the Prepetition Senior Notes, including, without limitation, costs, expenses, fees (including attorneys' fees), indemnities, reimbursement obligations and other charges and obligations that may be due and payable under the Prepetition Senior Secured Note Documents.

[6] The Berlin Security Agreement was amended by that certain Amended and Restated Security Agreement dated as of October 25, 2012.

(each term as defined below) and the Prepetition Secured Parties, to secure the Prepetition Obligations, a continuing first-priority lien and security interest in substantially all of the property and assets of Berlin, and the proceeds thereof, whether now owned or existing or hereafter acquired or arising, regardless of where located, other than the Excluded Collateral (as defined in the Berlin Security Agreement), (collectively, the "Berlin Collateral");

(c) *Security Agreement*, dated as of September 2, 2011 (as amended, restated, supplemented, or otherwise modified from time to time, the "Burgess Security Agreement"), Burgess granted to Berlin, to secure the Facility Lease Obligations, a continuing first-priority lien and security interest in substantially all of the property and assets of Burgess, and the proceeds thereof, whether now owned or existing or hereafter acquired or arising, regardless of where located, other than the Excluded Collateral (as defined in the Burgess Security Agreement), (collectively, the "Burgess Collateral");

(d) *Depository and Security Agreement*, dated as of September 2, 2011 (as amended, restated, supplemented, or otherwise modified from time to time, the "Berlin Depository and Security Agreement"), Berlin granted to the Prepetition Agent, for the benefit of itself as Depository and the Prepetition Secured Parties, to secure the Prepetition Obligations, a continuing first-priority lien and security interest in, among other things, certain accounts of Berlin and any cash balances, securities and other investment property, supporting property and other property from time to time credited to such accounts and any and all proceeds thereof (collectively, the "Berlin Account Collateral");

(e) *Depository and Security Agreement*, dated as of September 2, 2011 (as amended, restated, supplemented, or otherwise modified from time to time, the "Burgess Depository and Security Agreement"),[7] Burgess granted to the Prepetition Agent, for the benefit of itself as Depository and the Prepetition Secured Parties, to secure the Facility Lease Obligations, a continuing first-priority lien and security interest in, among other things, certain accounts of Burgess and any cash balances, securities and other investment property, supporting property and other property from time to time credited to such accounts and any and all proceeds thereof (collectively, the "Burgess Account Collateral");

(f) *Pledge and Security Agreement*, dated as of September 2, 2011 (as amended, restated, amended and restated, supplemented, or otherwise

[7] The Burgess Depositary and Security Agreement has been amended by that certain Consent, Amendment No. 2 to Note Purchase Agreement, Amendment No. 1 to Amended and Restated Depositary and Security Agreement and Amendment No. 1 to Depositary and Security Agreement, dated March 30, 2015.

modified from time to time, the "Berlin Pledge Agreement"), BBP #1, LLC and BBP #2, LLC pledged to the Prepetition Agent, for its benefit as Depository under the Berlin Depository and Security Agreement and the Burgess Depository and Security Agreement and the benefit of the Prepetition Noteholders, to secure the Prepetition Obligations, a continuing first-priority lien and security interest in all of the Pledged Collateral (as defined in the Berlin Pledge Agreement), which includes, among other things, 100% of all shares in Berlin (collectively, the "Berlin Pledged Collateral"); and

(g) *Pledge and Security Agreement*, dated as of September 2, 2011 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "Burgess Pledge Agreement" and together with the First Mortgage, the Berlin Security Agreement, the Burgess Security Agreement, Berlin Depository and Security Agreement, the Burgess Depository and Security Agreement, the Berlin Pledge Agreement, the Burgess Pledge Agreement and any other security agreement or document executed or delivered in connection therewith or in connection with the Prepetition Senior Notes, collectively, the "Prepetition Security Documents"), Burgess Holding, LLC pledged to the Prepetition Agent, for its benefit as Depository under the Berlin Depository and Security Agreement and the Burgess Depository and Security Agreement and the benefit of the Prepetition Noteholders, to secure the Prepetition Obligations, a continuing first-priority lien and security interest in all of the Pledged Collateral (as defined in the Burgess Pledge Agreement), which includes, among other things, 100% of all shares in Burgess (collectively, the "Burgess Pledged Collateral").

All security interests and liens granted under and pursuant to the Prepetition Security Documents shall collectively be referred to herein as the "Prepetition Liens."

All Property (as defined in the First Mortgage), Berlin Collateral, Burgess Collateral, Berlin Account Collateral, Burgess Account Collateral, Berlin Pledged Collateral, Burgess Pledged Collateral and any other collateral granted, assigned or pledged under the Prepetition Security Documents shall collectively be referred to herein as the "Prepetition Collateral."

Pursuant to the Prepetition Collateral Agency Agreement, certain Subordinated Lenders (collectively, as defined therein, the "Subordinated Lenders") agreed that, among other things, their liens and claims against the Prepetition Collateral are junior to the Prepetition Liens and claims of the Prepetition Secured Parties.

(v) *Validity, Perfection, and Priority of Prepetition Liens and Prepetition Obligations.* The Debtors acknowledge and agree that (a) the Prepetition Liens on the Prepetition Collateral are valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Prepetition Secured Parties for fair consideration and reasonably equivalent value; (b) the Prepetition Liens are senior in priority over any and all other liens

on the Prepetition Collateral, subject only to certain liens senior by operation of law (solely to the extent such liens were valid, non-avoidable, and senior in priority to the Prepetition Liens as of the Petition Date and properly perfected prior to the Petition Date or perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code) or otherwise permitted by the Prepetition Senior Secured Note Documents (collectively, the "Permitted Prior Liens"), if any; (c) the Prepetition Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtors enforceable in accordance with the terms of the applicable Prepetition Senior Secured Note Documents; (d) no offsets, recoupments, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition Liens or Prepetition Obligations exist, and no portion of the Prepetition Liens or Prepetition Obligations is subject to any challenge or defense including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or any other applicable law; (e) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including, without limitation, avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against any of the Prepetition Secured Parties or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon or related to the Prepetition Financing; and (f) the Debtors waive, discharge, and release any right to challenge any of the Prepetition Obligations, the priority of the Debtors' obligations thereunder, and the validity, extent, and priority of the Prepetition Liens.

(vi) *Release*. The Debtors hereby stipulate and agree that they forever and irrevocably release, discharge, and acquit the DIP Secured Parties, the Prepetition Secured Parties, and each of their respective successors, assigns, affiliates, subsidiaries, parents, officers, shareholders, directors, employees, attorneys and agents, past, present and future, and their respective heirs, predecessors, successors and assigns (collectively, the "Releasees") of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, expenses (including reasonable attorneys' fees), debts, liens, actions and causes of action of any and every nature whatsoever relating to, as applicable, this Interim DIP Order, the DIP Facility, the DIP Documents, the Prepetition Financing, the Prepetition Senior Secured Note Documents, and/or the transactions contemplated hereunder or thereunder occurring prior to entry of this Interim DIP Order, including (x) any so-called "lender liability" or equitable subordination or recharacterization claims or defenses, (y) any and all claims and causes of action arising under the Bankruptcy Code, and (z) any and all claims and causes of action with respect to the validity, priority, perfection or avoidability of the liens or claims of the DIP Secured Parties and the Prepetition Secured Parties. The Debtors further waive and release any defense, right of counterclaim, right of set-off or deduction to the payment of the Prepetition Obligations and the DIP Obligations which the Debtors may now have or may claim to have against the Releasees, arising out of, connected with or relating to any and all acts, omissions or events occurring prior to this Court entering this

Interim DIP Order.

(vii) *Default by the Debtors*. The Debtors acknowledge and stipulate that Events of Default have occurred and are continuing under the Prepetition Senior Secured Note Documents as a result of, among other things, defaults occurring prior to the Petition Date in addition to the filing of the Chapter 11 Cases, and that the Debtors have been and are in default of their obligations under the Prepetition Senior Secured Note Documents. As of the Petition Date, interest is accruing on the Prepetition Obligations at the default rate in accordance with the provisions of the Prepetition Senior Secured Note Documents, subject to any limitations imposed by the Bankruptcy Code.

(viii) *Cash Collateral*. All of the Debtors' cash and cash equivalents, including any cash in deposit accounts of the Debtors, wherever located, constitutes Cash Collateral of the Prepetition Secured Parties.

G. **Permitted Prior Liens**. Nothing herein shall constitute a finding or ruling by this Court that any alleged Permitted Prior Lien is valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing shall prejudice the rights of any party-in-interest, including, but not limited to the Debtors, the DIP Secured Parties, the Prepetition Secured Parties, or any Committee (if appointed), to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Permitted Prior Lien and/or security interests.

H. **Continuation of Prepetition Liens**. In light of the integrated nature of the DIP Facility, the DIP Documents, and the Prepetition Senior Secured Note Documents, the Prepetition Liens, and the DIP Liens (as defined below) that prime certain of the Prepetition Liens, are continuing liens, and the DIP Collateral is and will continue to be encumbered by such liens.

I. **Findings Regarding Corporate Authority**. Each Debtor has all requisite corporate power and authority to execute and deliver the DIP Documents to which it is a party and to perform its obligations thereunder.

J. **Findings Regarding Postpetition Financing**

(i) *Request for Postpetition Financing*. The Debtors seek authority to (a) enter into, and borrow under, the DIP Facility on the terms described herein and in the DIP Documents, and (b) use Cash Collateral on the terms described herein, to administer their Cases and fund their operations. At the Final Hearing, the Debtors will seek final approval of the DIP Facility and use of Cash Collateral pursuant to the Final DIP Order, which shall be in form and substance acceptable to the Debtors, the DIP Lenders, and the Prepetition Secured Parties. Notice of the Final Hearing and Final DIP Order will be provided in accordance with this Interim DIP Order.

(ii) *Priming of the Prepetition Liens*. The priming of the Prepetition Liens on the Prepetition Collateral under section 364(d) of the Bankruptcy Code, as contemplated by the DIP Facility and as further described below, will enable the Debtors to obtain the DIP Facility and to continue to operate their businesses to the benefit of their estates and creditors. The Prepetition Agent, for the benefit of itself and the other Prepetition Secured Parties, is entitled to receive adequate protection as set forth in this Interim DIP Order pursuant to sections 361, 363, and 364 of the Bankruptcy Code, for any Diminution in Value of each of the Prepetition Secured Parties' respective interests in the Prepetition Collateral (including Cash Collateral).

(iii) *Need for Postpetition Financing and Use of Cash Collateral*. The Debtors have an immediate and critical need to use Cash Collateral on an interim basis and to obtain credit on an interim basis pursuant to the DIP Facility in order to, among other things, enable the orderly continuation of their operations and to administer and preserve the value of their estates. The ability of the Debtors to maintain business relationships with their vendors, contractors, suppliers, and customers, to sell power into the market, and otherwise to finance their operations requires the availability of working capital from the DIP Facility and the use of Cash Collateral,

the absence of either of which would immediately and irreparably harm the Debtors, their estates, and parties in interest. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses or maintain their properties in the ordinary course of business without the DIP Facility and authorized use of Cash Collateral.

(iv) *No Credit Available on More Favorable Terms*. The DIP Facility is the best source of debtor-in-possession financing available to the Debtors. Given their current financial condition, financing arrangements and capital structure, the Debtors have been and continue to be unable to obtain financing from sources other than the DIP Lenders on terms more favorable than the DIP Facility. The Debtors are unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors have also been unable to obtain: (a) unsecured credit solely having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a), and 507(b) of the Bankruptcy Code; (b) credit secured solely by a lien on property of the Debtors and their estates that is not otherwise subject to a lien; or (c) credit secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. Financing on a postpetition basis on better terms is not otherwise available without granting the DIP Agent, for the benefit of themselves and the other DIP Secured Parties: (1) perfected security interests in and liens on (each as provided herein) all of the Debtors' existing and after-acquired assets with the priorities set forth herein; (2) superpriority claims and liens; and (3) the other protections set forth in this Interim DIP Order.

(v) *Use of Proceeds of the DIP Facility*. As a condition to entry into the DIP Credit Agreement and other DIP Documents, the extension of credit under the DIP Facility and the authorization to use Cash Collateral, the DIP Secured Parties and the Prepetition Secured

Parties require, and the Debtors have agreed, that proceeds of the DIP Facility and the Cash Collateral shall be used, in each case in a manner consistent with the terms and conditions of this Interim DIP Order, the DIP Credit Agreement, and the other DIP Documents and in accordance with the budget (as the same may be modified from time to time consistent with the terms of this Interim DIP Order and the DIP Documents and subject to such variances and other exclusions as permitted in this Interim DIP Order and the DIP Credit Agreement, the "Budget").[8]

(vi) *Application of Proceeds of Collateral*. As a condition to entry into the DIP Credit Agreement, the extension of credit under the DIP Facility, and authorization to use Cash Collateral, the Debtors, the DIP Secured Parties, and the Prepetition Secured Parties have agreed that the Debtors shall apply the proceeds of DIP Collateral in accordance with this Interim DIP Order and the Budget.

(vii) *Refinancing of Certain Prepetition Obligations.* Concurrently with the Debtors' incurrence of the Interim DIP Term Loan and the Interim Roll-Up Loans, the Debtors shall use the Interim Roll-Up Loan to refinance, on a two-to-one ratio times the committed principal amount of the Interim DIP Term Loan, the Prepetition Obligations held by the Prepetition Secured Parties and, subject to and effective upon entry of the Final DIP Order, concurrently with the Debtors' incurrence of the Final DIP Term Loans and the Final Roll-Up Loans, the Debtors shall use the Final Roll-Up Loans to refinance, on a two-to-one ratio times the committed principal amount of the Final DIP Term Loan, the Prepetition Obligations held by the Prepetition Secured Parties on a final basis. Notwithstanding anything to the contrary in this Interim DIP Order, all Prepetition Obligations and Roll-Up Loans are subject to Challenge (as

[8] A copy of the current Budget is attached hereto as **Exhibit 1**.

defined below) of parties in interest to the extent set forth in Paragraph 42 of this Interim DIP Order.

K. **Adequate Protection**. Until such time as the Prepetition Obligations are Paid in Full,[9] the Prepetition Agent, for the benefit of itself and the other Prepetition Secured Parties, is entitled to receive adequate protection solely to the extent of any Diminution in Value of its respective interests in the Prepetition Collateral as set forth in this Interim DIP Order.

L. **Sections 506(c) and 552(b).** In light of: (i) the DIP Secured Parties' agreement that their liens and superpriority claims shall be subject to the Carve-Out; (ii) the Prepetition Secured Parties' agreement that their liens shall be subject to the Carve-Out and subordinate to the DIP Liens; and (iii) the payment of prepetition claims and/or expenses as set forth in the Budget and first day motions in accordance with and subject to the terms and conditions of this Interim DIP Order and the DIP Documents, (a) subject to entry of a Final DIP Order, the Prepetition Secured Parties are each entitled to a waiver of any "equities of the case" exception under section 552(b) of the Bankruptcy Code, and (b) subject to entry of a Final DIP Order, the DIP Secured Parties and the Prepetition Secured Parties are each entitled to a waiver of the provisions of section 506(c) of the Bankruptcy Code.

M. **Good Faith of the DIP Agent and DIP Lenders**.

[9] "Paid in Full" means the indefeasible repayment in full in cash of all obligations (including principal, interest, fees, prepayment premiums, expenses, indemnities, other than contingent indemnification obligations for which no claim has been asserted) under the applicable credit documents, the cash collateralization or repayment in full in cash of all treasury and cash management obligations, hedging obligations, and bank product obligations, and the cancelation, replacement, backing, or cash collateralization of letters of credit, in each case, in accordance with the terms of the applicable credit documents. No facility or loan shall be deemed to have been Paid in Full until such time as, with respect to the applicable facility, (a) the commitments to lend thereunder have been terminated, (b) with respect to the Challenge Deadline (i) the Challenge Deadline (as defined in Paragraph 42 of this Interim DIP Order) shall have occurred without the timely and proper commencement of a Challenge or (ii) if a Challenge is timely and properly asserted prior to the Challenge Deadline, upon the final, non-appealable disposition of such Challenge; and (c) with respect to the Prepetition Obligations and DIP Obligations, as applicable, the Prepetition Agent and other Prepetition Secured Parties, or DIP Lenders, as applicable, have received (i) a countersigned payoff letter in form and substance satisfactory to such party and (ii) releases in form and substance satisfactory to such party, each in its sole discretion.

(i) *Willingness to Provide Financing*. The DIP Lenders have indicated a willingness to provide financing to the Debtors subject to: (a) entry of this Interim DIP Order and the Final DIP Order; (b) approval of the terms and conditions of the DIP Facility and the DIP Documents; (c) satisfaction of the closing conditions set forth in the DIP Documents; and (d) findings by this Court that the DIP Facility is essential to the Debtors' estates, that the DIP Secured Parties are extending credit to the Debtors pursuant to the DIP Documents in good faith, and that the DIP Secured Parties' claims, superpriority claims, security interests, and liens and other protections and releases granted pursuant to this Interim DIP Order and the DIP Documents will have the protections provided by section 364(e) of the Bankruptcy Code.

(ii) *Business Judgment and Good Faith Pursuant to Section 364(e) of the Bankruptcy Code*. The terms and conditions of the DIP Facility and the DIP Documents, and the fees paid and to be paid thereunder, are fair, reasonable, and the best available to the Debtors under the circumstances, are ordinary and appropriate for secured financing to debtors in possession, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration. The terms and conditions of the DIP Facility and the use of Cash Collateral were negotiated in good faith and at arms' length among the Debtors, the DIP Secured Parties, and the Prepetition Secured Parties, with the assistance and counsel of their respective advisors. Use of Cash Collateral and credit to be extended under the DIP Facility shall be deemed to have been allowed, advanced, made, or extended in good faith by the DIP Secured Parties and the Prepetition Secured Parties within the meaning of section 364(e) of the Bankruptcy Code.

N. **Immediate Entry**. Sufficient cause exists for immediate entry of this Interim DIP Order pursuant to Bankruptcy Rule 4001(c)(2).

O. **Interim Hearing**. Notice of the Interim Hearing and the relief requested in the DIP Motion has been provided by the Debtors, whether by facsimile, electronic mail, overnight courier or hand delivery, to certain parties in interest, including: (i) the U.S. Trustee; (ii) counsel to the Prepetition Agent and DIP Agent; (iii) counsel to the Prepetition Noteholders and DIP Lenders; (iv) counsel to the Subordinated Lenders; (v) counsel to Eversource Energy d/b/a PSNH and (vi) all other parties entitled to notice under the Local Rules. The Debtors have made reasonable efforts to afford the best notice possible under the circumstances.

Based upon the foregoing findings and conclusions, the DIP Motion, the Vomero Declaration, the Victor Declaration, and the record before the Court with respect to the DIP Motion, and after due consideration and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED that:

1. Interim Financing Approved. The DIP Motion is granted on an interim basis as set forth herein. The Interim Financing (as defined herein) and Interim Roll-Up Loans are authorized and approved, and the use of Cash Collateral on an interim basis is authorized, in each case subject to the terms and conditions set forth in the DIP Documents, the Budget and this Interim DIP Order. Any objections to this Interim DIP Order to the extent not withdrawn, waived, settled, or resolved are hereby denied and overruled.

DIP Facility Authorization

2. Authorization of the DIP Facility. The DIP Facility is hereby approved. The Debtors are expressly and immediately authorized and empowered to execute and deliver the DIP Documents and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Interim DIP Order and the DIP Documents, and to deliver all instruments, certificates, agreements, and documents that may be required, necessary or advisable for the

performance by the Debtors under the DIP Facility and the creation and perfection of the DIP Liens (as defined herein) described in and provided for by this Interim DIP Order and the DIP Documents. The Debtors are hereby authorized and directed to pay, in accordance with this Interim DIP Order (including Paragraph 34 herein) and the DIP Documents, the principal, interest, fees, payments, expenses, and other amounts described in the DIP Documents as such amounts become due and payable and without need to obtain further approval from the Court, including DIP Agent's fees, the reasonable and documented fees and disbursements of the DIP Lenders and DIP Agent and their respective attorneys, advisors, accountants, and other consultants, in such cases, reimbursable under the DIP Documents, whether or not such fees arose before or after the Petition Date, and to take any other actions that may be necessary or appropriate, all to the extent provided in this Interim DIP Order or the DIP Documents. All collections and proceeds, whether from ordinary course collections, asset sales, insurance recoveries, condemnations, or otherwise, will be deposited and applied as required by this Interim DIP Order and the DIP Documents. Upon execution and delivery, the DIP Documents shall represent valid and binding obligations of the Debtors, enforceable against each of the Debtors and their estates in accordance with their terms.

3. Authorization to Borrow and Guarantee. To prevent immediate and irreparable harm to the Debtors' estates, from the entry of this Interim DIP Order through and including the earliest to occur of (i) entry of the Final DIP Order or (ii) the DIP Termination Date (as defined below), and subject to the terms, conditions, and limitations on availability (as applicable) set forth in the DIP Documents and this Interim DIP Order, Berlin is hereby authorized to borrow the Interim DIP Term Loan, and Burgess is hereby authorized to unconditionally guarantee the DIP Obligations thereunder.

4. DIP Obligations. The DIP Documents and this Interim DIP Order shall constitute and evidence the validity and binding effect of the DIP Obligations, which shall be enforceable against the Debtors, their estates, and any successors thereto, including any trustee appointed in the Chapter 11 Cases, or in any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the "Successor Cases"). Upon entry of this Interim DIP Order, the DIP Obligations will include all loans, letter of credit reimbursement obligations, and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the Debtors to any of the DIP Secured Parties, in each case, under, or secured by, the DIP Documents or this Interim DIP Order, including all principal, accrued interest (at the rate set out in the DIP Facility), costs, fees, expenses and other amounts as provided in the DIP Documents. The Debtors shall be jointly and severally liable for the DIP Obligations, which shall be due and payable, without notice or demand, and the use of Cash Collateral shall automatically cease on the DIP Termination Date in each case, except as provided in Paragraph 29 herein. No obligation, payment, transfer, or grant of collateral security hereunder or under the DIP Documents (including any DIP Obligation or DIP Liens, and including in connection with any adequate protection provided to the Prepetition Secured Parties hereunder) shall be stayed, restrained, voidable, avoidable, or recoverable, under the Bankruptcy Code or under any applicable law (including under sections 502(d), 544, and 547 to 550 of the Bankruptcy Code or under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaim, cross-claim, defense,

or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

5. DIP Liens. In order to secure the DIP Obligations, effective immediately upon entry of this Interim DIP Order and subject to the Carve-Out, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the DIP Agent, for the benefit of itself and the DIP Secured Parties, is hereby granted, continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens (collectively, the "DIP Liens") on all real and personal property, whether now existing or hereafter arising and wherever located, tangible and intangible, of each of the Debtors (the "DIP Collateral"), including (a) all cash, cash equivalents, deposit accounts, securities accounts, accounts, other receivables (including credit card receivables), chattel paper, contract rights, inventory (wherever located), instruments, documents, securities (whether or not marketable) and investment property (including, without limitation, all of the issued and outstanding capital stock or equivalents of each of its subsidiaries), hedge agreements, furniture, fixtures, equipment (including documents of title), goods, franchise rights, trade names, trademarks, servicemarks, copyrights, patents, license rights, intellectual property, general intangibles (including, for the avoidance of doubt, payment intangibles), rights to the payment of money (including, without limitation, tax refunds and any other extraordinary payments), supporting obligations, guarantees, letter of credit rights, claims and causes of action (including without limitation claims and causes of action against Eversource Energy d/b/a PSNH), and all substitutions, indemnification rights, all present and future intercompany debt, books and records related to the foregoing, accessions and proceeds of the foregoing, wherever located, including insurance or other proceeds; (b) all proceeds of leased real property, including the Premises; (c) all proceeds

of actions brought under section 549 of the Bankruptcy Code to recover any postpetition transfer of DIP Collateral; (d) all commercial tort claims regardless of whether identified by name or case number, (e) all proceeds of the Debtors' rights under section 506(c) (solely to the extent such rights result from the use of the DIP Facility or the DIP Collateral and are, therefore, enforceable against parties other than the DIP Agent, DIP Lenders or the Prepetition Secured Parties) of the Bankruptcy Code; (f) all property of every description, in the possession or custody of or in transit to the Prepetition Agent or such Prepetition Noteholder for any purpose, including safekeeping, collection or pledge, for the account of such Debtor or as to which such Debtor may have any right or power, and all products and proceeds thereof; (g) upon entry of the Final DIP Order, all proceeds of, or property and interests recovered in respect of, claims or causes of action of the estates pursuant to the Bankruptcy Code or other applicable law, including, without limitation, those arising under sections 510, 544, 545, 547, 548, 549, 550 and 553(b) of the United States Bankruptcy Code; and (h) all DIP Collateral that was not otherwise subject to valid, perfected, enforceable, and unavoidable liens on the Petition Date, but excluding any specified assets (other than those assets that are subject to liens granted pursuant to the Prepetition Senior Secured Note Documents) as to which a valid, perfected and unavoidable lien in favor of a third-party existed as of the Petition Date and any deposits being held as adequate assurance for utilities subject to and as approved by an order of the Court, each as to which assets an immediately junior lien shall be granted pursuant to section 364(c)(3) of the Bankruptcy Code.

6. DIP Lien Priority. The DIP Liens are valid, automatically perfected, non-avoidable, senior in priority, and superior to any security, mortgage, collateral interest, lien, or claim to any of the DIP Collateral, except that the DIP Liens shall be subject to the Carve-Out

as set forth in this Interim DIP Order and shall otherwise be junior only to Permitted Prior Liens, if any. Other than as set forth herein or in the DIP Documents, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Cases and shall be valid and enforceable against any trustee appointed in the Chapter 11 Cases or any Successor Cases, upon the conversion of any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The DIP Liens shall not be subject to section 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens.

7. DIP Superpriority Claims. Upon entry of this Interim DIP Order, the DIP Secured Parties are hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claim in each of the Chapter 11 Cases and any Successor Cases (collectively, the "DIP Superpriority Claims") for all DIP Obligations. The DIP Superpriority Claims shall have priority over any and all other obligations, liabilities and indebtedness of each Debtor of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, including, to the extent allowed under the Bankruptcy Code, any and all administrative expense claims and unsecured claims against the Debtors or their estates in any of the Chapter 11 Cases and any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 364, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113 and 1114 of the Bankruptcy Code, and any other provision of the Bankruptcy Code, to the extent provided under section 364(c)(1) of the Bankruptcy Code, other

than the Carve-Out. No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Superpriority Claims. The DIP Superpriority Claims shall have priority, to the extent provided by section 507(b) of the Bankruptcy Code, over all administrative expense claims and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, other than the Carve-Out.

8. No Obligation to Extend Credit. The DIP Secured Parties shall have no obligation to make any loan or advance, or to issue, amend, renew, or extend any letters of credit under the DIP Documents, unless all of the conditions precedent to the making of such extension of credit or the issuance, amendment, renewal, or extension of such letter of credit or bankers' acceptance be deemed issued under and subject to the DIP Documents and this Interim DIP Order have been satisfied in full or waived by the DIP Secured Parties in accordance with the terms of the DIP Documents.

9. Use of Proceeds of DIP Facility. From and after the Petition Date, the Debtors shall use advances of credit under the DIP Facility, in accordance with the Budget (subject to such variances and other exceptions as permitted in this Interim DIP Order and the DIP Credit Agreement), only for the purposes specifically set forth in this Interim DIP Order, the DIP Documents, and the Budget and in compliance with the terms and conditions in this Interim DIP Order and the DIP Documents.

10. DIP Roll-Up Loans. Upon entry of this Interim DIP Order, without any further action by the Debtors or any other party, and as a condition to the provision of liquidity under the DIP Facility, the Debtors shall use the Interim Roll-Up Loans to refinance, on a two-to-one ratio times the committed principal amount of the Interim DIP Term Loan, the Prepetition

Obligations held by the Prepetition Secured Parties and, subject to and effective upon entry of the Final DIP Order, concurrently with the Debtors' incurrence of the Final DIP Term Loans and the Final Roll-Up Loans, the Debtors shall use the Final Roll-Up Loans to refinance, on a two-to-one ratio times the committed principal amount of Final DIP Term Loan, the Prepetition Obligations held by the Prepetition Secured Parties on a final basis. Upon entry of this Interim DIP Order, the portion of the Prepetition Obligations refinanced by the Interim Roll-Up Loans shall (a) no longer constitute a Prepetition Obligation under the Prepetition Senior Secured Note Documents and (b) be deemed a DIP Obligation under the DIP Documents.

Authorization to Use Cash Collateral

11. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Interim DIP Order, the DIP Facility, and the DIP Documents and in accordance with the Budget (subject to such variances and other exceptions as permitted in this Interim DIP Order and the DIP Documents), the Debtors are authorized to use Cash Collateral until the DIP Termination Date; *provided, however*, that, upon the Termination Declaration Date (as defined below), the Carve-Out shall be funded and available to satisfy Allowed Professional Fees (as defined herein); *provided*, *further*, that during the DIP Remedies Notice Period (as defined herein), the Debtors may use Cash Collateral (subject to the Budget) to satisfy expenses that are critical to keeping the Debtors' business operating as approved by the DIP Lenders or approved by the Court. Nothing in this Interim DIP Order shall authorize the disposition of any assets of the Debtors or their estates outside the ordinary course of business, or any Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as permitted in this Interim DIP Order, the DIP Facility, the DIP Documents, and in accordance with the Budget (subject to such variances and other exceptions as permitted in this Interim DIP Order and the DIP Documents).

12. Prepetition Adequate Protection Liens. Pursuant to sections 361, 363(e), and 364(d) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition Secured Parties in the Prepetition Collateral to the extent of any Diminution in Value of such interests in the Prepetition Collateral, the Debtors hereby grant to the Prepetition Agent, for itself and for the benefit of the Prepetition Secured Parties, continuing, valid, binding, enforceable, and perfected postpetition security interests in and liens (the "Adequate Protection Liens") on the DIP Collateral.

13. Priority of Adequate Protection Liens. The Adequate Protection Liens shall be subject to the Carve Out and otherwise shall be immediately junior only to: (i) the DIP Liens and (ii) Permitted Prior Liens. The Adequate Protection Liens shall be senior to all other security interests in, liens on, or claims against any of the DIP Collateral. Except as provided herein, the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter in the Chapter 11 Cases or any Successor Cases, and shall be valid and enforceable against any trustee appointed in any of the Chapter 11 Cases or any Successor Cases, or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The Adequate Protection Liens shall not be subordinated to or made *pari passu* with any lien, security interest or administrative claim under section 364 of the Bankruptcy Code or otherwise; *provided, however*, that the Debtors shall not create, incur or suffer to exist any postpetition liens or security interests other than: (i) those granted pursuant to this Interim DIP Order; (ii) carriers', mechanics', operators', warehousemen's, repairmen's or other similar ordinary course liens arising in the ordinary course of business; (iii) pledges and deposits in connection with any applicable social security legislation; and (iv) deposits to secure the payment of any postpetition statutory obligations and performance bonds. For the avoidance of doubt, notwithstanding

anything contained in this Interim DIP Order to the contrary, the Adequate Protection Liens and the Adequate Protection Superpriority Claims (as defined below) shall not prime, affect, impair, or limit any Permitted Prior Liens. The Adequate Protection Liens shall not be subject to sections 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the Prepetition Liens or the Adequate Protection Liens.

14. Adequate Protection Superpriority Claims. As further adequate protection of the interests of the Prepetition Secured Parties in the Prepetition Collateral to the extent of any Diminution in Value of such interests in the Prepetition Collateral, the Debtors shall grant to the Prepetition Agent, on behalf of itself and the Prepetition Secured Parties, as and to the extent provided by section 507(b) of the Bankruptcy Code, an allowed superpriority administrative expense claim in the Chapter 11 Cases and any successor cases (the "Adequate Protection Superpriority Claims").

15. Priority of the Adequate Protection Superpriority Claims. Except as set forth in this Interim DIP Order, the Adequate Protection Superpriority Claims shall have priority, to the extent provided by section 507(b) of the Bankruptcy Code, over all administrative expense claims and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 364, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113 and 1114 of the Bankruptcy Code; *provided, however*, the Adequate Protection Superpriority Claims shall be subject to the Carve-Out and shall have priority in the following order: (a) the DIP Superpriority Claims, and (b) the Adequate Protection Superpriority Claims.

16. Adequate Protection Fees and Expenses and Protections for Prepetition Secured Parties. As further adequate protection (the "Adequate Protection Fees and Expenses"), the Debtors are authorized and directed to provide adequate protection to the Prepetition Secured Parties in the form of payment in cash (and as to fees and expenses, without the need for the filing of a formal fee application) immediately upon entry of this Interim DIP Order, payment of the reasonable and documented fees, out-of-pocket expenses, and disbursements (including the reasonable and documented fees, out-of-pocket expenses, and disbursements of counsel, financial advisors, auditors, third-party consultants, and other vendors) incurred by the Prepetition Secured Parties (a) arising prior to the Petition Date and reimbursable under the Prepetition Senior Secured Note Documents including reasonable and documented fees and expenses of, including, without limitation (1) Greenberg Traurig, LLP, (2) Hogan Lovells US LLP, (3) Bernstein Shur Sawyer & Nelson, P.A, (4) Richards, Layton & Finger, PA and (5) FTI Consulting LLP (collectively, the "Prepetition Senior Secured Party Advisors"), and (b) in accordance with the procedures set forth in Paragraph 34 hereof, arising subsequent to the Petition Date and reimbursable under the Prepetition Senior Secured Note Documents, including reasonable and documented fees and expenses of the Prepetition Secured Party Advisors.

17. Adequate Protection Reservation. Nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided hereunder to the Prepetition Secured Parties is insufficient to compensate for any Diminution in Value of their respective interests in the Prepetition Collateral. The receipt by the Prepetition Secured Parties of the adequate protection provided herein shall not be deemed an admission that the interests of the Prepetition Secured Parties are adequately protected. Further, this Interim DIP Order shall not prejudice or limit the rights of the Prepetition Secured Parties to

seek additional relief with respect to the use of Cash Collateral or for additional adequate protection, and all parties in interests' rights are reserved with respect thereto.

Provisions Common to
DIP Financing and Use of Cash Collateral

18. Amendment of the DIP Documents. The DIP Documents may from time to time be amended, modified, or supplemented by the parties thereto without further order of the Court if the amendment, modification, or supplement is (a) immaterial or non-adverse to the Debtors and their estates and (b) in accordance with the DIP Documents, with a copy of any such amendment, modification, or supplement to be provided promptly by the Debtors to a Committee, if appointed. In the case of a material amendment, modification, waiver, or supplement to the DIP Documents that is adverse to the Debtors, their estates or stakeholders, the Debtors shall provide notice (which may be provided through electronic mail or facsimile) to counsel to a Committee, if appointed, and the U.S. Trustee at least five (5) days prior to the proposed effectiveness of such amendment, modification, or supplement; *provided*, that executed waivers need only be provided to such parties substantially concurrently with the effectiveness thereof; *provided, further, however*, any such material or adverse amendment, modification, or supplement shall be filed with the Court, and waiver of compliance with any covenant or extension of the period for compliance shall not be deemed to be adverse to the Debtors or their estates.

19. Budget Maintenance. The use of borrowings under the DIP Facility and the use of Cash Collateral shall be in accordance with the Budget, subject in all respects to the variances and other exceptions set forth in the DIP Credit Agreement. The Budget shall depict all line items required under the DIP Credit Agreement, and such Budget shall be approved by, and in form and substance satisfactory to the DIP Lenders and the Prepetition Secured Parties, each in

their sole discretion (it being acknowledged and agreed that the Budget attached hereto has been approved by the DIP Lenders and the Prepetition Secured Parties) and as otherwise required in accordance with the DIP Documents. Other than as expressly provided in the DIP Documents, the Debtors shall not be permitted to update the Budget more than once a week following the entry of this Interim DIP Order. The Budget shall be transmitted to the Lender Advisors (as defined below). Each such updated, modified, or supplemented budget shall be approved in writing (including by email) by, and shall be in form and substance satisfactory to, the DIP Lenders and the Prepetition Secured Parties (each in their sole discretion), and no such updated, modified, or supplemented budget shall be effective until so approved, and once so approved shall be deemed the Budget.

20. Budget Compliance: Obligations of the Debtors to the DIP Secured Parties. The Debtors shall at all times comply with the Budget, subject to the variances and other exceptions set forth in the DIP Credit Agreement. The Debtors shall provide all reports and other information, including any Variance Reports (as defined in the DIP Credit Agreement) as required in the DIP Documents. The Debtors' failure to comply with the Budget (including the variances and other exceptions set forth in the DIP Credit Agreement) or to provide the reports and other information required in the DIP Documents shall constitute a DIP Event of Default (as defined herein) following the expiration of any applicable cure period set forth in the applicable DIP Document unless waived in accordance with the terms of the DIP Documents.

21. Modification of Automatic Stay. The automatic stay imposed under section 362(a)(2) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Interim DIP Order, including, without limitation, to: (a) permit the Debtors to grant the DIP Liens, Adequate Protection Liens, DIP Superpriority Claims, and

Adequate Protection Superpriority Claims; (b) permit the Debtors to perform such acts as the DIP Agent, DIP Lenders, or Prepetition Secured Parties, as applicable, may reasonably request to assure the perfection and priority of the liens granted herein; (c) permit the DIP Agent, DIP Lenders, and/or Prepetition Secured Parties to perform such acts as they may reasonably determine to assure the perfection and priority of the lines granted herein; (d) permit the Debtors to incur all liabilities and obligations to the DIP Secured Parties, and the Prepetition Secured Parties under the DIP Documents, the DIP Facility, and this Interim DIP Order, as applicable; and (e) authorize the Debtors to pay, and the DIP Secured Parties and the Prepetition Secured Parties to retain and apply, payments made in accordance with the terms of the DIP Documents, Prepetition Senior Secured Note Documents and this Interim DIP Order.

22. Perfection of DIP Liens and Adequate Protection Liens. This Interim DIP Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of all liens granted herein, including the DIP Liens and the Adequate Protection Liens, without the necessity of filing or recording any financing statement, mortgage, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement, securities account control agreement, or mortgage) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens and the Adequate Protection Liens, or to evidence or entitle the DIP Secured Parties and the Prepetition Secured Parties to the priorities granted herein. Notwithstanding the foregoing, the DIP Agent and Prepetition Agent (acting in their capacities as collateral agents), as applicable, are authorized to file, in the applicable registries of deeds and other appropriate public records, as they in their sole discretion deem necessary or advisable, such financing statements, security agreements,

mortgages, leasehold mortgages, notices of liens, and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the DIP Liens and the Adequate Protection Liens, as applicable, and all such financing statements, mortgages, leasehold mortgages, notices, and other documents shall be deemed to have been filed or recorded as of the Petition Date; *provided, however*, that no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens or the Adequate Protection Liens. The Debtors are authorized and directed to execute and deliver promptly upon demand to the DIP Agent and the Prepetition Agent, as applicable, all such financing statements, deposit account control agreements, securities account control agreement, mortgages, leasehold mortgages, notices, and other documents and/or applicable amendments as the DIP Agent or the Prepetition Agent may reasonably request. Each of the DIP Agent and the Prepetition Agent may file a copy of this Interim DIP Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien, or similar instrument. To the extent that the Prepetition Agent is the secured party under any security agreement, mortgage, leasehold mortgage, landlord waiver, credit card processor notices or agreements, financing statement, account control agreements, or any other Prepetition Senior Secured Note Documents or is listed as loss payee or additional insured under any of the Debtors' insurance policies, the DIP Agent shall also be deemed to be the secured party under such documents or to be the loss payee or additional insured, as applicable. The Prepetition Agent shall serve as agent for the DIP Agent for purposes of perfecting the DIP Agent's liens on all DIP Collateral that, without giving effect to the Bankruptcy Code and this Interim DIP Order, is of a type such that perfection of a lien therein may be accomplished only by possession or control by a secured party, and such perfection shall

be deemed to be automatic upon the entry of this Interim DIP Order without the need for any further action on the part of the Prepetition Agent.

23. Application of Proceeds of Collateral. As a condition to the entry of the DIP Documents, the extension of credit under the DIP Facility, and the authorization to use Cash Collateral, the Debtors have agreed that as of and commencing on the date of the Interim Hearing, the Debtors shall apply all net proceeds of DIP Collateral, including whether sold in the ordinary course or otherwise, as provided in the DIP Documents.

24. Protections of Rights of the Prepetition Secured Parties.

(a) Without the prior written consent of each of the DIP Secured Parties and the Prepetition Secured Parties, unless all DIP Obligations and Prepetition Obligations (excluding contingent indemnification obligations for which no claim has been asserted) have been, or contemporaneously will be, Paid in Full and the lending commitments under the DIP Facility have terminated, in any of the Chapter 11 Cases, any Successor Cases, the Debtors shall neither seek entry of, nor support any motion or application seeking entry of, and otherwise shall object to any motion or application seeking entry of, any order (including any order confirming any plan of reorganization or liquidation) that authorizes any of the following: (i) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the DIP Collateral or Prepetition Collateral and/or that is entitled to administrative priority status, in each case that is superior to or *pari passu* with the DIP Liens, the DIP Superpriority Claims, the Prepetition Liens, the Adequate Protection Liens, and/or the Adequate Protection Superpriority Claims except as expressly set forth in this Interim DIP Order or the DIP Documents; (ii) the use of Cash Collateral for any purpose other than as permitted in the DIP Documents and this Interim DIP Order; or (iii) any modification of

any of the DIP Secured Parties' or the Prepetition Secured Parties' rights under this Interim DIP Order, the DIP Documents or the Prepetition Senior Secured Note Documents with respect any DIP Obligations or Prepetition Obligations. It shall be an Event of Default under the DIP Documents under this Interim DIP Order if, in any of the Chapter Cases or any Successor Cases, the Debtors take or fail to take any of the actions contemplated with respect to provisions (i) through (iii) of the previous sentence or if any order is entered granting any of the relief enumerated in provisions (i) through (iii) of the previous sentence.

(b) No Debtor shall object to any DIP Secured Parties, or any Prepetition Secured Parties (subject to the rights preserved in Paragraph 42), credit bidding up to the full amount of the applicable outstanding DIP Obligations and Prepetition Obligations, in each case including any accrued interest, fees, and expenses, in any sale of any DIP Collateral or Prepetition Collateral, as applicable, whether such sale is effectuated through sections 363 or 1129 of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise.

25. Credit Bidding. In connection with any sale process authorized by the Court, (a) the DIP Secured Parties (or any such party's designee), and (b) subject to the rights preserved in Paragraph 42, the Prepetition Secured Parties (or any such party's designee) may credit bid, consistent with the applicable DIP Documents and/or Prepetition Senior Secured Note Documents, some or all of their claims for their respective priority collateral (each a "Credit Bid") pursuant to section 363(k) of the Bankruptcy Code. Each of the DIP Secured Parties (or any such party's designee) and, subject to the rights preserved in Paragraph 42, the Prepetition Secured Parties (or any such party's designee) shall each be considered a "Qualified Bidder" with respect to its respective rights to acquire all or any of their collateral by Credit Bid.

26. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in the Chapter 11 Cases or any Successor Cases, shall obtain credit or incur debt pursuant to sections 364(b), 364(c), or 364(d) of the Bankruptcy Code or in violation of the DIP Documents and this Interim DIP Order at any time prior to the DIP Obligations and Prepetition Obligations being Paid in Full, and the termination of the DIP Secured Parties' obligation to extend credit under the DIP Facility, including subsequent to the confirmation of any plan with respect to any or all of the Debtors and the Debtors' estates, and such facilities are secured by any DIP Collateral, then all the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Secured Parties to be applied in accordance with this Interim DIP Order, the DIP Documents and the Prepetition Senior Secured Note Documents, as applicable.

27. Cash Collection. From and after the date of the entry of this Interim DIP Order, all collections and proceeds of any DIP Collateral or Prepetition Collateral and all Cash Collateral that shall at any time come into the possession, custody, or control of any Debtor, or to which any Debtor is now or shall become entitled at any time, shall, to the extent required by the DIP Documents, be promptly deposited in the account(s) designated in the DIP Documents (or in such other accounts as are designated by the DIP Lenders from time to time), which accounts (except as otherwise set forth in the applicable DIP Documents) shall be subject to the sole dominion and control of the DIP Agent in accordance with the applicable DIP Documents (and, for the avoidance of doubt, the DIP Agent shall be authorized to issue notices of exclusive control or similar notices under existing control agreements). The Debtors shall maintain no accounts except those specifically authorized by the DIP Lenders and as designated in any cash management order consented to by the DIP Agent and DIP Lenders and approved by the Court.

28. Disposition of DIP Collateral. The Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral or the Prepetition Collateral other than in the ordinary course of business without the prior written consent of the DIP Lenders and the Prepetition Secured Parties unless the DIP Obligations and the Prepetition Obligations will be Paid in Full from the proceeds of such transaction (and no such consent shall be implied, from any other action, inaction or acquiescence by the DIP Lenders, the Prepetition Secured Parties, or from any order of this Court), except as expressly provided for in the DIP Documents or otherwise ordered by the Court.

29. DIP Maturity Date. On the DIP Maturity Date: (a) all DIP Obligations shall be immediately due and payable, all commitments to extend credit under the DIP Facility will terminate, other than as may be required in Paragraph 39 with respect to the Carve-Out, (b) any treasury and cash management, hedging obligations and bank product obligations constituting DIP Obligations shall be cash collateralized, and such cash collateral shall not be subject to any right of offset or recoupment but shall be subject to the Carve-Out; (c) all authority to use DIP Collateral shall cease, *provided, however*, that upon the DIP Maturity Date, the Carve-Out shall be funded and available to satisfy Allowed Professional Fees (as defined in Paragraph 39 of this Interim DIP Order) and (d) upon the expiration of the DIP Remedies Notice Period, the DIP Agent, acting at the direction of the DIP Lenders, shall be entitled to otherwise exercise the rights and remedies under the DIP Documents in accordance with this Interim DIP Order (including Paragraph 30). For the purposes of this Interim DIP Order, the "DIP Maturity Date" shall mean the Maturity Date (as defined in the DIP Credit Agreement).

30. DIP Events of Default. The occurrence of any of the following events, unless waived by all DIP Lenders in advance, in writing, and in accordance with the terms of the DIP

Documents, shall constitute an event of default (collectively, the "DIP Events of Default"): (a) the failure of the Debtors to perform, in any respect, any of the terms, provisions, conditions, covenants, or obligations under this Interim DIP Order (regardless of whether such term, provision, condition, covenant or obligation expressly provides that such failure constitutes a DIP Event of Default); (b) the failure of the Debtors to meet any of the milestones set forth herein, in the DIP Documents or that certain Restructuring Support Agreement; or (c) the occurrence of a "DIP Event of Default" under this Interim DIP Order or an "Event of Default" under the DIP Credit Agreement.

31. Rights and Remedies Upon DIP Event of Default. Immediately upon (a) the occurrence and during the continuation of a DIP Event of Default or (b) the Maturity Date, notwithstanding the provisions of section 362 of the Bankruptcy Code, without any application, motion, or notice to, hearing before, or order from the Court, but subject to the terms of this Interim DIP Order, the DIP Documents and the DIP Remedies Notice Period (as defined below), the DIP Agent, at the direction of the DIP Lenders, shall (a) declare (any such declaration to be referred to herein as a "DIP Termination Declaration") (i) all DIP Obligations owing under the DIP Documents to be immediately due and payable, (ii) the termination, reduction or restriction of any further commitment to extend credit to the Debtors to the extent any such commitment remains under the DIP Facility, (iii) termination of the DIP Facility and any other DIP Documents as to any future liability or obligation of the DIP Agent and the DIP Lenders, but without affecting any of the DIP Liens or the DIP Obligations, and (iv) that the application of the Carve-Out has occurred through the delivery of the Carve Out Trigger Notice (as defined below) to the Debtors; and (b) the DIP Agent may declare a termination, reduction or restriction on the ability of the Debtors to use Cash Collateral (the date which is the earliest to occur of any such

date a DIP Termination Declaration is delivered and shall be referred to herein as the "DIP Termination Date"). The DIP Termination Declaration shall be given by electronic mail (or other electronic means) to counsel to the Debtors, the U.S. Trustee, and counsel to a Committee (if appointed). The automatic stay in the Chapter 11 Cases otherwise applicable to the DIP Secured Parties and the Prepetition Secured Parties is hereby modified so that five (5) business days after the date a DIP Termination Declaration is delivered (the "DIP Remedies Notice Period"): (a) the DIP Agent and the DIP Lenders shall be entitled to exercise their rights and remedies in accordance with the DIP Documents and this Interim DIP Order to satisfy the DIP Obligations, DIP Superpriority Claims and DIP Liens, subject to the Carve-Out; (b) the applicable Prepetition Secured Parties shall be entitled to exercise their rights and remedies in accordance with the applicable Prepetition Senior Secured Note Documents and this Interim DIP Order to satisfy the Prepetition Obligations, Adequate Protection Superpriority Claims and the Adequate Protection Liens, subject to the Carve-Out (to the extent applicable).

32. During the DIP Remedies Notice Period, the Debtors and/or any party in interest shall be entitled to seek an emergency hearing within the DIP Remedies Notice Period with the Court; *provided that*, at any such emergency hearing, the Debtors (solely for themselves and their estates but not on behalf of any other party in interest including the United States Trustee or a committee, if any) agree that (a) the sole issue that they may bring before the Court is whether a DIP Event of Default has occurred and/or is continuing and (b) they waive their right to and shall not be entitled to seek relief, including under section 105 of the Bankruptcy Code, to the extent that such relief would in any way impair or restrict the rights and remedies of any of the DIP Secured Parties or Prepetition Secured Parties. Unless the Court orders otherwise, the automatic stay, as to all of the DIP Secured Parties and Prepetition Secured Parties, shall

automatically be terminated at the end of the DIP Remedies Notice Period without further notice or order. Upon expiration of the DIP Remedies Notice Period, each of the DIP Secured Parties and the Prepetition Secured Parties shall be permitted to exercise all remedies set forth herein, in the DIP Documents, the Prepetition Senior Secured Note Documents, and as otherwise available at law without further order of or application or motion to the Court consistent with the DIP Documents, as applicable, and this Paragraph 32 of this Interim DIP Order.

33. Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Interim DIP Order. The DIP Secured Parties and Prepetition Secured Parties have acted at arms' length in good faith in connection with this Interim DIP Order and are entitled to, and may rely upon, the protections granted herein and by section 364(e) of the Bankruptcy Code.

34. DIP Fees, and Other Expenses. The Debtors are authorized and directed to pay (i) all reasonable and documented prepetition and postpetition fees and out of pocket expenses of the DIP Agent and DIP Lenders in connection with the DIP Facility, including reasonable and documented attorneys' fees, monitoring and appraisal fees, financial advisory fees, fees and expenses of other consultants, and indemnification and reimbursement of reasonable and documented fees and expenses of, including with limitation, Greenberg Traurig LLP, Hogan Lovells US LLP, Richards, Layton & Finger PA, Bernstein Shur Sawyer & Nelson, P.A, and FTI Consulting LLP (the "DIP Secured Party Advisors," and together with the Prepetition Secured Parties Advisors, the "Lender Advisors"), subject solely with respect to the DIP Secured Party Advisors, to the review procedures set forth in this Paragraph 34, (ii) the prepetition Adequate Protection Fees and Expenses referenced in clause (a) of Paragraph 16 (which fees and expenses are not subject to the review procedures set forth in this Paragraph 34), and (iii) the postpetition Adequate Protection Fees and Expenses referenced in clause (b) of

Paragraph 16, subject, solely with respect to the Prepetition Secured Parties Advisors, to the review procedures set forth in this Paragraph 34. Subject to the review procedures set forth in this Paragraph 34, payment of all reasonable and documented invoiced out-of-pocket fees and expenses provided for herein (and of the DIP Agent and Prepetition Agent) shall not be required to comply with the U.S. Trustee guidelines or file fee applications with the Court and invoices shall be in summary form only (and shall not be required to contain time entries and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work product doctrine), and shall be provided to counsel to the Debtors and the U.S. Trustee (the "Fee Notice Parties"). If no objection to payment of the requested fees and expenses required to be submitted to the Fee Notice Parties is made in writing by any of the Fee Notice Parties within ten (10) days after delivery of such invoices (the "Fee Objection Period"), then, without further order of, or application to, the Court or notice to any other party, such fees and expenses shall be promptly paid by the Debtors and, in any case, within five (5) days after expiration of the Fee Objection Period. If an objection is made by any of the Fee Notice Parties within the Fee Objection Period to payment of the requested fees and expenses, then only the disputed portion of such fees and expenses shall not be paid until the objection is resolved by the applicable parties in good faith or by order of the Court, and the undisputed portion shall be promptly paid by the Debtors. Payments of any amounts set forth in this Paragraph 34 shall not be subject to recharacterization, subordination, or disgorgement, subject to the rights preserved in Paragraph 42 solely with respect to the fees and expenses of the Prepetition Secured Party Advisors.

35. Milestones. As a condition to the DIP Facility and the use of Cash Collateral, the Debtors shall comply with the milestones (the "Milestones") set forth in Section 5.17 of the RSA and Annex I to the DIP Credit Agreement. For the avoidance of doubt, the failure of the Debtors to comply with any of the Milestones: (a) shall, unless waived, constitute an Event of Default under Section 8.01 of the DIP Credit Agreement, (b) subject to the expiration of the DIP Remedies Notice Period, result in the automatic termination of the Debtors' authority to use Cash Collateral under this Interim DIP Order, and (c) permit the DIP Agent and the Prepetition Agent, subject to Paragraph 31, to exercise the rights and remedies provided for in this Interim DIP Order, the DIP Facility and the Prepetition Senior Secured Note Documents.

36. Indemnification. The Debtors shall indemnify and hold harmless the DIP Secured Parties in accordance with the terms and conditions of the DIP Documents.

37. Proofs of Claim. Notwithstanding any order entered by this Court in relation to the establishment of a bar date in any of the Chapter 11 Cases or any Successor Cases to the contrary, DBTCA, the DIP Agent, the DIP Lenders, the Prepetition Agent, and the Prepetition Secured Parties are not required to file proofs of claim in any of the Chapter 11 Cases or Successor Cases for any claims arising under the DIP Documents, the Prepetition Senior Secured Note Documents, any related account or customer agreements, or any other agreements executed and/or delivered in connection with any of the foregoing. The Debtors' stipulations, admissions, and acknowledgments and the provisions of this Interim DIP Order shall be deemed to constitute a timely filed proof of claim for the DIP Secured Parties and the Prepetition Secured Parties with regard to all claims arising under the DIP Documents or the Prepetition Senior Secured Note Documents, as the case may be. Notwithstanding the foregoing, each of the Prepetition Secured Parties is authorized, in its sole discretion, but not required, to file (and amend and/or

supplement, as it sees fit) a proof of claim and/or aggregate or master proof of claim in each of the Chapter 11 Cases or Successor Cases for any claim described herein (with any such aggregate or master proof of claim filed in any of the Chapter 11 Cases deemed to be filed in all Cases of each of the Debtors and asserted against all of the applicable Debtors). Any proof of claim filed by any Prepetition Secured Party shall be deemed to be in addition to and not in lieu of any other proof of claim that may be filed by any of the Prepetition Secured Parties. Any order entered by the Court in relation to the establishment of a bar date in any of the Chapter 11 Cases or Successor Cases shall not apply to any claim of the DIP Secured Parties or the Prepetition Secured Parties. The provisions set forth in this Paragraph are intended solely for the purpose of administrative convenience and shall not affect the substantive rights of any party-in-interest or their respective successors-in-interest.

38. Rights of Access and Information. Without limiting the rights of access and information afforded the DIP Secured Parties (under the DIP Documents) or the Prepetition Secured Parties (under the Prepetition Senior Secured Note Documents), the Debtors shall be, and hereby are, required to afford representatives, agents and/or employees of the DIP Secured Parties and representatives, agents, and/or employees of the Prepetition Secured Parties reasonable access to the Debtors' premises and their books and records in accordance with the DIP Documents and Prepetition Senior Secured Note Documents, as applicable, and shall reasonably cooperate, consult with, and provide to such persons all such information as may be reasonably requested. In addition, the Debtors authorize their financial advisors, investment bankers and other financial consultants to provide to the DIP Secured Parties and the Prepetition Secured Parties all such information as may be reasonably requested with respect to the business, results of operations and financial condition of any of the Debtors.

39. Carve-Out.

(a) Carve-Out. As used in this Interim DIP Order, the "Carve-Out" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to $50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code at any time before or on the first business day following delivery by the DIP Agent or the Prepetition Agent of a Carve-Out Trigger Notice, whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice, not to exceed the lesser of (x) the actual amounts, and (y) the amounts set forth for such professionals in the Approved Budget for such period (including any permitted variances) (the "Allowed Professional Fees"), such Allowed Professional Fees not to include any restructuring, sale, success, or other transaction fee of any investment bankers or financial advisors of the Debtors; and (iv) Allowed Professional Fees in an aggregate amount not to exceed $300,000 incurred after the first business day following delivery of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the "Post-Carve-Out Trigger Notice Cap"). For purposes of the foregoing, "Carve-Out Trigger Notice" shall mean a written notice delivered by email (or other electronic means) by the DIP Lenders or the Prepetition Agent to the Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to a Committee, if appointed, which notice may be delivered following the occurrence and

during the continuation of a DIP Event of Default and acceleration of the DIP Obligations under the DIP Facility, stating that the Post-Carve-Out Trigger Notice Cap has been invoked.

(b) Carve-Out Reserves. For the avoidance of doubt, the DIP Secured Parties shall be entitled to maintain at all times a reserve (the "Carve-Out Reserve") in an amount (the "Carve-Out Reserve Amount") equal to the sum of (i) the aggregate amount of Allowed Professional Fees contemplated to be unpaid in the Budget at the applicable time (including any permitted variances), *plus* (ii) the Post-Carve-Out Trigger Notice Cap, *plus* (iii) the amounts contemplated under Paragraph 39(a)(i) and 39(a)(ii) above. Promptly upon request by the DIP Lenders, and in no event later than two (2) business days after such request, the Debtors shall deliver to the DIP Lenders a report setting forth the Carve-Out Reserve Amount as of the date of such request, and the DIP Lenders shall be entitled to rely upon such reports in accordance with the DIP Documents.

(c) Termination Declaration Date. On the day on which a Carve-Out Trigger Notice is given by the DIP Lenders to the Debtors with a copy to the U.S. Trustee (the "Termination Declaration Date"), the Carve-Out Trigger Notice (i) shall be deemed a draw request and notice of borrowing by the Debtors for DIP Loans under the DIP Documents in an amount equal to the sum of (x) the amounts set forth in Paragraphs 39(a)(i) and 39(a)(ii) above, and (y) the then unpaid amounts of the Allowed Professional Fees pursuant to the Budget (including any permitted variances) (any such amounts actually advanced shall constitute DIP Loans) and (ii) shall also constitute a demand to the Debtors, and authorization for the Debtors, to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the sum of the amounts set forth in Paragraphs 39(a)(i) and 39(a)(ii), and unpaid amounts of the Allowed Professional Fees pursuant to the Budget (which

cash amounts shall reduce, on a dollar for dollar basis, the draw requests and applicable DIP Loans pursuant to clause (i) of this Paragraph (c)). The Debtors shall deposit and hold such amounts in an account designated by the DIP Lenders and, if applicable, the cash on hand exclusively to pay such unpaid Allowed Professional Fees (each, a "Pre-Carve-Out Trigger Notice Reserve") prior to any and all other claims. On the Termination Declaration Date, the Carve-Out Trigger Notice (iii) shall also be deemed a request by the Debtors for DIP Loans under the DIP Documents in an amount equal to the Post-Carve-Out Trigger Notice Cap (any such amounts actually advanced shall constitute DIP Loans), and (iv) shall also constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor, after funding the Pre-Carve-Out Trigger Notice Reserve, to fund a reserve in an amount equal to the Post-Carve-Out Trigger Notice Cap (which cash amounts shall reduce, on a dollar for dollar basis, the draw requests and applicable DIP Loans pursuant to clause (iii) of this Paragraph (c)). The Debtors shall deposit and hold such amounts in an account designated by the DIP Lenders under the DIP Documents in trust in respect of amounts funded by the DIP Lenders and, if applicable, cash on hand exclusively to pay such Allowed Professional Fees benefiting from the Post-Carve-Out Trigger Notice Cap (each, a "Post-Carve-Out Trigger Notice Reserve" and, together with the Pre-Carve-Out Trigger Notice Reserve(s), the "Carve-Out Reserves") prior to any and all other claims. On the first business day following the Termination Declaration Date and the deemed requests for the making of DIP Loans as provided in this Paragraph (c), notwithstanding anything in the DIP Credit Agreement to the contrary, including with respect to (1) the existence of a Default (as defined in the DIP Documents) or Event of Default, (2) the failure of the Debtors to satisfy any or all of the conditions precedent for the making of any DIP Loan under the DIP Documents, (3) any

termination of the Commitments (as defined in the DIP Credit Agreement) following an Event of Default, or (4) the occurrence of a DIP Termination Date, each DIP Lender with an outstanding Commitment shall make available such DIP Lender's *pro rata* share of such DIP Loans.

(d) Application of Carve-Out Reserves.

(i) All funds in the Pre-Carve-Out Trigger Notice Reserve shall be used first to pay the obligations set forth in Subparagraphs (a)(i) through (a)(iii) of the definition of Carve-Out set forth above (the "Pre-Carve-Out Amounts"), but not, for the avoidance of doubt, the Post-Carve-Out Trigger Notice Cap, until paid in full. If after payment in full of the Pre-Carve-Out Amounts, the Pre-Carve-Out Trigger Notice Reserve has not been reduced to zero, subject to clause (iii) below, all remaining funds in the account funded by (x) the DIP Lenders and/or from proceeds of DIP Collateral shall be distributed (A) *first*, to the DIP Lenders on account of the DIP Obligations until such obligations have been Paid in Full, and (B) *second*, to the Prepetition Secured Parties on account of the Prepetition Obligations until such obligations have been Paid in Full.

(ii) All funds in the Post-Carve-Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve-Out set forth in Paragraph 39(a) above (the "Post-Carve-Out Amounts"). If, after such application, the Post-Carve-Out Trigger Notice Reserve has not been reduced to zero, subject to clause (iii) below, all remaining funds in the account funded by the DIP Lenders and/or from proceeds of DIP Collateral shall be distributed (A) *first*, to the DIP Lenders on account of the DIP Obligations until such obligations have been Paid in Full and (B) *second*, to the Prepetition Secured Parties on account of the Prepetition Obligations until such obligations have been Paid in Full.

(iii) Notwithstanding anything to the contrary in the DIP Documents or this Interim DIP Order, if either of the Carve-Out Reserves is not funded in full in the amounts set forth in this Paragraph 39, then, any excess funds in one of the Carve-Out Reserves following the payment of the Pre-Carve-Out Amounts and Post-Carve-Out Amounts, respectively, shall be used to fund the other Carve-Out Reserve to the extent of any shortfall in funding prior to making any payments to the DIP Lenders.

(iv) Notwithstanding anything to the contrary in the DIP Documents or this Interim DIP Order, following delivery of a Carve-Out Trigger Notice, the DIP Agent shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve-Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve-Out Reserves, with any excess paid as provided in Subparagraphs (i), (ii), and (iii) above of this Paragraph 39(d).

(v) Notwithstanding anything to the contrary in this Interim DIP Order, the failure of the Carve-Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve-Out with respect to any shortfall (as described below), and, in no way shall any Budget, Post-Carve Out Trigger Notice Cap or Carve-Out Reserves be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors, but shall affect the priority thereof, which shall be governed solely by the Budget and the Carve-Out. For the avoidance of doubt and notwithstanding anything to the contrary in this Interim DIP Order, or in the DIP Documents, or in the Prepetition Senior Secured Note Documents, the Carve-Out shall be senior to all liens and claims securing the DIP Facility, the Adequate Protection Liens, and the Adequate Protection Superpriority Claims, and any and all other forms

of adequate protection, liens, or claims securing the DIP Obligations or the obligations under the Prepetition Senior Secured Note Documents.

(e) No Direct Obligation to Pay Allowed Professional Fees. None of the DIP Secured Parties and the Prepetition Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any Successor Cases under any chapter of the Bankruptcy Code. Nothing in this Interim DIP Order or otherwise shall be construed to obligate the DIP Secured Parties or Prepetition Secured Parties in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(f) Payment of Allowed Professional Fees Prior to the Termination Declaration Date. Any payment or reimbursement made prior to the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall not reduce the Carve-Out.

(g) Payment of Carve-Out on or After the Termination Declaration Date. Following the delivery of the Carve-Out Trigger Notice, all Allowed Professional Fees shall be paid from the applicable Carve-Out Reserve, and no Professional Person shall seek payment of any Allowed Professional Fees from any other source until the applicable Carve-Out Reserve has been exhausted. Any payment or reimbursement made on or after the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall permanently reduce the Carve-Out on a dollar-for-dollar basis. Any funding of the Carve-Out shall be added to, and made a part of, the DIP Obligations secured by the DIP Collateral and shall be otherwise entitled to the protections granted under this Interim DIP Order, the DIP Documents, the Bankruptcy Code, and applicable law.

(h) The Carve-Out shall not be available to pay any such Allowed Professional Fees incurred in connection with the initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against the DIP Agent or the DIP Lenders or the DIP Agent or the DIP Lenders' professionals and nothing herein shall impair the right of any party to object to the reasonableness of any such fees or expenses to be paid by the Debtors' estates.

40. Limitations on Use of DIP Proceeds, Cash Collateral, and Carve-Out. The DIP Facility, the DIP Collateral, the Prepetition Collateral, the Cash Collateral, and the Carve-Out may not be used in connection with: (a) paying any prepetition claim except in accordance with the Budget, (b) preventing, hindering, or delaying any of the DIP Secured Parties or the Prepetition Secured Parties' permitted enforcement or realization upon any of the DIP Collateral or Prepetition Collateral; (c) using or seeking to use Cash Collateral except as provided for in this Interim DIP Order and the DIP Documents; (d) selling or otherwise disposing of DIP Collateral without the consent of the DIP Agent, acting at the direction of the DIP Lenders, or Prepetition Collateral without the consent of the Prepetition Agent, acting at the direction of the Prepetition Senior Secured Lenders; (e) using or seeking to use any insurance proceeds constituting DIP Collateral except as provided for in this Interim DIP Order and the DIP Documents without the consent of the DIP Agent, acting at the direction of the DIP Lenders, or the Prepetition Agent, acting at the direction of the Prepetition Senior Secured Lenders; (f) incurring Indebtedness (as defined in the applicable DIP Documents) without the prior consent of the DIP Lenders, except to the extent permitted under the DIP Documents; (g) seeking to amend or modify any of the rights granted to the DIP Secured Parties or the Prepetition Secured Parties under this Interim DIP Order, the DIP Documents, or the Prepetition Senior Secured Note Documents, including seeking to use Cash Collateral and/or DIP Collateral on a

contested basis; (h) objecting to or challenging in any way the DIP Liens, DIP Obligations, Prepetition Liens, Prepetition Obligations, DIP Collateral (including Cash Collateral) or, as the case may be, Prepetition Collateral, or any other claims or liens, held by or on behalf of any of the DIP Secured Parties or the Prepetition Secured Parties, respectively; (i) asserting, commencing, or prosecuting any claims or causes of action whatsoever, including any actions under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions to recover or disgorge payments, against any of the DIP Secured Parties, the Prepetition Secured Parties, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees; (j) litigating, objecting to, challenging, or contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the DIP Obligations, the DIP Liens, the Prepetition Liens, Prepetition Obligations, or any other rights or interests of any of the DIP Secured Parties or the Prepetition Secured Parties; or (k) seeking to subordinate, recharacterize, disallow, or avoid the DIP Obligations, or the Prepetition Obligations.

41. Payment of Compensation. Nothing herein shall be construed as a consent to the allowance of any professional fees or expenses of any Professional Person or shall affect the right of the DIP Secured Parties or the Prepetition Secured Parties to object to the allowance and payment of such fees and expenses. The Debtors shall be permitted to pay fees and expenses allowed and payable by final order (that has not been vacated or stayed, unless the stay has been vacated) under sections 328, 330, 331, and 363 of the Bankruptcy Code, as the same may be due and payable.

42. Effect of Stipulations on Third Parties.

(a) *Generally*. The admissions, stipulations, agreements, releases, and waivers set

forth in Paragraph F of this Interim DIP Order (collectively, the "Prepetition Lien and Claim Matters") are and shall be binding on the Debtors, any subsequent trustee, responsible person, examiner with expanded powers, any other estate representative, and all creditors and parties in interest and all of their successors in interest and assigns, including a Committee, if appointed, unless and to the extent that a party in interest with proper standing granted by order of the Court (or other court of competent jurisdiction) has properly filed an adversary proceeding or contested matter under the Bankruptcy Rules (other than the Debtors, as to which any Challenge (as defined below) is irrevocably waived and relinquished) and (i) has timely filed the appropriate pleadings, and timely commenced the appropriate proceeding required under the Bankruptcy Code and Bankruptcy Rules, including as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth in this Paragraph 42) challenging the Prepetition Lien and Claim Matters (including any challenge with respect to the Roll-Up Loans) (each such proceeding or appropriate pleading commencing a proceeding or other contested matter, a "Challenge") by no later than the earlier of April 24, 2024, or (II) the deadline established by order of the Court for objections to any motion seeking the entry of an order confirming a plan of the Debtors or the sale of all or substantially all the assets of the Debtors (as applicable, the "Challenge Deadline"), as such applicable date may be extended in writing from time to time (email shall suffice) in the sole discretion of the Prepetition Secured Parties or by this Court for good cause shown pursuant to an application filed by a party in interest prior to the expiration of the Challenge Deadline, and (ii) this Court enters judgment in favor of the plaintiff or movant in any such timely and properly commenced Challenge proceeding and any such judgment has become a final judgment that is not subject to any further review or appeal. Notwithstanding the exclusion of restructuring, sale, success, or other transaction fees from the Carve-Out, (a) in the

event of the closing of a Court-approved sale of substantially all of the assets of the Debtors pursuant to section 363 of the Bankruptcy Code, the Sale Fee (as defined in the Engagement Agreement, by and between the Debtors and to SSG Advisors, LLC ("SSG"), as amended and as authorized by this Court, the "SSG Engagement") due and payable to SSG shall be paid from the proceeds of that sale and (b) in the event of confirmation of a plan of reorganization in accordance with the RSA (or as otherwise consented to by the DIP Agent and DIP Lenders) the Restructuring Fee (as defined in the SSG Engagement" due and payable to SSG shall be paid on or before the effective date.

(b) *Binding Effect*. To the extent no Challenge is timely commenced by the Challenge Deadline, or to the extent such proceeding does not result in a final and non-appealable judgment or order of this Court that is inconsistent with the Prepetition Lien and Claim Matters, then, without further notice, motion, or application to, order of, or hearing before, this Court and without the need or requirement to file any proof of claim, the Prepetition Lien and Claim Matters shall, pursuant to this Interim DIP Order, become binding, conclusive, and final on any person, entity, or party in interest in the Chapter 11 Cases, and their successors and assigns, and in any Successor Case for all purposes and shall not be subject to challenge or objection by any party in interest, including a trustee, responsible individual, examiner with expanded powers, or other representative of the Debtors' estates. Notwithstanding anything to the contrary herein, if any such proceeding is timely commenced, the Prepetition Lien and Claim Matters shall nonetheless remain binding on all other parties in interest and preclusive as provided in Subparagraph (a) above except to the extent that any of such Prepetition Lien and Claim Matters is expressly the subject of a timely filed Challenge, which Challenge is successful as set forth in a final judgment as provided in Subparagraph (a) above, and only as to plaintiffs or

movants that have complied with the terms hereof. To the extent any such Challenge proceeding is timely and properly commenced, the Prepetition Secured Parties shall be entitled to payment of the related costs and expenses, including, but not limited to, reasonable attorneys' fees, incurred under the Prepetition Senior Secured Note Documents in defending themselves in any such proceeding as adequate protection. Upon a successful Challenge brought pursuant to this Paragraph 42, the Court may fashion any appropriate remedy.

43. No Third Party Rights. Except as explicitly provided for herein, this Interim DIP Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary.

44. Section 506(c) Claims. Subject to entry of a Final DIP Order, no costs or expenses of administration which have been or may be incurred in the Chapter 11 Cases at any time shall be charged against the DIP Secured Parties, the Prepetition Secured Parties, or any of their respective claims, the DIP Collateral, or the Prepetition Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of the DIP Secured Parties or the Prepetition Secured Parties, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by any such parties.

45. No Marshaling/Applications of Proceeds. Subject to entry of a Final DIP Order, the DIP Secured Parties and the Prepetition Secured Parties shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral, as the case may be, and proceeds shall be received and applied pursuant to this Interim DIP Order and the DIP Documents, notwithstanding any other agreement or provision to the contrary.

46. Section 552(b). Subject to entry of a Final DIP Order, the Prepetition Secured

Parties shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Secured Parties, with respect to proceeds, products, offspring or profits of any of the Prepetition Collateral.

47. Access to DIP Collateral. Subject to the rights and procedures included in Paragraphs 32 and 33 hereof and effective upon entry of a Final DIP Order, upon expiration of the DIP Remedies Notice Period, the DIP Secured Parties and the Prepetition Secured Parties shall be permitted to (a) access and recover any and all DIP Collateral, and (b) enter onto any leased premises of any Debtor that constitutes DIP Collateral and exercise all of the Debtors' rights and privileges as lessor or lessee under such lease in connection with an orderly liquidation of the DIP Collateral, *provided*, *however*, in the case of clause (b), the DIP Secured Parties and/or Prepetition Secured Parties can only enter upon a leased premises after expiration of the DIP Remedies Notice Period and/or DIP Event of Default in accordance with (i) a separate written agreement by and between the DIP Secured Parties or the Prepetition Secured Parties, as applicable, and any applicable landlord, (ii) pre-existing rights of the DIP Secured Parties or the Prepetition Secured Parties, as applicable, and any applicable landlord under applicable non-bankruptcy law, (iii) consent of the applicable landlord, or (iv) entry of an order of this Court obtained by motion of the applicable DIP Secured Party or Prepetition Secured Party on such notice to the landlord as shall be required by this Court; *provided*, *however*, solely with respect to rent due to a landlord of any such leased premises, the DIP Secured Parties and/or the Prepetition Secured Parties, as applicable, shall be obligated only to reimburse the Debtors for the payment of rent of the Debtors that first accrues after delivery of the DIP Termination Declaration in accordance with Paragraph 31 herein that is payable during the period of such

occupancy by the DIP Secured Parties and/or Prepetition Secured Parties, as applicable, calculated on a daily per diem basis; *provided*, *further*, that nothing herein shall relieve the Debtors of their obligations pursuant to section 365(d)(3) of the Bankruptcy Code for the payment of postpetition rent and other charges under any lease of non-residential real property through and including any assumption and/or rejection of any lease. Nothing herein shall require the DIP Secured Parties or the Prepetition Secured Parties to assume any lease as a condition to the rights afforded in this Paragraph.

48. Limits on Lender Liability. Subject to entry of a Final DIP Order, nothing in this Interim DIP Order, any of the DIP Documents, the Prepetition Senior Secured Note Documents, or any other documents related thereto shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Secured Parties or the Prepetition Secured Parties of any liability for any claims arising from any activities by the Debtors in the operation of their businesses or in connection with the administration of the Chapter 11 Cases. The DIP Secured Parties and the Prepetition Secured Parties shall not, solely by reason of having made loans under the DIP Facility or the Prepetition Senior Secured Note Documents or permitted the use of Cash Collateral, be deemed in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, as amended, or any similar federal or state statute). Nothing in this Interim DIP Order or the DIP Documents, shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Secured Parties or any of the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors.

49. Insurance Proceeds and Policies. Until all DIP Obligations and all Prepetition Obligations are Paid in Full, and the DIP Secured Parties' obligation to extend credit under the DIP Facility has terminated, the Debtors shall obtain and maintain insurance with respect to the DIP Collateral as required under the DIP Facility and the Prepetition Collateral as required under the Prepetition Senior Secured Note Documents. Upon entry of this Interim DIP Order and to the fullest extent provided by applicable law, the DIP Agent (on behalf of the DIP Secured Parties) and the Prepetition Agent (on behalf of the Prepetition Secured Parties) shall be, and shall be deemed to be, without any further action or notice, named as additional insured and loss payee on each insurance policy maintained by the Debtors that in any way relates to the DIP Collateral (the "DIP Collateral Insurance Policies"). Notwithstanding the foregoing, upon entry of this Interim DIP Order, the Debtors shall take any and all steps necessary under the DIP Collateral Insurance Policies to name both the DIP Agent (on behalf of the DIP Secured Parties) and the Prepetition Agent (on behalf of the Prepetition Secured Parties) as additional insureds and loss payees on each DIP Collateral Insurance Policy.

50. Joint and Several Liability. Nothing in this Interim DIP Order shall be construed to constitute a substantive consolidation of any of the Debtors' estates, it being understood, however, that the Debtors shall be jointly and severally liable for the obligations hereunder and all DIP Obligations in accordance with the terms hereof and of the DIP Facility and the DIP Documents.

51. No Superior Rights of Reclamation. Based on the findings and rulings herein regarding the integrated nature of the DIP Facility and the Prepetition Senior Secured Note Documents, the right of a seller of goods to reclaim such goods under section 546(c) of the Bankruptcy Code is not a Permitted Prior Lien; rather, any such alleged claims arising or

asserted as a right of reclamation (whether asserted under section 546(c) of the Bankruptcy Code or otherwise) shall have the same rights and priority with respect to the DIP Liens as such claim had with the Prepetition Liens.

52. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of this Interim DIP Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, subject to the Prepetition Senior Secured Note Documents: (a) the DIP Secured Parties' and Prepetition Secured Parties' right to seek any other or supplemental relief in respect of the Debtors; (b) any of the rights of any of the DIP Secured Parties and/or the Prepetition Secured Parties under the Bankruptcy Code or under any other applicable law, including the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Chapter 11 Cases or Successor Cases, conversion of any of the Chapter 11 Cases to cases under chapter 7, or appointment of a Chapter 11 trustee or examiner with expanded powers, or (iii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a Chapter 11 plan or plans; or (c) any other rights, claims, or privileges (whether legal, equitable, or otherwise) of any of the DIP Secured Parties or Prepetition Secured Parties. Notwithstanding anything herein to the contrary, the entry of this Interim DIP Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the Debtors', a Committee's (if appointed), or any party in interest's right to oppose any of the relief requested in accordance with the immediately preceding sentence except as expressly set forth in this Interim DIP Order.

53. No Waiver by Failure to Seek Relief. The failure, or delay for any period, of the DIP Secured Parties or Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under this Interim DIP Order, the DIP Documents, the Prepetition Senior Secured

Note Documents, or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of the DIP Secured Parties or the Prepetition Secured Parties.

54. Binding Effect of Interim DIP Order. Immediately upon execution by this Court, the terms and provisions of this Interim DIP Order shall become valid and binding upon and inure to the benefit of the Debtors, the DIP Secured Parties, the Prepetition Secured Parties, all other creditors of any of the Debtors, or any court appointed committee, and all other parties in interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in any of the Chapter 11 Cases, any Successor Cases, or upon dismissal of any Chapter 11 Case or Successor Case.

55. No Modification of Interim DIP Order. Until and unless the DIP Obligations and the Prepetition Obligations have been Paid in Full (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms) the Debtors shall not seek or consent to, directly or indirectly: (a) without the prior written consent of the DIP Lenders, (i) any modification, stay, vacatur, or amendment to this Interim DIP Order; or (ii) a priority claim for any administrative expense or unsecured claim against the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including any administrative expense of the kind specified in sections 503(b), 506(c), 507(a), or 507(b) of the Bankruptcy Code) in any of the Chapter 11 Cases or Successor Cases, equal or superior to the DIP Superpriority Claims or Adequate Protection Superpriority Claims, other than the Carve-Out; (b) without the prior written consent of the DIP Lenders, any order allowing use of Cash Collateral (other than as permitted during the DIP Remedies Notice Period) resulting from DIP Collateral or Prepetition Collateral in a manner inconsistent with this Interim DIP Order; (c)

without the prior written consent of the DIP Agent, acting at the direction of the DIP Lenders, any lien on any of the DIP Collateral with priority equal or superior to the DIP Liens, except as specifically provided in the DIP Documents, other than the Carve-Out; or (d) without the prior written consent of the Prepetition Agent, any lien on any of the DIP Collateral with priority equal or superior to the Prepetition Liens or Adequate Protection Liens, other than the Carve-Out. The Debtors shall not seek or consent to, directly or indirectly any amendment, modification, or extension of this Interim DIP Order without the prior written consent, as provided in the foregoing, of the DIP Lenders and/or the DIP Agent, as applicable, and no such consent shall be implied by any other action, inaction or acquiescence of the DIP Lenders and/or the DIP Agent, as applicable.

56. Interim DIP Order Controls. In the event of any inconsistency between the terms and conditions of the DIP Documents and of this Interim DIP Order, the provisions of this Interim DIP Order shall govern and control.

57. Discharge. The DIP Obligations and the obligations of the Debtors with respect to the adequate protection provided herein shall not be discharged by the entry of an order confirming any plan of reorganization in any of the Chapter 11 Cases, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless such obligations have been Paid in Full, on or before the effective date of such confirmed plan of reorganization, or each of the DIP Secured Parties and the Prepetition Secured Parties, as applicable, has otherwise agreed in writing. None of the Debtors shall propose or support any plan of reorganization or sale of all or substantially all of the Debtors' assets, or order confirming such plan or approving such sale, that does not require that all DIP Obligations be Paid in Full, and the payment of the Debtors' obligations with respect to the adequate protection provided for herein, in full in cash within a

commercially reasonable period of time (and in no event later than the effective date of such plan of reorganization or sale) (a "Prohibited Plan or Sale") without the written consent of each of the DIP Secured Parties and the Prepetition Secured Parties, as applicable. For the avoidance of doubt, the Debtors' proposal or support of a Prohibited Plan or Sale, or the entry of an order with respect thereto, shall constitute a DIP Event of Default hereunder and an Event of Default under the DIP Documents.

58. Survival. The provisions of this Interim DIP Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in any of the Chapter 11 Cases; (b) converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code; (c) dismissing any of the Chapter 11 Cases or any Successor Cases; or (d) pursuant to which this Court abstains from hearing any of the Chapter 11 Cases or Successor Cases. The terms and provisions of this Interim DIP Order, including the claims, liens, security interests, and other protections granted to the DIP Secured Parties and Prepetition Secured Parties granted pursuant to this Interim DIP Order and/or the DIP Documents, notwithstanding the entry of any such orders described in (a)-(d), above, shall continue in the Chapter 11 Cases, in any Successor Cases, or following dismissal of the Chapter 11 Cases or any Successor Cases, and shall maintain their priority as provided by this Interim DIP Order until: (x) respect of the DIP Facility, all the DIP Obligations, pursuant to the DIP Documents and this Interim DIP Order, have been Paid in Full (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms); and (y) in respect of the Prepetition Financing, all of the Prepetition Obligations pursuant to the Prepetition Senior Secured Note Documents and this Interim DIP Order, have been Paid in Full. The terms and provisions concerning the indemnification of the DIP Agent

and DIP Lenders shall continue in the Chapter 11 Cases, in any Successor Cases, following dismissal of the Chapter 11 Cases or any Successor Cases, following termination of the DIP Documents and/or the indefeasible repayment of the DIP Obligations.

59. Notice of Entry of this Interim DIP Order. The Debtors' counsel shall serve a copy of this Interim DIP Order or a suitable notice respecting same on all of the following parties: (i) the U.S. Trustee; (ii) the parties included on each Debtor's list of twenty (20) largest unsecured creditors; (iii) counsel to the DIP Lenders and Prepetition Noteholders; (iv) counsel to the Prepetition Agent and the DIP Agent; (v) counsel to the Subordinated Lenders; (vi) counsel to Eversource Energy d/b/a PSNH; (vii) counsel to a Committee (if any); and (viii) all other parties entitled to notice under the Local Rules.

60. Final Hearing. The Final Hearing to consider entry of the Final DIP Order and final approval of the DIP Facility is scheduled for [__], 2024 **at [__] (prevailing Eastern Time)**, and parties shall have until [__]**, 2024 at 4:00 p.m. (prevailing Eastern Time)** to file an objection if necessary and serve such objection on (a) the Debtors, Attn: Dean Vomero, c/o CS Operations, Inc., 631 US Hwy 1, #300, North Palm Beach, FL 33408; (b) Foley Hoag, 1301 Avenue of the Americas, 25th Floor, New York, New York 10019, Attn: Alison Bauer, Esq. (abauer@foleyhoag.com, and Jiun-Wen Bob Teoh, Esq., jteoh@foleyhoag.com) and 155 Seaport Boulevard, Boston, Massachusetts 02210, Attn: Kenneth S. Leonetti, Esq. (ksl@foleyhoag.com); (c) Gibbons, P.C., 300 Delaware Ave., Suite 1015, Wilmington, Delaware 19801 Attn: Chantelle D. McClamb, Esq. (cmcclamb@gibbonslaw.com) and One Gateway Plaza, Newark, New Jersey, 07102 Attn: Robert K. Malone, Esq. (rmalone@gibbonslaw.com); (d) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware; 19801, Attn: Jane M. Leamy Esq. (jane.m.leamy@usdoj.gov); (e) counsel to the DIP Lenders and the

Prepetition Noteholders, Greenberg Traurig, LLP, (i) One International Place, Suite 2000, Boston, MA 02110, Attn: Julia Frost-Davies (Julia.FrostDavies@gtlaw.com), (ii) One Vanderbilt Avenue, New York, New York 10017, Attn: Oscar Pinkas (pinkaso@gtlaw.com) and Leo Muchnik (muchnikl@gtlaw.com), and (iii) 222 Delaware Avenue, Suite 1600, Wilmington, Delaware 19801, Attn: Dennis Meloro (MeloroD@gtlaw.com) and Anthony Clark (Anthony.Clark@gtlaw.com) (f) counsel to the DIP Agent and Prepetition Agent, (i) Hogan Lovells US LLP, 390 Madison Avenue, New York, New York 10017, Attn: Robert Ripin (robert.ripin@hoganlovells.com) and Ronald J. Silverman (ronald.silverman@hoganlovells.com) and (ii) Richards, Layton & Finger, PA, 920 N. King Street, Wilmington, Delaware 19801, Attn: Daniel J. DeFranceschi (defranceschi@rlf.com); and (g) counsel to any statutory committee appointed in these chapter 11 cases. In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.

61. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce the terms of any and all matters arising from or related to the DIP Facility and/or this Interim DIP Order.

Exhibit 1

(Budget)

DIP Budget Week #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Week Ending	9-Feb	16-Feb	23-Feb	1-Mar	8-Mar	15-Mar	22-Mar	29-Mar	5-Apr	12-Apr	19-Apr	26-Apr	3-May	10-May	17-May	24-May	31-May
Actuals / Forecast	For.	For.	For.	For.	For.	For.	For.	For.	For.	For.	For.	For.	For.	For.	For.	For.	For.
Operating Receipts																	
Total Operating Receipts	-	-	-	-	-	-	-	-	-	-	3,954	3,877	479	-	526	162	686
Variable Costs																	
Fuel	1,140	504	486	515	686	686	686	686	482	400	400	400	537	718	718	718	718
Total Variable Costs	1,140	504	486	515	686	686	686	686	482	400	400	400	537	718	718	718	718
Gross Margin	(1,140)	(504)	(486)	(515)	(686)	(686)	(686)	(686)	(482)	(400)	3,554	3,477	(58)	(718)	(192)	(556)	(32)
Operating Disbursements																	
Labor & Benefits [GAAP]	-	-	-	11	-	-	-	296	-	-	-	344	-	-	-	336	-
Maintenance & Repairs	-	-	-	200	-	-	-	200	-	-	-	550	-	-	-	450	-
Plant Utilities & Services	55	-	-	171	-	-	-	164	-	-	-	252	-	-	-	172	-
Other Miscellaneous Operating Expenses	-	-	-	118	-	-	-	202	-	-	-	140	-	-	-	128	-
Other Miscellaneous Operating Expenses	-	-	-	53	-	-	-	162	-	-	-	81	-	-	-	88	-
Equipment Leases, Rentals & Royalties	-	-	-	28	-	-	-	28	-	-	-	48	-	-	-	28	-
Vehicle, Fuel & Transportation	-	-	-	37	-	-	-	12	-	-	-	12	-	-	-	12	-
CAPEX	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Operating Disbursements	55	-	-	500	-	-	-	863	-	-	-	1,286	-	-	-	1,087	-
G&A Disbursements																	
Employee Incentive Plan	-	-	-	126	-	-	-	126	-	-	-	126	-	-	-	126	-
Insurance [GAAP]	-	-	-	158	-	-	-	158	-	-	-	358	-	-	-	158	-
Professional Fees	-	-	-	37	-	-	-	37	-	-	-	37	-	-	-	37	-
Management Fees	-	-	-	150	-	-	-	150	-	-	-	150	-	-	-	125	-
Other Miscellaneous G&A	155	-	-	72	-	-	-	40	-	-	110	267	-	220	-	350	-
Other Miscellaneous G&A	155	-	-	28	-	-	-	43	-	-	110	37	-	220	-	153	-
Licenses & Fees	-	-	-	6	-	-	-	1	-	-	-	25	-	-	-	202	-
Travel & Entertainment	-	-	-	0	-	-	-	0	-	-	-	0	-	-	-	0	-
Interest Income	-	-	-	(4)	-	-	-	(4)	-	-	-	(4)	-	-	-	(4)	-
Other Tax [GAAP]	-	-	-	42	-	-	-	-	-	-	-	209	-	-	-	-	-
Total G&A Disbursements	155	-	-	542	-	-	-	510	-	-	110	938	-	220	-	795	-
Credit Support	-	850	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Net Cash Flow before Restructuring	(1,350)	(1,354)	(486)	(1,556)	(686)	(686)	(686)	(2,059)	(482)	(400)	3,444	1,254	(58)	(938)	(192)	(2,439)	(32)
Restructuring Costs																	
Professional Fees	-	-	-	-	-	-	-	405	-	-	844	305	680	-	-	-	2,416
Utility Deposit	-	100	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
US Trustee	-	-	-	-	-	-	-	-	-	-	-	-	150	-	-	-	74
Other (Agency Fees)	-	90		3	-	-	3	-	-	-	3	-	-	-	3	-	-
Total Restructuring Costs	-	190	-	3	-	-	3	405	-	-	847	305	830	-	3	-	2,490
Net Cash Flow Prior to DIP Funding	$ (1,350)	$ (1,544)	$ (486)	$ (1,559)	$ (686)	$ (686)	$ (689)	$ (2,464)	$ (482)	$ (400)	$ 2,597	$ 949	$ (888)	$ (938)	$ (195)	$ (2,439)	$ (2,522)
Beginning Cash Balance (Unrestricted)	$ 1,386	$ 2,536	$ 1,492	$ 2,606	$ 1,747	$ 1,761	$ 1,776	$ 3,487	$ 1,523	$ 1,441	$ 1,041	$ 3,638	$ 4,587	$ 3,699	$ 2,761	$ 3,466	$ 3,527
Net Change in Cash	(1,350)	(1,544)	(486)	(1,559)	(686)	(686)	(689)	(2,464)	(482)	(400)	2,597	949	(888)	(938)	(195)	(2,439)	(2,522)
DIP Draws (Repayment)	2,500	500	1,600	700	700	700	2,400	500	400	-	-	-	-	-	900	2,500	-
Ending Cash Balance (Unrestricted)	$ 2,536	$ 1,492	$ 2,606	$ 1,747	$ 1,761	$ 1,776	$ 3,487	$ 1,523	$ 1,441	$ 1,041	$ 3,638	$ 4,587	$ 3,699	$ 2,761	$ 3,466	$ 3,527	$ 1,005
Beginning DIP Balance	$ -	$ 2,500	$ 3,000	$ 4,600	$ 5,300	$ 6,000	$ 6,700	$ 9,100	$ 9,600	$ 10,000	$ 10,000	$ 10,000	$ 10,000	$ 10,000	$ 10,000	$ 10,900	$ 13,400
Draws	2,500	500	1,600	700	700	700	2,400	500	400	-	-	-	-	-	900	2,500	-
Repayments	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ending DIP Balance	$ 2,500	$ 3,000	$ 4,600	$ 5,300	$ 6,000	$ 6,700	$ 9,100	$ 9,600	$ 10,000	$ 10,000	$ 10,000	$ 10,000	$ 10,000	$ 10,000	$ 10,900	$ 13,400	$ 13,400

EXHIBIT B

Victor Declaration

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
BURGESS BIOPOWER, LLC, *et al.*[1]	Case No. 24-10235 (LSS)
	(Joint Administration Requested)
Debtors.	

DECLARATION OF J. SCOTT VICTOR IN SUPPORT OF THE DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED PARTIES, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF

Pursuant to 28 U.S.C. § 1746, I, J. Scott Victor, hereby declare as follows:

1. I am Managing Director of SSG Advisors, LLC ("SSG"), an investment banking firm retained by the Debtors in possession (collectively, the "Debtors") in the above-captioned cases (these "Chapter 11 Cases").

2. I have over forty (40) years of experience in the restructuring industry and extensive experience: (i) marketing companies or their assets for sale, including experience marketing companies in distress and debtors in bankruptcy cases; (ii) raising capital for special situation transactions; and (iii) restructuring companies' balance sheets both in court and out of court.

3. Prior to the Petition Date, the Debtors retained SSG as exclusive investment banker to the Debtors to (i) advise regarding possible restructuring of existing claims and equity

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are Burgess BioPower, LLC (0971) and Berlin Station, LLC (1913). The Debtors' corporate headquarters are located at c/o CS Operations, Inc., 631 US Hwy 1, #300, North Palm Beach, FL 33408.

and/or (ii) assist with the sale, assignment, license, or other disposition of all or substantially all of the assets of the Debtors.

4. I submit this Declaration in support of the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* (the "DIP Motion")[2] and approval of the financing package proposed therein pursuant to the DIP Orders. I am over the age of 18 and competent to testify and am authorized to submit this declaration (this "Declaration") on behalf of SSG.

5. Except as otherwise indicated, all facts or opinions set forth in this Declaration are based on my personal knowledge, my discussions with the Debtors' advisors, professionals, boards of directors or managers, or other members of the SSG team, my review of relevant documents and information concerning the Debtors' financial affairs and restructuring initiatives, or my experience. I am not being specifically compensated for this testimony other than through payments received by SSG as a professional whose retention the Debtors will seek pursuant to an application to be filed with this Court. If called upon to testify, I could and would testify competently to the statements set forth in this Declaration, as the information in this Declaration is accurate to the best of my knowledge.

6. The Debtors' prepetition capital structure is set forth in detail in the *Declaration of Declaration of Dean Vomero Pursuant to 28 U.S.C. § 1746 in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* (the "First Day Declaration"). As set forth in the

[2] Capitalized terms not otherwise defined in this Declaration shall have the meaning ascribed to them in the DIP Motion.

First Day Declaration, the Debtors' obligations to the Prepetition Noteholders are collateralized by first priority liens on substantially all of their assets.

THE DEBTORS' EFFORTS TO OBTAIN POSTPETITION FINANCING

7. In my role as investment banker, I was actively involved in the Debtors' analysis of their options, including their financing options, and their efforts to obtain debtor-in-possession financing to fund these Chapter 11 Cases. Based on my experience and involvement in the consideration and good-faith, arms'-length negotiation of the DIP Facility, the DIP Facility should be approved. The DIP Facility is the best financing package available to the Debtors under the circumstances. Indeed, it is likely the only financing available to the Debtors. The Debtors are out of cash, and their only source of revenue has been shut off. They have no unencumbered assets to pledge to a post-petition lender, nor do they have the ability to provide adequate protection to the Prepetition Noteholders were any alternate lender to express an interest in providing financing, which has not happened. The DIP Facility provides the only path forward for the Debtors and is urgently needed.

I. THE DIP MARKETING PROCESS

8. In this case, obtaining access to debtor-in-possession financing was difficult because all or nearly all of the Debtors' assets are encumbered under the existing prepetition capital structure, which, along with the Debtors' anticipated cash shortfalls, restricts the availability of, and options for, debtor-in-possession financing. To avoid a protracted and expensive priming fight, which the Debtors could not afford (even if they were able to identify an alternate source of financing, which has not happened), the Debtors and their advisors, including SSG, believed that their only alternatives were to: (1) obtain the Prepetition Noteholders' consent to the priming of their liens by a third-party lender; (2) locate a third-party lender willing to provide debtor-in-possession financing on an unsecured basis with priority over

that of administrative expenses; (3) find lenders willing to refinance out Prepetition Noteholders and provide incremental liquidity; or (4) find junior financing and a new secured lender. Indeed, based on a review of the Prepetition Noteholders' lien position and a preliminary analysis of the Debtors' potential enterprise value, the Debtors and their advisors, including SSG, believed that there was not an equity cushion available for the Debtors to obtain debtor-in-possession financing based on priming the Prepetition Noteholders' liens over their objections, nor would the Debtors' business be able to sustain its value during a contested priming fight.

9. Notwithstanding these significant challenges, the Debtors, with the assistance of SSG, solicited proposals for third-party debtor-in-possession financing in parallel with discussions with the Prepetition Noteholders. Beginning on January 24, 2024, the Debtors and SSG reached out to several private credit investors that make investments in the amount required by the Debtors to gauge their interest in providing debtor-in-possession financing to the Debtors.

10. Due to the Debtors' financial position, their existing leveraged capital structure, and the size of the financing need, the Debtors were unable to identify any interested third-party financing parties. Potential financing parties were not willing to provide financing junior to the Prepetition Noteholders due to the amount of existing secured debt relative to the Debtors' financial position, and the Prepetition Noteholders were not willing to subordinate their lien position to a third-party lender because that would greatly impair their position and the Debtors have no ability to provide them with adequate protection. In addition, any senior financing that did not include Prepetition Noteholders' consent would have inevitably resulted in an uncertain non-consensual priming fight that would be costly and in which the Debtors were unlikely to succeed, which would serve only to draw out these Chapter 11 Cases and result in increased professional costs, threatening the Debtors' ability to emerge as a viable reorganized entity. Any

lender willing to lend on cash flow would need a signed power purchase agreement – which the Debtors do not have -- with pricing to support the Debtors' business plan, and prospective lenders would be sizing the Debtors' facility based off a conservative loan-to-value ratio on the liquidation value of the assets. It is unclear whether an appraisal of this nature would reach the value of an $18 million of new financing debtor-in-possession credit facility that the Prepetition Noteholders have agreed to provide the Debtors. For the foregoing reasons, the Debtors and SSG determined that reaching out to any additional third-party financing sources would be fruitless and unlikely to result in any viable financing proposals.

II. THE DIP FACILITY

11. In parallel with the solicitation of proposals from new sources of financing, the Debtors and their advisors continued negotiating with the Prepetition Noteholders on the terms of a debtor-in-possession credit facility to be provided by them. The Debtors' negotiations with the Prepetition Noteholders ultimately led to an agreement on the terms of a senior secured postpetition financing on a superpriority basis consisting of a senior secured superpriority debtor-in-possession priming credit facility (the "DIP Facility") to be provided by the Prepetition Noteholders (in each case, including any successors and permitted assignees, each, a "DIP Lender" and, collectively, the "DIP Lenders"), pursuant to that Senior Secured Superpriority Debtor In Possession Credit Agreement dated as of February [ ], 2024, attached to the DIP Motion as **Exhibit C** (the "DIP Credit Agreement"), by and among the Borrower, the Guarantor, the DIP Lenders, and DBTCA in its capacities as the Collateral and Administrative Agent, (in such capacities, the "DIP Agent," and together with the DIP Lenders, the "DIP Secured Parties").

12. Pursuant to the DIP Facility, the DIP Lenders have agreed to provide $54 million in aggregate term loan commitments consisting of: (a) a new money delayed-draw term loan facility in the aggregate principal amount of up to $18 million dollars including (i) up to $4.4

million available to the Borrower on an interim basis and (ii) to $18 million (inclusive of all amounts funded by the DIP Lenders on account of the Interim DIP Term Loan), on a final basis and (b) roll-up loans to refinance on a pro rata basis across the holdings of the Prepetition Obligations of the DIP Lenders (x) upon entry of an Interim DIP Order, on a 2:1 ratio times the principal amount of the committed Interim DIP Term Loans and (y) upon entry of a final order, on a 2:1 ratio times the committed principal amount of the Final DIP Term Loans on a final basis ($36,000,000).

13. The proposed DIP Facility contemplates, among other things, the Debtors moving quickly and efficiently through these Chapter 11 Cases. This comprehensive restructuring of the Debtors' prepetition obligations depends on, and would not be feasible without, the support provided to them by the Prepetition Noteholders throughout the restructuring process, not only through the restructuring support agreement and proposed plan of reorganization but also by way of the significant commitment in connection with the DIP Facility, which will provide critical financing to fund the Debtors' operations and administration of these cases.

III. THE DIP FACILITY HAS BEEN HEAVILY NEGOTIATED

14. The Debtors and their advisors and professionals were actively involved throughout the negotiations with the Prepetition Noteholders and their advisors in connection with the proposed debtor-in-possession financing, which were lengthy, at times contentious, and were conducted vigorously, at arms' length and in good faith. The DIP Facility represents a negotiated resolution with the Prepetition Noteholders, whereby the Debtors can obtain a substantial financing package on market terms, without overly burdensome case controls, without the risk of a priming fight, and with a clear path to expedited emergence. It is, in my experience, and lacking any other viable alternative, not only fair and reasonable but also in the best interests of the Debtors and their stakeholders.

IV. THE TERMS OF THE DIP FACILITY ARE FAIR AND REASONABLE

15. Given that the Debtors have limited cash on hand and are currently operating at a loss that increases daily given the refusal of their off-taker to make payments under the pre-petition Power Purchase Agreement ("PPA"), the DIP Facility gives the Debtors a lifeline by providing fair, reasonable and the best available overall financing terms under the circumstances. The DIP Facility will provide critically needed liquidity to the Debtors to pay all trade creditors, vendors and plant personnel, fund these cases, run a parallel sale and plan process backstopped by the Prepetition Noteholders, and maximize value for the Debtors and their stakeholders.

16. Based on my experience both in this industry and in this particular situation, the proposed DIP Facility, including the roll-up component, is reasonable and justifiable, not only because it avoids a protracted and expensive priming fight but more importantly because such a fight – if the Debtors were able to identify another lender – would not likely be successful due to the Debtors' inability to provide adequate protection to the Prepetition Noteholders. There is simply no other viable financing alternative in this matter. Given the Debtors' liquidity concerns and the critical case Milestones (as defined below) which I believe are necessary to keep the process on track, I believe that reducing litigation and entering the Chapter 11 Cases with collaboration between and among the Prepetition Secured Parties and the Debtors is in the best interests of the estates.

17. As a condition to entry into the DIP Credit Agreement and other DIP Documents, the extension of credit under the DIP Facility and the authorization to use Cash Collateral, the DIP Secured Parties and the Prepetition Secured Parties require, and the Debtors have agreed, that proceeds of the DIP Facility and the Cash Collateral shall be used, in each case in a manner consistent with the terms and conditions of the DIP Orders, the DIP Credit Agreement and the other DIP Documents and in accordance with the Budget.

18. I understand that the Debtors have agreed, subject to Court approval, to pay certain fees to the DIP Agent and DIP Lenders. These fees were the subject to negotiation between the Debtors, the DIP Lenders and the DIP Agent, are an integral component of the overall terms of the DIP Facility, in my view are fair and reasonable, and were required by the DIP Agent and DIP Lenders as consideration for the extension of postpetition financing. Under the circumstances, and in light of the marketing process described herein, I believe that the fees reflected in the DIP Credit Agreement are consistent with the range of fees I have seen in similar financings from existing prepetition lenders in which I have recently been involved. In light of the marketing and negotiation process described herein, I believe that the proposed terms of the DIP Facility are fair, reasonable, and appropriate under the circumstances.

19. The Prepetition Noteholders agreement to provide the DIP Facility was conditioned on the 2:1 roll-up of the Prepetition Obligations under the DIP Facility as set forth in the DIP Credit Agreement. Such arrangements are common in circumstances where the (i) first lien lender is providing postpetition financing, and (ii) the financing is in the form of a delayed draw term loan facility. However, the Prepetition Noteholders have agreed to (a) exchange their debt for equity under a confirmed plan of reorganization that pays all administrative claims in accordance with the DIP Budget in the event that a sales process is unsuccessful, and (b) provide for payment of administrative expenses in accordance with the DIP Budget from the net proceeds of a consensual sale of substantially all of the Debtors' assets. Therefore, there is no disadvantage to the Debtors' estates in connection with the proposed roll-up and instead provides benefits to all stakeholders.

20. I understand that the DIP Facility also contemplates certain milestones as detailed in the First Day Declaration (the "Milestones") that the Debtors must meet throughout their

Chapter 11 Cases. These were negotiated among the Debtors, the Prepetition Noteholders, and the Debtors' affiliated non-debtor entities that provide management and operation services to the Debtors. They are critical to keeping the case on track and were negotiated by all the parties at arms' length within the parameters of the Debtors' anticipated liquidity needs. I believe that the Milestones should permit sufficient time for the Debtors to emerge.

THE DIP FACILITY IS THE BEST FINANCING AVAILABLE

21. Each of the collateral terms, covenants, interest rates, the Closing Fee and the Milestones were subject to negotiation, are integral components of the overall terms of the DIP Facility and were required by DIP Lenders as consideration for the extension of the DIP Loans. The terms reflected in the DIP Credit Agreement are reasonable and substantially in line with other debtor-in-possession financings generally, including debtor-in-possession financings recently approved by this court and others in comparable Chapter 11 Cases. Access to the DIP Facility will provide the Debtors with capital that is essential to (a) operate throughout these Chapter 11 Cases; (b) avoid irreparable harm to the Debtors' estates; and (c) provide the Debtors with sufficient runway to pursue a reorganization.

22. I believe the proposed DIP Facility serves as an important component of the Debtors' overall restructuring efforts because it provides the Debtors with the stability and certainty that they can emerge from the Chapter 11 process in a timely and expeditious manner. Overall, based on the results of SSG's discussions with potential lenders, I believe that the DIP Facility is the only possible financing option for the Debtors at this time.

NEED FOR INTERIM RELIEF

23. The Debtors are entering these Chapter 11 Cases with the support of the DIP Lenders. Their support is contingent on, among other things, meeting the obligations in the DIP

Documents and consummating the restructuring transactions contemplated thereunder. One of the Debtors' principal obligations under the DIP Documents is to gain this Court's approval of the DIP Facility pursuant to the terms of the Interim Order within the first three (3) Business Days of the Petition Date.

24. As described more fully in the First Day Declaration, the continued and viable operation of the Debtors' business through and upon emergence from Chapter 11 will not be possible absent the Court's entry of the Interim Order. Without immediate access to the new financing or Cash Collateral, the Debtors could suffer substantial and irreparable harm. The Debtors' need for access to additional liquidity is, therefore, urgent. In addition, because the Debtors lack sufficient unencumbered funds to meet certain imminent expenses necessary for a smooth transition to chapter 11, it is essential that they obtain interim approval of the use of the proceeds of the DIP Facility or Cash Collateral. Approval of the Interim Order will ensure that the Debtors' can (a) continue their business operations without interruption, sell at-the-market, and/or enter into a new power purchase agreement with a qualified party (b) maintain ordinary course relationships with vendors and customers, (c) satisfy other working capital needs in the ordinary course, and (d) consummate the broader set of restructuring transactions.

CONCLUSION

25. In sum, based upon the foregoing and the facts and circumstances of these cases, I believe that approving the DIP Facility and use of Cash Collateral is in the best interests of the Debtors' estates.

[Remainder of page intentionally left blank]

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

Dated: February 9, 2024
West Conshohocken, PA

/s/ J. Scott Victor
J. Scott Victor
SSG Advisors LLC

Proposed Investment Banker to the Debtors

EXHIBIT C

DIP Credit Agreement

SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT

dated as of February [_], 2024

among

BERLIN STATION, LLC, as the Borrower,

BURGESS BIOPOWER, LLC, as the Guarantor,

DEUTSCHE BANK TRUST COMPANY AMERICAS,
as Administrative Agent and Collateral Agent

and

The Lenders Party Hereto from Time to Time

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SENIOR SECURED SUPERPRIORITY
DEBTOR-IN-POSSESSION CREDIT AGREEMENT

This **SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT** ("Agreement") is entered into as of February [__], 2024, among **BERLIN STATION, LLC**, a Delaware limited liability company ("Berlin" or the "Borrower"), **BURGESS BIOPOWER, LLC**, a Delaware limited liability company (the "Guarantor"), each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"), **DEUTSCHE BANK TRUST COMPANY AMERICAS** ("DBTCA"), as administrative agent for the Secured Parties (in such capacity, the "Administrative Agent") and **DEUTSCHE BANK TRUST COMPANY AMERICAS**, as collateral agent for the Secured Parties (the "Collateral Agent").

PRELIMINARY STATEMENTS:

WHEREAS, on February 9, 2024 (the "Petition Date"), the Borrower and the Guarantor commenced Chapter 11 case numbers 24-10236 and 24-10235, as jointly administered for procedural purposes as Chapter 11 case number 24-10235 (individually each a "Case" and collectively, the "Cases") by filing with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") voluntary petitions for relief under the Bankruptcy Code and have continued to operate their business as debtor-in-possession pursuant to Section 1107 and 1108 thereof;

WHEREAS, the Borrower has requested and the Lenders have agreed to make loans to the Borrower consisting of a priming, secured superpriority debtor-in-possession delayed draw term loan credit facility in the aggregate principal amount of up to $18,000,000;

WHEREAS, Guarantor is an Affiliate of the Borrower and the lessee and operator of the Project owned by the Borrower and, as such, will benefit by virtue of the financial accommodations extended to Borrower by the Lenders, including without limitation the provision of loans by the Lenders to fund the operations of the Guarantor and the costs of administration of its Case;

WHEREAS, the Lenders are willing to extend such credit to the Borrower under this Agreement upon the terms and subject to the conditions set forth in this Agreement and the Interim DIP Order or the Final DIP Order, as applicable.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS AND ACCOUNTING TERMS

1.01 Defined Terms. All terms defined in the UCC and used herein shall have the same definitions herein as specified therein. If, however, a term is defined in Article 9 of the UCC differently than in another Article of the UCC, the term has the meaning specified in Article 9. As used in this Agreement, the following terms shall have the meanings set forth below:

"Acceptable Sale Provisions" means a sale that the Lenders have determined should be pursued and such sale shall be consummated pursuant to a purchase agreement and Plan of Reorganization, that, among other things: (i) does not have any financing or diligence contingency; (ii) demonstrates that the purchaser(s) has the wherewithal to close such transaction; and (iii) provides that closing thereunder shall occur on or before the applicable Milestone, and in connection therewith, the Bankruptcy Court shall enter

an order or orders approving such transaction(s) and related documentation and authorizing the Loan Parties to enter into such transaction and related documentation in form and substance acceptable to the Lenders.

"Adequate Protection Fees and Expenses" has the meaning ascribed to such term in the Interim DIP Order or, upon entry of the Final DIP Order, in the Final DIP Order, as applicable.

"Adequate Protection Liens" has the meaning ascribed to such term in the Interim DIP Order or, upon entry of the Final DIP Order, in the Final DIP Order, as applicable.

"Adequate Protection Superpriority Claim" has the meaning ascribed to such term in the Interim DIP Order or, upon entry of the Final DIP Order, in the Final DIP Order, as applicable.

"Administrative Agent" means Deutsche Bank Trust Company Americas in its capacity as administrative agent for the Lenders under any of the Loan Documents, or any successor administrative agent appointed pursuant to the terms of this Agreement.

"Administrative Agent's Office" means the Administrative Agent's address and, as appropriate, account as set forth in wire instructions provided by the Administrative Agent to the Borrower, or such other address or account as the Administrative Agent may from time to time notify in writing to the Borrower and the Lenders.

"Administrative Questionnaire" means an Administrative Questionnaire in form and substance approved by the Agent.

"Affiliate" means, at any time, and with respect to any Person, any other Person that at such time directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, such first Person. Unless the context otherwise clearly requires, any reference to an "Affiliate" is a reference to an Affiliate of any of the Borrower or the Guarantor. Notwithstanding anything to the contrary in this definition, none of the Lenders shall be deemed to be an Affiliate of any Loan Party.

"Agent-Related Persons" means each Agent, together with their respective Affiliates, successors and assigns and the officers, direct and indirect owners, directors, employees, agents, advisors, attorneys, controlling persons and members of each of the foregoing.

"Agents" means the Administrative Agent and the Collateral Agent.

"Agreement" has the meaning specified in the preamble hereto.

"Allowed Variance" has the meaning set forth in Section 7.25(b).

"Anti-Corruption Laws" means any law or regulation in a U.S. or any non-U.S. jurisdiction regarding bribery or any other corrupt activity, including the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act 2010.

"Anti-Money Laundering Laws" means any law or regulation in a U.S. or any non-U.S. jurisdiction regarding money laundering, drug trafficking, terrorist-related activities or other money laundering predicate crimes, including the Currency and Foreign Transactions Reporting Act of 1970 (otherwise known as the Bank Secrecy Act) and the USA PATRIOT Act.

"Applicable Percentage" means with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Facility represented by the sum of such Lender's Commitment at such time, plus the principal amount of such Lender's Loans at the relevant time of reference thereto.

"Approvals" means any and all approvals, permits, permissions, licenses, authorizations, consents, certifications, actions, orders, waivers, exemptions, variances, franchises, filings, declarations, rulings, registrations, applications and notices to, from or issued by any Person.

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Assignee Group" means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 11.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit C or any other form approved by the Administrative Agent.

"Auction" means an auction with respect to the sale of all or substantially all of any of any Loan Party's assets or Equity Interests conducted in accordance with the requirements for the Sale Process.

"Audited Financial Statements" has the meaning specified in Section 5.05(a).

"Automatic Stay" means the automatic stay imposed under Section 362 of the Bankruptcy Code.

"Availability Period" means, the period from and including the Closing Date to the earliest of (a) the Maturity Date, (b) the date of termination of the Commitments pursuant to Section 2.04 and (c) the date of termination of the Commitments pursuant to Section 8.02.

"Avoidance Actions" means claims and causes of action under sections 510, 544, 545, 547, 548, 549, 550, and 553(b) of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code or similar state law.

"Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"Bail-In Legislation" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time, which is described in the EU Bail-In Legislation Schedule.

"Bankruptcy Code" means 11 U.S.C. §101 *et seq.*

"Bankruptcy Court" has the meaning specified in the recitals hereto.

"Bidding Procedures Order" means an order in form and substance satisfactory to the Lenders approving the Sale Process and including the Acceptable Sale Provisions.

"Blocked Person" means (i) a Person whose name appears on the list of Specially Designated Nationals and Blocked Persons published by OFAC, (ii) a Person, entity, organization, country or regime

that is blocked or a target of sanctions that have been imposed under U.S. Economic Sanctions Laws or (iii) a Person that is an agent, department or instrumentality of, or is otherwise beneficially owned by, controlled by or acting on behalf of, directly or indirectly, any Person, entity, organization, country or regime described in clause (i) or (ii).

"Borrower" has the meaning specified in the preamble hereto.

"Borrowing" means the borrowing of a Loan pursuant to Article II hereof.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, New York.

"Capitalized Leases" means, at any time, a lease with respect to which the lessee is required concurrently to recognize the acquisition of an asset and the incurrence of a liability in accordance with GAAP.

"Carve-Out" has the meaning specified in the Interim DIP Order or, upon entry of the Final DIP Order, in the Final DIP Order, as applicable.

"Cash Balance Report" has the meaning specified in Section 6.01(c).

"Cash Equivalents" means any of the following types of Investments, to the extent owned by any Loan Party free and clear of all Liens (other than Liens created by Article XII or permitted by Section 7.01):

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof having maturities of not more than 360 days from the date of acquisition thereof; provided that the full faith and credit of the United States of America is pledged in support thereof;

(b) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus of at least $1,000,000,000, in each case with maturities of not more than 180 days from the date of acquisition thereof;

(c) commercial paper issued by any Person organized under the laws of any state of the United States of America and rated at least "Prime-1" (or the then equivalent grade) by Moody's or at least "A-1" (or the then equivalent grade) by S&P, in each case with maturities of not more than 180 days from the date of acquisition thereof; and

(d) Investments, classified in accordance with GAAP as current assets of any Loan Party, in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions that have the highest rating obtainable from either Moody's or S&P, and the portfolios of which are limited solely to Investments of the character, quality and maturity described in clauses (a), (b) and (c) of this definition.

"Cash Management Order" means an order, in form and substance acceptable to the Lenders in their sole discretion, entered by the Bankruptcy Court with respect to the Loan Parties' use of a cash management system in accordance with the terms of this Agreement and the DIP Orders.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted, implemented or issued.

"Chief Restructuring Officer" means Dean Vomero (or such other person who is acceptable to the Lenders and employed on terms and conditions acceptable to the Lenders in their sole discretion), as the "chief restructuring officer" of each Loan Party to handle all matters related to the Loan Parties' finances (including disbursements), budgetary matters, restructuring matters, sale matters and sale process and the Cases; provided, the Chief Restructuring Officer shall report to each Special Committee.

"Closing Date" means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 11.01.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

"Collateral" has the meaning specified in Section 12.01(a).

"Collateral Agent" means DBTCA, in its capacity as collateral agent for the Lenders under any of the Loan Documents, or any successor collateral agent appointed pursuant to the terms of this Agreement.

"Commitment" means, as to each Lender, its obligation to make Loans to the Borrower pursuant to Section 2.01(a) in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender's name on Schedule 2.01 under the caption "Facility Commitment" or opposite such caption in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The aggregate Commitments of the Lenders as of the date hereof is $18,000,000, or such lesser amount as may be approved by the Bankruptcy Court; provided, however, prior to the Final Order Entry Date, such aggregate amount shall for all Lenders not exceed the Interim Commitment Amount.

"Committed Loan Notice" means a notice of Borrowing, converting, or continuing a Loan pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit A.

"Committee" means an official committee of creditors holdings unsecured claims, if appointed by the Office of the United States Trustee in respect of the Cases pursuant to Section 1102(a) of the Bankruptcy Code.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Connection Income Taxes" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Contractual Obligation" means, with respect to any Person, any provision of any document or undertaking (other than a Loan Document) to which such Person is a party or by which it or any of its property is bound or to which any of its property is subject.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Controlled Account" means each deposit account and securities account that is subject to a Lien and, from and after the Interim Order Entry Date if required by the Lenders or the Collateral Agent, shall each be subject to a "springing" account control agreement in favor of the Collateral Agent and in form and substance satisfactory to the Collateral Agent and the Lenders; provided, that the Loan Parties shall have until the date which is 30 days after the Closing Date (or such later date as may be agreed to in writing by the Lenders) to provide account control agreements with respect to such accounts.

"Controlled Entity" means (a) any of the Borrower's or the Guarantor's respective Controlled Affiliates and (b) any of the Borrower's or the Guarantor's parent companies and their respective Controlled Affiliates. As used in this definition, "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Credit Extension" means a Borrowing.

"CS-Berlin" means CS Berlin Ops, Inc., a Delaware corporation.

"DBTCA" has the meaning specified in the preamble hereto.

"Debtor Relief Laws" means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"Default" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"Default Rate" means, with respect to the Loans or any other Obligations, an interest rate per annum equal to 2.0% in excess of the interest rate otherwise applicable thereto, in each case, to the fullest extent permitted by applicable Laws.

"DIP Budget" has the meaning specified in Section 6.01(d).

"DIP Orders" means the Interim DIP Order, the Final DIP Order and any amendment, modification or supplement thereto in form and substance acceptable to the Lenders in their sole discretion.

"Disposition" or "Dispose" means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

"Distributions" means any (a) distribution of any nature or kind, either directly or indirectly, to any equity holder of any Loan Party, including any dividend or distribution in cash or property of any kind and any "Tax Distributions" (as defined in any Loan Party's limited liability company Operating Agreement); a purchase, redemption, reduction, return or any other payment of capital; or any repayment or reduction of Indebtedness owing to an equity holder of any Loan Party or any Affiliate of any of them; (b) loans or other payments to an equity holder of any Loan Party or any Affiliate of any of them; (c) management fees or similar fees payable to any Affiliate (other than another Loan Party) of any Loan Party; and (d) payment for or on behalf of an equity holder of any Loan Party or any Affiliate of any of them by way of guaranty, indemnity or otherwise including in connection with any Indebtedness; but shall not include any payments for goods and services provided pursuant to a Material Project Document in the amount required or permitted thereunder.

"Division/Series Transaction" means, with respect to any Person, a division of any such Person into two or more Persons pursuant to Section 18-217 of the Delaware Limited Liability Act (or any similar provision in any other applicable jurisdiction), or an allocation of assets of such person pursuant to such a division.

"Dollar" and "$" mean lawful money of the United States.

"EEA Financial Institution" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any credit institution or investment firm established in any EEA Member Country.

"Eligible Assignee" means any Person that meets the requirements to be an assignee under Section 11.06(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 11.06(b)(iii)).

"Environmental Claim" means any and all administrative, regulatory or judicial actions, suits, demands, decrees, claims, liens, judgments, written warning notices, written notices of noncompliance or violation, investigations, proceedings, removal or remedial actions or orders, or damages (foreseeable and unforeseeable, including consequential and punitive damages), penalties, fees, out-of-pocket costs, expenses, disbursements, attorneys' or consultants' fees, relating in any way to any actual or alleged breach or violation of any Environmental Law or any Required Approval issued under any such Environmental Law (hereafter "Environmental Proceedings"), including (a) any and all Environmental Proceedings by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and (b) any and all Environmental Proceedings by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Material or arising from alleged injury or threat of injury to health, safety or the environment.

"Environmental Laws" means any and all federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment, the treatment, use, generation, handling or storage of Hazardous Materials or the release of any Hazardous Materials.

"Equity Interests" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

"ERISA Affiliate" means, with respect to any Loan Party, any trade or business (whether or not incorporated) that is treated as a single employer together with any Loan Party under section 414 of the Code.

"Erroneous Payment" has the meaning specified in Section 9.17(a).

"Erroneous Payment Deficiency Assignment" has the meaning specified in Section 9.17(d)(i).

"Erroneous Payment Impacted Class" has the meaning specified in Section 9.17(d)(i).

"Erroneous Payment Return Deficiency" has the meaning specified in Section 9.17(d)(i).

"Erroneous Payment Subrogation Rights" has the meaning specified in Section 9.17(e).

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor thereto), as in effect from time to time.

"Event of Default" has the meaning specified in Section 8.01.

"Event of Eminent Domain" means any compulsory transfer or taking by condemnation, eminent domain or exercise of a similar power, or transfer or sale under threat of such compulsory transfer or taking, of any part of the Project or other Collateral, by any agency, department, authority, commission, board, instrumentality or political subdivision of the State of New Hampshire, the United States or another Governmental Authority having jurisdiction.

"Excess Cash" means, as of any date of determination, the dollar amount of (a) the Loan Parties' unrestricted cash and Cash Equivalents that are in Controlled Accounts that exceeds $500,000 *minus* (b) the sum of the amount of forecasted disbursements in the DIP Budget projected to be made during the next four weeks after such date of determination.

"Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time.

"Excluded Taxes" means, any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from any payment to a Recipient, (a) Taxes imposed on or measured by such Recipient's net income or net profits (however denominated), branch profits Taxes imposed on such Recipient, and franchise taxes imposed on such Recipient, in each case (i) imposed by the United States of America, any political subdivision thereof or therein, or any other country or any political subdivision of any country, in which such Recipient is organized, or has its principal office or, in the case of any Lender, its applicable lending office, or (ii) that are Other Connection Taxes, (b) in the case of a Lender that is not a United States person (as defined in Section 7701(a)(30) of the Code), any U.S. federal withholding tax that is imposed on amounts payable to such Lender pursuant to a law in effect on the date on which (i) such Lender becomes a party to the Agreement or designates a new lending office, except in each case to the extent that, pursuant to Section 3.01, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) any Taxes attributable to such Recipient's failure to comply with Section 3.01(e) hereof, and (d) any U.S. federal withholding Taxes attributable to FATCA.

"Exempt Wholesale Generator" means an "exempt wholesale generator" under Section 1262 of PUHCA and the implementing regulations of the FERC, at 18 C.F.R. §§ 366.1 and 366.7 (2017).

"Extraordinary Receipt" means any payments received by any Loan Party in respect of (i) proceeds of judgments, proceeds of settlements, or other consideration of any kind received in connection with any cause of action or claim, (ii) indemnity payments, (iii) tax refunds, and (iv) any other transaction outside of the ordinary course of business (but excluding transactions otherwise subject to Sections 2.03(b)(i), 2.03(b)(iii) and 2.03(b)(iv)).

"Facility" means, at any time, (a) the aggregate amount of Commitments of all Lenders at such time, and (b) the aggregate principal amount of the Loans of all Lenders outstanding at such time.

"FATCA" means (a) sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), together with any current or future regulations or official interpretations thereof, (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the United States of America and any other jurisdiction, which (in either case) facilitates the implementation of the foregoing clause (a), and (c) any agreements entered into pursuant to section 1471(b)(1) of the Code.

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System of the United States.

"FERC" means the Federal Energy Regulatory Commission, or any successor agency to its duties and responsibilities and, in connection with Section 215 of the FPA, any national or regional electric reliability organization so certified or determined by the FERC.

"Final DIP Order" means, collectively, a final order of the Bankruptcy Court, in form and substance satisfactory to the Lenders in their sole discretion (and with respect to any provisions that affect the rights or duties of any Agent, such Agent), entered in the Cases pursuant to Section 364 of the Bankruptcy Code approving this Agreement and the other Loan Documents on a final basis, confirming the Interim DIP Order and authorizing (i) the Borrower to obtain credit as contemplated hereunder, (ii) the Loan Parties to incur the Obligations and grant Liens under the Loan Documents and (iii) the Loan Parties to use cash collateral.

"Final Order Entry Date" means the date on which the Final DIP Order is entered on the docket of the Bankruptcy Court.

"Final Roll-Up Loans" has the meaning set forth in Section 2.01(c).

"Force Majeure Event" means an event or circumstance beyond the reasonable control of the Person claiming the existence of a Force Majeure Event, that could not have been prevented by the exercise of reasonable care by such Person and that has a material effect on the ability of such Person to perform its obligations (assuming the foregoing conditions are satisfied), including acts of God, strikes, lockouts or other industrial disturbances of a regional or national scope, acts of the public enemy, orders of a governmental authority, insurrection, riots, epidemics, civil disturbances, explosions, nuclear accidents, wars, or breakage of equipment due to a Force Majeure Event.

"Foreign Lender" means any Lender that is organized under the Laws of a jurisdiction other than that in which the Loan Parties are resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"FPA" means the Federal Power Act, 16 U.S.C. §§791 et seq., as amended, and the regulations of the FERC thereunder.

"Fund" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States of America.

"Governmental Authority" means (a) the government of (i) the United States or any State or other political subdivision thereof, or (ii) any other jurisdiction in which any Loan Party conducts all or any part of its business, or which asserts jurisdiction over any properties of any Loan Party, (b) any entity, agency, department or similar body exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, any such government, including but not limited to the New Hampshire Public Utilities Commission, or (c) ISO New England.

"Guarantee" means, with respect to any Person, any obligation (except the endorsement in the ordinary course of business of negotiable instruments for deposit or collection) of such Person guaranteeing or in effect guaranteeing any indebtedness, dividend or other obligation of any other Person in any manner, whether directly or indirectly, including (without limitation) obligations incurred through an agreement, contingent or otherwise, by such Person: (a) to purchase such indebtedness or obligation or any property constituting security therefor, (b) to advance or supply funds (i) for the purchase or payment of such indebtedness or obligation, or (ii) to maintain any working capital or other balance sheet condition or any income statement condition of any other Person or otherwise to advance or make available funds for the purchase or payment of such indebtedness or obligation, (c) to lease properties or to purchase properties or services primarily for the purpose of assuring the owner of such indebtedness or obligation of the ability of any other Person to make payment of the indebtedness or obligation, or (d) otherwise to assure the owner of such indebtedness or obligation against loss in respect thereof. In any computation of the indebtedness or other liabilities of the obligor under any Guarantee, the indebtedness or other obligations that are the subject of such Guarantee shall be assumed to be direct obligations of such obligor. The term "Guarantee" as a verb has a corresponding meaning.

"Guaranty" means Article X of this Agreement.

"Hazardous Materials" means any and all pollutants, toxic or hazardous wastes or other substances that might pose a hazard to health and safety, the removal of which may be required or the generation,

manufacture, refining, production, processing, treatment, storage, handling, transportation, transfer, use, disposal, release, discharge, spillage, seepage or filtration of which is or shall be restricted, prohibited or penalized by any applicable law including, but not limited to, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum, petroleum products, lead based paint, radon gas or similar restricted, prohibited or penalized substances.

"Indebtedness" with respect to any Person means, at any time, without duplication:

(a) its liabilities for borrowed money and its redemption obligations in respect of mandatorily redeemable Preferred Stock;

(b) its liabilities for the deferred purchase price of property acquired by such Person (excluding accounts payable arising in the ordinary course of business but including all liabilities created or arising under any conditional sale or other title retention agreement with respect to any such property);

(c) (i) all liabilities appearing on its balance sheet in accordance with GAAP in respect of Capital Leases and (ii) all liabilities which would appear on its balance sheet in accordance with GAAP in respect of Synthetic Leases assuming such Synthetic Leases were accounted for as Capital Leases;

(d) all liabilities for borrowed money secured by any Lien with respect to any property owned by such Person (whether or not it has assumed or otherwise become liable for such liabilities);

(e) all its liabilities in respect of letters of credit or instruments serving a similar function issued or accepted for its account by banks and other financial institutions (whether or not representing obligations for borrowed money);

(f) [reserved]; and

(g) any Guarantee of such Person with respect to liabilities of a type described in any of clauses (a) through (f) hereof.

Indebtedness of any Person shall include all obligations of such Person of the character described in clauses (a) through (g) to the extent such Person remains legally liable in respect thereof notwithstanding that any such obligation is deemed to be extinguished under GAAP.

"Indemnified Losses" is defined in Section 11.04(b).

"Indemnified Parties" is defined in Section 11.04(b).

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not described in (a), Other Taxes.

"Independent Director" shall have the meaning given such term in each Loan Party's operating agreement (as in effect on the Closing Date).

"Information" has the meaning specified in Section 11.07.

"Insurance Proceeds" means all amounts and proceeds (including instruments) in respect of any Loss payable under any insurance policy maintained by or on behalf of any Loan Party, other than proceeds received under business interruption insurance.

"Initial DIP Budget" has the meaning specified in Section 4.01(d).

"Initial Funding" has the meaning specified in Section 2.01(a).

"Interconnection Agreement" means the Large Generator Interconnection Agreement, dated July 18, 2011, among ISO New England Inc., the Borrower and Northeast Utilities Service Company on behalf of Public Service Company of New Hampshire.

"Interest Payment Date" means, the last day of each calendar month (or, if such day is not a Business Day, the next succeeding Business Day) and the Maturity Date.

"Interim Commitment Amount" means an aggregate principal amount equal to $4,400,000, or such lesser amount as may be approved by the Bankruptcy Court.

"Interim DIP Order" means an interim order of the Bankruptcy Court, substantially in the form attached hereto as Annex II (or in the form and substance reasonably satisfactory to the Lenders in their sole discretion, and with respect to any provisions that affect the rights or duties of any Agent, such Agent), entered in the Cases pursuant to Section 364 of the Bankruptcy Code, approving this Agreement and the other Loan Documents on an interim basis and authorizing, among other things, (i) the Borrower to obtain credit as contemplated hereunder, (ii) the Loan Parties to incur the Obligations and grant Liens under the Loan Documents, and (iii) the Loan Parties to use cash collateral.

"Interim Order Entry Date" means the date on which the Interim DIP Order is entered on the docket of the Bankruptcy Court.

"Interim Roll-Up Loans" has the meaning set forth in Section 2.01(c).

"Investment" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit or all or a substantial part of the business of such Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"Investment Banker" has the meaning set forth in Section 6.21.

"IRS" means the United States Internal Revenue Service.

"ISO New England" means the independent system operator of the New England Grid (ISO New England, Inc.).

"Laws" means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed

duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"Lender" has the meaning specified in the introductory paragraph hereto and, as the context requires.

"Lending Office" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

"Lien" means, with respect to any Person, any mortgage, lien, pledge, charge, security interest or other encumbrance, or any interest or title of any vendor, lessor, lender or other secured party to or of such Person under any conditional sale or other title retention agreement or Capital Lease, upon or with respect to any property or asset of such Person (including in the case of stock, stockholder agreements, voting trust agreements and all similar arrangements).

"Loan" means each advance of funds by the Lenders to the Borrower pursuant to Section 2.01(a).

"Loan Documents" means, collectively, (a) this Agreement, (b) the Notes, (c) the DIP Orders and any Cash Management Order, (d) the Mortgage, (e) any other security documents, financing statements and the like filed or recorded in accordance with the Loans and (f) each other agreement, certificate, document or instrument delivered by any Loan Party, Agent or Lender in connection with any Loan Document, whether or not specifically mentioned herein or therein.

"Loan Parties" means, collectively, the Borrower, the Guarantor, any other Person who becomes a party to this Agreement pursuant to a joinder agreement in form and substance satisfactory to the Administrative Agent and the Lenders, and their respective successors and assigns, and the term "Loan Party" shall mean any one of them or all of them individually, as the context may require.

"Loss" means any loss, theft, destruction, damage, casualty, Event of Eminent Domain, title defect or failure, zoning change, taking, condemnation, seizure, confiscation or requisition of or with respect to the Project or any part thereof.

"Loss Proceeds" means the aggregate amount of all Insurance Proceeds (including, without limitation, title insurance proceeds) and any other proceeds paid to, or for the benefit of, any Loan Party in connection with any Loss.

"Material Adverse Effect" means a material adverse effect on one or more of the following: (a) the business, operations or condition (financial or otherwise) of any Loan Party or the Loan Parties, taken as a whole; (b) the ability of any Loan Party to perform its obligations under any of the Loan Documents or Material Project Documents to which it is a party; (c) the rights or remedies of the Agents or any Lender; or (d) the validity, enforceability or priority of the Liens granted to the Collateral Agent to secure the Obligations; provided that, the filing of the Cases, the events leading to the filing of the Cases, the events that typically result from the filing of a case under Chapter 11 of the Bankruptcy Code (other than the termination of any Material Project Document) shall not constitute a Material Adverse Effect.

"Material Contract" means (a) any energy purchase or sale agreement or heat rate call option or other energy hedge arrangement entered into after the Closing Date, (b) any other Contractual Obligation of any Loan Party that is material to development, financing, construction, operation or maintenance of the Project or (c) any Contractual Obligation pursuant to which the aggregate payments to be made by any

Loan Party or the aggregate liabilities to be incurred by such Loan Party thereunder exceed $50,000 in any year or $250,000 during the term hereof.

"Material Project Documents" each of the documents and agreements that were or are material to the operation of any of the Debtors businesses as set forth on Schedule 5.21, in each case, as in effect prior to and/or after the Petition Date, as amended, restated, supplemented or otherwise modified (including the status of each such document and agreement, whether terminated or in effect), together with any document or agreement that amends, supplements or replaces any of the foregoing with the prior written consent of the Lenders.

"Maturity Date" means, the earliest of (a) [_____, 2024], (b) the earlier of the date (i) any Loan Party enters into (or files a motion with the Bankruptcy Court or otherwise supports another Person taking action to pursue the Bankruptcy Court for approval of) a purchase agreement relative to any assets or Equity Interests of a Loan Party, unless such purchase agreement is entered into in connection with the Auction conducted pursuant to the Bidding Procedures Order or expressly consented to in writing by all Lenders, and (ii) any Loan Party files a motion or otherwise supports another person taking action to pursue the Bankruptcy Court for approval of a sale relative to any assets or Equity Interests of a Loan Party (other than an Auction conducted pursuant to the Bidding Procedures Order) unless expressly consented to in writing by all Lenders, (c) the consummation of a sale of all or substantially all of the assets of any of the Loan Parties or any Equity Interests of a Loan Party pursuant to section 363 of the Bankruptcy Code or otherwise, (d) the effective date of a Plan of Reorganization or plan of liquidation in the Cases, or (e) the date of filing or support by any Loan Party of a Plan of Reorganization that (i) does not provide for indefeasible payment in full in cash of all Obligations in connection with the Facility and all outstanding obligations in connection with the Prepetition Senior Secured Note Documents or (ii) is not otherwise acceptable to all Lenders in their sole discretion. **[NOTE: STATED MATURITY TO BE 180 DAYS AFTER CLOSING DATE.]**

"Milestones" means each of the milestones set forth in Annex I.

"Moody's" means Moody's Investors Service, Inc., or any successor entity.

"Mortgage" means that certain First Mortgage with Assignment of Leases, Contracts and Rents and Fixture Filing dated as of September 2, 2011, from the Borrower to the Prepetition Agent, as the same may be amended, restated, supplemented, or otherwise modified from time to time with consent of the Lenders.

"Multiemployer Plan" means any Plan that is a "multiemployer plan" (as such term is defined in section 4001(a)(3) of ERISA).

"MW" means a megawatt (or 1,000 kilowatts) of electric capacity.

"Net Cash Proceeds" means:

(a) with respect to any Disposition by any Loan Party, or any Extraordinary Receipt received or paid to the account of any Loan Party, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such transaction (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset and that is required to be repaid in connection with such transaction (other than Indebtedness under the Loan Documents), (B) the reasonable and customary out-of-pocket expenses incurred by such Loan Party in connection with

such transaction not payable to an Affiliate of the Loan Parties and (C) Taxes reasonably estimated to be actually payable within one year of the date of the relevant transaction as a result of such transaction; provided that, if the amount of any estimated Taxes pursuant to subclause (C) exceeds the amount of Taxes actually required to be paid in cash within one year of the date of the relevant transaction, the aggregate amount of such excess shall constitute Net Cash Proceeds; and

(b) with respect to the sale or issuance of any Equity Interest by any Loan Party, or the incurrence or issuance of any Indebtedness by any Loan Party, the excess of (i) the sum of the cash and Cash Equivalents received in connection with such transaction over (ii) reasonable underwriting discounts and commissions, and other reasonable and customary out-of-pocket expenses, incurred by such Loan Party in connection therewith and not payable to an Affiliate of such Loan Party.

"Note" means a promissory note made by the Borrower in favor of a Lender evidencing Loans made by such Lender, substantially in the form of Exhibit B.

"Obligations" means all advances to, and debts, liabilities, fees, obligations, indemnifications, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising.

"OFAC" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"OFAC Sanctions Program" means any economic or trade sanction that OFAC is responsible for administering and enforcing. A list of OFAC Sanctions Programs may be found at http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx.

"Operator" means a provider of management, operations, maintenance, and repair services for energy generation facilities acceptable to the Lenders.

"Organization Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with

respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

"Participant" has the meaning specified in Section 11.06(d).

"Participant Register" has the meaning specified in Section 11.06(e).

"Payment Recipient" has the meaning specified in Section 9.17(a).

"PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA or any successor thereto.

"Permitted Investment" means any (a) marketable direct obligation of the United States of America, (b) marketable obligation directly and fully guaranteed as to interest and principal by the United States of America, (c) demand deposit with the Depositary, or time deposit, certificate of deposit and banker's acceptance issued by any member bank of the Federal Reserve System which is organized under the laws of the United States of America or any state thereof or any United States branch of a foreign bank, in each case whose equity capital is in excess of $500,000,000 and whose long-term debt securities are rated "A" or better by S&P and "A2" or better by Moody's, (d) commercial paper or tax exempt obligations given the highest rating by Moody's and S&P, (e) obligations of a commercial bank described in clause (c) above, in respect of the repurchase of obligations of the type as described in clauses (a) and (b) hereof, *provided* that such repurchase obligation shall be fully secured by obligations of the type described in said clauses (a) and (b) and the possession of such obligation shall be transferred to, and segregated from other obligations owned by, any such bank, (f) money market instruments rated "AAA" by S&P and "Aaa" by Moody's, (g) Eurodollar certificates of deposit issued by any bank described in clause (c) above, and (h) marketable securities rated not less than "A-1" by S&P or not less than "Prime-1" by Moody's. In no event shall Permitted Investments include any obligation, certificate of deposit, acceptance, commercial paper or instrument which by its terms matures more than 180 days after the date of investment, unless a bank meeting the requirements of clause (c) above shall have agreed to repurchase such obligation, certificate of deposit, acceptance, commercial paper or instrument at its purchase price plus earned interest within no more than 90 days after its purchase thereunder.

"Permitted Lien" means: (a) Prepetition Liens; (b) Liens for Taxes, assessments or governmental charges or levies not yet due and payable or Liens for Taxes, assessments or governmental charges or levies being contested in good faith and by appropriate proceedings for which adequate reserves have been established and which proceedings have the effect of preventing the forfeiture or sale of the property or asset subject to such Lien; (c) Liens in respect of property or assets of any Loan Party arising by operation of law, which were incurred in the ordinary course of business and do not secure Indebtedness for borrowed money, such as carriers', warehousemen's, materialmen's and mechanics' Liens and other similar Liens arising in the ordinary course of business which in each such circumstance (i) do not individually or in the aggregate materially detract from the value of the property or assets of any Loan Party and do not materially impair the use thereof in the operation of the business of any Loan Party or (ii) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the property or asset subject to such Lien and for which adequate reserves have been established; (d) easements, rights-of-way, restrictions (including zoning restrictions), encroachments, protrusions and other similar charges or encumbrances, and minor title deficiencies, in each case whether now or hereafter in existence, not securing Indebtedness and not materially interfering with the conduct of the business of any Loan Party; (e) [reserved]; (f) customary banker's and similar Liens in respect of Controlled Accounts; and (g) Liens on insurance premiums and the proceeds thereof securing Indebtedness permitted under Section 7.02(g).

"Person" means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, business entity or Governmental Authority.

"Petition Date" has the meaning specified in the recitals hereto.

"Plan" means an "employee benefit plan" (as defined in section 3(3) of ERISA) subject to Title I of ERISA that is or, within the preceding six years, has been established or maintained, or to which contributions are or, within the preceding six years, have been made or required to be made, by any Loan Party or any ERISA Affiliate or with respect to which any Loan Party or any ERISA Affiliate may have any liability.

"Plan of Reorganization" means a Chapter 11 plan of reorganization submitted by the Loan Parties, or any of the Loan Parties, to the Bankruptcy Court in connection with the Cases, or any Case, as applicable, and as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"Pledged Debt" means any promissory notes or tangible chattel paper.

"Pledged Equity" has the meaning specified in Section 12.01(d).

"Preferred Stock" means any class of capital stock of a Person that is preferred over any other class of capital stock (or similar Equity Interests) of such Person as to the payment of dividends or the payment of any amount upon liquidation or dissolution of such Person.

"Prepetition Agent" means, collectively, DBTCA, in all of its capacities under any Prepetition Senior Secured Note Documents, including as collateral agent for the Prepetition Noteholders and as Depositary and as Lessee Depositary (as such terms are defined in Prepetition Senior Secured NPA).

"Prepetition Collateral" means any and all "Collateral" (as defined under the Prepetition Senior Secured Note Documents) that any Loan Party has pledged, or purported to have pledged, to secure the Prepetition Indebtedness.

"Prepetition Indebtedness" means the Obligations as defined in the Prepetition Senior Secured NPA.

"Prepetition Liens" means the Liens in the Prepetition Collateral securing the Prepetition Indebtedness pursuant to the Prepetition Senior Secured Note Documents as in effect prior to the Petition Date.

"Prepetition Noteholders" means the "holders" under and as defined in the Prepetition Senior Secured NPA.

"Prepetition Priority Liens" means any perfected, senior, valid, prior and unavoidable Liens on the assets of any Loan party that are validly existing immediately prior to the Petition Date which were as a matter of law, senior to the Prepetition Liens pursuant to the DIP Orders and expressly indicated as "Prepetition Priority Liens" on Schedule 5.08(b) hereto.

"Prepetition Secured Parties" means the Prepetition Agent and the Prepetition Noteholders.

"Prepetition Senior Secured Note Documents" means the Prepetition Senior Secured NPA and the "Financing Documents" under and as defined in the Prepetition Senior Secured NPA as in effect on the

date hereof, as such Prepetition Senior Secured Note Documents have been amended, restated, supplemented or otherwise modified on or before the Petition Date, as in effect on such date.

"Prepetition Senior Secured NPA" means that certain Note Purchase Agreement, dated as of September 2, 2011, among Berlin and the Prepetition Noteholders, as the same has been amended, restated, supplemented or otherwise modified on or before the Petition Date, as in effect on such date.

"Prepetition Subordinated Debt" means all Indebtedness of the Borrower under the Prepetition Subordinated Loan Agreement and all other obligations of the Borrower under the Prepetition Subordinated Loan Documents.

"Prepetition Subordinated Lenders" means Berlin Biopower Investment Fund, LLC and BBP Finance Co, LLC.

"Prepetition Subordinated Loan Agreement" means (i) that certain Loan Agreement dated as of September 2, 2011, among the Subordinated Lenders and the Borrower, and (ii) that certain Loan Agreement, dated as of September 2, 2011, between BBP Finance Co, LLC and the Borrower, in each case, as amended.

"Prepetition Subordinated Loan Documents" means the Prepetition Subordinated Loan Agreement and the other "Loan Documents" (as defined in the Prepetition Subordinated Loan Agreement).

"Prime Rate" shall mean a fluctuating rate per annum (based on the actual number of days elapsed over a year of 365 or 366 days) equal on any given day to the rate of interest most recently displayed on the Bloomberg Screen BTMM for that day opposite the caption "OPEN" (or on such other substitute Bloomberg Screen that displays such rate), or as set forth on such other recognized electronic source used for the purpose of displaying such rate as selected by the Lenders (or if such rate for such day does not appear on the Bloomberg Screen BTMM (or any substitute screen), or if there shall at any time, for any reason, no longer exists a Bloomberg Screen BTMM (or any substitute screen), a comparable replacement rate determined by the Lenders at such time (which determination shall be conclusive absent manifest error) (the "Reference Rate"); the Prime Rate shall automatically fluctuate, without special notice to any Loan Party or any other Person, upward and downward as and in the amount by which the Reference Rate shall fluctuate. The Reference Rate is set by Bloomberg L.P. as a general reference rate of interest, taking into account such factors as Bloomberg L.P. may deem appropriate. The Reference Rate is not necessarily the lowest or best rate actually charged to any customer, and such rate may not correspond with future increases or decreases in interest rates charged by other lenders or market rates in general. Bloomberg L.P. may make various business or other loans at rates of interest having no relationship to the Reference Rate. Without notice to any Loan Party or any other Person, the Reference Rate shall change automatically from time to time, as determined by Bloomberg L.P.

"Project Party" means each Person party to the Material Project Documents other than the Borrower or the Guarantor.

"Project" means the approximately 75 MW biomass electric generation facility located in Berlin, New Hampshire owned by the Borrower and operated by the Guarantor as the Operator.

"property" or "properties" means, unless otherwise specifically limited, real or personal property of any kind, tangible or intangible, choate or inchoate.

"Proposed DIP Budget" has the meaning specified in Section 6.01(c).

"Professional Fees" means all accrued and unpaid claims for fees and expense reimbursements of Professional Persons retained by the Loan Parties.

"Professional Person" means a Person who is an attorney, accountant, appraiser, auctioneer or financial advisor or other professional person who is retained with approval of the Bankruptcy Court by any Loan Party pursuant to Section 327, 328 or 363 of the Bankruptcy Code or by any committee pursuant to Section 1103 of the Bankruptcy Code.

"PUHCA" means the Public Utility Holding Company Act of 2005, as amended, and all rules and regulations of the FERC adopted thereunder.

"QF" means a "qualifying small power production facility," as that term is defined under 16 U.S.C. § 796(17)(C) and the regulations of the FERC at 18 C.P.R. Part 292 thereunder.

"Recipient" means the Agents or any Lender.

"Register" has the meaning specified in Section 11.06(c).

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, representatives and advisors of such Person and of such Person's Affiliates.

"Remedies Notice Period" has the meaning specified in Section 8.02(a).

"Required Approval" means all Approvals required in connection with the execution, delivery and performance of the Transaction Documents or the operation and maintenance of the Project, and the generation, transmission and sale of energy generated by the Project as contemplated under the Transaction Documents.

"Responsible Officer" means the Chief Restructuring Officer.

"Roll-Up" means the substitution and exchange of Prepetition Indebtedness and the unpaid and accrued interest, fees, expenses and other obligations due as of the date of the Interim DIP Order in respect of, and as a result of, the Prepetition Indebtedness rolled into the Obligations as Roll-Up Loans, in each case, as set forth in Section 2.01(c).

"Roll-Up Loans" has the meaning set forth in Section 2.01(c).

"RSA" means that certain Restructuring Support Agreement, dated as of February 9, 2024.

"S&P" means Standard & Poor's Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc., or any successor thereto.

"Sale Process" means the implementation of bidding and sale procedures in respect of all of the Loan Parties' assets and property and/or the Equity Interests of the Loan Parties, approved by one or more orders of the Bankruptcy Court (including the Bidding Procedures Order) and in accordance with the Acceptable Sale Provisions, in form and substance satisfactory to the Lenders.

"Sanctions" means any and all economic or financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes and anti-terrorism laws, including but not limited to those imposed, administered or enforced from time to time by the U.S. government (including those administered by OFAC

or the U.S. Department of State), the United Nations Security Council, the European Union, His Majesty's Treasury, or other relevant sanctions authority with jurisdiction over any Lender, any Loan Party or any of its Affiliates.

"Sanctioned Country" means at any time, a country or territory which is itself the subject or target of any Sanctions (including, as of the Closing Date, Cuba, Iran, North Korea, Sudan, Syria and Crimea).

"Sanctioned Person" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC (including, without limitation, OFAC's Specially Designated Nationals and Blocked Persons List and OFAC's Consolidated Non-SDN List), the U.S. Department of State, the United Nations Security Council, the European Union, His Majesty's Treasury, or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in clauses (a) and (b), including a Person that is deemed by OFAC to be a Sanctions target based on the ownership of such legal entity by Sanctioned Peron(s).

"Secured Parties" means, collectively, the Collateral Agent, Administrative Agent, the Lenders, each co-agent or sub-agent appointed by the Collateral Agent or the Administrative Agent from time to time pursuant to Section 9.02, and the other Persons the Obligations owing to which are or are purported to be secured by the Collateral hereunder or under any Loan Document.

"Securities" or "Security" shall have the meaning specified in Section 2(1) of the Securities Act.

"Securities Act" means the Securities Act of 1933, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

"Services Proposal" shall have the meaning specified in Section 2.07(c).

"Site Lease" means the Lease by and between Borrower and Guarantor, dated as of September 2, 2011, as the same may have been amended, restated, supplemented, or otherwise modified from time to time prior to the Petition Date or, with consent of the Lenders, after the Petition Date.

"Site" means the real property on which the Project is located as described in the Title Policy, and all related easements, rights-of-way, and other rights and interests.

"State Sanctions List" means a list that is adopted by any state Governmental Authority within the United States of America pertaining to Persons that engage in investment or other commercial activities in Iran or any other country that is a target of economic sanctions imposed under U.S. Economic Sanctions Laws.

"Subsidiary" means, as to any Person, any other Person in which such first Person or one or more of its Subsidiaries or such first Person and one or more of its Subsidiaries owns sufficient equity or voting interests to enable it or them (as a group) ordinarily, in the absence of contingencies, to elect a majority of the directors (or Persons performing similar functions) of such second Person, and any partnership or joint venture if more than a 50% interest in the profits or capital thereof is owned by such first Person or one or more of its Subsidiaries or such first Person and one or more of its Subsidiaries (unless such partnership or joint venture can and does ordinarily take major business actions without the prior approval of such Person or one or more of its Subsidiaries).

"Synthetic Lease" means, at any time, any lease (including leases that may be terminated by the lessee at any time) of any property (a) that is accounted for as an operating lease under GAAP and (b) in

respect of which the lessee retains or obtains ownership of the property so leased for U.S. federal income tax purposes, other than any such lease under which such Person is the lessor.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Test Date" is defined in Section 7.25(b).

"Threshold Amount" means $250,000.

"Title Policy" means the Loan Policy of Title Insurance (Policy Number LX-08898005) with respect to the Site, together with such endorsements as are required by the Lenders, issued in connection with the Prepetition Indebtedness and this Agreement.

"Transaction" means collectively, (a) the entering into by the Loan Parties of the Loan Documents, (b) the extension of the Facility by the Lenders to the Borrower, (c) the payment of all fees and expenses incurred in connection with the foregoing, and (d) the filing of the Cases.

"Transaction Documents" means, collectively, the Loan Documents and the Material Project Documents.

"UCC" means the Uniform Commercial Code as in effect in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "UCC" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

"USA PATRIOT Act" means United States Public Law 107-56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

"U.S. Economic Sanctions Laws" means those laws, executive orders, enabling legislation or regulations administered and enforced by the United States pursuant to which economic sanctions have been imposed on any Person, entity, organization, country or regime, including the Trading with the Enemy Act, the International Emergency Economic Powers Act, the Iran Sanctions Act, the Sudan Accountability and Divestment Act and any other OFAC Sanctions Program.

"United States" and "U.S." mean the United States of America.

"Variance Report" has the meaning specified in Section 6.01(c).

"Weekly Lender Call Date" has the meaning specified in Section 6.23.

"Withholding Agent" means any Loan Party or Agent, as applicable.

"Write-Down and Conversion Powers" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In

Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, (vi) the inclusion of ISO New England in the definition of Governmental Authority is for purposes of the Loan Documents only and does not indicate an acknowledgment or agreement by the parties that such independent system operator is a governmental unit, and (vii) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including."

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

1.03 Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein.

(b) Changes in Accounting Treatment. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Loan Parties shall provide to the Administrative Agent and the Lenders financial statements and

other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. If any change in GAAP or application thereof would require that leases treated as operating leases hereunder prior to such change shall be treated as Capitalized Leases hereunder.

(c) [Reserved].

(d) Valuation of Indebtedness and Financial Instruments. Notwithstanding any other provision herein or in any other Loan Document, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Loan Parties shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

1.04 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

ARTICLE II
THE COMMITMENTS AND CREDIT EXTENSIONS

2.01 Loans.

(a) Subject to the terms and conditions set forth herein or in any DIP Order, each Lender severally, and not jointly, agrees to make Loans to the Borrower, as follows: (A) on the Closing Date, one (1) Borrowing in an amount equal to such Lender's Applicable Percentage of the Interim Commitment Amount (such Borrowing, the "Initial Funding"), and (B) after the Final Order Entry Date until the last day of the Availability Period, from time to time but no more frequently than one Borrowing every seven (7) days, in an amount not to exceed such Lender's remaining Commitment. The Loans extended on the applicable Borrowing date shall be used solely in accordance with Section 6.11. Notwithstanding anything to the contrary set forth herein, the principal amount of the Loans to be made by the Lenders shall be subject to reduction (but not increase) to any lesser such amount approved by the Bankruptcy Court pursuant to the Interim DIP Order and/or the Final DIP Order, as applicable.

(b) Amounts borrowed under this Section 2.01(a) and repaid or prepaid may not be reborrowed.

(c) Subject to the terms and conditions set forth herein and in any DIP Order, (i) upon entry of the Interim DIP Order, a portion of the Prepetition Indebtedness held by the Prepetition Noteholders which are also Lenders (or are Affiliates of Lenders) hereunder shall be automatically substituted and exchanged for (and repaid by) Loans hereunder in an amount equal to, for each Lender, $2.00 of Prepetition Indebtedness of such Lender (or its Affiliate) for each $1.00 of such Lender's Applicable Percentage of the Interim Commitment Amount (the "Interim Roll-Up Loans"), and such Interim Roll-Up Loans shall be deemed funded on the Closing Date, and shall constitute and be deemed to be Loans hereunder as of such date, and (ii) upon the Final Order Entry Date, a portion of the Prepetition Indebtedness held by the Prepetition Noteholders which are also Lenders (or Affiliates of Lenders) hereunder shall be automatically substituted and exchanged for (and repaid by) Loans hereunder in an aggregate principal amount equal to, for each Lender, $2.00 of Prepetition Indebtedness of such Lender (or its Affiliate) for each $1.00 of such Lender's Applicable Percentage of an amount equal to the difference between the aggregate Commitment and the Interim Commitment Amount (the "Final Roll-Up Loans"; together with the Interim Roll-Up Loans, collectively, the "Roll-Up Loans"), and such Final Roll-Up Loans shall be deemed funded on the Final Order Entry Date, and shall constitute and shall be deemed to be Loans for all purposes hereunder and under the other Loan Documents as of such date. Without limiting the foregoing, such Roll-Up Loans shall be

allocated among the Lenders based on each Lender's Applicable Percentage. Upon entry of the applicable DIP Order and the exchange of Prepetition Indebtedness for Roll-Up Loans hereunder, that portion of the Prepetition Indebtedness shall (A) no longer constitute Prepetition Indebtedness under the Prepetition Senior Secured Note Documents and (B) be deemed Obligations hereunder.

2.02 Borrowings.

(a) Solely with respect to the Initial Funding, upon satisfaction of the applicable conditions set forth in Sections 4.01 and 4.02, each Lender shall make its Applicable Percentage of the Interim Commitment Amount available to the Borrower by wire transfer of such funds in accordance with the instructions and in the amounts set forth on Schedule 2.02.

(b) Each Borrowing (other than the Initial Funding) shall be made upon the Borrower's delivery to the Administrative Agent of a Committed Loan Notice appropriately completed and signed by the Chief Restructuring Officer of the Borrower. Each Committed Loan Notice shall be irrevocable upon delivery and must be received by the Administrative Agent not later than 1:00 p.m. three Business Days prior to the requested date of any requested Borrowing; *provided* that no such notice shall be required for (i) the Initial Funding and (ii) the deemed funding of the Roll-Up Loans pursuant to Section 2.01(c). Each Borrowing of Loans (other than the Initial Funding) shall be in a principal amount of $100,000 or a whole multiple of $50,000 in excess thereof unless otherwise agreed to by the Lenders. Each Committed Loan Notice shall specify (i) the requested date of the Borrowing (which shall be a Business Day) and (ii) the principal amount of Loans to be Borrowed, converted, or continued.

(c) With respect to all Borrowings other than the Initial Funding, following receipt of a Committed Loan Notice that is appropriately completed and signed by the Chief Restructuring Officer of the Borrower, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the requested Borrowing. Each Lender shall make its Applicable Percentage of the Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 12:00 p.m. on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02, the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent by wire transfer of such funds in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower.

2.03 Prepayments.

(a) Optional. The Borrower may, upon notice to the Administrative Agent and the Lenders, at any time or from time to time voluntarily prepay Loans in whole or in part; provided that (A) such notice must be received by the Administrative Agent and each Lender not later than 11:00 a.m. three (3) Business Days prior to any date of prepayment of Loans; and (B) any prepayment of Loans shall be in a principal amount of $250,000 or a whole multiple of $50,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment. Each notice of prepayment delivered by the Borrower pursuant to this Section 2.03(a) shall be irrevocable, and if such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Each such prepayment shall be paid to the Administrative Agent to be applied to the Lenders in accordance with their respective Applicable Percentages in respect of the Facility.

(b) Mandatory.

(i) The entire principal amount of all outstanding Loans and all other outstanding Obligations (other than contingent indemnification obligations for which no claim shall have then been asserted) shall be repaid in full on the Maturity Date.

(ii) If any Loan Party Disposes (other than such Dispositions expressly permitted pursuant to Section 7.05(e)) of any property or assets, the Loan Parties shall prepay an aggregate principal amount of Loans equal to 100% of such Net Cash Proceeds, immediately upon receipt thereof by such Loan Party.

(iii) Upon receipt by any Loan Party of any cash capital contribution to such Loan Party or of the proceeds of the issuance of Equity Interests by such Loan Party, the Loan Parties shall prepay an aggregate principal amount of Loans equal to 100% of all Net Cash Proceeds received therefrom, immediately upon receipt thereof by such Loan Party.

(iv) Upon the incurrence or issuance by any Loan Party of any Indebtedness (other than Indebtedness expressly permitted to be incurred or issued pursuant to Section 7.02), the Loan Parties shall prepay an aggregate principal amount of Loans equal to 100% of all Net Cash Proceeds received therefrom immediately upon receipt thereof by such Loan Party.

(v) Upon any Extraordinary Receipt received by or paid to or for the account of any Loan Party, the Loan Parties shall prepay an aggregate principal amount of Loans equal to 100% of all Net Cash Proceeds received therefrom immediately upon receipt thereof by such Loan Party.

(vi) Upon receipt by any Loan Party of any Loss Proceeds, the Loan Parties shall prepay an aggregate principal amount of Loans equal to 100% of all Loss Proceeds received therefrom immediately upon receipt thereof by such Loan Party.

(c) [Reserved].

2.04 Termination or Reduction of Commitments.

(a) Mandatory.

(i) All of the Commitments, if not sooner terminated, shall terminate on the earlier to occur of the Maturity Date and the last day of the Availability Period.

(ii) Upon each Borrowing of a Loan, the aggregate amount of Commitments outstanding at the time of such Borrowing shall be reduced by the aggregate amount of Loans funded on the date of such Borrowing.

2.05 Repayment of Loans. The Borrower shall repay to the Lenders the entire principal amount of the Loans and all other outstanding Obligations (other than contingent indemnification obligations for which no claim shall have then been asserted) on the Maturity Date.

2.06 Interest. (a) Subject to the provisions of Section 2.06(b), each Loan under the Facility shall bear interest on the outstanding principal amount thereof from the applicable Borrowing date at a rate per annum equal to 12.0%.

(b) (i) Except as expressly permitted in clause (c) below, if any amount payable by the Loan Parties is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, or while any other Event of Default exists, the Borrower shall pay interest on

the principal amount of all outstanding Obligations hereunder at an interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(i) Accrued and unpaid interest on past due amounts (including interest on past due interest and interest accruing at the Default Rate) shall be due and payable upon demand.

(d) Interest on each Loan shall be due and payable in cash in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein and shall be due on the Maturity Date; provided that subject to the immediately following proviso, the Borrower may elect to not make such payment of interest in cash on any Interest Payment Date and such interest shall continue to accrue; provided, however, that notwithstanding the foregoing, at any time the amount of the Borrower's Excess Cash on any Interest Payment Date is greater than $0, the Borrower shall immediately pay any accrued but unpaid interest in cash in an amount equal to the lesser of: (x) the amount of Excess Cash and (y) the amount of accrued but unpaid interest at such time. Payments in cash with respect to accrued interest shall be applied in the order as elected by the Lenders. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment.

2.07 Fees.

(a) Upfront Fee. The Borrowers will pay to the Administrative Agent, for the account of each Lender, an upfront fee (the "Upfront Fee") equal to $250,000, to be distributed to each Lender on a pro rata basis based on such Lender's Applicable Percentage of the Commitments. The entire amount of the Upfront Fee shall be fully earned, due and owing on the Closing Date and shall be payable in cash on the Maturity Date.

(b) Unused Line Fee. The Borrowers will pay to the Administrative Agent for the account of each Lender, on a pro rata basis based on such Lender's Applicable Percentage, an unused line fee equal the actual daily amount by which the Commitments exceed the outstanding principal amount of the Loans times 0.50% per annum (the "Unused Line Fee"). The Unused Line Fee shall be fully earned, due and owing on the first day after the end of each fiscal month and on the Maturity Date and shall be payable in cash on the Maturity Date. The unused line fee shall accrue at all times from the Closing Date until the Maturity Date, including at any time during which one or more of the conditions in Article IV is not met.

(c) Agency Fee. The initial agency fees as set forth in the service proposal, dated February 8, 2024 and executed by the Borrower (the "Services Proposal") which are set forth as payable at closing, shall be due and payable on the Closing Date. Additional agency fees as set forth in the Services Proposal shall be due and payable by the Borrower to the Agents on each semi-annual anniversary of the Closing Date.

(d) Fees Generally. All fees payable hereunder will be payable in U.S. dollars in immediately available funds to the Administrative Agent or as directed by the Lenders, free and clear of, and without deduction for, any and all present or future applicable taxes, levies, imposts, deductions, charges or withholdings and all liabilities with respect thereto; provided, that if the Borrower determines, in its reasonable discretion exercised in good faith, that it is required to withhold Taxes under applicable Laws, then the Borrower may so withhold and shall timely pay the full amount of withheld Taxes to the relevant Governmental Authority in accordance with applicable Laws, and if such Taxes are Indemnified Taxes, then the amount payable by the Borrower shall be increased as necessary so that, net of such withholding (including such withholding applicable to additional amounts payable under this Section 2.07), the payee receives the amount it would have received had no such withholding been made. Once paid, no fee will be refundable under any circumstances and will not be subject to counterclaim setoff or otherwise affected.

2.08 Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate. All computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.10(a), bear interest for one day. Each determination by the Lenders of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.09 Evidence of Debt. The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto.

2.10 Payments Generally; Administrative Agent's Clawback.

(a) General. All payments to be made by the Loan Parties shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Loan Parties hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 12:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage in respect of the Facility (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 12:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by any Loan Party shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected on computing interest or fees, as the case may be.

(b) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(c) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Loans and to make payments pursuant to Section 11.04(c) are several and not joint. The failure of any Lender to make any Loan or to make any payment under Section 11.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 11.04(c).

(d) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(e) Insufficient Funds. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) first, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, toward payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

2.11 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (x) Obligations in respect of the Facility due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Facility due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations in respect of the Facility due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (y) Obligations in respect of any of the Facility owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Facility owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payment on account of the Obligations in respect of the Facility owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations in respect of the Facility then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided that:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (A) any payment made by any Loan Party pursuant to and in accordance with the express terms of this Agreement or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to a Loan Party (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Loan Parties rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

ARTICLE III
TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes. For purposes of this Section 3.01, the term "applicable law" includes FATCA.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes. (i) Any and all payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document shall to the extent permitted by applicable Laws be made free and clear of and without reduction or withholding for any Taxes. If, however, applicable Laws require any Withholding Agent to withhold or deduct any Tax, including both United States Federal backup withholding and withholding Taxes, from any payment, then (A) the applicable Withholding Agent shall withhold or make such deductions as are reasonably determined by the Withholding Agent to be required, (B) the applicable Withholding Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with applicable Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the any Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent or any Lender, as the case may be, receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Loan Parties. Without limiting the provisions of subsection (a) above, the Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable Laws, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Tax Indemnifications. (i) Without limiting the provisions of subsection (a) or (b) above, the Loan Parties shall, and do hereby, jointly and severally, indemnify each Recipient, and shall make payment in respect thereof within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) withheld or deducted by any Withholding Agent or paid by or required to be withheld or deducted from a payment to such Recipient, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. The Loan Parties shall also, and do hereby, jointly and severally, indemnify each Agent, and shall make payment in respect thereof within ten (10) days after such demand therefor, for any amount which a Lender for any reason fails to pay indefeasibly to such Agent as required by clause (ii) of this subsection. A certificate as to the amount of any such payment or liability delivered to the Loan Parties by a Lender (with a copy to the Agents), or by an Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(ii) Without limiting the provisions of subsection (a) or (b) above, each Lender shall, and does hereby, severally indemnify the Agents, and shall make payment in respect thereof within ten (10) days after demand therefor, for (x) any Indemnified Taxes attributable to such Lender (but only to the extent that the Loan Parties have not already indemnified such Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (y) any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.06 relating to the maintenance of a Participant Register, and (z) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by an Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Each Lender hereby authorizes each Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to such Agent under this clause (ii). The agreements in this clause (ii) shall survive the resignation and/or replacement of the Agents, any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

(d) Evidence of Payments. As soon as practicable after any payment of Taxes by any Withholding Agent to a Governmental Authority as provided in this Section 3.01, the Loan Parties shall deliver to the Agents or the Agents shall deliver to the Loan Parties, as the case may be, a copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Loan Parties or the Agents, as the case may be.

(e) Status of Lenders; Tax Documentation. (i) Any Lender that is entitled to an exception from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Loan Parties and to the Agents, at the time or times prescribed by applicable Laws or when reasonably requested by the Loan Parties or the Agents, such properly completed and executed documentation prescribed by applicable Laws or by the taxing authorities of any jurisdiction and such other reasonably requested information as will permit the Loan Parties or the Agents, as the case may be, to make such payments without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Loan Parties or the Agents, shall deliver such other documentation prescribed by applicable Laws or reasonably requested by the Borrower or the Agents as will enable the Loan Parties or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in clauses (ii)(A) and (ii)(B) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, if any Loan Party is a "United States person" within the meaning of Section 7701(a)(30) of the Code,

(A) any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to the Loan Parties and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of a Loan Party or the Administrative Agent) executed copies of Internal Revenue Service Form W-9 certifying that such Lender is not subject to backup withholding tax; and

(B) each Foreign Lender that is entitled under the Code or any applicable treaty to an exemption from or reduction of withholding tax with respect to payments hereunder or under any other Loan Document shall deliver to the Loan Parties and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Loan Parties or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(I) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or

reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty,

(II) executed originals of Internal Revenue Service Form W-8ECI,

(III) to the extent a Foreign Lender is not the beneficial owner, executed originals of Internal Revenue Service Form W-8IMY and all required supporting documentation, or

(IV) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a "bank" within the meaning of section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of any Loan Party within the meaning of section 871(h)(3)(B) of the Code, or (C) a "controlled foreign corporation" related to any Loan Party described in section 881(c)(3)(C) of the Code and (y) executed originals of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of any other form prescribed by applicable Laws as a basis for claiming exemption from or a reduction in United States Federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Laws to permit the Loan Parties or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender shall promptly update any form or certification it previously delivered that expires or becomes or obsolete or inaccurate in any respect, or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(f) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.01 (including by the payment of additional amounts pursuant to this Section 3.01), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made

under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this subsection (f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this subsection (f), the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(g) Survival. Each party's obligations under this Section 3.01 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

3.02 Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;

(ii) subject any Lender to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender or such other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or such other Recipient, the Borrower will pay to such Lender or such other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender or such other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's and the policies of such Lender's holding company with respect to capital

adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Recipient to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Recipient's right to demand such compensation, provided that the Borrower shall not be required to compensate a Recipient pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Recipient notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Recipient's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

3.03 [Reserved].

3.04 [Reserved].

3.05 [Reserved].

3.06 Survival. All of the Loan Parties' obligations under this Article III shall survive termination of the Commitments, repayment of all other Obligations hereunder, and resignation of the Administrative Agent.

ARTICLE IV
CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

4.01 Conditions to the Closing Date. The obligation of each Lender to make its initial Loans hereunder, including the deemed funding of the Roll-Up Loans pursuant to Section 2.01(c) is subject to satisfaction of the following conditions precedent:

(a) Each Lender's receipt of the following, each of which shall be originals or copies (followed promptly by originals) unless otherwise specified, each properly executed by the Chief Restructuring Officer of the signing Loan Parties, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to each of the Lenders:

(i) executed counterparts of this Agreement;

(ii) a Note executed by the Borrower in favor of each Lender requesting a Note;

(iii) duly executed counterparts of each other Loan Document, if any, together with:

(A) confirmation that the Collateral Agent is in receipt of all certificates representing the Pledged Equity accompanied by undated stock or membership interest

powers executed in blank and instruments evidencing any Pledged Debt pursuant to Section 12.01 indorsed in blank,

(B) confirmation that the Administrative Agent has received acknowledgement copies of proper financing statements duly filed on or before the Closing Date under the Uniform Commercial Code of all jurisdictions that the Lenders may deem necessary or desirable in order to perfect the Liens created pursuant to the DIP Orders and/or hereunder;

(C) results of searches or other evidence reasonably satisfactory to the Lenders (in each case dated as of a date reasonably satisfactory to the Lenders), and

(D) evidence of the completion of all other actions, recordings and filings of or with respect to this Agreement that the Lenders may deem necessary or desirable in order to perfect the Liens created pursuant to the DIP Orders and/or hereunder;

(iv) certificates executed by the Chief Restructuring Officer of each Loan Party (i) attaching such documents and certifications as the Lenders may reasonably require to evidence that such Loan Party is duly organized or formed, including without limitation the Organization Documents for such Loan Party, and that such Loan Party is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification; (ii) attaching resolutions or other action authorizing the actions of such Loan Party under the Loan Documents; and (iii) evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as the Chief Restructuring Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party;

(v) a certificate executed by the Chief Restructuring Officer of the Loan Parties certifying that all governmental and third-party consents, licenses and approvals, if any, necessary in connection with the DIP Facility, the operation of each Debtors' business and the Transactions hereunder have been obtained and remain in effect;

(vi) a certificate executed by the Chief Restructuring Officer of the Loan Parties certifying (A) that the conditions specified in Sections 4.02(a) and (b) have been satisfied, and (B) since the Petition Date, no change, occurrence or development shall have occurred or become known to the Loan Parties that has had or could reasonably be expected to have a Material Adverse Effect;

(vii) such other assurances, certificates, documents or consents as any Lender reasonably may require.

(b) [Reserved];

(c) [Reserved].

(d) The Lenders shall have received the Loan Parties' initial 13-week cash flow forecast setting forth the projected receipts, disbursements (including all restructuring costs and expenses (including professional fees) and on a line item basis) and net operating cash flow of the Loan Parties on a week-by-week basis (the "Initial DIP Budget") in form and substance acceptable to the Lenders in their sole discretion, certified by the Chief Restructuring Officer of the Loan Parties, certifying that the projections therein have been prepared in good faith based on reasonable assumptions, and that such projections contain

no statements or conclusions (and there are no omissions of information) which are based upon or include information known to the Loan Parties to be misleading in any material respect or which fail to take into account information known to the Loan Parties regarding materials reported therein.

(e) (i) All fees required to be paid to the Administrative Agent, Collateral Agent and the Lenders on or before the Closing Date, shall have been paid.

(f) The Loan Parties shall have paid all reasonable and documented fees, charges and disbursements of counsel to the Lenders, the Collateral Agent and the Administrative Agent (directly to such counsel if requested by the Lenders, the Collateral Agent or Administrative Agent) to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Loan Parties and the Administrative Agent, Collateral Agent and/or the Lenders).

(g) The Collateral Agent shall have a valid first priority perfected Lien on the Collateral, subject only to the Carve-Out and the Prepetition Priority Liens.

(h) Each Lender, the Collateral Agent and the Administrative Agent shall have received, to the extent applicable, not less than five (5) days prior to the Closing Date, all documentation and other information that the Administrative Agent requests in order to comply with requirements of Anti-Money Laundering Laws, including, without limitation, the USA PATRIOT Act and any applicable "know your customer" rules and regulations.

(i) Bankruptcy Matters.

(i) Entry of Interim DIP Order. The Bankruptcy Court shall have approved and entered the Interim DIP Order no later than three (3) Business Days after the Petition Date, in form and substance satisfactory to the Lenders in their sole discretion (and with respect to any provisions that affect the rights or duties of any Agent, such Agent). The Interim DIP Order shall not have been reversed, stayed or vacated and shall have not been amended, supplemented or otherwise modified absent prior written consent of the Lenders or subject to any motion for reversal, modifications, amendment, appeal, leave to appeal, or stay; *provided* that no Lender shall be required to fund any Borrowing to the extent that the Interim DIP Order does not approve the Roll-Up that is to be consummated pursuant to Section 2.01(c)(i).

(ii) Cash Management. The Loan Parties shall have established or shall maintain cash management systems acceptable to the Lenders and if requested by the Lenders, the entry by the Bankruptcy Court of a Cash Management Order shall be a condition to the funding by the Lenders of the initial Loan hereunder. To the extent a Cash Management Order has been entered by the Bankruptcy Court prior to the Closing Date, the Loan Parties shall have taken all steps necessary to comply with such Cash Management Order. Any Cash Management Order shall not have been reversed, stayed or vacated and shall have not been amended, supplemented or otherwise modified absent prior written consent of the Lenders or subject to any motion for reversal, modifications, amendment, appeal, leave to appeal, or stay.

(iii) First Day Pleadings and First Day Orders. All "first day" orders shall have been entered by the Bankruptcy Court, each in form and substance acceptable to the Lenders in their sole discretion, and no such "first day" order shall have been amended or supplemented in any manner that could be adverse to the Agents' or the Lenders' interests or be inconsistent, in an material

respect, with the terms hereof or with the Interim DIP Order unless such amendment or supplement shall have been approved in advance in writing by the Lenders.

(iv) Special Committee. Each Loan Party shall have appointed a special committee (each, a "Special Committee") comprised solely of Independent Directors and any other Person acceptable to the Lenders, in each case, pursuant to resolutions approved by and acceptable to the Lenders (each, a "Special Committee Consent").

(v) Retention Agreements. Subject to Bankruptcy Court approval, the Loan Parties shall have engaged the Chief Restructuring Officer and the Investment Banker, in each case pursuant to an engagement agreement approved by and acceptable to the Lenders.

Without limiting the generality of the provisions of Section 9.06, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

4.02 Conditions to all Credit Extensions. The obligation of each Lender to honor any Committed Loan Notice is subject to the following conditions precedent:

(a) The representations and warranties of each Loan Party contained in Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to the extent that any representation or warranty is already qualified or modified by materiality or subject to any dollar threshold in the text thereof) on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in Sections 5.05(a) and (b) shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and (b), respectively.

(b) No Default or Event of Default shall exist or would result from such proposed Credit Extension or from the application of the proceeds thereof and the making of such Credit Extension shall not violate any requirement of Law and shall not be enjoined, temporarily, preliminarily or permanently.

(c) The making of such Credit Extension shall not violate any requirement of law and shall not be enjoined, temporarily, preliminarily or permanently.

(d) Except with respect to the Roll-Up Loans deemed funded pursuant to Section 2.01(c), the Administrative Agent shall have received a Committed Loan Notice in accordance with the requirements hereof.

(e) With respect to any Credit Extension requested after the Final Order Entry Date, the Final DIP Order (i) shall have been entered on the docket of the Bankruptcy Court on the date that is on or before twenty-eight (28) calendar days after the Petition Date, (ii) shall be in full force and effect and shall not have been vacated, stayed, reversed, overturned or modified in any respect without the written consent of the Lenders in their sole discretion, and shall not have been reversed, stayed or vacated and shall have not been amended, supplemented or otherwise modified absent prior written consent of the Lenders or subject to any motion for reversal, modifications, amendment, appeal, leave to appeal, or stay, and (iii) shall approve the Roll-Up.

(f) The Loan Parties shall demonstrate with respect to each Borrowing pro forma compliance with the DIP Budget for such period (subject to any Allowed Variance) after giving effect to such Borrowing.

(g) No trustee, examiner, or receiver shall have been appointed or designated with respect to the Loan Parties' business, properties or assets and the Bankruptcy Court shall not have entered any order granting any party, other than the Loan Parties and the Agents, control over any Collateral.

(h) The RSA shall be in full force and effect and no default by any of the Loan Parties shall have occurred and be continuing (with all applicable grace periods having expired) under the RSA, except as otherwise waived in accordance with the terms thereof.

Each Committed Loan Notice submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

Each Loan Party represents and warrants to the Administrative Agent and the Lenders that:

5.01 Existence, Qualification and Power. Each Loan Party (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party and consummate the Transaction subject to the entry of the DIP Orders, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. No Loan Party is an EEA Financial Institution.

5.02 Authorization; No Contravention. Subject to the entry of the DIP Orders, the execution, delivery and performance by each Loan Party of each Loan Document to which such Loan Party is or is to be a party have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Loan Party's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation (other than any applicable anti-assignment provisions in effect as of the Petition Date) to which such Loan Party is a party or affecting such Loan Party or the properties of such Loan Party or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Loan Party or its property is subject; or (c) violate any Law.

5.03 Governmental Authorization. Subject to the entry of the DIP Orders, no approval, consent, exemption, authorization, or other action by, or notice to, or filing with (other than the filings required by the Loan Documents and the DIP Orders), any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document or for the consummation of the Transactions, (b) the grant by any Loan Party of the Liens granted by it pursuant to Article XII hereof, (c) the perfection or maintenance of the Liens created pursuant to Article XII hereof (including the first priority nature thereof, subject only to the Carve-Out, the Prepetition Priority Liens, and Liens permitted under clause (g) of Permitted Liens) or (d) the exercise by the Agents or any Lender of its rights under the Loan Documents or

the remedies in respect of the Collateral pursuant to Article XII hereof, except for the Required Approvals listed on Part I of Schedule 5.03, all of which have been duly obtained, taken, given or made and are in full force and effect, and each Required Approval listed in Part II of Schedule 5.03 is not required to be obtained until after the Closing Date, and such Required Approvals can be obtained when required without material expense or for aggregate fees and costs not exceeding the amounts budgeted therefor in the DIP Budget other than an Allowed Variance.

5.04 Binding Effect. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to the entry of the DIP Orders and further subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally, including the Cases, and further subject to general principles of equity regardless of whether considered in a proceeding in equity or at law.

5.05 Financial Statements; No Material Adverse Effect.

(a) [Intentionally Omitted.].

(b) Since the Petition Date, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(c) The pro forma balance sheet of each Loan Party as at November 30, 2023, and the related pro forma combined statements of income and cash flows of such Loan Party for the thirteen weeks then ended, certified by the Chief Restructuring Officer of the Loan Parties, copies of which have been furnished to the Administrative Agent and each Lender, fairly present the pro forma combined financial condition of the Loan Parties as at such date and the consolidated pro forma combined results of operations of the Loan Parties for the period ended on such date, in each case giving effect to the Transaction, all in accordance with GAAP.

(d) Each DIP Budget was prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair in light of the conditions existing at the time of delivery of such DIP Budget, and represented, at the time of delivery, the Loan Parties' good faith estimate of its future financial condition and performance.

5.06 Litigation. Other than the Cases and as set forth on Schedule 5.06, there are no actions, suits, investigations or proceedings pending or threatened against or affecting any Loan Party or any property of any Loan Party, including the Project, in any court or before any arbitrator of any kind or before or by any Governmental Authority that (x) could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or (y) or that questions the validity of any of the Transaction Documents.

5.07 No Default. No Loan Party is (a) in "Default" or "Event of Default" under the Loan Documents, (b) in default under any material agreement or instrument to which it is a party or by which it is bound (excluding the Material Project Documents which are addressed in Section 5.21), which has not been waived or cured within any applicable notice and cure period, (c) in default or in violation of any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority in any material respect, or (d) in violation of any applicable law, ordinance, rule or regulation (including without limitation the USA PATRIOT Act but excluding Environmental Laws which are addressed in Section 5.09) of any Governmental Authority in any material respect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by the Agreement or any other Loan Document.

5.08 Ownership of Property; Liens; Leases; Investments.

(a) The Loan Parties have good and sufficient title to their respective properties that individually or in the aggregate are material to its business, in each case free and clear of Liens other than Permitted Liens and other Liens permitted under Section 7.01.

(b) Schedule 5.08(b) sets forth a complete and accurate list of all Liens on the property or assets of each Loan Party on the date hereof (other than the Liens in favor of the Collateral Agent securing the Obligations hereunder), including the Prepetition Priority Liens to the extent identified as such, showing as of the date hereof the lienholder thereof, the principal amount of the obligations secured thereby and the property or assets of such Loan Party subject thereto. Each Loan Party is subject to no Liens, other than Liens set forth on Schedule 5.08(b), and as otherwise permitted by Section 7.01.

(c) Subject to Section 6.14 and except as set forth on Schedule 5.08(c), each Loan Party has good, valid, marketable and indefeasible fee simple (in the case of the Borrower) or leasehold (in the case of the Guarantor) and easement interests in the Project and the improvements thereon and the portions of its Project that constitute real property, and other real property rights and interest necessary for the construction, ownership, operation and maintenance of its Project, in each case free and clear of Liens (other than Permitted Liens and other Liens permitted under Section 7.01). The Site Lease is valid and subsisting and in full force and effect and has not been terminated. The real property interests, easements and other rights of each Loan Party set forth in the applicable Title Policy and encumbered by the applicable Prepetition Senior Secured Note Document and the Loan Documents:

(i) Except as set forth on Schedule 5.08, comprise all of the real property interests necessary to secure any right required with respect to (1) the use, operation or maintenance of its Project in accordance with all requirements of law, including all Required Approvals, and (2) the generation, transmission and sale of energy generated by its Project up to the point of interconnection with the electric grid in accordance with all requirements of law, including all Required Approvals;

(ii) Except as set forth on Schedule 5.08(c), are sufficient to enable its Project to be located, used, operated and routinely maintained on its Site through December 31, 2028; and

(iii) provide adequate ingress and egress for any reasonable purpose in connection with the use, leasing, operation and routine maintenance of its Project through December 31, 2028.

(d) [reserved].

(e) [reserved].

(f) There are no gas, oil or mineral rights with respect to the Project, the exercise of which could interfere with the Loan Parties' use of the Project.

(g) Schedule 5.08(g) sets forth a complete and accurate list of all Investments held by any Loan Party on the date hereof, showing as of the date hereof the amount, obligor or issuer and maturity, if any, thereof.

5.09 Environmental Matters.

(a) There is no Environmental Claim and there is no pending proceeding that has been instituted raising any Environmental Claim, in each case, against any Loan Party or the Site, alleging any

damage to the environment or violation of any Environmental Laws that could, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(b) There are no facts which would give rise to any Environmental Claim, public or private, of violation of Environmental Laws or damage to the environment emanating from, occurring on or in any way related to the Site that could, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(c) Except to the extent that could not reasonably be expected to result in a Material Adverse Effect, no Loan Party has stored any Hazardous Materials on its Site or has disposed of any Hazardous Materials in a manner contrary to any Environmental Laws.

(d) All buildings on the Site (if any) are in compliance with applicable Environmental Laws, except to the extent that failure to be in compliance could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(e) No Lien has been recorded pursuant to any Environmental Law with respect to the Site.

(f) To the extent available, the Loan Parties have provided to the Lenders copies of all environmental audits, reports, assessments, Required Approvals obtained pursuant to Environmental Laws, and any other material environmental document related to the Project or the Site.

(g) [Reserved].

(h) There is no aboveground or underground storage tankage regulated under applicable law that is not described in an application for an Approval.

(i) Emissions associated with the Project will be not aggregated with the emissions from other sources under applicable laws.

(j) The Project, as built and operated, includes no sources of air emissions that are not specifically identified in the relevant application for Approval.

(k) No navigable waters or waters of the United States, as defined under applicable law or described by judicial authority are present on the Site that are not reflected on the most recent National Wetlands Inventory Map, and the construction and operation of the will not involve the discharge of fill into any such waters.

(l) No species or habitat of a species listed as endangered or threatened under applicable law will be affected by the operation of the Project and is present on the Site.

(m) No sites listed on or eligible for listing on the National Register of Historic Places, or otherwise having historical, archeological or cultural significance, are present at the Site.

5.10 Insurance. The properties of the Loan Parties are insured with financially sound and reputable insurance companies not Affiliates of the Loan Parties, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where such Loan Party operates.

5.11 Taxes. The Loan Parties have filed all tax returns that are required to have been filed in any jurisdiction, and, other than as set forth on Schedule 5.11 which amounts are included for payment in

the Initial DIP Budget, have paid all Taxes shown to be due and payable on such returns and all other Taxes and assessments levied upon any Loan Party or their respective properties, assets, income or franchises, to the extent such Taxes and assessments have become due and payable and before they have become delinquent, except for any Taxes and assessments the amount, applicability or validity of which is currently being contested in good faith by appropriate proceedings without thereby incurring any material risk of the imposition or enforcement of any Lien and with respect to which such Loan Party has established adequate reserves in accordance with GAAP. No Loan Party knows of any basis for any other Tax or assessment or has received written notice from a taxing authority or other Governmental Authority regarding a proposed assessment of Taxes against any Loan Party that could reasonably be expected to have a Material Adverse Effect.

5.12 Organization and Ownership of Interests in Borrower; Affiliates; Officers; No Subsidiaries.

(a) Schedule 5.12(a) contains a complete and correct list and description of (i) each holder of Equity Interests issued by each Loan Party, and (ii) each Loan Party's directors, managers, and officers, as applicable.

(b) Set forth on Schedule 5.12(b) is a complete and accurate list of each Loan Party, showing as of the Closing Date, the jurisdiction of its incorporation, the address of its principal place of business and its U.S. taxpayer identification number.

(c) The limited liability company membership interests of each Loan Party are validly issued, are fully paid and nonassessable and are owned solely by the Persons set forth on Schedule 5.12(a) hereto free and clear of any Lien (except the Prepetition Priority Liens).

(d) The Loan Parties do not own any Equity Interests in any Person.

5.13 Margin Regulations; Status under Certain Statutes.

(a) No Loan Party is engaged, nor will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock, and is not otherwise engaged and will not otherwise engage in any activity in violation of Regulations T, U or X issued by the FRB.

(b) No Loan Party is an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended, or an "investment adviser" within the meaning of the Investment Advisers Act of 1940, as amended.

(c) Each Material Project Document is effective pursuant to the terms thereof and has received all approvals, authorizations, and acceptances required to be effective from every applicable Governmental Authority.

(d) Each Loan Party is in compliance with all and are not in violation of any applicable requirements and rules of FERC, including but not limited to all requirements applicable to any Loan Party under Section 215 of the FPA. No Loan Party requires permission or authorization from, or is required to deliver any notice to, FERC in order to execute and deliver the Transaction Documents to which it is a party or to enter into and perform the transactions contemplated thereby.

(e) Solely as a result of the execution and delivery of the Loan Documents and the entering into and performance of the Transactions contemplated thereby, none of the Secured Parties nor any Affiliates thereof shall become subject to, or not exempt from, regulation either by the FERC (under either of the FPA or PUHCA), except by the exercise by the Secured Parties of certain remedies allowed under the Loan Documents. No prior authorization, approval, registration, filing, or notice by or with any Governmental Authority is required for the execution and delivery of any Loan Documents and the granting of the Liens under the Loan Documents, or the performance of payment obligations under any Loan Documents.

5.14 Disclosure. Each Loan Party has disclosed to the Lenders all agreements, instruments and corporate or other restrictions to which it is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information, including any DIP Budget, furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case as modified or supplemented by other information so furnished) contains any material misstatement of fact or, when taken as a whole, omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; provided that, with respect to projected financial information, other forward-looking information and information of a general economic or general industry nature, each Loan Party represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being understood that such projected financial information is not to be viewed as facts and that the actual results may vary materially from such projected financial information).

5.15 [Reserved].

5.16 Licenses, Permits, Etc. Except as set forth in Part II of Schedule 5.03 and Part II of Schedule 5.21:

(a) The Loan Parties own or possess all licenses, permits, franchises, authorizations, patents, copyrights, proprietary software, service marks, trademarks and trade names, or rights thereto, that individually or in the aggregate are material to the construction and operation of the Project, without known conflict with the rights of others.

(b) No product or service of any Loan Party infringes in any material respect any license, permit, franchise, authorization, patent, copyright, proprietary software, service mark, trademark, trade name or other right owned by any other Person.

(c) There is no violation by any Person of any right of any Loan Party with respect to any material license, permit, franchise, authorization, patent, copyright, proprietary software, service mark, trademark, trade name or other right owned or used by such Loan Party.

5.17 Casualty, Etc. Neither the businesses nor the properties of any Loan Party are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.18 Labor Relations; Force Majeure Events; Access to Utilities. No strike, slowdown or stoppage is pending or, to any Loan Party's knowledge after due inquiry, threatened, against any Loan Party, their contractors or the Project. None of any Loan Party or the Project or any other Project Party has suffered any Force Majeure Event that is continuing. All utility services (including electricity) necessary

for the construction, development, ownership, operation and maintenance of Project for its intended purposes are available at the applicable Site or can reasonably be expected to be commercially available as and when required upon commercially reasonable terms and consistent with the schedule and budget for the Project.

5.19 Use of Proceeds. The proceeds of the Loans will be used exclusively to pay expenditures set forth in the DIP Budget, expressly permitted by the DIP Orders and by Sections 6.11 and 7.20 of this Agreement.

5.20 Compliance with ERISA.

(a) Either (i) each Loan Party and each of its ERISA Affiliates (A) do not maintain, contribute to or are obligated to maintain or contribute to, any Plans and (B) are not, or have not ever been at any time within the past six years, a "party in interest" (as defined in section 3(14) of ERISA) or a "disqualified person" (as defined in section 4975 of the Code) with respect to any Plan or (ii) each Loan Party and each of its ERISA Affiliates have operated and administered each Plan in compliance in all material respects with all applicable laws. No Loan Party nor any of its ERISA Affiliates has incurred any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans (as defined in section 3 of ERISA), and no event, transaction or condition has occurred or exists that could, individually or in the aggregate, reasonably be expected to result in the incurrence of any such liability by any Loan Party or any of its ERISA Affiliates, or in the imposition of any Lien on any of the rights, properties or assets of any Loan Party or any of its ERISA Affiliates, in either case pursuant to Title I or IV of ERISA or to section 430(k) of the Code or to any such penalty or excise tax provisions under the Code or federal law or section 4068 of ERISA or by the granting of a security interest in connection with the amendment of a Plan, other than such liabilities or Liens as would not be individually or in the aggregate material.

(b) Either (i) each Loan Party and each of its ERISA Affiliates (A) do not maintain, contribute to or are obligated to maintain or contribute to, any Plans and (B) are not, or have not ever been at any time within the past six years, a "party in interest" (as defined in section 3(14) of ERISA) or a "disqualified person" (as defined in section 4975 of the Code) with respect to any Plan or (ii) the present value of the aggregate benefit liabilities under each of the Plans (other than Multiemployer Plans), determined as of the end of such Plan's most recently ended plan year on the basis of the actuarial assumptions specified for funding purposes in such Plan's most recent actuarial valuation report, did not exceed the aggregate current value of the assets of such Plan allocable to such benefit liabilities. The term "benefit liabilities" has the meaning specified in section 4001 of ERISA and the terms "current value" and "present value" have the meaning specified in section 3 of ERISA.

(c) Each Loan Party and its ERISA Affiliates, if any, have not incurred withdrawal liabilities (and are not subject to contingent withdrawal liabilities) under section 4201 or 4204 of ERISA in respect of Multiemployer Plans.

(d) [Reserved].

(e) The execution and delivery of this Agreement and the extensions of credit hereunder will not involve any transaction that is subject to the prohibitions of section 406 of ERISA or in connection with which a tax could be imposed pursuant to section 4975(c)(1)(A)-(D) of the Code.

5.21 Material Project Documents. The Material Project Documents listed on Schedule 5.21 constitute and include all contracts and agreements that are material to the ownership, operation and maintenance of the Project and the generation, transmission and sale of energy generated by the Project,

other than contracts for consumables and non-material services that are readily available and do not involve material expense. Each Material Project Document identified on Part I of Schedule 5.21 is in full force and effect. Each Material Project Document listed in Part II of Schedule 5.21 is not required to be obtained until after the Closing Date and shall be subject to the advance approval of the Lenders. Other than defaults disclosed in writing to the Lenders prior to the date hereof that existed as of the Petition Date, no Loan Party is in default under any of the Material Project Documents as described in Schedule 5.21, nor has an event or omission occurred which with the giving of notice or lapse of time, or both, would constitute a default by any Loan Party, under any of the Material Project Documents.

5.22 Bank Accounts. The account numbers, names of the applicable financial institutions, and locations of all bank accounts, deposit accounts, and securities accounts of the Loan Parties are set forth on Schedule 5.22 hereto, which Schedule identifies all such accounts (if any) used as tax accounts or payroll accounts.

5.23 Collateral. The Collateral, as described in the Loan Documents, as applicable, includes all of the real and personal property of each Loan Party (other than those items of property specifically excluded as Collateral by the terms thereof in such Loan Documents) and constitutes all assets reasonably necessary for the operation and maintenance of the Project. The security interests in the Collateral granted to the Collateral Agent (for the benefit of the Secured Parties) pursuant to the Loan Documents: (a) constitute as to personal property included in the Collateral and, with respect to subsequently acquired personal property included in the Collateral, will constitute, upon entry of the DIP Orders, a perfected first-priority security interest and Lien (subject in priority only to the Carve-Out and the Prepetition Priority Liens), and (b) upon entry of the DIP Orders, are, and, with respect to such subsequently acquired property, will be, as to Collateral perfected pursuant to the DIP Orders, superior and prior to the rights of all third Persons now existing or hereafter arising whether by way of mortgage, Lien, security interests, encumbrance, assignment or otherwise (subject in priority only to the Carve-Out and the Prepetition Priority Liens). Subject to entry of the DIP Orders, all action as is necessary has been taken to establish and perfect the Collateral Agent's rights in and to, and the first lien priority (subject in priority only to the Carve-Out and the Prepetition Priority Liens) of its Lien on, the Collateral for the benefit of the Secured Parties. The applicable DIP Order has been entered by the required date hereunder and, upon such entry, shall be effective to create and perfect the Lien and security interest described above and with the priority thereof.

5.24 Foreign Assets Control Regulations, Etc.

(a) No Loan Party nor any Controlled Entity (i) is a Blocked Person, (ii) has been notified that its name appears or may in the future appear on a State Sanctions List or (iii) is a target of sanctions that have been imposed by the United Nations or the European Union.

(b) No Loan Party nor any Controlled Entity (i) has violated, been found in violation of, or been charged or convicted under, any applicable U.S. Economic Sanctions Laws, Anti-Money Laundering Laws or Anti-Corruption Laws or (ii) to the Loan Parties' knowledge after due inquiry, is under investigation by any Governmental Authority for possible violation of any U.S. Economic Sanctions Laws, Anti-Money Laundering Laws or Anti-Corruption Laws.

(c) No proceeds of any Credit Extension have been used, directly or indirectly, by any Loan Party or an of their respective directors, officers, employees and agents that:

(i) constitutes or will constitute funds obtained on behalf of any Blocked Person or will otherwise be used by the Loan Parties or any Controlled Entity, directly or indirectly, (A) in connection with any investment in, or any transactions or dealings with, any Blocked Person, (B)

for any purpose that would cause any Secured Party to be in violation of any U.S. Economic Sanctions Laws or (C) otherwise in violation of any U.S. Economic Sanctions Laws;

(ii) will be used, directly or indirectly, in violation of, or cause any Secured Party to be in violation of, any applicable Anti-Money Laundering Laws;

(iii) will be used, directly or indirectly, for the purpose of making any improper payments, including bribes, to any Governmental Authority or commercial counterparty in order to obtain, retain or direct business or obtain any improper advantage, in each case which would be in violation of, or cause any Secured Party to be in violation of, any applicable Anti-Corruption Laws; or

(iv) will be in violation of Section 7.10.

ARTICLE VI
AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification obligations for which no claim shall have then been asserted), each Loan Party shall:

6.01 Financial Statements. Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Lenders:

(a) as soon as available, but in any event within ninety (90) days after the end of each fiscal year of the Loan Parties, (i) an unaudited balance sheet of Borrower and Guarantor as at the end of such year and (ii) an unaudited statement of income, profit and loss statement and cash flows statement for each Loan Party for such year, in each case, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP, or accompanied by GAAP reconciliations;

(b) as soon as available, but in any event within forty-five (45) days after the end of each quarterly fiscal period in each fiscal year of the Loan Parties, (i) an unaudited balance sheet of each Loan Party as at the end of such quarter and (ii) an unaudited profit and loss statement and cash flows statement for each Loan Party for such quarter and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter, in each case, setting forth in each case in comparative form the figures for the corresponding periods in the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP applicable to quarterly financial statements generally, or accompanied by GAAP reconciliations, and certified by the Chief Restructuring Officer of the Loan Parties as fairly presenting the financial position and results of operations and cash flows of the Loan Parties, subject to changes resulting from year-end adjustments and the absence of footnotes;

(c) [reserved],

(d) DIP Budget. No later 5:00 p.m. on Thursday of each week (commencing on the second Thursday following the Petition Date), a proposed DIP Budget for the following rolling 13-week period (the "Proposed DIP Budget"), which shall be consistent in form and subject (other than dollar amounts) with the Initial DIP Budget, and that shall be subject to the approval of the Lenders in their sole discretion. If such Proposed DIP Budget is approved it shall then become the "DIP Budget" then in effect; provided, however, that if such Proposed DIP Budget is not approved by the Lenders, then the last approved DIP

Budget will be rolled forward on a week-to-week basis. Such Proposed DIP Budget shall be certified by the Chief Restructuring Officer as being accurate in all material respects and shall include:

(i) an updated thirteen week cash flow forecast setting forth all sources and uses of cash and beginning and ending cash balances, and with a reasonable disclosure of the key assumptions and drivers with respect to such forecast, and a written update regarding material operational, business and financial developments relating the Loan Parties,

(ii) a cash balance report showing the aggregate cash balance amount held in all accounts of the Loan Parties as of close of business on Friday of the prior week (such report as of any date, the "Cash Balance Report"),

(iii) a variance report reconciling the most recent DIP Budget for the prior week (or, in the case of the initial such report, for the prior two week period) to the actual sources and uses of cash for such prior period on an aggregate basis, along with a line-by-line reconciliation and detailed explanation of variances in excess of the greater of 10% and $20,000 from such DIP Budget (the "Variance Report"), in each case, in form and detail acceptable to the Lenders and certified by the Chief Restructuring Officer of the Loan Parties and that the Variance Report is in compliance with Section 7.23; and

(iv) such other information as any Agent or any Lender may reasonably request.

6.02 Certificates; Notices; Other Information. Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Lenders:

(a) promptly upon becoming available, one copy of each regular or periodic report and filing (without exhibits except as expressly requested by a Lender) made by any Loan Party to or with any State or federal regulatory body;

(b) promptly, and in any event within five Business Days after the Chief Restructuring Officer of any Loan Party becoming aware of the existence of any Default or Event of Default or that any Person has given any notice or taken any action with respect to a claimed default hereunder or that any Person has given any notice or taken any action with respect to a claimed default of the type referred to in Section 8.01(e) or Section 8.01(k), a written notice specifying the nature and period of existence thereof and what action the Loan Parties are taking or proposes to take with respect thereto;

(c) [reserved];

(d) promptly, and in any event within 5 Business Days after the Chief Restructuring Officer becoming aware of any of the following, a written notice setting forth the nature thereof and the action, if any, that the Loan Parties or an ERISA Affiliate proposes to take with respect thereto:

(i) with respect to any Plan, any reportable event, as defined in section 4043(c) of ERISA and the regulations thereunder, for which notice thereof has not been waived pursuant to such regulations as in effect on the date hereof; or

(ii) the taking by the PBGC of steps to institute, or the threatening by the PBGC of the institution of, proceedings under section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or the receipt by any Loan Party or any ERISA Affiliate of a notice from a Multiemployer Plan that such action has been taken by the PBGC with respect to such Multiemployer Plan; or

(iii) any event, transaction or condition that could reasonably be expected to result in the incurrence of any liability by any Loan Party or any ERISA Affiliate pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans (within the meaning of section 3(3) of ERISA), or in the imposition of any Lien on any of the rights, properties or assets of any Loan Party or any ERISA Affiliate pursuant to Title I or IV of ERISA or such penalty or excise tax provisions, if such liability or Lien, taken together with any other such liabilities or Liens then existing, could reasonably be expected to have a Material Adverse Effect.

(e) promptly, and in any event within five (5) Business Days of receipt thereof, copies of any material notice to any Loan Party from any federal or State Governmental Authority;

(f) [reserved],

(g) promptly, and in any event within thirty (30) days after the end of each month after the Closing Date, a monthly operating report with respect to the Project in the form acceptable to the Lenders;

(h) promptly, and in any event within thirty (30) days of the end of each fiscal year of the Loan Parties, commencing with the fiscal year ending December 31, 2024, and upon the reasonable request of the Lenders, evidence of insurance in effect that meets the requirements of Section 6.07;

(i) promptly, and in any event within two (2) Business Days of receipt thereof, copies of any certificates, reports or other documentation delivered by Borrower to the holders of the Prepetition Subordinated Loan Documents in connection with the Prepetition Subordinated Loan Agreement;

(j) promptly, such additional information regarding the business, financial, legal or corporate affairs of any Loan Party, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request;

(k) promptly, and in any event within two (2) Business Days of receipt thereof, copies of any material documentation or notices received under or with respect to the Prepetition Indebtedness or the Prepetition Subordinated Debt not otherwise provided to the Administrative Agent under this Agreement and/or the other Loan Documents;

(l) promptly, and in any event within two (2) Business Days after any delivery thereof, copies of all material written reports and presentations delivered by or on behalf of any Loan Party to a Committee, if any, or any other party in interest in the Cases that have not been filed publicly on the Bankruptcy Court's docket within such period;

(m) promptly, and in any event within five (5) Business Days of receipt (or knowledge) thereof:

(i) any press releases and other public statements about the Project made available generally by the Loan Parties;

(ii) notice of the occurrence of any condition or event that could reasonably result in a Material Adverse Effect;

(iii) copies of any notice of or other correspondence regarding a violation, breach or event of default under any Material Project Document;

(iv) any actual termination or rescission or any written threat of termination or rescission of any Material Project Document or Material Contract, any notice of exercise of a right

of termination or suspension of a Material Project Document or Material and any proposed amendment or final amendment of any Material Project Document or Material Contract, and any other material written notice or other written communication delivered by or to any Loan Party relative to any Material Project Document or Material Contract;

(v) notice of any material pending or threatened adversarial or contested proceeding of or before a Governmental Authority relating to the Project and any correspondence and documentation related thereto;

(vi) notice of any termination, suspension or other loss of any Required Approval; and

(vii) notice of any loss under or any claim of Force Majeure Event under any Material Project Document; and

(n) with reasonable promptness, such other data and information then in any Loan Party's possession relating to the business, operations, affairs, financial condition, assets or properties of any Loan Party or relating to the ability of any Loan Party to perform its obligations hereunder and under the Loan Documents (including the DIP Budget) as from time to time may be reasonably requested by any Lender.

6.03 Officer's Certificate. Each set of financial statements delivered to the Lenders pursuant to Section 6.01(a) or Section 6.01(b) shall be accompanied by a certificate of the Chief Restructuring Officer of the Loan Parties setting forth a statement that such Responsible Officer has reviewed the relevant terms hereof and has made, or caused to be made, under his or her supervision, a review of the transactions and conditions of the Loan Parties from the beginning of the annual or quarterly period covered by the statements then being furnished to the date of the certificate and that such review shall not have disclosed the existence during such period of any condition or event that constitutes a Default or an Event of Default or, if any such condition or event existed or exists (including, without limitation, any such event or condition resulting from the failure of any Loan Party to comply with any Environmental Law), specifying the nature and period of existence thereof and what action such Loan Party shall have taken or proposes to take with respect thereto.

6.04 Payment of Obligations. Subject to Section 7.23 and the DIP Orders, pay and discharge as the same shall become due and payable, all its obligations and liabilities constituting post-petition obligations that constitute administrative expenses in the Cases under the Bankruptcy Code or otherwise permitted to be paid (whether as ordinary course obligations or otherwise) or required to be paid pursuant to an effective order issued by the Bankruptcy Court, including (a) all tax liabilities (including sales tax), assessments and governmental charges or levies upon it or its properties or assets; (b) all lawful claims which, if unpaid, would by law become a Lien upon its property; and (c) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness; unless, in the case of clause (a) above or mechanics' Liens, materialmen's Liens or other similar Liens in the case of clause (b) above, the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by such Loan Party.

6.05 Preservation of Existence, Etc. Preserve and keep in full force and effect its limited liability company existence and maintain all rights, privileges and franchises necessary in the normal conduct of its business.Title, Etc. Maintain good, valid, marketable and insurable title to, or leasehold interests in, the Project and the other Collateral described in the Loan Documents, subject to Permitted Liens and other Liens permitted under Section 7.01, and will at all times warrant and defend the title to such property and

such Collateral against all claims that do not constitute Permitted Liens or other Liens permitted under Section 7.01.

6.07 Maintenance of Insurance. Maintain, with financially sound and reputable insurers, insurance meeting the requirements of Schedule 6.07.

6.08 Compliance with Laws. Comply in all material respects with all laws, ordinances or governmental rules or regulations to which it is subject, including, without limitation, ERISA, the USA PATRIOT Act and Environmental Laws. Each Loan Party will obtain and maintain in effect all licenses, certificates, permits, franchises and other governmental authorizations necessary to the ownership of their respective properties, the conduct of their businesses and the operation and financing of the Project, and will promptly pay when due all necessary license, franchise and other fees and charges due and payable thereunder (*provided* that the Loan Parties need not pay any such license, franchise and other fees and charges if (a) the amount, applicability or validity thereof is contested by such Loan Party on a timely basis in good faith and in appropriate proceedings, and such Loan Party has established adequate reserves therefor in accordance with GAAP on its books, (b) the nonpayment of all such license, franchise and other fees and charges during the pendency of such contest could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect), or (c) to the extent such payment is excused by, or is otherwise prohibited by the provisions of the Bankruptcy Code or order of the Bankruptcy Court.

6.09 Books and Records. Maintain proper books of record and accounts in conformity with GAAP and all applicable requirements of any Governmental Authority having legal or regulatory jurisdiction over such Loan Party.

6.10 Inspection Rights. At the expense of the Loan Parties, permit representatives of Administrative Agent or the Lenders to: (i) visit the principal executive office of each Loan Party and examine all their books of account, records, reports and other papers and make copies and extracts therefrom, (ii) discuss the affairs, finances and accounts of any Loan Party with such Loan Party's officers, directors and managers, and their independent public accountants and other professional advisors, and (iii) visit the other offices and properties of the Loan Parties; in each case, from time to time, with reasonable prior written notice to the Borrower and during normal business hours and subject to reasonable requirements of safety.

6.11 Use of Proceeds; Margin Regulations. Use the proceeds of the Credit Extensions hereunder solely for the purposes set forth in Section 5.19. No part of the proceeds of Loans will be used, directly or indirectly, for the purpose of buying or carrying any margin stock within the meaning of Regulation U of the Board of Governors of the Federal Reserve System (12 CFR 221), or for the purpose of buying or carrying or trading in any securities under such circumstances as to involve any Loan Party in a violation of Regulation X of said Board (12 CFR 224) or to involve any broker or dealer in a violation of Regulation T of said Board (12 CFR 220). As used in this Section, the terms "margin stock" and "purpose of buying or carrying" shall have the meanings assigned to them in Regulation U.

6.12 Material Project Documents. Subject to the DIP Orders, the DIP Budget and any necessary order or authorization of the Bankruptcy Court, (a) perform and observe in all material respects all of the terms, covenants, provisions and agreements of such Loan Party under the Material Project Documents, (b) perform and observe in all material respects all of the terms covenants, provisions and agreements of such Loan Party under all other material agreements to which it is a party, and (c) take reasonable actions to enforce all rights and obligations under the Material Project Documents and other agreements.

6.13 [Reserved].

6.14 Further Assurances. Promptly upon request by the Administrative Agent, or any Lender or the Collateral Agent through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by applicable law, subject any Loan Party's properties, assets, rights or interests to the Liens now or hereafter intended to be covered by this Agreement or the DIP Orders, (iii) perfect and maintain the validity, effectiveness and priority of any of the Liens intended to be created hereunder or under any of the DIP Orders and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party is or is to be a party. No Loan Party shall form or acquire or permit to exist any Subsidiary, whether direct or indirect. Each Loan Party shall take such additional actions as may be necessary or desirable to ensure a valid first priority perfected Lien over the assets of each Loan Party (subject only to the Carve-Out, the Prepetition Priority Liens, and Liens permitted under clause (g) of Permitted Liens) including filing a copy of the DIP Orders in the real property records in the county where the Project are located.

6.15 Additional Covenants. Each Loan Party shall comply with the covenants set forth on Annex III.

6.16 Material Contracts. Subject to the DIP Budget, the DIP Orders and any necessary order or authorization of the Bankruptcy Court, perform and observe in all material respects all the terms and provisions of each Material Contract to be performed or observed by it, maintain each such Material Contract in full force and effect, enforce each such Material Contract in accordance with its terms, take all such action to such end as may be from time to time requested by the Administrative Agent and, upon request of the Administrative Agent, make to any other party to each such Material Contract such demands and requests for information and reports or for action as any Loan Party is entitled to make under such Material Contract, except, in any case, to the extent such Material Contract may not be enforced solely as a result of the filing of the Cases.

6.17 Compliance with Anti-Corruption Laws; Anti-Money Laundering Laws and Sanctions. Maintain in effect and enforce policies and procedures reasonably designed to ensure compliance by the Loan Parties and their respective directors, officers, employees and agents with all Anti-Corruption Laws, Anti-Money Laundering Laws and applicable Sanctions.

6.18 Status under Certain Statutes.

(a) Guarantor has filed with FERC a Notice of Self-Certification as an Exempt Wholesale Generator in FERC Docket No. EG14-1 and its Exempt Wholesale Generator Status has not been challenged by any party or revoked by FERC.

(b) Guarantor has filed with FERC a Notice of Self-Certification as a QF in FERC Docket No. QFll-238.

(c) The Interconnection Agreement has been executed by all parties and no party has protested or otherwise challenged its effectiveness before the FERC.

(d) No Loan Party is in violation of any applicable requirements and rules of the New Hampshire Public Utilities Commission or FERC. No Loan Party requires permission or authorization from,

and is not required to deliver any notice to, the FERC or the New Hampshire Public Utilities Commission to execute and deliver the Transaction Documents to which it is a party nor to enter into and perform the transactions contemplated thereby, other than (i) filing of a Notice of Self-Certification as an Exempt Wholesale Generator prior to the Commercial Operation Date, (ii) filing of an effective market-based rate tariff with the FERC, and (iii) filings with and approvals by FERC and other Governmental Authorities may be required prior to the exercise of certain remedies under the Loan Documents.

(e) Solely as a result of the execution and delivery of the Loan Documents and the entering into and performance of the transactions contemplated thereby, none of the Collateral Agent or any Lender nor any of their Affiliates shall become subject to or not exempt from regulation either by the FERC (under either of the FPA or PUHCA) or by the New Hampshire Public Utilities Commission under New Hampshire law, except by the exercise of the holders of certain remedies allowed under the Loan Documents.

6.19 Chief Restructuring Officer. Subject to Bankruptcy Court order authorizing such retention, the Loan Parties shall at all times following the Petition Date retain the Chief Restructuring Officer on terms and conditions reasonably acceptable to the Lenders. The Chief Restructuring Officer shall not be replaced or removed or have its duties changed, in each case, without the prior consent of the Lenders. The Chief Restructuring Officer shall use such other representatives of Applied Business Strategy to assist in performing the duties delegated to the Chief Restructuring Officer and such representatives shall be retained as temporary employees of the Loan Parties. The rights granted to the Chief Restructuring Officer shall be permanently delegated to, and shall be the exclusive rights of, the Chief Restructuring Officer. The Chief Restructuring Officer shall (i) prepare the Initial DIP Budget, Proposed DIP Budgets and Variance Reports and any other projections and cash flow forecasts of the Borrowers, (ii) assist the Loan Parties in all aspects of their financial affairs, budgeting and reporting requirements under this Agreement, (iii) report to the Special Committee of each Loan Party, and (iv) perform any such actions or other actions as are typically performed determined by a chief restructuring officer.

6.20 Special Committees. The Loan Parties shall maintain each Special Committee in accordance with the terms of the Special Committee Consent. Any and all decisions relating to any Interested Transaction (as defined in each Special Committee Consent), shall be delegated to the Special Committee, and the Special Committee shall exclusively oversee all such Interested Transactions.

6.21 Investment Banker. The Loan Parties shall maintain SSG Capital Advisors or another investment banking firm satisfactory to the Lenders shall be at all times retained by the Loan Parties as their investment banker (the "Investment Banker"), tasked with marketing the Borrowers' assets in accordance with the Milestones.

6.22 Cash Management Arrangements; Payment of Professional Fees. (a) Maintain, and cause each of the other Loan Parties to maintain, all deposit accounts and securities accounts as Controlled Accounts, (b) deposit all receivables, securities, cash and Cash Equivalents into a Controlled Account, and (c) otherwise maintain a cash management system in accordance with any Cash Management Order and as satisfactory to the Lenders. Upon the occurrence and during the continuation of an Event of Default, subject to Section 8.02, all deposits in such Controlled Accounts shall be transferred to an account designated by the Lenders on each Business Day and applied to repay the outstanding Obligations in accordance with Section 8.03. The cash management system of the Loan Parties shall be otherwise maintained in a manner satisfactory to the Lenders. All Professional Fees at any time paid by the Loan Parties, or any of them, shall be paid by the Loan Parties pursuant to one or more orders of the Bankruptcy Court, including, without limitation the DIP Orders and pursuant to the DIP Budget.

6.23 Weekly Lender Calls. On a date to be mutually agreed upon by the Borrower and the Lenders (a "Weekly Lender Call Date"), commencing with the first full calendar week ending after the

Closing Date, the Loan Parties will hold a conference call (at a time mutually agreed upon by the Borrower and the Lenders) with all Lenders who choose to attend such conference call, during which conference call the Loan Parties shall discuss the Cases, the Sale Process, the financial condition and results of operations of the Loan Parties, including the DIP Budget and the Variance Reports. The Loan Parties shall make available for such calls the Chief Restructuring Officer and senior management of the Loan Parties, and if reasonably requested by the Lenders, the Special Committee.

6.24 Post-Closing Covenants. Within the time periods set forth below after the Closing Date, each Loan Party shall:

(a) On or before the date on which the Final DIP Order is required to be entered (or such longer period agreed to from time to time by the Lenders in their discretion) after the Closing Date, the Loan Parties shall deliver to the Lenders insurance certificates of insurance and endorsements satisfactory to the Lenders demonstrating the Loan Parties' compliance with Section 6.07.

(b) On or before the date on which the Final DIP Order is required to be entered (or such longer period agreed to from time to time by the Lenders in their discretion) after the Closing Date, the Loan Parties shall deliver to the Lenders account control agreements in favor of the Collateral Agent in form and substance satisfactory to the Lenders and the Agents for each of the Loan Parties' deposit accounts located at M&T Bank.

(c) On or before the date on which the Final DIP Order is required to be entered (or such longer period agreed to from time to time by the Lenders in their discretion) after the Closing Date, the Loan Parties shall deliver to the Lenders an amendment to the Mortgage (or a new mortgage with respect to the Site) to reflect this Agreement, together with such amendments and endorsements to the Title Policy (or a new title policy with respect to the Site) as the Lenders may require.

ARTICLE VII
NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification obligations for which no claim shall have then been asserted), no Loan Party shall:

7.01 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, or sign or file or suffer to exist under the Uniform Commercial Code of any jurisdiction a financing statement that names any Loan Party as debtor, or assign any accounts or other right to receive income, other than the following:

(a) Liens pursuant to any Loan Document;

(b) Permitted Liens;

(c) [Reserved];

(d) Liens securing the Prepetition Indebtedness;

(e) Prepetition Priority Liens; and

(f) Adequate Protection Liens.

provided, further, that, all Liens under this Section 7.01 (other than the Carve-Out and Prepetition Priority Liens), while any portion of the Obligations remain outstanding, shall at all times be junior and subordinate to the Liens granted under the Loan Documents and the DIP Orders, which prohibition specifically restricts, without limitation, any Loan Party, a Committee, if any, or any other party-in-interest in the Cases or any successor case, from priming or creating Liens senior to or *pari passu* with any Liens of the Collateral Agent, the Lenders or any other Secured Party (other than the Carve-Out and Prepetition Priority Liens) irrespective of whether such Liens may be "adequately protected" without the prior written approval, which may be withheld in the sole and absolute discretion, of the Lenders.

7.02 Indebtedness. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness of the Guarantor owing to the Borrower pursuant to an Investment permitted under Section 7.03(b);

(b) Indebtedness under the Loan Documents;

(c) Indebtedness outstanding as of the Petition Date in respect of Capitalized Leases and purchase money obligations for fixed or capital assets as set forth on Schedule 7.02;

(d) to the extent constituting Indebtedness, the obligations of the Loan Parties outstanding as of the Petition Date under the Material Project Documents as set forth on Schedule 7.02 or any new power purchase agreement consented to by the Lenders;

(e) the Prepetition Subordinated Debt, in each case subject to the subordination provisions set forth in the Prepetition Subordinated Loan Documents, and in a principal amount equal to approximately $33,000,000 plus accrued and capitalized interest thereon, in accordance with the terms thereof as in effect and as outstanding as of the Petition Date;

(f) the Prepetition Indebtedness; and

(g) to the extent permitted by the Bankruptcy Court, non-recourse Indebtedness incurred by any Loan Party to finance the payment of insurance premiums of such Loan Party, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance premiums.

7.03 Investments. Make or hold any Investments, except (a) Investments described on Schedule 7.03, (b) intercompany loans made by the Borrower to the Guarantor solely for the purposes of making any disbursement set forth in the DIP Budget, (c) Investments held by a Loan Party in the form of Cash Equivalents, provided, that such Cash Equivalents are maintained in a Controlled Account and (d) so long as CS-Berlin is acting as the Lead Market Participant for Burgess, loans from Burgess to CS-Berlin to fund any cash collateral account required by ISO New England under its financial assurance policy in an amount not to exceed the minimum collateral requirement of ISO New England and so long as such loan is evidenced by a note in form and substance satisfactory to the Lenders and pledged to the Collateral Agent for the benefit of the Lenders.

7.04 Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions and including by way of a Division/Series Transaction) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default exists or would result therefrom:

(a) Dispositions pursuant to Section 7.05 shall be permitted; and

(b) Dispositions in accordance with the Sale Process shall be permitted.

7.05 Dispositions. Make any Disposition or enter into any agreement to make any Disposition, except:

(a) Dispositions of equipment with the prior written consent of all Lenders;

(b) Dispositions of cash to another Loan Party to the extent set forth in the DIP Budget;

(c) Dispositions permitted by Section 7.04;

(d) Dispositions of inventory for cash consideration in the ordinary course of business; and

(e) Investments permitted by Section 7.03 and as contemplated by the DIP Orders and any Cash Management Order;

provided, however, that any Disposition pursuant to Section 7.05(b) and Section 7.05(e) shall be for fair market value and shall be on arm's length terms.

7.06 Restricted Payments. The Loan Parties will not, directly or indirectly, make or declare any Distribution.

7.07 Change in Nature of Business. No Loan Party shall engage in any material business other than the direct or indirect development, financing, construction, ownership, operation and maintenance of the Project and sale of the Project's electrical output at wholesale and businesses incidental or ancillary thereto.

7.08 Transactions with Affiliates. Enter into any transaction of any kind with any Affiliate of any Loan Party after the date hereof, except transactions among Loan Parties as set forth in the DIP Budget or as may be agreed to in advance in writing by the Lenders in their sole discretion. Affiliate transactions currently in existence are set forth on Schedule 7.08.

7.09 Regulatory Standing. Take or cause to be taken any action which could reasonably be expected to result in either (a) the Project losing its QF status, or ceasing to hold any of the exemptions from regulation provided under 18 C.P.R. §§ 292.602(b) and 292.602(c), (b) any regulatory disapproval, rejection, suspension, or other action adverse to the continued effectiveness of the Interconnection Agreement, or (c) any Secured Party or any "affiliate" (as that term is defined in PUHCA) of any Secured Party, solely as a result of the Borrower's. Guarantor's, or any Affiliates' actions relating to the ownership, leasing or operation of the Project, the sale of electricity therefrom or the entering into of any Loan Documents or any transaction contemplated thereby, becoming subject to, or not exempt from regulation under, PUHCA or the FPA.

7.10 Margin Stock; Sanctions.

(a) Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

(b) Request any Credit Extension, or use or permit any of its respective subsidiaries, directors, managers, officers, employees and agents to use, the proceeds of any Credit Extension, directly or

indirectly, (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (ii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

(c) Will not, and will not permit any Controlled Entity to, (x) become (including by virtue of being owned or controlled by a Blocked Person), own or control a Blocked Person or (y) directly or indirectly have any investment in or engage in any dealing or transaction (including any investment, dealing or transaction involving the proceeds of the Loans) with any Person if such investment, dealing or transaction (i) would cause any Lender or any of their Affiliates to be in violation of, or subject to sanctions under, any law or regulation applicable to such Lender, or (ii) is prohibited by or subject to sanctions under any U.S. Economic Sanctions Laws.

7.11 Reporting Practices. Make any change in reporting practices, except as may be required or permitted by GAAP, without the prior written consent of the Lenders.

7.12 Equity Capital. Directly or indirectly, by the issuance of rights or options for, or securities convertible into such interests, or otherwise, issue, sell or dispose of any of its membership interests or other equity interests, other than the membership and other Equity Interests pledged to the Collateral Agent pursuant to the Loan Documents.

7.13 Amendments to Organization Documents. Amend any of its Organization Documents.

7.14 No Employees; No ERISA Plans. (a) Hire or become the employer of any employees, other than the retention of independent contractors with the consent of the Lenders, or (b) maintain or be a participating employer in any Plan, or enter into any indemnity agreement or similar arrangement with, or assume any liability or obligation with respect to, any ERISA Affiliate in connection with any Plan maintained at any time by such ERISA Affiliate or in connection with any Plan to which any ERISA Affiliate may at any time contribute, except as may be required by ERISA or the Code.

7.15 Prepayments, Etc. of Indebtedness. Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment in violation of any subordination terms of, any Indebtedness for borrowed money except (a) [reserved], (b) [reserved], (c) prepayments of the Credit Extensions permitted under and made in accordance with the terms of this Agreement, (d) any other payments expressly permitted under and made in accordance with this Agreement, the DIP Budget and the DIP Orders.

7.16 Amendment, Etc. of Related Documents and Indebtedness.

(a) Amend, modify or waive in any manner any term, provision or condition of any Prepetition Subordinated Loan Document, without the prior written consent of the Lenders; or

(b) Amend, modify or waive in any manner any term, provision or condition of any Material Contract or any Prepetition Senior Secured Note Document, without the prior written consent of the Lenders.

7.17 No Subsidiaries. The Loan Parties shall not have any Subsidiary entities.

7.18 No Margin Stock. Make or authorize any investment in, or otherwise purchase or carry, any margin stock within the meaning of Regulation U of the Federal Reserve Board (12 CFR 221).

7.19 Accounts. Maintain, establish or use any deposit or securities accounts, other than the Controlled Accounts.

7.20 Use of Proceeds. Use any proceeds from the Loans or any cash collateral, directly or indirectly, for any purposes other than to pay or fund:

(a) [reserved];

(b) Adequate Protection Fees and Expenses;

(c) the Carve-Out; and

(d) the working capital needs of the Loan Parties during the Case;

in each case, solely in accordance with the DIP Budget and the DIP Orders.

Notwithstanding anything to the contrary contained in any Loan Document, none of the proceeds of the Loans and none of the Obligations, the cash collateral, the Collateral or the Carve-Out may be used for the following purposes: (i) to object, contest or raise any defense to, the validity or priority of the Prepetition Indebtedness or the Prepetition Senior Secured Note Documents, the Obligations, the Loan Documents or the liens, security interests or claims granted under the Interim DIP Order, the Final DIP Order, this Agreement, the other Loan Documents or the Prepetition Senior Secured Note Documents, (ii) investigate, initiate or prosecute any claims and defenses or causes of action against any of the Administrative Agent, the Collateral Agent, the Lenders, the Prepetition Noteholders, the Prepetition Secured Parties, or their respective agents, affiliates, representative, attorneys, or advisors under or relating to the Prepetition Indebtedness, the Prepetition Senior Secured Note Documents, the Prepetition Collateral, the Collateral, the Obligations or the Loan Documents, (iii) prevent, hinder or otherwise delay the Collateral Agent's or any Lender's assertion, enforcement or realization on the cash collateral or the Collateral in accordance with the Loan Documents, (iv) seek to modify any of the rights granted to the Collateral Agent, the Lenders, the Prepetition Noteholders or the Prepetition Secured Parties hereunder or under the Loan Documents or the Prepetition Senior Secured Note Documents, in each of the foregoing cases without such parties' prior written consent, (v) seek to sell or otherwise dispose of the Collateral (other than as permitted under Section 7.05) without the prior written consent of the Lenders, (vi) pay any amount on account of any claims arising prior to the Petition Date, to fund acquisitions, capital expenditures, capital lease, or any other expenditure, unless such payments or expenditures are (A) approved by an order of the Bankruptcy Court and (B) in accordance with this Agreement and any relevant DIP Budget, or (vii) to pay Past Due O&M Obligations and Past Due PMA Obligations as defined in that certain Motion for Interim and Final Orders (I) Authorizing the Debtors to Continue Performing Under Certain Shared Services Agreements and Honor Obligations Related Thereto; and (II) Granting Related Relief filed with the Bankruptcy Court on the Petition Date; provided that, notwithstanding the foregoing to the contrary, advisors to a Committee, if any, may investigate (but not prosecute) the Prepetition Indebtedness and the Prepetition Liens to the extent and in the manner set forth in the applicable DIP Order.

7.21 Lease Obligations. Except for the Site Leases, create or suffer to exist any obligations for the payment under operating leases or agreements to lease (but excluding any obligations under leases required to be classified as capital leases under GAAP) if the rental obligations under such operating leases or agreements to lease would exceed $40,000 in the aggregate in any fiscal year.

7.22 Material Project Documents. Subject to Section 7.26, enter into, amend, modify, supplement, vary, waive, cancel, terminate, agree to terminate or agree or purport to do any of the foregoing in relation to, any other Material Project Document, except with the prior written consent of the Lenders.

7.23 Case Matters. Shall, or shall support any other Person, in any of the following:

(a) assert, file or seek, or consent to the filing or the assertion of or joinder in, or use any portion of the proceeds of the Loans, the Collateral, the Carve-Out or cash collateral to compensate services rendered or expenses incurred in connection with, any claim, counterclaim, action, proceeding, order, application, pleading, motion, objection, any other papers or documents, defense (including offsets and counterclaims of any nature of kind), or other contested matter (including any of the foregoing the purpose of which is to seek, or the result of which would be to obtain, any order, judgment, determination, declaration or similar relief) for the purpose of:

(i) avoiding, re-characterizing, recovering, reducing, subordinating (except pursuant to the DIP Orders), disallowing, or otherwise challenging (under Sections 105, 506(c), 542, 543, 544, 545, 547, 548, 549, 550, 551, 552(b), or 553 of the Bankruptcy Code or applicable non-bankruptcy law), in each case, in whole or in part, of the Obligations, the DIP Liens (as defined in the DIP Orders), the Loan Documents, the Prepetition Indebtedness, the Prepetition Senior Secured Note Documents or the Prepetition Liens; reversing, modifying, amending, staying, or vacating the DIP Orders, without the prior written consent of the Lenders;

(ii) granting priority for any administrative expense, secured claim or unsecured claim against any Loan Party (now existing or hereafter arising of any kind or nature whatsoever, including without limitation any administrative expenses of the kind specified in, or arising or ordered under, Sections 105, 326, 327, 328, 330, 331, 503(b)m 506(c), 507(a), 507(b), 546, 726, 1113 and 1114 of the Bankruptcy Code) equal or superior to the priority of the Collateral Agent and the Lenders in respect of the Obligations, except as provided under the Carve-Out or to the extent expressly permitted under the DIP Orders;

(iii) granting or imposing under Sections 364(c) or 364(d) of the Bankruptcy Code or otherwise, any additional financing under such sections or any Lien equal or superior to the priority of the Loans, the DIP Liens and the Adequate Protection Liens, except to the extent expressly permitted under the DIP Orders;

(iv) permitting the use of cash collateral as defined in Section 363 of the Bankruptcy Code, except as expressly permitted by the DIP Orders and this Agreement or as otherwise consented by the Lenders in their respective sole discretion; or

(v) modifying, altering or impairing in any manner any part of the DIP Liens or the Prepetition Liens, or any of the Administrative Agent's, the Collateral Agent's, the Lenders' or the Prepetition Secured Parties' rights or remedies under the DIP Orders, any of the Loan Documents, or any of the Prepetition Senior Secured Note Documents or any documents related thereto (including the right to demand payment of all Obligations and Adequate Protection Fees and Expenses, as applicable, and to enforce is Liens and security interests in the Collateral and the Prepetition Collateral, as applicable), whether by plan of reorganization or liquidation, order of confirmation or any financings of, extensions of credit to, or incurring of debt by any Loan Party or otherwise, whether pursuant to Section 364 of the Bankruptcy Code or otherwise;

(b) without the prior written consent of the Lenders, seek or consent to any order (i) dismissing any of the Cases under Sections 105, 305 or 1112 of the Bankruptcy Code or otherwise; (ii) converting any

of the Cases to cases under Chapter 7 of the Bankruptcy Code; (iii) appointing a Chapter 11 trustee in any of the Cases; (iv) appointing an examiner with enlarged powers beyond those set forth in sections 1104(d) and 1106(a)(3) and (4) of the Bankruptcy Code in any of the Cases; or (v) granting a change of venue with respect to any Case or any related adversary proceeding;

(c) make any payments or transfer any property on account of claims asserted by any vendors of any Loan Party for reclamation in accordance with Section 2-702 of any applicable UCC and Section 546(c) of the Bankruptcy Code, or make payment of any pre-petition claims against the Loan Parties (other than in respect of the Prepetition Indebtedness or as otherwise set forth in the DIP Budget), in each case, unless otherwise ordered by the Bankruptcy Court upon prior notice to the Lenders or unless otherwise consented to by the Lenders;

(d) return any inventory or other property to any vendor pursuant to Section 546(g) of the Bankruptcy Code, unless otherwise ordered by the Bankruptcy Court in accordance with Section 546(g) of the Bankruptcy Code upon prior notice to the Lenders or unless otherwise consented to by the Lenders;

(e) propose to the Bankruptcy Court, or otherwise, any Plan of Reorganization that does not provide for the indefeasible payment in full in cash of the Obligations and the obligations in connection with the Prepetition Senior Secured Note Documents on the effective date of such Plan of Reorganization and is otherwise acceptable to the Lenders; and

(f) propose to Bankruptcy Court, or otherwise, a sale of all or substantially all of the Collateral, other than in accordance with the Sale Process.

7.24 Amendments to Orders. Amend, modify, or waive (or make any payment consistent with an amendment, modification or waiver of), or apply to the Bankruptcy Court for authority to make an amendment, modification or waiver of, any provision of any Cash Management Order, the Interim DIP Order or the Final DIP Order without, in each case the prior written consent of the Lenders.

7.25 Disbursements; DIP Budget Variance.

(a) Make any disbursements other than those set forth in the DIP Budget (or as otherwise permitted in accordance with the terms of the DIP Orders) or with the prior written consent of the Lenders; provided, however, that to the extent the DIP Budget includes professional fees and expenses, such fees and expenses may be paid in accordance with the DIP Budget, subject to the Carve-Out, when allowed by the Bankruptcy Court; or

(b) As of the fourth (4^{th}) Business Day of every calendar week after the Closing Date (each such date, a "Test Date"), with the first Test Date being the fourth (4^{th}) Business Day of the first full calendar week after the Closing Date, cause or permit (i) the actual amount of cash disbursements of the Loan Parties for the preceding Measurement Period (with each weekly period ending on the preceding Sunday), to be on an aggregate basis, more than 110% of the projected corresponding disbursements (excluding any variance related to (A) fees and expense reimbursements of professional persons required to be paid by the Loan Parties, or (B) an Investment permitted by Section 7.03(d)) for the corresponding Measurement Period set forth in the DIP Budget and (ii) the actual amount of cash receipts of the Loan Parties for the preceding Measurement Period (with each weekly period ending on the preceding Sunday), to be on an aggregate basis, less than 90% of the projected corresponding receipts for the corresponding Measurement Period set forth in the DIP Budget (such permitted variances, the "Allowed Variance"). As used in this Section 7.25, "Measurement Period" shall mean with respect to each Test Date, (i) initially, for the first three (3) Test Dates following the Petition Date, the one week, two week or three week cumulative periods most recently

ended prior to such Test Date, and (ii) thereafter, the rolling four-week period ending immediately prior to such Test Date.

(c) In addition, (i) any payment of Professional Fees in excess of the amounts set forth for any corresponding period in the DIP Budget shall be permitted if the aggregate amount of Professional Fees paid and accrued by the Loan Parties do not exceed the cumulative total amount of Professional Fees set forth in the DIP Budget, (ii) if the actual amount of cash disbursements of the Loan Parties for the current Measurement Period excluding the Professional Fees is less than the corresponding projected disbursements for such Measurement Period, then any such excess may be allocated and applied to the payment of Professional Fees in excess of the Professional Fees set forth in the DIP Budget and (iii) except as provided in the preceding clauses (i) and (ii), the exclusion of fees and expenses of professional persons from the variance testing set forth herein shall not be construed as Lenders' consent to the Loan Parties' payment of any Professional Fees in amounts in excess of the amounts set forth in the DIP Budget.

7.26 Material Contracts. File motions seeking entry of an order approving procedures for the rejection, negotiation or assumption, as applicable, of any Material Contracts without the prior written consent of the Lenders, which such motions shall be in form and substance reasonably satisfactory to the Lenders and may not be amended or otherwise modified without the prior written consent the Lenders.

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default. Any of the following shall constitute an Event of Default:

(a) Non-Payment. any Loan Party fails to (i) pay when and as required to be paid herein, any amount of principal of or interest on any Loan, or any fee due hereunder, or (ii) pay within three (3) days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Section 6.01, 6.02, 6.03, 6.05, 6.07, 6.10, 6.11, 6.15, 6.17, 6.22, 6.23, 6.24, or Article VII, Article X or Article XII; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for fifteen (15) days; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Loan Party, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading when made or deemed made; or

(e) Cross-Default. (i) Any Loan Party (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any post-petition Indebtedness or Guarantee (other than Indebtedness hereunder) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such post-petition Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such post-petition Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if

required, such post-petition Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such post-petition Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; (ii) [reserved]; or (iii) any Loan Party fails to pay any Adequate Protection Fees and Expenses; or

(f) Judgments. There is entered against any Loan Party (i) one or more final judgments or orders that are not subject to the Automatic Stay for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding the Threshold Amount (to the extent not pursuant to an order of the Bankruptcy Court or covered by independent third-party insurance as to which the insurer is rated at least "A-" by A.M. Best Company, has been notified of the potential claim and does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or the Automatic Stay or otherwise, is not in effect; or

(g) Invalidity of Loan Documents. Any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document; or

(h) Guaranty. The Guaranty shall fail to remain in full force or effect or any action shall be taken to discontinue or to assert the invalidity or unenforceability of the Guaranty, or any Guarantor shall fail to comply with any of the terms or provisions of the Guaranty, or any Guarantor shall deny that it has any further liability under the Guaranty, or shall give notice to such effect, including, but not limited to notice of termination delivered pursuant to Section 10.08; or

(i) Liens and Super-Priority Claims. Any Lien or super-priority claims granted to the Collateral Agent for the benefit of the Secured Parties with respect to any material portion of the Collateral intended to be secured thereby (i) ceases to be, or is not at any time, valid, perfected and prior to all other Liens and claims (other than Liens and claims granted in respect of the Carve-Out and the Prepetition Priority Liens) or (ii) is terminated, revoked, or declared void (unless released or terminated pursuant to the terms of this Agreement); or

(j) Subordination. (i) The subordination provisions (including, without limitation, the provisions set forth in the Prepetition Subordinated Loan Documents) of the documents evidencing or governing any subordinated Indebtedness (including the Prepetition Subordinated Debt) (collectively, the "Subordination Provisions") shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable subordinated Indebtedness; or (ii) any Loan Party or any holder of subordinated Indebtedness shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any of the Subordination Provisions, (B) that the Subordination Provisions exist for the benefit of the Prepetition Secured Parties or the Agents and the Lenders, as applicable or (C) that all payments of principal of or premium and interest on applicable subordinated Indebtedness, or realized from the liquidation of any property of any Loan Party, shall be subject to any of the Subordination Provisions; or

(k) Default under Material Contracts. There occurs any "default", "event of "default", other breach or termination or words of similar import under (i) any Material Contract or (ii) any other contract.

license or agreement which, in the case of clause (ii) only, (x) individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or (y) enforcement under which is not subject to the Automatic Stay; or

(l) Licenses and Permits. There occurs the loss, suspension or revocation of, or failure to renew, any license (including liquor licenses) or permit now held or hereafter acquired by any Loan Party which loss could be reasonably expected to result in a Material Adverse Effect; or

(m) Material Uninsured Loss. Any Loan Party shall suffer a loss or casualty of any of its assets exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer is rated at least "A-" by A.M. Best Company, has been notified of the potential claim and does not dispute coverage); or

(n) Additional Events of Default related to the Cases.

(i) other than as a result of the filing of the Cases, any Loan Party is enjoined, restrained or in any way prevented by an order of any court or any Governmental Authority from conducting all or any material part of its business; or

(ii) an order shall be entered in any of the Cases appointing, or any Loan Party shall file an application for an order with respect to any of the Cases seeking the appointment of, in either case without the prior written consent of the Lenders, (A) a trustee under Section 1104 of the Bankruptcy Code or (B) an examiner or any other Person with enlarged powers relating to the operation of the business (i.e., powers beyond those set forth in Sections 1104(d) and 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code; or

(iii) the filing of a motion by any of the Loan Parties seeking dismissal of any of the Cases, the dismissal of any of the Cases, the filing of a motion by any of the Loan Parties seeking to convert any of the Cases to a case under Chapter 7 of the Bankruptcy Code or the conversion of any of the Cases to a case under Chapter 7 of the Bankruptcy Code; or

(iv) an order shall be entered that is not stayed pending appeal granting relief from the Automatic Stay to any creditor of a Loan Party (other than the Agents or the Lenders) with respect to any claim against any property; or

(v) any Loan Party's board of directors (or equivalent governing body) shall authorize the liquidation of such Loan Party's business pursuant to one or more sales pursuant to Section 363 of the Bankruptcy Code or otherwise, or shall file any motion under Section 363 of the Bankruptcy Code seeking approval to liquidate all or substantially all of the assets of the Loan Parties, other than in accordance with the Sale Process and as consented to by the Lenders; or

(vi) failure of the Final DIP Order to be entered in the Cases within twenty-eight (28) calendar days after the Petition Date; or

(vii) an order shall be entered terminating or reducing the Loan Parties' exclusivity period for proposing a Plan of Reorganization (to the extent such motion is not made by Administrative Agent or any Lender) or any party in interest other than the Loan Parties shall have the right to file a plan in the Cases, including but not limited under Section 1121(c) or (d) of the Bankruptcy Code; or

(viii) (A) the amendment, modification, reversal, revocation, issuance of a stay or order to vacate, or supplementing of any Cash Management Order, the Interim DIP Order, the Final DIP Order, any Loan Document or any other order of the Bankruptcy Court, in any way adversely affecting or relating to the Facility, the Loans, the DIP Liens, the Adequate Protection Liens, or the claims of the Collateral Agent, the Administrative Agent and the Lenders, in a manner not satisfactory to the Lenders, (B) the waiver of any condition of the Sale Process in any manner not reasonably acceptable to any Lender, or (C) an order shall be entered with respect to the Case or Cases, without the prior written consent of the Lenders (1) to permit any administrative expense or any claim (now existing or hereafter arising, of any kind or nature whatsoever) to have administrative priority equal or superior to the priority of the Collateral Agent and Lenders in respect of the Obligations other than the Carve-Out, (2) terminating or denying the use of cash collateral, or authorizing the use of cash collateral, or (3) granting or permitting the grant of a lien that is equal in priority with or senior to the DIP Liens, other than the Carve-Out and the Prepetition Priority Liens; or

(ix) failure of the Loan Parties to satisfy any of the Milestones by the applicable date set forth on Annex I; or

(x) the solicitation, filing and/or seeking or entry of an order by the Bankruptcy Court confirming a Plan of Reorganization or liquidation in any of the Cases which (i) does not contain a provision for termination of the Commitments and indefeasible payment in full in cash of all Obligations hereunder and under the other Loan Documents on or before the effective date of such plan upon entry thereof and (ii) is not otherwise reasonably acceptable to the Lenders (and with respect to any provisions that affect the rights or duties of any Agent, such Agent); or

(xi) the failure by any Loan Party to comply with any provisions of any of the DIP Orders and any Cash Management Order; or

(xii) any Loan Party rejects an unexpired lease or other contract that is projected to give rise to a prepetition damages claim or an administrative expense claim, other than with the prior written consent of the Lenders,

(xiii) the commencement of any adversary proceeding, contested matter or other action by any Loan Party or any of their Affiliated or Related Parties or any other person supported by any of them asserting any claims and defenses or otherwise against any of the Prepetition Agent or the Prepetition Noteholders with respect to the obligations of any Loan Party under the Prepetition Senior Secured NPA or the other Prepetition Senior Secured Note Documents or the Prepetition Liens (including any motion or order), except as may be expressly permitted under the DIP Orders; or

(xiv) unless consented to by the Lenders, any Loan Party shall make any payment or grant any form of adequate protection with respect to Indebtedness existing prior to the Petition Date other than, in each case, as expressly permitted under this Agreement or the DIP Orders;

(xv) any Material Project Document is declared by any Governmental Authority to be null and void or otherwise unenforceable, or any party thereto claims that any Material Project Document is null, void or unenforceable or otherwise repudiates any Material Project Document, and such Material Project Document is not replaced within 30 days with a valid, binding and enforceable agreement that has substantially the same or more favorable terms to the Loan Parties than the Material Project Document being replaced; or

(xvi) the Chief Restructuring Officer or the Investment Banker failing to be retained by the Borrowers on terms and conditions reasonably satisfactory to the Administrative Agent, after motion to the Bankruptcy Court therefor;

(xvii) (A) the removal or attempted removal, or replacement or attempted replacement of any Special Committee, (B) the dissolution or attempted dissolution of the Special Committee of each applicable Loan Party, or the material change, attempted material change or derogation of the duties thereof as contemplated in each Special Committee Consent, or (C) the hindering or other circumvention, or attempted hindering or other circumvention of the duties of each Special Committee;

(xviii) (A) the removal or attempted removal, or replacement or attempted replacement of the Chief Restructuring Officer as an officer of any Loan Party, (B) the dissolution or attempted dissolution of the position of the Chief Restructuring Officer as an officer of any Loan Party, or the material change, attempted material change or derogation of the duties thereof, or (C) the hindering or other circumvention, or attempted hindering or other circumvention of the duties of the Chief Restructuring Officer;

(xix) appointment of a responsible officer or examiner with enlarged powers relating to the operation of the business of any Loan Party

(xx) any event or series of events which allows the Lenders to terminate the RSA; or

(xxi) any default or event of default (howsoever described) under the RSA.

8.02 Consequences of an Event of Default.

(a) Remedies. If an Event of Default exists, the Administrative Agent may, or shall at the request of the Lenders, at any time or times and in any order, without notice to or demand on any Loan Party (except for such notice or consent that is expressly provided for hereunder, under the Interim DIP Order or the Final DIP Order, or required by applicable Laws): (i) restrict the amount of or refuse to permit any Lender to make any Loan, (ii) terminate all or any portion (ratably as among the Lenders) of the Commitments, and thereupon such Commitments shall terminate immediately, (iii) deliver the Carve-Out Trigger Notice (as defined in the DIP Orders), (iv) after providing five (5) Business Days' prior notice to the Loan Parties, the United States Trustee, a Committee, if any, and any other official committee (but this shall not serve as a consent to the use of the Loans hereunder to pay professional fees incurred by any other such official committee), (A) direct the Collateral Agent to exercise the right to realize on all Collateral, (B) charge the Default Rate, and (C) declare the Obligations then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be immediately due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be immediately due and payable, together with accrued interest thereon and all fees and other Obligations of the Loan Parties accrued hereunder and under the other Loan Documents, shall become due and payable immediately, in each case under this clause (iv), without the necessity of obtaining any further relief or order from the Bankruptcy Court, subject to the right of the Loan Parties to seek continuation of the automatic stay during such five (5) Business Day period (such period referred to in this Section 8.02 as the "Remedies Notice Period") solely on the basis that no Event of Default has occurred; (v) assume control over the use of cash in any accounts; *provided* that the Loan Parties shall be permitted to use cash during the Remedies Notice Period to the extent necessary to preserve their business; and (vi) pursue its other rights and remedies under the Loan Documents, the DIP Orders and/or applicable law. Except as otherwise provided in the DIP Orders, the foregoing remedies may be exercised without demand and without further application to or order of the Bankruptcy Court. In any hearing regarding any exercise of remedies under

this Section 8.02 (which hearing must take place within the Remedies Notice Period), the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default has occurred and is continuing, and the Loan Parties, any committee and all other parties in interest shall not be entitled to seek relief, including, without limitation, under Section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of the Administrative Agent, the Collateral Agent or the Lenders set forth in the DIP Order, this Agreement or the Loan Documents, as applicable. If no such order is entered during the Remedies Notice Period, all use of the Collateral shall cease and the Administrative Agent, the Collateral Agent and the Lenders shall be entitled to enforce the remedies hereunder.

(b) Sales; UCC.

(i) Sales. Each Loan Party recognizes that the Agents may be unable to effect a public sale of any or all of the Collateral that constitutes securities to be sold by reason of certain prohibitions contained in the Laws of any jurisdiction outside the United States or in applicable federal or state securities laws but may be compelled to resort to one or more private sales thereof to a restricted group of Lenders who will be obliged to agree, among other things, to acquire such Collateral to be sold for their own account for investment and not with a view to the distribution or resale thereof. Each Loan Party acknowledges and agrees that any such private sale may result in prices and other terms less favorable to the seller than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall, to the extent permitted by law, be deemed to have been made in a commercially reasonable manner. Unless required by applicable Law, the Agents shall not be under any obligation to delay a sale of any of such Collateral to be sold for the period of time necessary to permit the issuer of such securities to register such securities under the laws of any jurisdiction outside the United States or under any applicable federal or state securities laws, even if such issuer would agree to do so. Each Loan Party further agrees to do or cause to be done, to the extent that such Loan Party may do so under the Law, all such other acts and things as may be necessary to make such sales or resales of any portion or all of such Collateral or other property to be sold valid and binding and in compliance with any and all Laws at the Loan Parties' expense. Each Loan Party further agrees that a breach of any of the covenants contained in this Section 8.02 will cause irreparable injury to the Agents and the Lenders for which there is no adequate remedy at law and, as a consequence, agrees that each covenant contained in this Section 8.02 shall be specifically enforceable against such Loan Party, and each Loan Party hereby waives and agrees, to the fullest extent permitted by law, not to assert as a defense against an action for specific performance of such covenants that (i) such Loan Party's failure to perform such covenants will not cause irreparable injury to the Agents and the Lenders or (ii) the Agents or the Lenders have an adequate remedy at law in respect of such breach. Each Loan Party further acknowledges the impossibility of ascertaining the amount of damages which would be suffered by the Agents and the Lenders by reason of a breach of any of the covenants contained in this Section 8.02 and consequently, agrees that, if such Loan Party shall breach any of such covenants and the Agents or the Lenders shall sue for damages for such breach, such Loan Party shall pay to the Agents, for the benefit of the Agents and the Lenders, as liquidated damages and not as a penalty, an aggregate amount equal to the value of the Collateral or other property to be sold on the date the Agent shall demand compliance with this Section 8.02(b).

(ii) UCC. If an Event of Default has occurred and is continuing, the Collateral Agent shall have, in addition to all other rights of the Agents and the Lenders, the rights and remedies of a secured party under the UCC, and without limiting the generality of the foregoing, the Collateral Agent shall be empowered and entitled to, subject to the terms of the DIP Orders: (i) take possession of, foreclose on and/or request a receiver of the Collateral and keep it on any Loan Party's premises at any time, at no cost to the Agents or any Lender, or remove any part of it to such other place or

places as the Administrative Agent (at the direction of the Lenders) may determine, or the Loan Parties shall, upon the Administrative Agent's or the Lenders' demand, at the Loan Parties' cost, assemble the Collateral and make it available to the Collateral Agent at a place convenient to the Collateral Agent; (ii) sell and deliver any Collateral at public or private sales, for cash, upon credit, or otherwise, at such prices and upon such terms as the Lenders deem advisable, in their sole discretion, and may postpone or adjourn any sale of the Collateral by an announcement at the time and place of sale or of such postponed or adjourned sale; (iii) hold, lease, develop, manage, operate, control and otherwise use the Collateral upon such terms and conditions as may be reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as may be reasonably necessary or desirable), exercise all such rights and powers of each Loan Party with respect to the Collateral, whether in the name of such Loan Party or otherwise, including without limitation the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for, collect and receive all rents, in each case, in accordance with the standards applicable to the Collateral Agent under the Loan Documents, (iv) employ consultants to inspect the Collateral and to assure compliance by each Loan Party of the terms and conditions of the Loan Documents and (v) take any other actions, as may be necessary or desirable, in connection with the Collateral (including preparing for the disposition thereof), and all actual, out-of-pocket fees and expenses incurred in connection therewith shall be borne by the Loan Parties. Upon demand from the Collateral Agent (at the direction of the Lenders), the applicable Borrower shall direct the grantor or licensor of, or the contracting party to, any property agreement with respect to any property to recognize and accept the Collateral Agent, for the benefit of and on behalf of the Lenders, as the party to such agreement for any and all purposes as fully as it would recognize and accept such Loan Party and the performance of such Loan Party thereunder and, in such event, without further notice or demand and at the Loan Parties' cost and expense, the Collateral Agent, for the benefit of and on behalf of the Lenders (at the direction of the Lenders), may exercise all rights of such Loan Party arising under such agreements. Without in any way requiring notice to be given in the following manner, each Loan Party agrees that any notice by an Agent of sale, disposition, or other intended action hereunder or in connection herewith, whether required by the UCC or otherwise, shall constitute reasonable notice to such Loan Party if such notice is mailed by registered or certified mail, return receipt requested, postage prepaid, or is delivered personally against receipt, at least ten (10) Business Days prior to such action to the Loan Parties' address in accordance with Section 11.02 of this Agreement. If any Collateral is sold on terms other than payment in full at the time of sale, no credit shall be given against the Obligations until the Collateral Agent or the Lenders receive payment, and if the buyer defaults in payment, the Collateral Agent may resell the Collateral. In the event the Collateral Agent seeks to take possession of all or any portion of the Collateral by judicial process, each Loan Party irrevocably waives: (A) the posting of any bond, surety, or security with respect thereto which might otherwise be required; (B) any demand for possession prior to the commencement of any suit or action to recover the Collateral; and (C) any requirement that the Collateral Agent retain possession and not dispose of any Collateral until after trial or final judgment. Each Loan Party agrees that the Collateral Agent has no obligation to preserve rights to the Collateral or marshal any Collateral for the benefit of any Person. The proceeds of sale shall be applied as set forth in the DIP Orders. The Administrative Agent will return any excess to the applicable Borrower or as directed by a court of competent jurisdiction and the Loan Parties shall remain liable for any deficiency.

(c) Relief. An Event of Default shall occur as set forth in this Agreement even if an act or circumstance which gives rise, directly or indirectly, to such Event of Default has been authorized by the Bankruptcy Court or another court or tribunal with jurisdiction over the Cases. None of the Agents nor any Lender shall have any obligation whatsoever to object to any relief requested by any Loan Party from the Bankruptcy Court or another court or tribunal with jurisdiction over the Cases if and because such relief would or may constitute, or would or may lead to, an Event of Default, or the Administrative Agent's,

Collateral Agent's or any Lender's failure to object to such relief shall not limit the Events of Default under this Agreement, constitute a waiver or release of rights and remedies under this Agreement, estop or preclude an Agent or any Lender from fully enforcing the same, or have any res judicata effect on whether an Event of Default has occurred under this Agreement. Each Loan Party shall be fully responsible for determining whether any relief it seeks from the Bankruptcy Court or another court or tribunal with jurisdiction over the Cases would or may constitute, or would or may lead to, an Event of Default under this Agreement, and authorization for such relief shall not limit in any manner whatsoever such Loan Party's obligation to fully comply with all of the terms and conditions of this Agreement.

(d) Secured Parties' Rights and Remedies. The rights, remedies, powers, privileges, and discretions of the Agents and the Lenders hereunder (herein, the "Secured Parties' Rights and Remedies") shall be cumulative and not exclusive of any rights or remedies which they would otherwise have. No delay or omission by the Agents or any Lender in exercising or enforcing any of the Secured Parties' Rights and Remedies shall operate as, or constitute, a waiver thereof. No waiver by the Administrative Agent or the Lenders of any Default or Event of Default or of any default under any other agreement shall operate as a waiver of any other default hereunder or under any other agreement. No single or partial exercise of any of the Secured Parties' rights or remedies, and no express or implied agreement or transaction of whatever nature entered into between an Agent and any person, at any time, shall preclude the other or further exercise of the Secured Parties' Rights and Remedies. No waiver by an Agent or the Lenders of any of the Secured Parties' Rights and Remedies on any one occasion shall be deemed a waiver on any subsequent occasion, nor shall it be deemed a continuing waiver. All of the Secured Parties' Rights and Remedies and all of the Agents' and Lenders' rights, remedies, powers, privileges, and discretions under any other agreement or transaction are cumulative, and not alternative or exclusive, and may be exercised by the Agents and the Lenders, as applicable, at such time or times and in such order of preference as the Lenders in their sole discretion may determine. The Secured Parties' Rights and Remedies may be exercised without resort or regard to any other source of satisfaction of the Obligations.

8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of all amounts owing to and all costs and expenses incurred by the Agents, pursuant to the terms of the Loan Documents or in connection with any enforcement of rights or exercise of remedies pursuant thereto, including all court costs and the reasonable and documented fees and expenses of agents and legal counsel and, in each case, including all costs and expenses incurred in enforcing their respective rights to obtain such payment;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including fees, charges and disbursements of counsel to the respective Lenders (including fees and time charges for attorneys who may be employees of any Lender) arising under the Loan Documents and amounts payable under Article III, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting interest on the Loans and other Obligations arising under the Loan Documents with respect thereto, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, ratably among the Lenders, in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to pay amounts due to the Prepetition Agent;

Sixth, to pay amounts due to the Prepetition Noteholders; and

Seventh, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Loan Parties or as otherwise required by Law and the DIP Orders.

ARTICLE IX
AGENTS

9.01 Appointment and Authority. Each Lender hereby designates and appoints the Administrative Agent as its agent under this Agreement and the other Loan Documents and each Lender hereby irrevocably authorizes the Administrative Agent to execute and deliver each of the other Loan Documents (where required) on its behalf and to take such other action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Each Lender hereby designates and appoints the Collateral Agent as its agent under this Agreement and the other Loan Documents and each Lender hereby irrevocably authorizes the Collateral Agent to execute and deliver each of the other Loan Documents (where required) on its behalf and to take such other action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to the Collateral Agent by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Each Agent agrees to act as agent for and on behalf of the Lenders on the conditions contained in this Article IX. Any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document notwithstanding, neither Agent shall have any duties or responsibilities, except those expressly set forth herein or in the other Loan Documents, nor shall either Agent have or be deemed to have any fiduciary relationship with any Lender or other Person, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against such Agent. Without limiting the generality of the foregoing, the use of the term "agent" in this Agreement or the other Loan Documents with reference to the Administrative Agent or Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only a representative relationship between independent contracting parties. In this connection, the Agents, and any co-agents, sub-agents and attorneys-in-fact appointed by either Agent for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under any Loan Document, or for exercising any rights and remedies hereunder or thereunder, shall be entitled to the benefits of all provisions of this Article IX. As to matters requiring the exercise of discretion or of a right, including the right to give any consent or make any demand under the Loan Agreement or to make a determination under any Loan Document whether any matter is acceptable or satisfactory to it or as to matters not expressly provided for by this Agreement or the other Loan Documents, the Agents will not be required to exercise any discretion or right or take any action, but will act or refrain from action (and will be fully protected in so acting or refraining from acting) only upon the written instructions of the Lenders and subject to the Agents' rights and protections. Without limiting the generality of the foregoing, or of any other provision of the Loan Documents that provides rights or powers to the Agents, Lenders agree that the applicable Agent shall have the right, but not the obligation, to exercise the following powers as long as this Agreement remains in effect: (a) maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Collateral, payments and proceeds of Collateral, and related matters, (b) execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to the Loan Documents, or to take any other action with respect to any Collateral or Loan Documents which may be

necessary to perfect, and maintain perfected, the security interests and Liens upon Collateral pursuant to the Loan Documents, (c) exclusively receive, apply, and distribute payments and proceeds of the Collateral as provided in the Loan Documents, (d) open and maintain such bank accounts and cash management arrangements as the Administrative Agent deems necessary and appropriate in accordance with the Loan Documents for the foregoing purposes, (e) perform, exercise, and enforce any and all other rights and remedies of the Secured Parties with respect to any Loan Party, the Obligations, the Collateral, or otherwise related to any of same as provided in the Loan Documents, and (f) incur and pay such expenses as the Administrative Agent may deem necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to the Loan Documents.

9.02 Delegation of Duties. Each Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Neither Agent shall be responsible for the negligence or misconduct of any agent or attorney in fact that it selects as long as such selection was made with due care.

9.03 Liability of the Agents. None of the Agent-Related Persons shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except in the case of gross negligence or willful misconduct, as determined by a court of competent jurisdiction by final and non-appealable judgment), or (b) be responsible in any manner to any Person for any recital, statement, representation or warranty made by any Person, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of any Loan Party or any other party to any Loan Document to perform its obligations hereunder or thereunder. The Agents shall have no duty to risk or advance their own funds in the performance of any of their duties hereunder or under any other Loan Document or in the exercise of any of their respective rights or powers. No Agent-Related Person shall be under any obligation to any Person to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the books and records or properties of any Loan Party. No Agent-Related Person shall have any liability to any Lender, any Loan Party or any of their respective Affiliates if any request for any Loan or other extension of credit was not authorized by the Borrower. Neither Agent shall be required to take any action, including, without limitation, the entry into any account control agreement, that, in its opinion or in the opinion of its counsel, may expose it to liability or that is contrary to any Loan Document or applicable law or regulation. No Agent-Related Person shall be under any obligation to any Lender or participant to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party or any Affiliate thereof. Neither Agent shall be liable for any action taken, or errors in judgment made, in good faith by it or any of its officers, employees or agents, unless it shall have been grossly negligent in ascertaining the pertinent facts. The permissive rights of the Agents to do things enumerated in this Agreement shall not be construed as a duty and, with respect to such permissive rights, neither Agent shall be liable for any acts or omissions, except for such losses, damages or expenses which have been finally adjudicated by a court of competent jurisdiction to have directly resulted from the applicable Agent's gross negligence or willful misconduct. Nothing in this Agreement shall require either Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder. Notwithstanding anything herein or in any other Loan Document to the contrary, neither Agent shall have an obligation to give, execute, deliver, file, record, authorize or obtain any financing or continuation statements, notices, instruments, documents, agreements, consents or other papers as shall be necessary to (i) create, preserve, perfect or validate the security interest granted to the Collateral Agent for the benefit

of the Secured Parties pursuant to this Agreement or (ii) enable the Collateral Agent to exercise and enforce its rights under this Agreement with respect to such pledge and security interest. Neither Agent shall be responsible or liable for any failure or delay in the performance of its obligations under this Agreement or any other Loan Document arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including without limitation, any act or provision of any present or future law or regulation or governmental authority; acts of God; earthquakes; fires; floods; wars; terrorism; civil or military disturbances; sabotage; epidemics; pandemics; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility.

9.04 Reliance by Agents. Each Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, judgment, order, affidavit, letter, telegram, telefacsimile or other electronic method of transmission, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent, or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to the Loan Parties or counsel to any Lender), independent accountants and other experts selected by such Agent. Each Agent may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts. Each Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless the applicable Agent shall first receive such advice or concurrence of the Lenders as it deems appropriate and until such instructions are received, the applicable Agent may refrain from acting. All requests, directions, certificates and notices to be furnished to an Agent hereunder shall be in writing. If either Agent so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Each Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders. The Administrative Agent may treat each institution that is party to this Agreement as a "lender" as an obligor hereunder until the Administrative Agent receives written notice of the assignment or transfer of the Loans owed to such Lender or the Commitments of such Lender in form and substance satisfactory to the Administrative Agent.

9.05 Notice of Default or Event of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest, fees, and expenses required to be paid to the Administrative Agent for the account of the Lenders and, unless the Administrative Agent shall have received written notice from a Lender or a Loan Party referring to this Agreement, describing such Default or Event of Default, and stating that such notice is a "notice of default." The Administrative Agent promptly will notify the Lenders and the Collateral Agent of its receipt of any such written notice of any Default or Event of Default. If any Lender obtains actual knowledge of any Event of Default, such Lender promptly shall notify the other Lenders and the Agents of such Event of Default. Each Lender shall be solely responsible for giving any notices to its Participants, if any. Subject to Section 9.04 and to its rights and protections in this Agreement, the Administrative Agent shall take such action with respect to such Default or Event of Default as may be requested by the Lenders in accordance with Article VIII; provided, that unless and until the Administrative Agent has received any such request, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable. The Collateral Agent will not be deemed to have notice or knowledge of a Default or an Event of Default unless and until it receives written notice from a Loan Party, the Administrative Agent or a Lender.

9.06 Credit Decision. Each Lender acknowledges that none of the Agent-Related Persons has made any representation or warranty to it, and that no act by either Agent hereinafter taken, including any review of the affairs of any Loan Party and its Affiliates, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender. Each Lender represents to the Administrative Agent that it has, independently and without reliance upon any Agent-Related Person and based on such due diligence, documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of each Loan Party or any other Person party to a Loan Document, and all applicable bank regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of each Loan Party or any other Person party to a Loan Document. Except for notices, reports, and other documents expressly herein required to be furnished to the Lenders by the Administrative Agent, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of the Loan Parties or any other Person party to a Loan Document that may come into the possession of any of the Agent-Related Persons, it being understood that the Administrative Agent shall deliver to each Lender each notice, report, request, demand, communication and other document the Administrative Agent receives hereunder. Each Lender acknowledges that the Administrative Agent does not have any duty or responsibility, either initially or on a continuing basis (except to the extent, if any, that is expressly specified herein) to provide such Lender with any credit or other information with respect to the Loan Parties, their Affiliates or any of their respective business, legal, financial or other affairs, and irrespective of whether such information came into the Administrative Agent's or its Affiliates' or representatives' possession before or after the date on which such Lender became a party to this Agreement.

9.07 Costs and Expenses; Indemnification. Without creating an obligation to do so, an Agent may incur and pay costs, expenses and disbursements to the extent an Agent reasonably deems necessary or appropriate for the performance and fulfillment of its functions, powers, and obligations pursuant to the Loan Documents, including court costs, attorneys' fees and expenses, fees and expenses of financial accountants, advisors, consultants, and appraisers, costs of collection by outside collection agencies, auctioneer fees and expenses, and costs of security guards or insurance premiums paid to maintain the Collateral, whether or not the Loan Parties are obligated to reimburse such Agent or Lenders for such expenses pursuant to this Agreement or otherwise. Each Agent is authorized and directed to deduct and retain sufficient amounts from payments or proceeds of the Collateral received by such Agent to reimburse the Agent for such out-of-pocket costs and expenses prior to the distribution of any amounts to Lenders. In the event the Agent is not reimbursed for such costs and expenses by the Loan Parties, each Lender hereby agrees that it is and shall be obligated to pay promptly to the Agent such Lender's ratable share thereof. Whether or not the transactions contemplated hereby are consummated, each of the Lenders, on a ratable basis, shall indemnify and defend the Agent-Related Persons (to the extent not reimbursed by or on behalf of the Loan Parties and without limiting the obligation of the Loan Parties to do so) from and against any and all Indemnified Losses; provided, that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Losses resulting solely from such Person's gross negligence or willful misconduct, as determined by a court of competent jurisdiction by final and nonappealable judgment. Without limitation of the foregoing, each Lender shall reimburse each Agent upon demand for such Lender's ratable share of any fees, costs or out of pocket expenses (including attorneys, accountants, advisors, and consultants fees and expenses) incurred by such Agent in connection with the preparation, execution, delivery, administration, modification, amendment, or enforcement (whether through

negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement or any other Loan Document to the extent that the Loan Parties are required to pay or reimburse an Agent for such fees, costs and expenses and such Agent is not paid or reimbursed promptly for such fees, costs and expenses by or on behalf of the Loan Parties. The undertaking in this Section shall survive the payment of all Obligations hereunder and the resignation or replacement of the Agent.

9.08 Agent in Individual Capacity. Each Agent and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide bank products to, acquire Equity Interests in, and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with any Loan Party or its Affiliates and any other Person party to any Loan Document as though it were not an Agent hereunder, and, in each case, without notice to or consent of the other Secured Parties. The other Secured Parties acknowledge that, pursuant to such activities, the Administrative Agent or its Affiliates may receive information regarding a Borrower or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of such Loan Party or such other Person and that prohibit the disclosure of such information to the Lenders, and the Lenders acknowledge that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver the Agent will use its reasonable efforts to obtain), the Agent shall not be under any obligation to provide such information to them. With respect to its Loans (if any), each Agent shall have the same rights and powers under the Loan Documents as each other Lender, and may exercise the same as though it were not an Agent.

9.09 Successor Agent. Each Agent may resign as the Administrative Agent or Collateral Agent, as applicable, upon 30 days (ten (10) days if an Event of Default has occurred and is continuing) prior written notice to the Lenders (unless such notice is waived by the Lenders), and the Borrower (unless such notice is waived by the Borrower or a Default or Event of Default has occurred and is continuing). Each Agent may also be removed at the direction of the Lenders. If either Agent resigns or is removed under this Agreement, the Lenders shall be entitled, with (so long as no Event of Default has occurred and is continuing) the consent of the Borrower (such consent not to be unreasonably withheld, delayed, or conditioned), to appoint a successor Collateral Agent or Administrative Agent, as applicable, for the Lenders. If no successor Collateral Agent or Administrative Agent is appointed prior to the effective date of the resignation of the Collateral Agent or Administrative Agent, the applicable Agent may appoint, without liability, after consulting with the Lenders and, if no Default or Event of Default has occurred and is continuing, the Borrower a successor Agent. In any such event, upon the acceptance of its appointment as successor Administrative Agent or Collateral Agent, as applicable, hereunder, such successor Administrative Agent or Collateral Agent shall succeed to all the rights, powers, and duties of the retiring Administrative Agent or Collateral Agent and the term "Administrative Agent" or "Collateral Agent", as applicable, shall mean such successor Administrative Agent or Collateral Agent and the retiring Administrative Agent's or Collateral Agent's appointment, powers, and duties as the Administrative Agent or Collateral Agent shall be terminated. After any retiring Administrative Agent's or Collateral Agent's resignation or removal hereunder as the Administrative Agent or Collateral Agent, the provisions of this Article IX shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent or Collateral Agent under this Agreement. If no successor Administrative Agent or Collateral Agent has accepted appointment as the Administrative Agent or Collateral Agent, as applicable, by the date which is 30 days following a retiring Administrative Agent's or Collateral Agent's notice of resignation, the retiring Administrative Agent's or Collateral Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of Administrative Agent or Collateral Agent hereunder until such time, if any, as the Lenders appoint a successor Administrative Agent or Collateral Agent as provided for above. Any entity into which the Administrative Agent or Collateral Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any entity resulting from any such conversion, sale, merger, consolidation or transfer to which the

Administrative Agent or Collateral Agent is a party, will be and become the successor of the Administrative Agent or the Collateral Agent, as applicable, under this Agreement and will have and succeed to the rights, duties, benefits, privileges, protections, indemnities and immunities as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

9.10 Collateral Matters.

(a) The Lenders hereby irrevocably authorize the Collateral Agent to release any Lien on any Collateral (i) upon the payment and satisfaction in full by the Loan Parties of all of the Obligations, (ii) [reserved], (iii) [reserved], (iv) [reserved], or (v) in connection with a credit bid or purchase authorized under this Section 9.10. The Loan Parties and the Lenders hereby irrevocably authorize the Collateral Agent, based upon the instruction of the Lenders, to (I) consent to the sale of, credit bid, or purchase (either directly or indirectly through one or more entities) all or any portion of the Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code, including Section 363 of the Bankruptcy Code, (II) credit bid or purchase (either directly or indirectly through one or more entities) all or any portion of the Collateral at any sale or other disposition thereof conducted under the provisions of the Code, including pursuant to Sections 9-610 or 9-620 of the Code, or (III) credit bid or purchase (either directly or indirectly through one or more entities) all or any portion of the Collateral at any other sale or foreclosure conducted or consented to by the Collateral Agent at the direction of the Lenders in accordance with applicable law in any judicial action or proceeding or by the exercise of any legal or equitable remedy, and upon any such credit bid or purchase as contemplated in the immediately preceding clauses (I), (II) and (III), the Collateral Agent shall convey to the Lenders (or their designee) the relevant Liens on the relevant Collateral. Notwithstanding the foregoing, the Collateral Agent shall not be obligated to acquire title to any assets (other than the Liens). In connection with any such credit bid or purchase, (i) the Obligations owed to the Lenders shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not impair or unduly delay the ability of the Collateral Agent to credit bid or purchase at such sale or other disposition of the Collateral and, if such contingent or unliquidated claims cannot be estimated without impairing or unduly delaying the ability of the Collateral Agent to credit bid at such sale or other disposition, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the Collateral that is the subject of such credit bid or purchase) and the Lenders whose Obligations are credit bid shall be entitled to receive interests (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) in the Collateral that is the subject of such credit bid or purchase (or in the Equity Interests of the any entities that are used to consummate such credit bid or purchase), and (ii) the Collateral Agent, based upon the instruction of the Lenders, may accept non-cash consideration, including debt and equity securities issued by any entities used to consummate such credit bid or purchase and in connection therewith the Administrative Agent may reduce the Obligations owed to the Lenders (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) based upon the value of such non-cash consideration. Except as provided above, the Collateral Agent will not execute and deliver a release of any Lien on any Collateral without the prior written authorization of (y) if the release is of all or substantially all of the Collateral, all of the Lenders, or (z) otherwise, the Lenders. Upon request by the Collateral Agent or the Borrower at any time, the Lenders will confirm in writing the Collateral Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 9.10; provided, that (1) anything to the contrary contained in any of the Loan Documents notwithstanding, the Collateral Agent shall not be required to execute any document or take any action necessary to evidence such release on terms that, in the Collateral Agent's opinion, could expose the Collateral Agent to liability or create any obligation or entail any consequence other than the release of such Lien without recourse, representation, or warranty, and (2) such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly released) upon (or obligations of the Loan Parties in respect of) any and all interests

retained by any Loan Party, including, the proceeds of any sale, all of which shall continue to constitute part of the Collateral.

(b) The Agents shall have no obligation whatsoever to any of the Lenders (i) to verify or assure that the Collateral exists or is owned by a Borrower or is cared for, protected, or insured or has been encumbered, (ii) to verify or assure that the Collateral Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, or enforced or are entitled to any particular priority, it being understood that the Loan Parties shall be responsible for such verifications and assurances, (iii) to verify or assure that any particular items of Collateral meet the eligibility criteria applicable in respect thereof, (iv) to impose, maintain, increase, reduce, implement, or eliminate any particular reserve hereunder or to determine whether the amount of any reserve is appropriate or not, or (v) to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to either Agent pursuant to any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, subject to the terms and conditions contained herein, each Agent shall have no duty or liability whatsoever to any Lender as to any of the foregoing, except as otherwise expressly provided herein.

9.11 Restrictions on Actions by Lenders; Sharing of Payments.

(a) Each of the Lenders agrees that it shall not, without the express written consent of the Administrative Agent, and that it shall, to the extent it is lawfully entitled to do so, upon the written request of the Administrative Agent, set off against the Obligations, any amounts owing by such Lender to any Loan Party or any deposit accounts of any Loan Party now or hereafter maintained with such Lender. Each of the Lenders further agrees that it shall not, unless specifically requested to do so in writing by the Administrative Agent, take or cause to be taken any action, including, the commencement of any legal or equitable proceedings to enforce any Loan Document against any Loan Party or to foreclose any Lien on, or otherwise enforce any security interest in, any of the Collateral.

(b) If, at any time or times any Lender shall receive (i) by payment, foreclosure, setoff, or otherwise, any proceeds of Collateral or any payments with respect to the Obligations, except for any such proceeds or payments received by such Lender from the Administrative Agent pursuant to the terms of this Agreement, or (ii) payments from the Administrative Agent in excess of such Lender's Applicable Percentage of all such distributions by the Administrative Agent, such Lender promptly shall (A) turn the same over to the Administrative Agent, in kind, and with such endorsements as may be required to negotiate the same to the Administrative Agent, or in immediately available funds, as applicable, for the account of all of the Lenders and for application to the Obligations in accordance with the applicable provisions of this Agreement, or (B) purchase, without recourse or warranty, an undivided interest and participation in the Obligations owed to the other Lenders so that such excess payment received shall be applied ratably as among the Lenders in accordance with their respective Applicable Percentage; provided, that to the extent that such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment.

9.12 Agency for Perfection. The Collateral Agent hereby appoints each Lender as its agent (and each Lender hereby accepts such appointment) for the purpose of perfecting the Collateral Agent's Liens in assets which, in accordance with Article 8 or Article 9, as applicable, of the Code can be perfected by possession or control. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify the Administrative Agent thereof, and, promptly upon the Administrative Agent's request

therefor shall deliver possession or control of such Collateral to the Collateral Agent or in accordance with the Collateral Agent's instructions.

9.13 Payments by Administrative Agent to the Lenders. All payments to be made by the Administrative Agent to the Lenders shall be made by bank wire transfer of immediately available funds pursuant to such wire transfer instructions as each party may designate for itself by written notice to the Administrative Agent. Concurrently with each such payment, the Administrative Agent shall identify whether such payment (or any portion thereof) represents principal, premium, fees, or interest of the Obligations.

9.14 Concerning the Collateral and Related Loan Documents. Each Secured Party authorizes and directs the Collateral Agent to enter into this Agreement and the other Loan Documents. Each Secured Party agrees that any action taken by the Collateral Agent in accordance with the terms of this Agreement or the other Loan Documents relating to the Collateral and the exercise by the Collateral Agent of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders.

9.15 Reports and Information. The Administrative Agent shall provide to each Lender a copy of any report, notice, request, document, or other information or communications provided by any Loan Party to the Administrative Agent that has not been contemporaneously provided by such Loan Party to such Lender. By becoming a party to this Agreement, each Lender may to the extent that the Administrative Agent is entitled, under any provision of the Loan Documents, to request additional reports, documents, notices or information from any Loan Party, from time to time, reasonably request the Administrative Agent to exercise such right as specified in such Lender's notice to the Administrative Agent, whereupon the Administrative Agent promptly shall request of the Loan Parties the additional reports, documents, notices or information reasonably specified by such Lender, and, upon receipt thereof from such Loan Party, the Administrative Agent promptly shall provide a copy of same to such Lender.

9.16 Several Obligations; No Liability. Notwithstanding that certain of the Loan Documents now or hereafter may have been or will be executed only by or in favor of the Administrative Agent or the Collateral Agent in its capacity as such, and not by or in favor of the Lenders, any and all obligations on the part of the Administrative Agent (if any) to make any credit available hereunder shall constitute the several (and not joint) obligations of the respective Lenders on a ratable basis, according to their respective Commitments, to make an amount of such credit not to exceed, in principal amount, at any one time outstanding, the amount of their respective Commitments. Nothing contained herein shall confer upon any Lender any interest in, or subject any Lender to any liability for, or in respect of, the business, assets, profits, losses, or liabilities of any other Lender. Each Lender shall be solely responsible for notifying its Participants of any matters relating to the Loan Documents to the extent any such notice may be required, and no Lender shall have any obligation, duty, or liability to any Participant of any other Lender. Except as provided in Section 9.07, no Secured Party shall have any liability for the acts of any other Secured Party. No Lender shall be responsible to the Loan Parties or any other Person for any failure by any other Lender to fulfill its obligations to make credit available hereunder, nor to advance for such Lender or on its behalf, nor to take any other action on behalf of such Lender hereunder or in connection with the financing contemplated herein.

9.17 Erroneous Payments.

(a) If the Administrative Agent (x) notifies a Lender or Secured Party, or any Person who has received funds on behalf of a Lender or Secured Party (any such Lender, Secured Party or other recipient (and each of their respective successors and assigns), a "Payment Recipient") that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately

succeeding clause (b)) that any funds (as set forth in such notice from the Administrative Agent) received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Secured Party or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and (y) demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent pending its return or repayment as contemplated below in this Section 9.17 and held in trust for the benefit of the Administrative Agent, and such Lender or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter (or such later date as the Administrative Agent may, in its sole discretion, specify in writing), return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the Administrative Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Prime Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender, Secured Party, or any Person who has received funds on behalf of a Lender or Secured Party (and each of their respective successors and assigns), agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender or Secured Party, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case:

(i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error and mistake has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender or Secured Party shall use commercially reasonable efforts to (and shall use commercially reasonable efforts to cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 9.17(b).

For the avoidance of doubt, the failure to deliver a notice to the Administrative Agent pursuant to this Section 9.17(b) shall not have any effect on a Payment Recipient's obligations pursuant to Section 9.17(a) or on whether or not an Erroneous Payment has been made.

(c) Each Lender or Secured Party hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender or Secured Party under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender or Secured Party under any Loan Document with respect to any payment of principal, interest, fees or other amounts, against any amount that the Administrative Agent has demanded to be returned under immediately preceding clause (a).

(d) (i) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor in accordance with immediately preceding clause (a), from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "Erroneous Payment Return Deficiency"), upon the Administrative Agent's notice to such Lender at any time, then effective immediately (with the consideration therefor being acknowledged by the parties hereto) (A) such Lender shall be deemed to have assigned its Loans (but not its Commitments) with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Class") in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the "Erroneous Payment Deficiency Assignment") (on a cashless basis and such amount calculated at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance)), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Assumption with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent (but the failure of such Person to deliver any such Notes shall not affect the effectiveness of the foregoing assignment), (B) the Administrative Agent as the assignee Lender shall be deemed to have acquired the Erroneous Payment Deficiency Assignment, (C) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification and reimbursement provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender, (D) the Administrative Agent and Borrower shall each be deemed to have waived any consents required under this Agreement to any such Erroneous Payment Deficiency Assignment, and (E) the Administrative Agent will reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement.

(ii) Subject to Section 11.06(b) (but excluding, in all events, any assignment consent or approval requirements), the Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). In addition, an Erroneous Payment Return Deficiency owing by the applicable Lender (x) shall be reduced by the proceeds of prepayments or repayments of principal and interest, or other distribution in respect of principal and interest, received by the Administrative Agent on or with respect to any such Loans acquired from such Lender pursuant to an Erroneous Payment Deficiency Assignment (to the extent that any such Loans are then owned by the Administrative Agent) and (y) may, in the sole discretion of the Administrative Agent, be reduced by any amount specified by the Administrative Agent in writing to the applicable Lender from time to time.

(e) The parties hereto agree that (x) irrespective of whether the Administrative Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender or Secured Party, to the rights and interests of such Lender or Secured Party, as the case may be) under the Loan Documents with respect to such amount (the "Erroneous Payment Subrogation Rights") (provided that the Loan Parties' Obligations under the Loan Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such Obligations in respect of Loans that have been assigned to the Administrative Agent under an Erroneous Payment Deficiency Assignment) and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party provided that this Section 9.17 shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrower relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by the Administrative Agent; provided, further, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including without limitation any defense based on "discharge for value" or any similar doctrine.

(g) Each party's obligations, agreements and waivers under this Section 9.17 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

ARTICLE X
GUARANTY

10.01 Guaranty. Each Guarantor hereby agrees that it is jointly and severally liable for, and, as a primary obligor and not merely as surety, absolutely, unconditionally and irrevocably guarantees to the Secured Parties, the prompt payment when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, of the Obligations and all costs and expenses, including, without limitation, all court costs and reasonable and documented attorneys' and paralegals' fees and expenses paid or incurred by the Agents and the Lenders in endeavoring to collect all or any part of the Obligations from, or in prosecuting any action against, the Borrower, the Guarantor, or any other guarantor of all or any part of the Obligations (such costs and expenses, together with the Obligations, collectively the "Guaranteed Obligations". Guarantor further agrees that the Guaranteed Obligations may be extended or renewed in whole or in part without notice to or further assent from it, and that it remains bound upon its guarantee notwithstanding any such extension or renewal. All terms of this Guaranty apply to and may be enforced by or on behalf of any domestic or foreign branch or Affiliate of any Lender that extended any portion of the Guaranteed Obligations.

10.02 Guaranty of Payment. This Guaranty is a guaranty of payment and not of collection. Guarantor waives any right to require an Agent or any Lender to sue the Borrower, the Guarantor, any other guarantor of, or any other Person obligated for, all or any part of the Guaranteed Obligations (each, an

"Obligated Party"), or otherwise to enforce its payment against any collateral securing all or any part of the Guaranteed Obligations.

10.03 No Discharge or Diminishment of Guaranty. (a) Except as otherwise provided for herein, the obligations of the Guarantor hereunder are unconditional and absolute and not subject to any reduction, limitation, impairment or termination for any reason (other than Payment in Full of the Guaranteed Obligations), including: (i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration or compromise of any of the Guaranteed Obligations, by operation of law or otherwise; (ii) any change in the corporate existence, structure or ownership of the Borrower or any other Obligated Party liable for any of the Guaranteed Obligations; (iii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting any Obligated Party or their assets or any resulting release or discharge of any obligation of any Obligated Party; or (iv) the existence of any claim, setoff or other rights which the Guarantor may have at any time against any Obligated Party, an Agent, any Lender or any other Person, whether in connection herewith or in any unrelated transactions.

(a) The obligations of Guarantor hereunder are not subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Guaranteed Obligations or otherwise, or any provision of applicable law or regulation purporting to prohibit payment by any Obligated Party, of the Guaranteed Obligations or any part thereof.

(b) Further, the obligations of Guarantor hereunder are not discharged or impaired or otherwise affected by: (i) the failure of an Agent or any Lender to assert any claim or demand or to enforce any remedy with respect to all or any part of the Guaranteed Obligations; (ii) any waiver or modification of or supplement to any provision of any agreement relating to the Guaranteed Obligations; (iii) any release, non-perfection or invalidity of any indirect or direct security for the obligations of the Borrower for all or any part of the Guaranteed Obligations or any obligations of any other Obligated Party liable for any of the Guaranteed Obligations; (iv) any action or failure to act by an Agent or any Lender with respect to any collateral securing any part of the Guaranteed Obligations; or (v) any default, failure or delay, willful or otherwise, in the payment or performance of any of the Guaranteed Obligations, or any other circumstance, act, omission or delay that might in any manner or to any extent vary the risk of Guarantor or that would otherwise operate as a discharge of the Guarantor as a matter of law or equity (other than Payment in Full of the Guaranteed Obligations).

10.04 Defenses Waived. To the fullest extent permitted by applicable law, the Guarantor hereby waives any defense based on or arising out of any defense of the Borrower or the Guarantor or the unenforceability of all or any part of the Guaranteed Obligations from any cause, or the cessation from any cause of the liability of the Borrower, the Guarantor or any other Obligated Party, other than Payment in Full of the Guaranteed Obligations. Without limiting the generality of the foregoing, the Guarantor irrevocably waives acceptance hereof, presentment, demand, protest and, to the fullest extent permitted by law, any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against any Obligated Party or any other Person. Guarantor confirms that it is not a surety under any state law and shall not raise any such law as a defense to its obligations hereunder. The Collateral Agent may, at its election, foreclose on any Collateral held by it by one or more judicial or nonjudicial sales, accept an assignment of any such Collateral in lieu of foreclosure or otherwise act or fail to act with respect to any collateral securing all or a part of the Guaranteed Obligations, compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with any Obligated Party or exercise any other right or remedy available to it against any Obligated Party, without affecting or impairing in any way the liability of the Guarantor under this Guaranty except to the extent the Guaranteed Obligations have been Paid in Full. To the fullest extent permitted by applicable law, the Guarantor waives any defense arising out of any such election even though that election may operate, pursuant to applicable law, to impair or

extinguish any right of reimbursement or subrogation or other right or remedy of the Guarantor against any Obligated Party or any security.

10.05 Rights of Subrogation. No Guarantor will assert any right, claim or cause of action, including, without limitation, a claim of subrogation, contribution or indemnification, that it has against any Obligated Party or any collateral, until the Borrower and the Guarantor have fully performed all their obligations to the Agents and the Lenders.

10.06 Reinstatement; Stay of Acceleration. If at any time any payment of any portion of the Guaranteed Obligations (including a payment effected through exercise of a right of setoff) is rescinded, or must otherwise be restored or returned upon the insolvency, bankruptcy or reorganization of the Borrower or otherwise (including pursuant to any settlement entered into by a Secured Party in its discretion), each Guarantor's obligations under this Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made and whether or not the Agents and the Lenders are in possession of this Guaranty. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of the Borrower, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Guaranteed Obligations shall nonetheless be payable by the Guarantor forthwith on demand by the Administrative Agent.

10.07 Information. Guarantor assumes all responsibility for being and keeping itself informed of the Borrower's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that the Guarantor assumes and incurs under this Guaranty, and agrees that none of the Agents or any Lender shall have any duty to advise the Guarantor of information known to it regarding those circumstances or risks.

10.08 Termination. Each of the Lenders may continue to make loans or extend credit to the Borrower based on this Guaranty until five (5) days after it receives written notice of termination from the Guarantor. Notwithstanding receipt of any such notice, the Guarantor will continue to be liable to the Lenders for any Guaranteed Obligations created, assumed or committed to prior to the fifth day after receipt of the notice, and all subsequent renewals, extensions, modifications and amendments with respect to, or substitutions for, all or any part of such Guaranteed Obligations. Nothing in this Section 10.08 shall be deemed to constitute a waiver of, or eliminate, limit, reduce or otherwise impair any rights or remedies the Administrative Agent or any Lender may have in respect of, any Default or Event of Default that shall exist under clause (o) of Article VII hereof as a result of any such notice of termination.

10.09 Taxes. Each payment of the Guaranteed Obligations will be made by the Guarantor without withholding for any Taxes, unless such withholding is required by applicable Laws. If the Guarantor determines, in its sole discretion exercised in good faith, that it is so required to withhold Taxes, then the Guarantor may so withhold and shall timely pay the full amount of withheld Taxes to the relevant Governmental Authority in accordance with applicable Laws. If such Taxes are Indemnified Taxes, then the amount payable by the Guarantor shall be increased as necessary so that, net of such withholding (including such withholding applicable to additional amounts payable under this Section), the Recipient receives the amount it would have received had no such withholding been made.

10.10 Maximum Liability. Notwithstanding any other provision of this Guaranty, the amount guaranteed by each Guarantor hereunder shall be limited to the extent, if any, required so that its obligations hereunder shall not be subject to avoidance under Section 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, Uniform Voidable Transactions Act or similar statute or common law. In determining the limitations, if any, on the amount of Guarantor's obligations hereunder pursuant to the preceding sentence, it is the intention of the parties

hereto that any rights of subrogation, indemnification or contribution which such Guarantor may have under this Guaranty, any other agreement or applicable law shall be taken into account.

10.11 [Reserved].

10.12 Liability Cumulative. The liability of each Loan Party as a Guarantor under this Article X is in addition to and shall be cumulative with all liabilities of each Loan Party to the Administrative Agent and the Lenders under this Agreement and the other Loan Documents to which such Loan Party is a party or in respect of any obligations or liabilities of the other Loan Parties, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

ARTICLE XI
MISCELLANEOUS

11.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by each Lender and the Loan Parties, and acknowledged by the Administrative Agent and the Collateral Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.; provided, however, that no amendment, waiver or consent shall, unless in writing and signed by the Agents in addition to the Lenders required above, affect the rights or duties of the Agents under this Agreement or any other Loan Document, and no amendment, waiver or consent shall, unless in writing and signed by the Collateral Agent in addition to the Lenders required above, affect the rights or duties of the Collateral Agent under this Agreement or any other Loan Document.

Notwithstanding anything in this Agreement to the contrary, each Lender hereby irrevocably authorizes the Administrative Agent on its behalf, and without further consent of any Lender (but with the consent of the Borrower and the Administrative Agent), to amend and restate this Agreement if, upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended and restated), the Commitments of such Lender shall have terminated, such Lender shall have no other commitment or other obligations hereunder and shall have been paid in full all principal, interest and other amounts owing to it or accrued for its account under this Agreement.

11.02 Notices; Effectiveness; Electronic Communications.

(a) Notices Generally. Except as provided in subsection (b) below, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by electronic mail or facsimile as follows:

(i) if to the Loan Parties or the Administrative Agent or the Collateral Agent, to the address, telecopier number, or electronic mail address specified for such Person on Schedule 11.02; and

(ii) if to any other Lender, to the address, telecopier number or electronic mail address specified in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business

day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent, the Lenders, or the Loan Parties may, in their discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) [Reserved].

(d) Change of Address, Etc. Each Loan Party and each Agent may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Loan Parties and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Lender agrees to cause at least one individual at or on behalf of such Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Lender or its delegate, in accordance with such Lender's compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Loan Parties or their securities for purposes of United States Federal or state securities laws.

(e) Reliance by Agents and Lenders. Each Agent and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of the Loan Parties even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Agents, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower.

11.03 No Waiver; Cumulative Remedies; Enforcement. No failure by any Lender or either Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the

exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Agents in accordance with Section 8.02 for the benefit of all the Lenders; provided, however, that the foregoing shall not prohibit (a) either Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as an Agent) hereunder and under the other Loan Documents, (b) any Lender from exercising setoff rights in accordance with Section 11.08 (subject to the terms of Section 2.10), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent or Collateral Agent hereunder and under the other Loan Documents, then (i) the Lenders shall have the rights otherwise ascribed to the Administrative Agent or Collateral Agent, as applicable, pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso and subject to Section 2.10, any Lender may, with the consent of the Lenders, enforce any rights and remedies available to it and as authorized by the Lenders.

11.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. Whether or not the transactions contemplated hereby are consummated, the Loan Parties will pay all documented costs and expenses (including reasonable and documented attorneys' fees of a special counsel and, if reasonably required by the Lenders, local or other counsel) incurred by the Lenders in connection with such transactions and in connection with any amendments, waivers or consents under or in respect of this Agreement or the other Loan Documents (whether or not such amendment, waiver or consent becomes effective), including, without limitation: (a) the costs and expenses incurred in enforcing or defending (or determining whether or how to enforce or defend) any rights under this Agreement or any other Loan Document or in responding to any subpoena or other legal process or informal investigative demand issued in connection with this Agreement or any other Loan Document, or by reason of being an Agent or a Lender, (b) the reasonable and documented out-of-pocket costs and expenses, including financial advisors' fees and other consultant's fees, incurred in connection with the Cases, the Sale Process or in connection with any work-out or restructuring of the transactions contemplated hereby and the other Loan Documents and (c) the costs and expenses incurred in connection with the filing of this Agreement any the Loan Documents and all related documents. In addition, the Loan Parties will pay the documented fees and disbursements of the FTI Consulting, Inc., Greenberg Traurig, LLP, Bernstein, Shur, Sawyer & Nelson, P.A., Hogan Lovells US LLP and Richards, Layton & Finger P.A. and other attorneys and consultants retained by the Agents and/or the Lenders from time to time in connection with this Agreement and the transactions contemplated hereby.

(b) Indemnification by the Loan Parties. The Loan Parties will, jointly and severally, pay, and will save each Lender, the Agents and each of their respective Affiliates, officers, directors, representatives, employees, advisors, agents and other Agent-Related Persons (collectively, the "Indemnified Parties") harmless from, all claims in respect of any fees, costs or expenses, if any, of brokers and finders and any judgment, liability, claim, order, decree, cost, fee, expense, loss, action or obligation, other than Excluded Taxes, resulting from the consummation of the transactions contemplated hereby, including the use of the proceeds of the Loans by the Loan Parties and any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, claims, expenses or disbursements of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any Indemnified Party in any way relating to, arising out of or incurred in respect of the Cases or any of the Transactions contemplated by the RSA,

the Project, this Agreement, any other Loan Document, or any documents contemplated by or referred to herein or the transactions contemplated hereby or thereby, the administration of this Agreement or any other Loan Document, or the enforcement of any of the terms hereof or thereof or of any such other documents, including any Environmental Claims, arising in connection with the release or presence of any Hazardous Material at the Project or the Site, whether foreseeable or unforeseeable, including all costs of removal and disposal of such Hazardous Material, all costs required by any Governmental Authority or under any applicable law to be incurred in determining whether the Project or the Site is in compliance, and causing the Project or the Site to be in compliance, with all applicable requirements of law, all costs associated with claims for damages to persons or property, and reasonable attorneys' and consultants' fees and court costs (collectively, the "Indemnified Losses"), except to the extent that any Indemnified Loss is finally determined by a court of competent jurisdiction to be the direct result from the gross negligence or willful misconduct of the party seeking indemnification (and, upon any such determination by such court, any indemnification payments with respect to such losses, claims, damages, liabilities or related costs and expenses previously received by such Indemnified Party shall be subject to reimbursement by such Indemnified Party if provided by such court).

(c) Reimbursement by Lenders. To the extent that the Loan Parties for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Agents (or any sub-agent thereof), or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Agents (or any such sub-agent), or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Agents (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Agents (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.10(d).

(d) Consequential Damages, Etc. To the fullest extent permitted by applicable law, in no event shall the Agents be liable for special, punitive, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Agents have been advised of the likelihood of such loss or damage and regardless of the form of action. No Indemnified Party referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnified Party through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnified Party as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable not later than ten (10) Business Days after demand therefor.

(f) Survival. The agreements in this Section 11.04 shall survive the resignation of the Administrative Agent or Collateral Agent, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Obligations, and shall continue in the Cases and in any successor cases, following the dismissal of the Cases of any successor cases.

11.05 Payments Set Aside. To the extent that any payment by or on behalf of any Loan Party is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee,

receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Prime Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

11.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that none of the Loan Parties may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender and Agent and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 11.06(b), (ii) by way of participation in accordance with the provisions of Section 11.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 11.06(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each Agent and each of the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment under the Facility and the Loans at the time owing to it under the Facility or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $500,000, unless the Administrative Agent otherwise consents; provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of $3,500 with respect to assignments to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund with respect to such Lender; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Borrower. No such assignment shall be made to any Loan Party, the Sponsor, any such Person's respective Affiliates or Subsidiaries, or any other Person with a direct or indirect ownership interest in any Loan Party (other than an Affiliate of any Lender).

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural person.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.03 and 11.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the Borrower (at their expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 11.06(d).

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Agents and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, any Borrower or the Administrative Agent, sell participations to any Person (other than a natural person or any Loan Party or any of the Loan Parties' Affiliates) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans; provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such

Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Loan Parties, the Administrative Agent, and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 3.01(c)(ii) with respect to any payments made by such Lender to its Participant(s)

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification that affects such Participant. Each Loan Party agrees that each Participant shall be entitled to the benefits of Sections 3.01 and 3.02 (subject to the requirements and limitations therein, including the requirements under Section 3.01(e) (it being understood that the documentation required under Section 3.01(e) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 3.01, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.11 as though it were a Lender.

(e) Participant Register. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans or its other obligations under any Loan Document) to any Person except solely to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

11.07 Treatment of Certain Information; Confidentiality. Each of Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, trustees, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar

legal process including the Bankruptcy Court or in connection with the Cases, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Loan Parties and their obligations, (g) with the consent of the Borrower or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to either Agent, any Lender, or any of their respective Affiliates on a nonconfidential basis from a source other than a Borrower.

For purposes of this Section, "Information" means all information received from any Loan Party relating to any Loan Party or their respective businesses, other than any such information that is available to the Administrative Agent, the Collateral Agent, or any Lender on a nonconfidential basis prior to disclosure by any Loan Party, provided that, in the case of information received from a Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, the Collateral Agent and the Lenders acknowledges that (a) the Information may include material non-public information concerning a Borrower, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws. The confidentiality requirements under this Section 11.07 shall expire one year after the Maturity Date.

11.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law and the Bankruptcy Court, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of any Loan Party against any and all of the obligations of such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or their respective Affiliates may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

11.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest,

(b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

11.10 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

11.11 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Agents and each Lender, regardless of any investigation made by the Agents or any Lender or on their behalf and notwithstanding that an Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

11.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

11.13 [Reserved.]

11.14 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement and the other Loan Documents. In the event an ambiguity or question of intent or interpretation arises under any provision of this Agreement or any Loan Document, this Agreement or such other Loan Document shall be construed as if drafted jointly by the parties thereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement or any other Loan Document.

11.15 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. EXCEPT TO THE EXTENT GOVERNED BY THE BANKRUPTCY CODE, THE INTERNAL LAWS OF THE STATE OF NEW YORK SHALL GOVERN ALL MATTERS ARISING OUT OF, IN CONNECTION WITH OR RELATING TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, INCLUDING THE VALIDITY, INTERPRETATION, CONSTRUCTION, PERFORMANCE AND ENFORCEMENT THEREOF (INCLUDING ANY CLAIMS SOUNDING IN CONTRACT OR TORT LAW ARISING OUT OF THE SUBJECT MATTER THEREOF AND ANY DETERMINATIONS WITH RESPECT TO POST-JUDGMENT INTEREST).

(b) SUBMISSION TO JURISDICTION. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE BANKRUPTCY COURT, AND IF THE BANKRUPTCY COURT ABSTAINS FROM HEARING OR REFUSES TO EXERCISE JURISDICTION, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH BANKRUPTCY COURT OR NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, THE COLLATERAL AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN SUBSECTION (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

11.16 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

11.17 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other

modification hereof or of any other Loan Document), each Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) each Loan Party has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (B) each Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each Agent and each Lender is and has been acting solely as a principal and has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Loan Parties or any of their Affiliates, or any other Person and (B) neither the Agents, nor any of the Lenders has any obligation to the Loan Parties or any of their Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Agents, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their Affiliates, and none of the Agents or any of the Lenders have any obligation to disclose any of such interests to the Loan Parties or any of their Affiliates. To the fullest extent permitted by law, the Loan Parties hereby waive and release any claims that it may have against the Agents and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

11.18 Electronic Execution of Assignments and Certain Other Documents. Facsimile, documents executed, scanned and transmitted electronically and electronic signatures, including those created or transmitted through a software platform or application, shall be deemed original signatures for purposes of this Agreement and all other Loan Documents and all matters and agreements related thereto, with such facsimile, scanned and electronic signatures having the same legal effect as original signatures. The parties agree that this Agreement] or any other Loan Document or any instrument, agreement or document necessary for the consummation of the transactions contemplated by this Agreement or the other Loan Documents or related hereto or thereto (including, without limitation, addendums, amendments, notices, instructions, communications with respect to the delivery of securities or the wire transfer of funds or other communications) ("Executed Documentation") may be accepted, executed or agreed to through the use of an electronic signature in accordance with applicable laws, rules and regulations in effect from time to time applicable to the effectiveness and enforceability of electronic signatures. Any Executed Documentation accepted, executed or agreed to in conformity with such laws, rules and regulations will be binding on all parties hereto to the same extent as if it were physically executed and each party hereby consents to the use of any third party electronic signature capture service providers as may be reasonably chosen by a signatory hereto or thereto. When an Agent acts on any Executed Documentation sent by electronic transmission, such Agent will not be responsible or liable for any losses, costs or expenses arising directly or indirectly from its reliance upon and compliance with such Executed Documentation, notwithstanding that such Executed Documentation (a) may not be an authorized or authentic communication of the party involved or in the form such party sent or intended to send (whether due to fraud, distortion or otherwise) or (b) may conflict with, or be inconsistent with, a subsequent written instruction or communication; it being understood and agreed that the Agent shall conclusively presume that Executed Documentation that purports to have been sent by an authorized officer of a Person has been sent by an authorized officer of such Person. The party providing Executed Documentation through electronic transmission or otherwise with electronic signatures agrees to assume all risks arising out of such electronic methods, including, without limitation, the risk of the relevant Agent acting on unauthorized instructions and the risk of interception and misuse by third parties.

11.19 USA PATRIOT Act; Anti-Money Laundering Laws. The Agents and each Lender hereby notifies the Loan Parties (and, in the case of the Agents, the Lenders) that pursuant to the requirements of the USA PATRIOT Act or any other Anti-Money Laundering Laws, each of them is required to obtain, verify, record and update certain information that identifies each Loan Party (and, in the case of the Agents, the Lenders), which information includes the name and address of each such party and other information that will allow such Agent and/or such Lender to identify each Loan Party in accordance with the USA

PATRIOT Act or such Anti-Money Laundering Laws. Accordingly, the Loan Parties agree to provide the Agents and the Lenders, and the Lenders agree to provide to the Agents, upon request from time to time such identifying information and documentation as may be available for such party in order to enable the Agents and the Lenders to comply with the USA PATRIOT Act or any other Anti-Money Laundering Laws.

11.20 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

11.21 Incorporation of DIP Orders by Reference. Each of the Loan Parties, the Agents and the Lenders agrees that any reference contained herein to (i) the Interim DIP Order shall include all terms, conditions and provisions of such Interim DIP Order and that the Interim DIP Order is incorporated herein for all purposes, and (ii) the Final DIP Order shall include all terms, conditions and provisions of such Final DIP Order and that the Final DIP Order is incorporated herein for all purposes. To the extent there is any inconsistency between the terms of this Agreement and the terms of either the Interim DIP Order of the Final DIP Order, the terms of the Interim DIP Order and the Final DIP Order, as applicable, shall govern.

ARTICLE XII
SECURITY AGREEMENT

12.01 Grant of Security Interest.

(a) Each Loan Party hereby grants to the Collateral Agent, for the benefit of the Secured Parties, to secure the payment and performance in full of all of the Obligations, a Lien on and a security interest in and pledges and collaterally assigns to the Collateral Agent, for the benefit of the Secured Parties, all right, title and interest of such Loan Party in all of its assets and properties (real and personal), wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof (all of the same being hereinafter called the "Collateral") including: (i) all goods (including inventory, equipment and any accessions thereto), instruments (including promissory notes), (ii) documents (including, if applicable, electronic documents), accounts (including health-care-insurance receivables), (iii) chattel

paper (whether tangible or electronic), (iv) deposit accounts, (v) letter-of-credit rights (whether or not the letter of credit is evidenced by a writing), (vi) actions brought under 549 of the Bankruptcy Code, (vii) proceeds of avoidance actions, (viii) proceeds of the leases, (ix) commercial tort claims (including, without limitation, those set forth on Schedule 12.01(a) attached hereto), (x) securities and all other investment property, (xi) supporting obligations, (xii) any other contract rights or rights to the payment of money, (xiii) insurance claims, (xiv) all general intangibles (including all payment intangibles), (xv) money, cash and cash equivalents, (xvi) intellectual property, (xvii) software, books, records, ledger cards, files, correspondence, computer programs, tapes, disks, and related data processing software, (xviii) real property, (xix) upon entry of the Final DIP Order, any proceeds of, or property and interests recovered in respect of Avoidance Actions, (xx) all other personal and fixture property of every kind and nature and all to the extent not otherwise included, and (xxi) all accessions, proceeds and products of any and all of the foregoing.

(b) Notwithstanding anything to the contrary contained herein, as and to the extent provided in this Section 12.02, the Collateral shall not include, and the Lien of this Agreement shall not attach to, the following:

(i) any item of, tangible or intangible, property to the extent and only for so long as the creation, attachment or perfection of the security interest granted herein by any Loan Party in its right, title and interest in such item of property is prohibited by applicable Law or is permitted only with the consent (that has not been obtained) of a Governmental Authority and such restriction, prohibition and/or requirement of consent is not rendered ineffective by applicable Law (including pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC);

(ii) any property subject to a Lien permitted under Subsection 7.02(f) of this Agreement to the extent and only for so long as the applicable purchase money security agreement, Capital Lease or other applicable documentation contains a term that restricts, prohibits or requires a consent (that has not been obtained) of a Person (other than such Loan Party or any other Borrower) to, the creation, attachment or perfection of the security interest granted herein and such restriction, prohibition and/or requirement of consent is not rendered ineffective by applicable Law (including pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC); and

(iii) any lease, license, contract, property rights or agreement to which a Borrower is a party or any of such Loan Party's rights or interests thereunder, in any case if and for so long as and to the extent that the grant of such security interest or lien shall constitute or result in (a) the abandonment, invalidation or unenforceability of any material right, title or interest of such Loan Party therein or (b) a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract, property rights or agreement (other than, in the case of the above clauses (a) and (b), to the extent that any such abandonment, invalidation, unenforceability, breach, termination or default would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law or principles of equity); provided, however, that to the extent Liens and consents to assignments are not permitted pursuant to the foregoing each Loan Party hereby grants to the Collateral Agent for the benefit of the Secured Parties (A) consent rights with respect to the rejection of leases, (B) rights to select replacement lessees for rejected leases, and (C) rights to compel assumption and assignment (regardless of prior assumption) or the sale of leases upon an Event of Default.

If at any time the creation, attachment or perfection of the security interest granted herein in any of property subject to clauses (b)(i) through clauses (b)(iii) of this Section 12.01(b) shall be permitted or consent in respect thereof shall have been obtained, then the applicable Borrower shall at such time be deemed to have

granted a security interest in such property (and such security interest will attach immediately without any further action). Notwithstanding anything to the contrary set forth above, the rights to receive, and any interest in, all proceeds of, or monies or other consideration received or receivable from or attributable to the sale, transfer, assignment or other disposition of, any of the property subject to this Section 12.01(b) (to the extent a direct security interest in such property proceeds from the sale or disposition of such property shall not have already been granted) shall attach immediately and be subject to the security interest granted pursuant to Section 12.01.

(c) Subject to the Carve-Out and subject to the scheme of priority set forth in the DIP Order, pursuant to Bankruptcy Code Section 364(c)(1) the Collateral Agent and the Secured Parties have been granted a superpriority administrative claim over any and all administrative claims of the type specified in Bankruptcy Code Section 503(b) and 507(b). As collateral for the Loans and security for the full and timely payment and performance of all Obligations when due (whether at stated maturity, by acceleration or otherwise), the Collateral Agent, for the benefit of the Secured Parties, is hereby granted (i) pursuant to Section 364(c)(2) of the Bankruptcy Code, a perfected first priority Lien on the Collateral that is otherwise unencumbered as of the commencement of the Cases; (ii) pursuant to Section 364(c)(3) of the Bankruptcy Code, a perfected Lien on all Collateral of the Secured Parties, junior only to (A) Prepetition Priority Liens, and (B) valid Liens in existence at the time of such commencement that are perfected subsequent to such commencement as permitted by Section 546(b) of the Bankruptcy Code; and (iii) pursuant to Section 364(d)(1) of the Bankruptcy Code, a perfected senior priming Lien on all of the Loan Parties' Collateral that is subject only to the Carve-Out.

(d) Pledged Equity. As security for the Obligations, each of the Loan Parties pledges, hypothecates, assigns, transfers, sets over and delivers unto the Collateral Agent, its successors and assigns, for the benefit of the Lenders, and grants to the Collateral Agent, its successors and assigns, for the benefit of the Lenders, a continuing security interest in and to the following (hereinafter collectively called the "Pledged Equity"):

(i) Subject to Section 12.01(b), all of the Equity Interests now held and hereafter acquired by such Loan Party at any time, and any certificates representing such Equity Interests, all of the right, title and interest of such Loan Party in, to and under its percentages interest, shares or units as an owner thereof, and all investment property in respect thereof, including, without limitation, such Loan Party's interests in (or allocations of) the profits, losses, income, gains, deductions, credits or similar items in respect of any Equity Interests now held or hereafter acquired by such Loan Party, and the right to receive dividends or distributions in respect thereof, cash, other property, assets, and all options and warrants for the purchase of Equity Interests, all of such Loan Party's right, title and interest to receive payments of principal and interest on any loans and/or other extensions of credit made by such Loan Party to any other Borrower, all of such Loan Party's voting rights, whether now existing or hereafter arising, whether arising under the terms of the other Organization Documents of each Person in which it holds or acquires any Equity Interests, at law or in equity, or otherwise and any and all of the proceeds thereof, and all distributions, cash, instruments, investment property and other property from time to time received, receivable or otherwise distributed in respect of, or in exchange for, any or all of the Pledged Equity;

(ii) all other property hereafter delivered to the Collateral Agent by such Loan Party in substitution for or in addition to any of the foregoing, all certificates and instruments representing or evidencing such other property and all cash, securities, interest, dividends, rights and other property at any time and from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all thereof; and

(iii) all products and proceeds of all of the foregoing.

TO HAVE AND TO HOLD the Pledged Equity, together with all rights, titles, interests, privileges and preferences appertaining or incidental thereto, unto the Collateral Agent forever, subject, however, to the terms, covenants and conditions hereafter set forth.

12.02 No Filings Required; Perfection of Security Interests; Priority. The Liens and security interests referred to herein shall be deemed valid and perfected by entry of the DIP Orders. The Collateral Agent shall not be required (but shall have the option and authority) to file any financing statements, mortgages, notices of Lien or similar instruments in any jurisdiction or filing office or to take any other action in order to validate or perfect the Lien and security interest granted by or pursuant to this Agreement, any other Loan Document or the DIP Orders. The DIP Liens in the Collateral will not be junior in priority to any Lien other than the Carve-Out and the Prepetition Priority Liens (to the extent, and only to the extent, set forth in the DIP Orders).

12.03 Certain Perfection Actions; Further Assurances.

(a) Notwithstanding the perfection of any security interest granted hereunder pursuant to the order of the Bankruptcy Court under the applicable DIP Order, each Loan Party shall, as applicable, at such Person's expense, perform all steps requested by the Agents or the Lenders to perfect, maintain, protect, and enforce the DIP Liens including, upon request by the Lenders, delivering to the Collateral Agent (who shall hold on behalf of the Lenders), the originals of all Pledged Debt, certificated investment property, instruments, documents and chattel paper and all other Collateral of which the Lenders determine that the Collateral Agent should have physical possession of in order to perfect and protect the security interest of the Secured Parties therein, duly pledged, endorsed or assigned to the Collateral Agent without restriction. To the fullest extent permitted by applicable law, the Collateral Agent may file (i) one or more financing statements disclosing the DIP Liens on the Collateral and (ii) a copy of the DIP Orders (including this Agreement attached thereto) in real property records, in each case disclosing the DIP Liens on the Collateral.

(b) To the extent any Loan Party owns any investment property, such Loan Party agrees as follows with respect to such investment property:

(i) All cash dividends, cash distributions, and other cash or cash equivalents in respect of such investment property at any time payable or deliverable to such Loan Party shall be deposited a Controlled Account; and

(ii) Such Loan Party will not acknowledge any transfer or encumbrance in respect of such investment property to or in favor of any Person other than the Collateral Agent or a Person designated by the Collateral Agent in writing.

(c) The Collateral Agent shall have the right, at any time, after the occurrence and during the continuance of an Event of Default, to transfer to or to register in the name of the Collateral Agent or its nominee any Equity Interest in any Project Company. In addition, the Collateral Agent shall have the right at any time to exchange certificates or instruments representing or evidencing Equity Interests of such Project Company for certificates or instruments of smaller or larger denominations.

(d) Subject to Section 12.03(a), each Loan Party agrees, at its expense, to execute, acknowledge, deliver and cause to be duly filed all such further instruments and documents and take all such actions as the Collateral Agent or any Lender may from time to time reasonably request for the perfection and preserving of the security interests and the rights and remedies created hereby, including but not limited to, the execution and delivery of such additional conveyances, assignments, agreements, instruments and endorsements, the payment of any fees and taxes required in connection with the execution

and delivery of this Agreement, the granting of the security interests created hereby and the execution, filing and recordation of any financing statements (including fixture filings or real property filings) or other documents as the Collateral Agent or any Lender may deem reasonably necessary or desirable for the perfection of the security interests granted hereunder.

12.04 Powers of Attorney.

(a) Each Loan Party hereby irrevocably appoints the Collateral Agent (and any officer or agent of the Collateral Agent), on behalf of and for the benefit of the Lenders, as its true and lawful proxy and attorney-in-fact, with power of substitution for and in the name of the Collateral Agent or otherwise, which power of attorney shall be coupled with an interest, for the use and benefit of the Collateral Agent to, effective upon the occurrence and during the continuance of an Event of Default and subject to the DIP Orders: (i) receive, endorse the name of such Loan Party upon and deliver any notes, acceptances, checks, drafts, money orders or other evidences of payment that may come into the possession of the Collateral Agent with respect to the Collateral; (ii) cause such Loan Party's mail to be transferred to the Collateral Agent's own offices and to receive and open all mail addressed to such Loan Party for the purposes of removing any such notes, acceptances, checks, drafts, money orders or other evidences of payment; (iii) demand, collect and receive payment in respect of the Collateral and to apply any such payments directly to the payment of the Obligations in accordance with this Agreement; (iv) receive and give discharges and releases of all or any of the Collateral; (v) commence and prosecute any and all suits, actions or proceedings at law or in equity in any court of competent jurisdiction, to collect or otherwise realize on all or any part of the Collateral or to enforce any rights in respect thereof; (vi) sign the name of such Loan Party on any invoice or bill of lading relating to any of the Collateral; (vii) send verification of any accounts to any account debtor or customer; (viii) notify any account debtor or other obligor of such Loan Party with respect to any Collateral to make payment to the Collateral Agent; (ix) settle, compromise, compound, adjust or defend any actions, suits or proceedings relating or pertaining to all or any of the Collateral; (x) take any action for purposes of carrying out of the terms of this Agreement; (xi) enforce all of such Loan Party's rights and powers under and pursuant to any and all agreements with respect to the Collateral; (xii) to effectuate the transfer of the Pledged Equity on the books of the issuer thereof to the name of the Collateral Agent or to the name of the Collateral Agent's nominee, designee or assignee; (xiii) to exercise all voting rights or any other ownership or consensual rights (including (x) the right to remove and appoint directors and officers or the equivalent thereof and (y) dividend and distribution rights) and to exercise all rights, powers and privileges and remedies which any holder of any of the Pledged Equity would be entitled including giving or withholding consents of members, calling and attending special or regularly scheduled meeting of members and voting at such meetings and (xiv) generally, to sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with all or any of the Collateral, and to do all other acts and things necessary to carry out this Agreement, as fully and completely as though the Collateral Agent were the absolute owner of the Collateral for all purposes; provided, however, nothing herein contained shall be construed as requiring or obligating the Collateral Agent to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by the Collateral Agent, or to present or file any claim or notice, or to take any action with respect to the Collateral or any part thereof or the moneys due or to become due in respect thereof or any property covered thereby, and no action taken by the Collateral Agent or omitted to be taken with respect to the Collateral or any part thereof shall give rise to any defense, counterclaim or offset in favor of such Loan Party or to any claim or action against the Collateral Agent. It is understood and agreed that the power of attorney granted to the Collateral Agent for the purposes set forth above in this Section 12.04 is coupled with an interest and is irrevocable and shall be effective automatically without any action or notice upon an Event of Default. Such appointment as proxy and attorney-in-fact shall be valid and irrevocable notwithstanding any limitations to the contrary set forth in the organizational documents of any Loan Party or any issuer of the Pledged Equity. All prior proxies given by any Loan Party with respect to any of the Pledged Equity (other than to the Collateral Agent), are hereby revoked, and no subsequent proxies (other than to the Collateral Agent) will be given with respect

to any of the Pledged Equity, unless the Administrative Agent at the direction of the Lenders otherwise subsequently agrees in writing. To the fullest extent permitted by applicable law, the Collateral Agent shall have no agency, fiduciary, or other implied duties to any Loan Party or any other Person when acting in its capacity as such proxy or attorney-in-fact. Each Loan Party hereby waives and releases to the fullest extent permitted by applicable law any claims that it may otherwise have against the Collateral Agent or any other Secured Party with respect to any breach or alleged breach of any such agency, fiduciary, or other duty. Each Loan Party hereby ratifies and approves all acts of such attorney-in-fact made in accordance with this Agreement and agrees that such attorney-in-fact will not be liable for any such acts, omissions, errors of judgment or mistakes of law or fact other than by such Person's gross negligence or willful misconduct. The provisions of this Section 12.04 shall in no event relieve any Loan Party of any of its obligations hereunder with respect to the Collateral or any part thereof or impose any obligation on the Collateral Agent to proceed in any particular manner with respect to the Collateral or any part thereof, or in any way limit the exercise by the Collateral Agent of any other or further right which it may have on the date of this Agreement or hereafter, whether hereunder, by law or otherwise.

(b) Beyond the duty of the Collateral Agent to exercise reasonable care in the custody of any Collateral in its possession, the Collateral Agent shall not, under any circumstance or in any event whatsoever, have any liability for any part of the Collateral, nor shall the Collateral Agent have any liability for any error or omission or delivery of any kind incurred in the good faith settlement, collection or payment of any of the Collateral or any monies received in payment therefor or for any damages resulting therefrom, nor shall this Agreement impose upon the Collateral Agent any obligation to perform any obligation with respect to the Collateral. The costs of collection, notification and enforcement, including but not limited to, reasonable attorneys' fees and reasonable out-of-pocket expenses, shall be borne by the Loan Parties, whether the same are incurred by a Lender or the Collateral Agent.

12.05 Certain Waivers; Loan Parties Not Discharged. Each Loan Party expressly and irrevocably waives (to the extent permitted by applicable law) presentment, demand of payment and protest of nonpayment in respect of its Obligations under this Agreement. The obligations and duties of each Loan Party hereunder are irrevocable, absolute, and unconditional and shall not be discharged, impaired or otherwise affected by (a) the failure of either Agent to assert any claim or demand or to enforce any right or remedy against any Loan Party or any grantee under the provisions of this Agreement or any waiver, consent, extension, indulgence or other action or inaction in respect thereof, (b) any extension or renewal of any part of the Obligations, (c) any rescission, waiver, amendment or modification of any of the terms or provisions of any agreement related to this Agreement, (d) the release of any liens on or security interests in any part of the Collateral or the release, sale or exchange of or failure to foreclose against any security held by or for the benefit of the Collateral Agent for payment or performance of the Obligations, (e) the bankruptcy, insolvency or reorganization of any Loan Party or any grantee or any other Persons, (f) any change, restructuring or termination of the organization structure or existence of any Loan Party or any grantee or any restructuring or refinancing of all or any portion of the Obligations, or (g) any other event that under law would discharge the obligations of a surety other than payment and satisfaction in full of all Obligations.

12.06 Adequate Protection. The Prepetition Secured Parties have been granted adequate protection in accordance with the DIP Orders to the extent of any diminution in the value of the Collateral as of the Petition Date, including but not limited to any diminution in value resulting from (i) the use, sale or lease of Collateral pursuant to Bankruptcy Code Section 363(c) or (ii) the imposition of the automatic stay pursuant to Bankruptcy Code Section 362(a), in the form of Adequate Protection Liens, the Adequate Protection Superpriority Claim and Adequate Protection Fees and Expenses.

[*Remainder of Page Intentionally Left Blank; Signature Pages Follow.*]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

BORROWER: **BERLIN STATION, LLC**

By:_____
Name:
Title:

GUARANTOR: **BURGESS BIOPOWER, LLC**

By:_____
Name:
Title:

DEUTSCHE BANK TRUST COMPANY AMERICAS, as Administrative Agent

By:_____
Name:
Title:

By:_____
Name:
Title:

DEUTSCHE BANK TRUST COMPANY AMERICAS, as Collateral Agent

By:_____
Name:
Title:

By:_____
Name:
Title:

_____,
as a Lender

By:_____
Name:
Title:

Schedule 5.03

Governmental Authorization

Permit	Issuing Agency
NH Site Evaluation Committee ("NH SEC") Certificate First Amended NH SEC Certificate Second Amended NH SEC Certificate	NH SEC
State Sewer Connection Permit (D2010-0109) Attached to SEC Certificate	New Hampshire Department of Environmental Services ("NHDES"), Wastewater Engineering Bureau
State Industrial Wastewater Indirect Discharge Permit (IDR 10-002) Attached to SEC Certificate	NHDES, Wastewater Engineering Bureau
Low Strength Wastewater Treatment Agreement	City of Berlin
Title V Air Permit (TV-0065)	NHDES, Air Resources Division
Authorization under Federal Power Act ("FPA") § 203, 16 U.S.C. § 824b	Federal Energy Regulatory Commission (FERC)

Schedule 5.06

Litigation

In re: Cate Street Capital, Inc., Chapter 7 Trustee v. Berlin Station, LLC, *inter alia*, Adversary Proceeding No. 21-01017-BAH.

Schedule 5.08

Ownership of Property; Liens; Leases; Investments

(b)

Caterpillar Financial Services Corporation lien on one 2019 caterpillar 972M Wheel Loader SN: AN300359, one Wood Chip Bucket 18.25YDS SN: 7NW17841, one HD Fusion Coupler SN: Y7A00592 and substitutions, replacements, additions and accessions thereto, now owned or hereafter acquired and proceeds thereof filed against Burgess BioPower, LLC in DE on June 21, 2019, as amended on July 3, 2019.

Caterpillar Financial Services Corporation lien on one 2019 caterpillar 972M Wheel Loader SN: AN300360 with 18 YDS LM Bucket SN: 7NW18004 and substitutions, replacements, additions and accessions thereto, now owned or hereafter acquired and proceeds thereof filed against Burgess BioPower, LLC in DE on June 27, 2019, as amended on August 22, 2019.

(c)

Site Lease.

Schedule 5.11

Taxes

A payment in the amount of $42,000 for New Hampshire State Business Tax is included in the DIP budget for Q1-2024 tax.

A payment in the amount of $209,000 for City of Berlin Interconnection Property Tax is included in the DIP Budget for the year ended 2023 (not past due it is currently due).

Schedule 5.12

Organization and Ownership of Interests in Borrower, Affiliates; Officers; No Subsidiaries

(a)

(i)

Loan Party	Holder of Equity Interests
Berlin Station, LLC	BBP #1, LLC (99%) BBP #2, LLC (1%)
Burgess BioPower, LLC	Burgess Holding, LLC (100%)

(ii)

Loan Party	Directors	Managers/Member	Officers
Berlin Station, LLC	Jean R. Hallé Edward J. Dwyer Antonio Bianco Drew McManigle Michelle A. Dreyer Miranda L. Brewer	BBP#1, LLC (Member) BBP #2, LLC (Member)	Jean R. Hallé, President; Edward J. Dwyer, Vice President; Antonio Bianco, Secretary and Treasurer; Dean Vomero, Chief Restructuring Officer
Burgess BioPower, LLC	Jean R. Hallé Edward J. Dwyer Antonio Bianco Drew McManigle Suzanne M. Hay Teresa Premeaux	Burgess Holding, LLC (Member)	Jean R. Hallé, President; Edward J. Dwyer, Vice President; Antonio Bianco, Secretary and Treasurer; Dean Vomero, Chief Restructuring Officer

(b)

Loan Party	Jurisdiction	Address	Taxpayer ID
Berlin Station, LLC	Delaware	631 US Hwy 1, #300 North Palm Beach, FL 33408	1913
Burgess BioPower, LLC	Delaware	631 US Hwy 1, #300 North Palm Beach, FL 33408	0971

Schedule 5.21

Material Project Documents

Part I:

- Amended and Restated Power Purchase Agreement, dated as of May 18, 2011 ("Power Purchase Agreement"), by and between Public Service Company of New Hampshire and Berlin Station, LLC (as successor in interest to Laidlaw Berlin Biopower, LLC), as amended by the First Amendment to the Amended and Restated Power Purchase Agreement, dated November 19, 2019, and the Second Amendment to the Amened and Restated Power Purchase Agreement, dated August 18, 2022. *Terminated pre-petition.*
- Purchase Option Agreement, dated as of November 25, 2013, by and between Public Service Company of New Hampshire and Berlin Station, LLC. *Terminated pre-petition.*
- Right to Use Agreement dated September 2, 2011, by and between Berlin Station, LLC and Burgess BioPower, LLC.
- Site Lease.
- Lease, dated as of June 12, 2017, by and between CS Berlin Ops, Inc. and Burgess Biopower, LLC.
- Master Services Agreement, dated as of October 15, 2015, by and between Burgess BioPower, LLC and Caterpillar Financial Services Corporation; Schedule No. 1 to Master Services Agreement: Burgess BioPower LLC, dated as of October 15, 2015 as amended by Amendment No. 1 to Burgess BioPower LLC Schedule No. 1
- Payment in Lieu of Tax Agreement, dated as of August 30, 2011, by and between the City of Berlin, New Hampshire and Berlin Station, LLC.
- Project Management Agreement, dated as of June 29, 2011, by and between CS Operations, Inc. (as assignee of Cate Street Capital, Inc. pursuant to that certain Assignment Agreement, dated as of March 1, 2018) and Berlin Station, LLC, as amended by that First Amendment dated as of February 8, 2024.
- Interconnection Agreement.
- Operations and Maintenance Agreement, dated as of January 19, 2018 (the "Operations and Maintenance Agreement"), by and between Berlin Station, LLC and CS Berlin Ops, Inc., as amended by those certain Amendment to Operation and Maintenance Agreements, dated as of January 19, 2022 and December 1, 2023.
- Agreement for the Purchase and Sale of Renewable Energy Certificates, dated as of October 20, 2023, by and between Burgess BioPower, LLC and Calpine Energy Solutions, LLC.
- Agreement for the Purchase and Sale of Renewable Energy Certificates, dated as of January 8, 2024, by and between Burgess BioPower, LLC and Constellation Energy Generation, LLC.
- Agreement for the Purchase and Sale of Renewable Energy Certificates, dated as of January 8, 2024, by and between Burgess BioPower, LLC and Sol Systems, LLC.

- Agreement for the Purchase and Sale of Renewable Energy Certificates, dated as of January 17, 2024, by and between Burgess BioPower, LLC and Constellation Energy Generation, LLC.
- Agreement to Provide Wood Ash Recycling Services for the Burgess Biopower Project in Berlin, NH, dated as of April 20, 2011, by and between Berlin Station, LLC and Resource Management, Inc.
- BWW Water Supply Agreement – Berlin Station, LLC – Power Project, dated as of July 18, 2011.
- Biomass Fuel Supply Agreement, dated as of March 1, 2011, by and between Berlin Station, LLC (as assignee of Laidlaw Berlin Biopower, LLC) and Richard Carrier Trucking, Inc.
- Lifecycle Services Product Support Contract, dated as of February 1, 2024, by and between Emerson Process Management Power & Water Solutions, Inc. and Berlin Station, LLC.

Schedule 5.22

Bank Accounts

[Redacted.]

Schedule 6.07

Insurance

Each Loan Party will, at such Loan Party's expense, maintain insurance respecting such Loan Party's assets wherever located, covering liabilities, losses or damages as are customarily insured against by other Persons engaged in the same or similar businesses and similarly situated and located. All such policies of insurance shall be with financially sound and reputable insurance companies acceptable to the Administrative Agent and in such amounts as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and located and, in any event, in amount, adequacy, and scope reasonably satisfactory to the Administrative Agent. All property insurance policies are to be made payable to the Administrative Agent for the benefit of the Administrative Agent and the Lenders, as their interests may appear, in case of loss, pursuant to a standard lender's loss payable endorsement with a standard non-contributory "lender" or "secured party" clause and are to contain such other provisions as the Administrative Agent may reasonably require to fully protect the Lenders' interest in the Collateral and to any payments to be made under such policies. All certificates of property and general liability insurance are to be delivered to the Administrative Agent, with the lender's loss payable and additional insured endorsements in favor of the Administrative Agent and shall provide for not less than thirty days (ten days in the case of non-payment) prior written notice to the Administrative Agent of the exercise of any right of cancellation. If any Loan Party fails to maintain such insurance, the Administrative Agent may arrange for such insurance, but at Loan Parties' expense and without any responsibility on the Administrative Agent's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent shall have the sole right to file claims under any property and general liability insurance policies in respect of the Collateral, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies.

Schedule 7.02

Indebtedness

(c)

Site Lease.

(d)

Utilities Providers

Utility	Address	Account No.	Nature of Service	Average Monthly Cost
2 Way Communications Services, Inc.	19 Durham St, Portsmouth, NH 03801	N/A	Radio	$2,850.01
American Telesis	200 E. 7th St, Suite 414 Loveland, CO 80537	N/A	Internet	$3,308.52
Berlin Water Works	55 Willow Street Berlin, NH 03570	1405 383403	Water	$55,028.15
Consolidated Communications (Fairpoint)	121 South 17th St., Mattoon IL 61938	15009856251	Network	$1,138.56
Eversource	300 Cadwell Dr, Springfield, MA, 01104	56349686022 6944000356036 56497386052 56497446096 56748207081 56835095050 56349686022 56497386052 56497446096 56748207081 8005540-03-9-6 56835095050	Electric	$52,911.21

Irving Energy Distribution and Marketing	58 Chenell Dr. Ste 1, Concord, NH 03301	310078	Heat	$34,264.73
Milan Container Company	2935 White Mountain Highway, North Conway, NH 03860	N/A	Excavation	$315.00
Sequoya Technologies Group, LLC	25 Community Lane, Peterborough, NH 03458	N/A	Information Technology	$3,009.40
Spectrum Business Internet		8358310010014280	Internet	$99.99
Total:				**$152,925.57**

Schedule 7.03

Investments

None.

Schedule 7.08

Affiliate Transactions

Outstanding obligations due from Burgess Holdings LLC in the amount of $24,152.22.

Outstanding obligations due from CS Berlin Ops, Inc. in the amount of $690,136.00 relating to the prepaid compensation and benefits to employees of CS Berlin Ops, Inc. under the Operations and Maintenance Agreement.

Outstanding obligations due to BBP Finance LLC in the amount of $392,836.37.

Outstanding obligations due to CS Operations, Inc. in the amount of $857,803.32 under that certain Project Management Agreement dated as of June 29, 2011, as amended, which have been waived by the First Amendment thereto effective as of February 8, 2024.

Outstanding obligations due to CS Berlin Ops, Inc. in the amount of $190,682.35 under that certain Operation and Maintenance Agreement by and between Berlin Station and CS Berlin Ops, dated as of January 19, 2018 (as amended January 19, 2022, and further amended December 1, 2023). *Such amount will be waived under the RSA.*

Berlin BioPower Investment Fund, LLC ownership of approximately $16,000,000 of the QLICI B obligations.

Schedule 11.02

Notices

If to Borrower:	**BERLIN STATION, LLC** c/o CS Operations, Inc. 631 US Hwy 1, #300 North Palm Beach, FL 33408 Attn: Jean R. Hallé; Dean Vomero Email address: jhalle@cs-ops.com; Dean.Vomero@appliedbusinessstrategy.com
If to Guarantor:	**BURGESS BIOPOWER, LLC** c/o CS Operations, Inc. 631 US Hwy 1, #300 North Palm Beach, FL 33408 Attn: Jean R. Hallé; Dean Vomero Email address: jhalle@cs-ops.com; Dean.Vomero@appliedbusinessstrategy.com
with copies (which shall not constitute notice) to:	Ward Damon, PL 4420 Beacon Circle West Palm Beach, FL 33407 Attn: Philip H. Ward, III Email address: pward@warddamon.com
and	**FOLEY HOAG LLP** 1301 Avenue of the Americas New York, NY 10019 Attn: Alison Bauer Email address: ABauer@foleyhoag.com; 155 Seaport Boulevard Boston, MA 02210 Attn: Kenneth Leonetti Email address: KSL@foleyhoag.com
If to Administrative Agent and Collateral Agent:	**DEUTSCHE BANK TRUST COMPANY AMERICAS** Trust and Agency Services 1 Columbus Circle, 17th Floor Mail Stop: NYC01-1710 New York, NY 10019 Attn: Project Finance Agency Services – Berlin Station. LLC DIP Financing AA6194 Facsimile: 646-961-3317

Schedule 12.01(a)

Commercial Tort Claims

All Accounts Receivable from Public Service Company of New Hampshire ("PSNH") and all rights, privileges, defenses, claims and causes of action (and proceeds thereof) with respect to the foregoing, the Power Purchase Agreement and/or PSNH.

EXHIBIT A

FORM OF COMMITTED LOAN NOTICE

[Date]

Deutsche Bank Trust Company Americas,
as Administrative Agent
1 Columbus Circle, 17th Floor
New York, NY 10019

Ladies and Gentlemen:

Reference is made to the Senior Secured Superpriority Debtor-In-Possession Credit Agreement, dated as of February [__], 2024, among Berlin Station, LLC, a Delaware limited liability company (the "Borrower"), Burgess BioPower, LLC, a Delaware limited liability company, as Guarantor, the Lenders party thereto and Deutsche Bank Trust Company Americas, as Administrative Agent and as Collateral Agent (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"). Capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

1. Borrowings. Pursuant to Section 2.02 of the Credit Agreement, the Borrower hereby irrevocably requests the following Borrowing**[s]** under the Credit Agreement and sets forth below the information relating to such Borrowing**[s]** (the "Proposed Credit Extension") as required by Section 2.02 of the Credit Agreement:

2. The Business Day of the Proposed Credit Extension is **[_____ __]**, 20**[__]**.

3. The amount of the Loans comprising the Proposed Credit Extension is [_____].

4. The location and number of the Borrower's account to which funds are to be disbursed is:

Bank: _____
ABA #: _____
Account #: _____
Account Name: _____

5. Certifications with respect to all Borrowings. The Borrower hereby certifies that on the date hereof as well as on the date of the Proposed Credit Extension (a) the representations and warranties of each Loan Party contained in Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, are true and correct in all material respects (except that such materiality qualifier shall not be applicable to the extent that any representation or warranty is already qualified or modified by materiality or subject to any dollar threshold in the text thereof) on and as of the date of such Proposed Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and except that for purposes of this Section 5, the representations and warranties contained in Section 5.05(b) of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and (b) of the Credit Agreement, respectively, (b) no Default or Event of Default exists, or would result from such Proposed Credit Extension or from the application of the proceeds thereof and the making of such Proposed Credit Extension does not violate

any requirement of Law and shall not be enjoined, temporarily, preliminarily or permanently; and (c) the making of such Proposed Credit Extension does not violate any requirement of law and shall not be enjoined, temporarily, preliminarily or permanently.

Delivery of an executed counterpart of this Committed Loan Notice by facsimile or other electronic method of transmission shall be effective as delivery of an original executed counterpart of this Committed Loan Notice.

[Signature page follows]

IN WITNESS WHEREOF, the Borrower has caused this Committed Loan Notice to be executed as of the date and year first written above.

BERLIN STATION, LLC

By: _____
Name: _____
Title: _____

EXHIBIT B

FORM OF NOTE

NOTE

February [__], 2024

FOR VALUE RECEIVED, BERLIN STATION, LLC, a Delaware limited liability company (the "Borrower") hereby promises to pay to the order of [_____], a [_____] [_____] (the "Lender"), or its registered assigns the unpaid principal amount of the Loans made by the Lender to the Borrower, in the amounts and at the times set forth in the Senior Secured Superpriority Debtor-In-Possession Credit Agreement, dated as of the date hereof, among the Borrower, Burgess BioPower, LLC, a Delaware limited liability company, as Guarantor, the Lenders party thereto and Deutsche Bank Trust Company Americas, as Administrative Agent and Collateral Agent (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement") and to pay interest from the date hereof on the principal balance of such Loans from time to time outstanding at the rate or rates and at the times set forth in the Credit Agreement, in each case at the Administrative Agent's Office in Dollars and in immediately available funds. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

This Note (the "Note") is issued pursuant to, and is one of the "Notes" referred to in, the Credit Agreement. The Loans evidenced by this Note are prepayable in the amounts, and under the circumstances, and their respective maturities are subject to acceleration upon the terms, set forth in the Credit Agreement. This Note is subject to, and shall be construed in accordance with, the provisions of the Credit Agreement and is entitled to the benefits and security set forth in the Loan Documents.

Except as specifically otherwise provided in the Credit Agreement, the Borrower hereby waives presentment, demand, notice of dishonor, protest, notice of protest and all other demands, protests and notices in connection with the execution, delivery, performance, collection and enforcement of this Note.

Upon the occurrence and during the continuation of an Event of Default, the principal balance of and all accrued interest on this Note may be declared (or, as provided in the Credit Agreement, automatically shall become) due and payable in the manner and with the effect provided in the Credit Agreement, and the unpaid principal amount thereof then and thereafter owing shall bear interest at the Default Rate as and when provided in the Credit Agreement.

The Borrower shall not have the right to assign its rights or obligations hereunder or any interest herein (and any such attempted assignment shall be void), except as expressly permitted by the Loan Documents. No failure or delay of the Lender in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. Neither this Note nor any provision hereof may be waived, amended or modified, nor shall any departure therefrom be consented to, except pursuant to a written agreement entered into between the Borrower and the Lender with respect to which such waiver, amendment, modification or consent is to apply, subject to any consent required in accordance with Section 11.01 of the Credit Agreement.

All communications and notices hereunder shall be in writing and given as provided in Section 11.02 of the Credit Agreement.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

[Signature page follows].

IN WITNESS WHEREOF, the Borrower has executed this Note as of the date and year first written above.

BERLIN STATION, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT C

FORM OF ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between **[the][each]**[1] Assignor identified in item 1 below **([the][each, an]** "Assignor") and **[the][each]**[2] Assignee identified in item 2 below (**[the][each, an]** "Assignee"). **[It is understood and agreed that the rights and obligations of [the Assignors][the Assignees]**[3] **hereunder are several and not joint.]**[4] Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by **[the][each]** Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto (the "Standard Terms and Conditions") are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, **[the][each]** Assignor hereby irrevocably sells and assigns to **[the Assignee][the respective Assignees]**, and **[the][each]** Assignee hereby irrevocably purchases and assumes from **[the Assignor][the respective Assignors]**, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of **[the Assignor's][the respective Assignors']** rights and obligations in **[its capacity as a Lender][their respective capacities as Lenders]** under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of **[the Assignor][the respective Assignors]** under the respective facilities identified below, and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of **[the Assignor (in its capacity as a Lender)] [the respective Assignors (in their respective capacities as Lenders)]** against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by **[the][any]** Assignor to **[the][any]** Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as **[the][an]** "Assigned Interest"). Each such sale and assignment is without recourse to **[the][any]** Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by **[the][any]** Assignor.

1. Assignor**[s]**: _____

2. Assignee**[s]**: _____
   [Assignee is an [Affiliate][Approved Fund] of **[identify Lender]]**

3. Borrower: Berlin Station, LLC, a Delaware limited liability company

---

[1] NTD: For bracketed language here and elsewhere in this form relating to the Assignor(s), if the assignment is from a single Assignor, choose the first bracketed language. If the assignment is from multiple Assignors, choose the second bracketed language.

[2] NTD: For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language.

[3] NTD: Select as appropriate.

[4] NTD: Include bracketed language, if appropriate, if there are either multiple Assignors or multiple Assignees.

4. Administrative Agent: Deutsche Bank Trust Company Americas, as the administrative agent under the Credit Agreement.

5. Collateral Agent: Deutsche Bank Trust Company Americas, as the collateral agent under the Credit Agreement.

6. Credit Agreement: Senior Secured Superpriority Debtor-In-Possession Credit Agreement, dated as of February [__], 2024, among the Borrower, Burgess BioPower, LLC, a Delaware limited liability company, as Guarantor, the Lenders party thereto, the Administrative Agent and the Collateral Agent, as from time to time amended, restated, supplemented or otherwise modified.

7. Assigned Interest**[s]**:

Assignor**[s]**[5]	Assignee**[s]**[6]	Aggregate Amount of Commitment/ Loans for all Lenders[7]	Amount of Commitment/ Loans Assigned	Percentage Assigned of Commitment/ Loans[8]
•	•	$_____	$_____	____%
•	•	$_____	$_____	____%
•	•	$_____	$_____	____%

8. Trade Date: **[_____ __]**, 20**[__]**[9]

9. Effective Date: **[_____ __]**, 20**[__]**[10]

[Signature pages follow]

[5] NTD: List each Assignor, as appropriate.

[6] NTD: List each Assignee, as appropriate.

[7] NTD: Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

[8] NTD: Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

[9] NTD: To be completed if the Assignor(s) and the Assignee(s) intend that the minimum assignment amount is to be determined as of the Trade Date.

[10] NTD: To be inserted by Administrative Agent and which shall be the Effective Date of recordation of transfer in the register therefor.

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR**[S]**[11]

[NAME OF ASSIGNOR]

By: _____
Title: _____

[NAME OF ASSIGNOR]

By: _____
Title: _____

ASSIGNEE**[S]**[12]

[NAME OF ASSIGNEE]

By: _____
Title: _____

[NAME OF ASSIGNEE]

By: _____
Title: _____

[11] NTD: Add additional signature blocks as needed.
[12] NTD: Add additional signature blocks as needed.

[Consented to and][13] Accepted:

Deutsche Bank Trust Company Americas., as Administrative Agent

By: _____
Title: _____

[13] NTD: To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties

1.1 Assignor**[s]**. **[The][Each]** Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of **[the][the relevant]** Assigned Interest, (ii) **[the][such]** Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and (iv) it is not a Defaulting Lender; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any Loan Party or Affiliates or any other Person obligated in respect of any Loan Document, or (iv) the performance or observance by the Borrower, any Loan Party or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2 Assignee**[s]**. **[The][Each]** Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an assignee under Section 11.06(b)(iii), (v) and (vi) of the Credit Agreement (subject to such consents, if any, as may be required thereunder), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of **[the][the relevant]** Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 6.01 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase **[the][such]** Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase **[the][such]** Assigned Interest, and (vii) if it is a Foreign Lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by **[the][such]** Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, **[the][any]** Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of **[the][each]** Assigned Interest (including payments of principal, interest, fees and other amounts) to **[the][the relevant]** Assignor for amounts which have accrued to but excluding the Effective Date and to **[the][the relevant]** Assignee for amounts which have accrued from and after the Effective Date. Notwithstanding the foregoing, the Administrative Agent shall make all payments of interest, fees or other amounts paid or payable in kind from and after the Effective Date to **[the][the relevant]** Assignee.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by facsimile shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the laws of the State of New York.

Annex I

Capitalized terms used but not defined in this Annex I shall have the respective meanings set forth in the Credit Agreement or the RSA, as applicable.

1. The Loan Parties shall commence the Chapter 11 Cases in the Bankruptcy Court no later than February 9, 2024.

2. The Loan Parties shall commence the Marketing Process no later than the day after the first-day hearing in the Chapter 11 Cases.

3. The Loan Parties shall provide the Consenting Lenders with all due diligence information requested by the Consenting Lenders and/or by the Lender Group Advisors as of the Agreement Effective Date within ten (10) Business Days of the Agreement Effective Date.

4. On the Petition Date, the Loan Parties shall file: (i) the First Day Pleadings, and (ii) the DIP Motion (including the proposed Interim DIP Order).

5. The Loan Parties shall file the Bidding Procedures Motion no later than four (4) calendar days after the Petition Date.

6. The Loan Parties shall have obtained entry of orders from the Bankruptcy Court granting interim relief on the First Day Pleadings, including an interim order granting LMP Relief, and the Interim DIP Order, no later than three (3) Business Days after the Petition Date;

7. The Loan Parties shall file the Disclosure Statement Motion, together with the proposed Plan, Disclosure Statement, Disclosure Statement Order, no later than fourteen (14) calendar days after the Petition Date.

8. The Loan Parties shall have delivered to the Consenting Lenders a Phase I Environmental Assessment by TRC Environmental Corp. and a detailed engineering and technical report by Black & Veatch Management Consulting (and which reports in greater detail than the annual engineering reports routinely performed by the Debtors), in each case in form and substance acceptable to the Consenting Lenders in their sole discretion, no later than ten (10) calendar days after the Petition Date.

9. No later than twenty-eight (28) calendar days after the Petition Date, the Loan Parties shall have obtained entry by the Bankruptcy Court of: (i) the Bidding Procedures Order, (ii) orders, each in form and substance acceptable to the Consenting Lenders, granting final relief on the First Day Pleadings, including an order granting LMP Relief on a final basis, (iii) the Final DIP Order; and (iv) an order, in form and substance acceptable to the Consenting Lenders, setting a general claims bar date that is no more than sixty (60) calendar days after the Petition Date and a governmental claims bar date that is no more than one-hundred-and-eighty (180) calendar days after the Petition Date.

10. The Loan Parties shall have obtained entry by the Bankruptcy Court of the Disclosure Statement Order, in form and substance acceptable to the Consenting Lenders, no later than fifty (50) calendar days after the Petition Date.

11. The Loan Parties shall have commenced Solicitation no later than two (2) Business Days after entry of the Disclosure Statement Order.

12. The auction for the Sale Transaction shall occur (if triggered under the Plan) no later than eighty-two (82) calendar days after the Petition Date; provided, that the auction can be cancelled at any time by the Consenting Lenders in accordance with the RSA and the Plan.

13. The confirmation hearing for the Plan, including to consider approval of the Sale Transaction (if triggered under the Plan), shall occur no later than ninety (90) calendar days after the Petition Date.

14. The Loan Parties shall have obtained entry by the Bankruptcy Court of the Confirmation Order, including approving the Stand-Alone Restructuring Scenario or the Sale Transaction (if triggered under the Plan), no later than ninety-two (92) calendar days after the Petition Date.

15. The Plan Effective Date (i) under a Stand-Alone Restructuring Scenario shall occur no later than one hundred and twenty (120) calendar days after the Petition Date, provided, however, that if, at the end of such period, the occurrence of the Plan Effective Date is dependent upon receipt of the necessary approval from FERC under Federal Power Act Section 203 for the Consenting Lenders to own the Berlin Facility, the Consenting Lenders may, in their sole discretion, extend such deadline and (ii) under a Sale Transaction, if triggered under the Plan, shall occur no later than one hundred and sixty (160) calendar days after the Petition Date.

16. The Loan Parties shall have filed any and all applications, notifications and other documents that are necessary or required in connection with obtaining the applicable approvals of from FERC, PUC, ISO New England, Inc. ("ISO-NE"), New Hampshire Department of Environmental Services ("NHDES"), New Hampshire Department of Energy ("NHDOE") and New Hampshire Site Evaluation Committee ("NHSEC") and as otherwise may be required under applicable Law (x) in support of a Restructuring in the Stand-Alone Restructuring Scenario,[1] no later than three (3) calendar days after the filing of the Disclosure Statement and Plan, and (y) if applicable, in support of a Restructuring in the Sale Scenario, seven (7) calendar days after a purchaser is declared a successful bidder (or back-up bidder) pursuant to the Bidding Procedures, in each case, unless such application or notification is required to be filed on an earlier date under applicable Law.

[1] In the Stand-Alone Restructuring Scenario, these shall include, but not be limited to, all filings in support of Federal Power Act Section 203 approval of the Stand-Alone Restructuring Scenario transactions, NHDES's approval of ownership change per the Title V Air Permit (TV-0065), notification of ownership change to the City of Berlin, New Hampshire pursuant to the Low Strength Wastewater Treatment Agreement, notice of ownership change to the NHDES under the Alteration of Terrain Permit, and any requisite federal, state, or local filings, registrations, notifications, applications for approval of change in ownership as may be necessary.

Annex III

Capitalized terms used but not defined in this Annex III shall have the respective meanings set forth in the Credit Agreement or the RSA, as applicable.

(a) use commercially reasonable efforts to (i) pursue the Restructuring on the terms of, and in accordance with the Milestones set forth in the RSA, including (A) by negotiating the Definitive Documents in good faith and executing and delivering any applicable Definitive Documents as and when required, (B) as to the Loan Parties, by pursuing and negotiating a power purchase agreement in good faith and executing and delivering any applicable documents as and when required; and (C) by engaging in the Marketing Process, providing relevant and customary diligence information to Prospective Bidders, providing reasonable access to the management, consultants and advisors of the Loan Parties for the purposes of evaluating the Loan Parties' assets, liabilities, operations, businesses, finances, strategies, prospects and affairs and for the Loan Parties to negotiate a Sale Purchase Agreement, and using best efforts to consummate the Sale Transaction, in each case, in accordance with the Bidding Procedures and with the consent and at the direction of the Consenting Lenders, (ii) cooperate with the Consenting Lenders to obtain Bankruptcy Court approval of the Definitive Documents, as applicable, and (iii) support and take all steps reasonably necessary and desirable to consummate the Restructuring in accordance with the RSA (including the Plan and the Milestones);

(b) to the extent any legal, financial or structural impediment arises that would prevent, hinder or delay the consummation of the Restructuring, support and take all steps commercially reasonably necessary and desirable to address any such impediment;

(c) to provide the Consenting Lenders with all due diligence information within their respective possession, custody, or control reasonably requested by the Consenting Lenders and/or by the Lender Group Advisors promptly, and in no event later than seven (7) Business Days after any such request;

(d) use commercially reasonable efforts to obtain any and all required approvals of and to provide required notices to any governmental or regulatory authority or any other third party (including any required approvals of or required notices to FERC, PUC, ISO-NE, NHDES, NHDOE, NHSEC, and the City of Berlin, New Hampshire), and as otherwise as may be required pursuant to applicable Law) in connection with the Sale Transaction and the Plan, including (i) promptly commencing any required governmental or regulatory approval processes and (ii) providing regular progress reports with respect to required governmental or regulatory approval processes (including copies of any communications from or requests for information or additional approvals, filings with or notices to such governmental or regulatory authority); provided, that any agreements with or commitments to any governmental or regulatory authority in connection with the Sale Transaction to the Consenting Lenders and/or the Plan (including any required approvals of or required notices to FERC, PUC, ISO-NE, NHDES, NHDOE, NHSEC, and the City of Berlin, New Hampshire) shall require the prior written approval (email being sufficient) of the Consenting Lenders;

(e) use commercially reasonable efforts to seek additional support for the Restructuring from any other material stakeholders of the Loan Parties to the extent reasonably prudent and, to the extent the Loan Parties receive any Joinders or Transfer Agreements, notify the Consenting Parties' Advisors of such Joinders and Transfer Agreements;

(f) subject to the filing of the petitions commencing the Chapter 11 Cases, operate the business of the Loan Parties in the ordinary course of business (including with respect to making Cash expenditures, continuously operating the Berlin Facility and producing and selling power) in a reasonable manner that is consistent with the RSA and past practices and use commercially reasonable efforts to (i) preserve intact

the Loan Parties' business organization and relationships with third parties (including suppliers, distributors, customers and governmental and regulatory authorities) and employees and (ii) minimize Cash expenditures to the extent practical that does not cause a breach of, or default under, the RSA and that complies with applicable law;

(g) as to the Guarantor, continue to have in effect its market-based rate authorization and related tariff to sell wholesale electric energy and related services at market-based rates (FERC Docket No. ER14-16), and certifications as a qualifying small power production facility (FERC Docket No. QF11-238) and exempt wholesale generator (FERC Docket No. EG14-1), and related rights and exemptions; provided, further, that in the event the Plan as to Burgess is severed and withdrawn, then Berlin shall obtain the necessary certification, including certifications as a qualifying small power production facility and exempt wholesale generator, and market-based rate authorization and related tariff to sell wholesale electric energy and related services;

(h) preserve and maintain all intercompany pledge agreements entered into in connection with the Senior Notes Purchase Agreement, including, without limitation, the pledge agreements that are in favor of the Senior Notes Agent;

(i) preserve and maintain the Berlin Facility Lease;

(j) not amend, terminate, or seek to assume or reject any Executory Contract or Unexpired Lease whose treatment is not otherwise expressly provided for herein or in the Plan, in each case without the prior written consent of the Consenting Lenders, and for the avoidance of doubt, excluding that certain Amended and Restated Power Purchase Agreement and the Purchase Option Agreement;

(k) not alter, modify, amend, assume or reject the Project Management Agreement or the O&M Agreement without the prior written consent of the Consenting Lenders;

(l) timely pay amounts due to the Operator Entities under the Project Management Agreement and O&M Agreement (as applicable) in the ordinary course of business for the period from and after the Petition Date through and including the earlier of (1) through the conclusion of the transition period provided for in Section **Error! Reference source not found.** of the RSA in the event of the rejection or termination (as applicable) of the Project Management Agreement and O&M Agreement or (2) the Plan Effective Date; provided, further, that the Loan Parties shall not pay any amounts accrued or outstanding under the Project Management Agreement and O&M Agreement as of the Petition Date unless otherwise permitted pursuant to an interim and/or final order granting the First Day Pleading seeking the Loan Parties' continued performance under the O&M Agreement and Project Management Agreement;

(m) (i) keep the Lender Group Advisors and Consenting Lenders informed about the operations of the Loan Parties; (ii) keep the Lender Group Advisors and Consenting Lenders informed regarding the status of the Marketing Process and discussions and negotiations with any Prospective Bidders (including by providing copies of any drafts of applicable Purchase Agreements or other definitive agreements related thereto as and when provided to or from any such Prospective Bidder) and provide the Consenting Lenders with access to, and permit the Consenting Lenders and the Lender Group Advisors to have direct discussions with, any Prospective Bidders in connection therewith or otherwise regarding a potential Sale Transaction (notwithstanding any provision of a confidentiality agreement or similar confidentiality obligation or agreement), in each case, with the consent and at the direction of the Consenting Lenders, provided that the Loan Parties' Advisors are informed of and given the opportunity to participate in any and all such discussions with Prospective Bidders; (iii) provide the Lender Group Advisors any information requested regarding the Loan Parties and provide, and direct the Loan Parties' employees, officers,

consultants (including the Operator Entities), advisors and other representatives to provide, to the Lender Group Advisors: (A) reasonable access during normal business hours to the Loan Parties' books, records and facilities, (B) reasonable access to the management, consultants (including the Operator Entities) and advisors of the Loan Parties for the purposes of evaluating the Loan Parties' assets, liabilities, operations, businesses, finances, strategies, prospects and affairs, and (C) such other information as reasonably requested by any of the Lender Group Advisors; (iv) promptly notify the Consenting Parties' Advisors of any governmental or third party complaints, litigations, inquires, orders to show cause, cease and desist orders, notices of violation, notice of apparent liability, orders of forfeiture, investigations or hearings (or communications indicating that the same may be contemplated or threatened); and (v) cooperate in good faith to structure the Restructuring in a tax efficient manner for the benefit of the Consenting Lenders;

(n) (i) stipulate to the allowance and amounts of the Senior Notes Claims and to the validity of the liens securing such Senior Notes Claims, including liens on cash collateral, and (ii) timely file a formal objection to any motion filed with the Bankruptcy Court by a third party challenging (a) the validity, enforceability, perfection or priority of, or seeking avoidance, disallowance or subordination of, any portion of the Senior Notes Claims or the liens securing such Senior Notes Claims (as applicable) and/or (b) the right of the Consenting Lenders to receive and retain the proceeds of any Sale Transaction or the distributions set forth in the Plan and contemplated by the RSA;

(o) cooperate and consult with the Consenting Lenders with respect to the development and adoption of the Loan Parties' business plan, including any business plans contemplated by the Plan, provided that the material elements of the Reorganized Debtors' business plan shall require the prior approval of the Consenting Lenders;

(p) timely file a formal objection to any motion filed with the Bankruptcy Court by a third party seeking the entry of an order (i) directing the appointment of a trustee or examiner (with expanded powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code), (ii) converting either of the Chapter 11 Cases of the Loan Parties to cases under chapter 7 of the Bankruptcy Code, or (iii) dismissing either of the Chapter 11 Cases of the Loan Parties;

(q) timely file a formal objection to any motion filed with the Bankruptcy Court by a third party seeking the entry of an order modifying or terminating the Loan Parties' exclusive right to file and/or solicit acceptances of a plan of reorganization, as applicable;

(r) (i) transition to CS Berlin Ops, Inc. as their new lead market participant for the period commencing immediately after cessation of Public Service Company of New Hampshire d/b/a Eversource Energy acting in such capacity, provided, no later than ten (10) days from any the request of the Consenting Lenders for the Loan Parties to replace CS Berlin Ops, Inc. as the lead market participant, the Loan Parties shall switch to another lead market participant that is not affiliated with the Loan Parties and one that is reasonably acceptable to the Consenting Lenders pursuant to a lead market participant agreement reasonably acceptable to the Consenting Lenders; provided, further, that if Berlin Station enters into a new purchase power agreement before Confirmation of the Plan, then the Loan Parties shall be permitted to replace the then-in-place lead market participant with a new lead market participant and enter into a new lead market participant agreement, in each case reasonably acceptable to the Consenting Lenders, with either the counterparty to any such power purchase agreement or as may be requested by such counterparty; and (ii) as to CS Berlin Ops, Inc., facilitate in the foregoing transactions;

(s) use commercially reasonable efforts to market to third parties a New PPA, the terms of which must be acceptable to the Consenting Lenders, and (1) with prior written consent from the Consenting Lenders, enter into such New PPA, and (2) promptly file a PPA Motion with the Bankruptcy Court after entry into such New PPA;

(t) facilitate any due diligence requested by the Consenting Lenders and/or the New Independent Director, including entry into any reasonable confidentiality agreement requested in connection therewith, in connection with the appointment of the New Independent Director on the Plan Effective Date;

(u) that the Special Committee continue to exist with its current constituents, not rescind or amend the Special Committee Consent or take any action without prior Special Committee approval as contemplated under any Special Committee Consent;

(v) not (i) take any action, and not encourage any other Person to take any action, directly or indirectly, that would reasonably be expected to breach or be inconsistent with the RSA; (ii) interfere with the acceptance or implementation of the Restructuring, the RSA, the Sale Transaction or the Plan; (iii) object to, delay, impede or take any other action to interfere with acceptance, implementation or consummation of the Restructuring, including any action not expressly contemplated hereby that would be reasonably likely to delay, impede or interfere with timely receipt of any required regulatory approvals of the Restructuring; (iv) take any action that is inconsistent with, or is intended to frustrate or impede approval, implementation and consummation of the Restructuring described in the RSA or the Plan, including any action not expressly contemplated hereby that would be reasonably likely to frustrate or impede the timely receipt of any required regulatory approvals of the Restructuring; (v) modify the Plan, in whole or in part, to reflect terms that are not consistent with the RSA; (vi) file any motion, pleading or Definitive Documents with the Bankruptcy Court or any other court (including any modifications or amendments thereof) that, in whole or in part, is not materially consistent with the RSA (including the consent rights of the parties to the RSA set forth herein as to the form and substance of such motion, pleading or other Definitive Document) or the Plan; (vii) enter into any joint venture, partnership, sharing of profits or other similar arrangement involving co-investment between a Debtor or Affiliate thereof and any other Person; or (viii) take any of the actions set forth on Schedule 6.1x to the RSA;

(w) not (i) sell (including, but not limited to, any sale leaseback transaction), lease, mortgage, pledge, grant or incur any encumbrance on, or otherwise Transfer, any properties or assets of the Loan Parties other than (A) in the ordinary course of business or (B) in connection with the Sale Transaction and Plan; (ii) purchase, lease or otherwise acquire (by merger, exchange, consolidation, acquisition of stock or assets or otherwise) any assets or properties, other than in the ordinary course of business; (iii) purchase or acquire any indebtedness, debt securities or equity securities of any Person other than the incurrence of indebtedness under the DIP Facility Documents; (iv) make any loans or advances to, or investments in, any Person, other than in the ordinary course of business; (v) (A) merge with or into, or consolidate or amalgamate with, any other Person, or (B) permit any other Person to merge with or into, or consolidate or amalgamate with, it; or (vi) split, combine or reclassify any of their respective Interests, or declare, set aside or pay any dividend or other distribution payable in Cash, stock, property or otherwise with respect to any of their respective Interests; and

(x) waive any and all existing defaults by CS Operations, Inc. under the Project Management Agreement and agree that only new events or conditions, which did not exist as of the Agreement Effective Date, may form the basis of a claim of default under the Project Management Agreement.