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)
	(Jointly Administered)
Debtors.	

DISCLOSURE STATEMENT FOR THE JOINT PLAN OF REORGANIZATION OF BURGESS BIOPOWER, LLC AND BERLIN STATION, LLC PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

THIS IS NOT A SOLICITATION OF AN ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL THIS DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT. THE INFORMATION IN THIS DISCLOSURE STATEMENT IS SUBJECT TO CHANGE. THIS DISCLOSURE STATEMENT IS NOT AN OFFER TO SELL ANY SECURITIES AND IS NOT SOLICITING AN OFFER TO BUY ANY SECURITIES

[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.

IMPORTANT NOTICES

THIRD-PARTY RELEASE

YOU ARE BEING DEEMED TO GRANT RELEASES TO THIRD PARTIES UNDER THE PLAN UNLESS YOU ARE PERMITTED TO, AND YOU FOLLOW THE APPLICABLE PROCEDURES TO, "OPT OUT" OF GRANTING THEM. PURSUANT TO ARTICLE VIII.3 OF THE PLAN (A) EACH HOLDER OF A CLAIM OR INTEREST WHO VOTES TO ACCEPT THE PLAN; (B) EACH HOLDER OF A CLAIM OR INTEREST WHO ABSTAINS FROM VOTING BUT DOES NOT OPT OUT OF THE RELEASES PROVIDED IN THE PLAN; (C) EACH HOLDER OF A CLAIM OR INTEREST WHO VOTES TO REJECT THE PLAN (OR IS DEEMED TO REJECT THE PLAN) BUT DOES NOT OPT OUT OF THE RELEASES PROVIDED IN THE PLAN; (D) THE CONSENTING LENDERS; (E) THE SPONSORS AND THEIR RELATED PARTIES; (F) THE PURCHASER; AND (G) ALL OTHER RELEASING PARTIES SHALL BE DEEMED TO GRANT THE THIRD-PARTY RELEASES. THIS RELEASE IS DISCUSSED FURTHER IN ARTICLE 5.5 OF THIS DISCLOSURE STATEMENT.

RECOMMENDATION BY THE DEBTORS

EACH DEBTOR'S BOARD OF DIRECTORS HAS APPROVED THE TRANSACTIONS CONTEMPLATED BY THE PLAN AND DESCRIBED IN THIS DISCLOSURE STATEMENT, AND EACH DEBTOR BELIEVES THAT THE PLAN IS FAIR AND EQUITABLE, MAXIMIZES THE VALUE OF EACH OF THE DEBTOR'S RESPECTIVE ESTATES, AND PROVIDES THE BEST RECOVERY TO STAKEHOLDERS. AT THIS TIME, EACH DEBTOR BELIEVES THAT THE PLAN AND RELATED TRANSACTIONS REPRESENT THE BEST ALTERNATIVE FOR ACCOMPLISHING THE DEBTORS' OVERALL RESTRUCTURING OBJECTIVES. EACH OF THE DEBTORS, THEREFORE, STRONGLY RECOMMENDS THAT ALL HOLDERS OF CLAIMS WHOSE VOTES ARE BEING SOLICITED SUBMIT BALLOTS TO ACCEPT THE PLAN BY RETURNING THEIR BALLOTS SO AS TO BE ACTUALLY RECEIVED BY THE SOLICITATION AGENT NO LATER THAN [ ]. (PREVAILING EASTERN TIME) PURSUANT TO THE INSTRUCTIONS SET FORTH HEREIN AND IN THE BALLOTS.

PLAN VOTING

The voting deadline to accept or reject the Plan is [ ] (prevailing Eastern Time), on [ ] (the "Voting Deadline"), unless extended by the Debtors. The record date for determining which holders of Claims may vote on the Plan is [April 8, 2024] (the "Voting Record Date").

For your vote to be counted, you must return your properly completed ballot in accordance with the voting instructions on the ballot so that it is actually received by the Debtors' Solicitation Agent before the Voting Deadline.

DELIVERY OF BALLOTS

You may submit your vote:

( ) via the enclosed pre-paid, pre-addressed return envelope

or

( ) via first-class mail to:

Burgess BioPower, LLC.
c/o Epiq Ballot Processing
P.O. Box 4422
Beaverton, OR 97076-4422

or

( ) via overnight courier, or hand delivery to:

Burgess BioPower, LLC.
c/o Epiq Ballot Processing
10300 SW Allen Boulevard
Beaverton, OR 97005

or

( ) via the e-ballot portal using the unique e-ballot ID# on your ballot at:
https://dm.epiq11.com/case/burgess

PLEASE CHOOSE ONLY ONE METHOD TO RETURN YOUR BALLOT.

BALLOTS RECEIVED VIA ELECTRONIC MEANS (OTHER THAN E-BALLOT) WILL NOT BE COUNTED.

If you have any questions on the procedures for voting on the Plan, please contact Epiq Corporate Restructuring, LLC (the Debtors' Solicitation Agent) at:

(877) 556-2937 (toll free)

(503) 843-8526 (international)

or via email: Burgess@epiqglobal.com

Additional details on voting are discussed herein and set forth on ballots delivered to holders of Claims entitled to vote on the Plan.

Burgess BioPower, LLC ("**Burgess**") and Berlin Station, LLC ("**Berlin**"), the debtors and debtors-in-possession (collectively, the "**Debtors**"), in the above-captioned Chapter 11 Cases (the "**Chapter 11 Cases**"), are providing you with the information in this Disclosure Statement because you may be a creditor of the Debtors and may be entitled to vote on the *Joint Plan of Reorganization of Burgess BioPower, LLC and Berlin Station, LLC Pursuant to Chapter 11 of the Bankruptcy Code* (including all exhibits and schedules thereto, and as may be amended, modified, or supplemented from time to time, the "Plan"). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in Article I.A of the Plan, the Restructuring Support Agreement, or the *Declaration of Dean Vomero Pursuant to 28 U.S.C. § 1746 in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* [D.I. 4] (the "**First Day Declaration**"), as applicable.

The Debtors believe that the Plan is in the best interests of the Debtors' creditors and other stakeholders. All creditors entitled to vote on the Plan are urged to vote in favor of the Plan. A summary of the voting procedures is set forth in Article II of this Disclosure Statement and in the Disclosure Statement Order. More detailed instructions are contained in the ballots distributed to the creditors entitled to vote on the Plan. To be counted, your ballot must be properly completed and returned to the Solicitation Agent in accordance with the voting instructions on such ballot and *actually received* by the Solicitation Agent by the Voting Deadline, via regular mail, overnight courier, or personal delivery at the appropriate address or via the Solicitation Agent's ballot upload site.

This Disclosure Statement, the Plan Supplement, and any attachments, exhibits, supplements, and annexes hereto are the only documents to be used in connection with the solicitation of votes on the Plan, and also may not be relied upon for any purpose other than to determine how to vote on the Plan. Neither the Bankruptcy Court nor the Debtors have authorized any person to give any information or to make any representation in connection with the Plan or the solicitation of acceptances of the Plan other than as contained in this Disclosure Statement, the Plan Supplement, and any attachments, exhibits, supplements, or annexes attached hereto. If given or made, such information or representation may not be relied upon as having been authorized by the Bankruptcy Court or the Debtors. The delivery of this Disclosure Statement will not under any circumstances represent that the information herein is correct as of any time after the date hereof.

ALL CREDITORS ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ AND CAREFULLY CONSIDER THIS ENTIRE DISCLOSURE STATEMENT, INCLUDING THE RISK FACTORS DESCRIBED IN ARTICLE VII BELOW, THE PLAN, ATTACHED HERETO AS EXHIBIT A,[2] AND THE PLAN SUPPLEMENT BEFORE SUBMITTING BALLOTS IN RESPONSE TO SOLICITATION OF THE PLAN.

[2] The Plan is contemporaneously filed herewith and will be included as **Exhibit A** to the Disclosure Statement distributed to the Debtors' creditors.

The summaries of the Plan and other documents contained in this Disclosure Statement are qualified in their entirety by reference to the Plan itself, the exhibits thereto that will be included in the Plan Supplement, and documents described therein as filed prior to approval of this Disclosure Statement or subsequently as part of the Plan Supplement. In the event that any inconsistency or conflict exists between this Disclosure Statement and the Plan, the terms of the Plan will control. Except as otherwise indicated herein or in the Plan, the Debtors will file all Plan Supplement documents with the Bankruptcy Court and make them available for review at the Debtors' website located online at https://dm.epiq11.com/case/burgess/info no later than seven (7) days before the Confirmation Hearing.

This Disclosure Statement contains, among other things, descriptions and summaries of provisions of the Plan. The Debtors reserve the right to modify the Plan consistent with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, subject to the terms of the Plan. The statements contained in this Disclosure Statement are made only as of the date of this Disclosure Statement, and there can be no assurance that the statements contained herein will be correct at any time after this date. The information contained in this Disclosure Statement, including the information regarding the history, businesses, and operations of the Debtors, the financial information regarding the Debtors and the Liquidation Analyses relating to the Debtors, is included for purposes of soliciting acceptances of the Plan, but, as to contested matters and adversary proceedings (if any), is not to be construed as an admission or stipulation, but rather as a statement made in settlement negotiations as part of the Debtors' attempt to settle and resolve claims and controversies pursuant to the Plan. This Disclosure Statement will not be admissible in any non-bankruptcy proceeding, nor will it be construed to be conclusive advice on the tax, securities, or other legal effects of the Plan as to holders of Claims against, or Interests in, either the Debtors or the Reorganized Debtors. Except where specifically noted, the financial information contained in this Disclosure Statement and in its exhibits has not been audited by a certified public accountant and has not been prepared in accordance with generally accepted accounting principles in the United States.

The Debtors believe that the solicitation of votes on the Plan made in connection with this Disclosure Statement is exempt from registration under the Securities Act of 1933, as amended (the "Securities Act") and related state statutes by reason of the exemption provided by section 1145(a)(1) of the Bankruptcy Code.

The effectiveness of the Plan is subject to material conditions precedent. *See* Article IX of the Plan. There is no assurance that these conditions will be satisfied or waived.

If the Plan is confirmed by the Bankruptcy Court and the Plan Effective Date occurs, all holders of Claims against, and Interests in, the Debtors (including without limitation those holders of Claims who do not submit ballots to accept or reject the Plan or who are not entitled to vote on the Plan), will be bound by the terms of the Plan and the transactions contemplated thereby, including (except for those holders entitled to, and who do, opt out) the third-party releases contained therein.

FORWARD-LOOKING STATEMENTS

This Disclosure Statement contains forward-looking statements based primarily on the current expectations of the Debtors and projections about future events and financial trends affecting the

financial condition of the Debtors' businesses and assets. Forward-looking statements can often be identified by the use of terminology such as "subject to," "believe," "anticipate," "plan," "expect," "intend," "estimate," "project," "may," "will," "should," "would," "could," "can," the negatives thereof, variations thereon and similar expressions, or by discussions of strategy. These forward-looking statements are subject to a number of risks, uncertainties, and assumptions, including those described below in Article VII. In light of these risks and uncertainties, the forward-looking events and circumstances discussed in this Disclosure Statement may not occur, and actual results could differ materially from those anticipated in the forward-looking statements. The Debtors do not undertake any obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events, or otherwise.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3016 AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NON-BANKRUPTCY LAWS. THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION (THE "SEC"), ANY STATE SECURITIES COMMISSION, OR ANY SECURITIES EXCHANGE OR ASSOCIATION, NOR HAS THE SEC, ANY STATE SECURITIES COMMISSION, OR ANY SECURITIES EXCHANGE OR ASSOCIATION PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN.

QUESTIONS AND ADDITIONAL INFORMATION

If you would like to obtain copies of this Disclosure Statement, the Disclosure Statement Order, the Plan, the Plan Supplement, or any of the documents attached hereto or referenced herein, or have questions about the solicitation and voting process or the Debtors' Chapter 11 Cases generally, please contact the Debtors' Solicitation Agent, Epiq Corporate Restructuring, LLC by

( ) visiting the Debtors' document website at https://dm.epiq11.com/case/burgess/info

( ) calling 877-556-2937 (US & Canada toll free) and 503-843-8526 (International), or

( ) sending an electronic message to Burgess@epiqglobal.com.

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INTRODUCTION

This is the disclosure statement (the "**Disclosure Statement**") for the *Joint Chapter 11 Plan for Burgess BioPower, LLC and Berlin Station, LLC*, dated March 11, 2024 (as may be amended, the "**Plan**"), filed by Burgess BioPower, LLC ("**Burgess**") and Berlin Station, LLC ("**Berlin**"), the debtors and debtors-in-possession (each, a "**Debtor**" and collectively, the "**Debtors**") in the above-captioned chapter 11 cases (the "**Chapter 11 Cases**"), pending in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"). The Debtors submit this Disclosure Statement pursuant to section 1125 of title 11 of the United States Code (the "**Bankruptcy Code**").[3]

Brief Summary of the Plan

The Plan itself is a "toggle" plan. That is, the Debtors are simultaneously pursuing both a sale process and a plan that includes debt-for-equity swap by the Debtors' DIP Lenders and Senior Lenders. Depending on the outcome of the sale process, the Debtors, with the Senior Lenders' consent, will determine which option to pursue.

In the event of a Sale Scenario, all or substantially all of the Debtors' assets will be sold pursuant to the Plan to a buyer and the Plan will be a liquidating plan. The DIP Lenders and the Senior Lenders have reserved the right to credit bid their debt in connection with any such sale. If no sale is pursued, and the Stand-Alone Restructuring Scenario is pursued, the DIP Lenders and the Senior Lenders will exchange their debt (in the case of the DIP Lenders, 100% of their debt, in the case of the Senior Lenders, a portion of their Senior Notes), for 100% of the equity in the Debtors and will own and control the assets of the Debtors free and clear of all liens, claims, interests, and encumbrances.

In either event, creditors of Debtor Burgess (other than the Senior Lenders) will receive a distribution equal to 100% of their allowed claims, provided that the aggregate of asserted claims do not exceed $250,000. The Debtors estimate that claims against Debtor Burgess will not exceed that amount. If the aggregate amount of Claims exceeds $250,000, then at the option of the Pro Forma Owners, the Plan for Burgess shall be severed from the Plan and deemed withdrawn. *See supra* Article 5.7(e).

Furthermore, in either the Sale Scenario or the Stand-Alone Restructuring Scenario, general unsecured creditors of Debtor Berlin will receive nothing on account of their Allowed unsecured Claims. The Debtors believe that the only general unsecured Claim against Debtor Berlin is a rejection damages Claim, the holder of which has already agreed to not object to the treatment set forth in the Plan – and to not vote to reject the Plan – as further discussed below.

Finally, in either the Sale Scenario or the Stand-Alone Restructuring Scenario:

[3] Capitalized terms used in this Disclosure Statement, but not otherwise defined herein, shall have the meanings given to them in the Plan. To the extent there are any inconsistencies between this Disclosure Statement and the Plan, the Plan shall govern.

- all allowed Other Secured Claims, Priority Tax Claims, and Other Priority Claims against the Debtors will be unimpaired;
- holders of Subordinated Note Claims against Berlin will receive nothing on account of their claims; the holders of such Claims do not hold any claims against Burgess; and
- holders of equity interests in the Debtors will be canceled and no payment will be made on account of any such equity interests.

The Debtors and Events Leading to the Chapter 11 Case

The Debtors comprise a renewable energy power company that owns and operates a 75-megawatt biomass-fueled power plant (the "**Facility**") located on an approximately 62-acre site in Berlin, New Hampshire (the "**Facility Site**"). Berlin owns the Facility and the Facility Site, and Burgess leases the Facility pursuant to a long-term lease and holds the necessary regulatory licenses for the operation of the Facility. The Debtors do not operate their business. Rather, the Debtors are operated through two non-Debtor affiliates – CS Operations, Inc. ("**CS Operations**"), which operates and maintains the Facility on a day-to-day basis; and Berlin Ops, Inc. ("**CS Berlin Ops**"), which provides the Debtors with certain management services (collectively, the "**Affiliate Service Providers**").

The Facility has been running for over a decade, supplying energy products to Public Service Company of New Hampshire, doing business as Eversource Energy ("**Eversource**") pursuant to a Power Purchase Agreement entered into by and between Berlin and Eversource, dated as of May 18, 2011, and amended on November 19, 2019, and on August 18, 2022 (as amended, the "**PPA**"). Those products have consisted of energy, capacity and ancillary services, and most renewable energy certificates produced by the Facility (respectively, "**Energy**", "**Capacity**" and "**RECs**", and, collectively, "**Products**") at agreed prices throughout the term of the PPA. The Debtors deliver more than 500,000 megawatt hours of sustainable and reliable baseload power to the New England power grid on an annual basis. The Facility is the fourth largest power generator in New Hampshire and is the only power generator of those four that uses regionally sourced fuel.

The PPA contains an offsetting provision that established the cumulative reduction factor (the "**CRF**"). Under that provision, when the Adjusted Base Price for Energy exceeded the ISO-NE Energy Price, a negative adjustment was made; and when the Adjusted Base Price was less than the ISO-NE Energy Price, a positive adjustment was made. The cumulative value of these adjustments was referred to as the "Cumulative Factor," and a net negative Cumulative Factor was referred to as the "Cumulative Reduction."

The CRF had at least two financial consequences for the Debtors. First, if at the end of any Operating Year (December 1 through November 30) of the PPA's term the Cumulative Reduction exceeded $100 million, the PPA allowed Eversource to credit the excess against payments for Energy delivered in the subsequent Operating Year in one-twelfth increments each month. Second, the total amount of CRF at the end of the PPA's term would serve as an adjustment to the purchase price of the Facility by Eversource. The Cumulative Reduction reached $100 million in the Facility's sixth year of operations, on or about September 4, 2019. Through a series of legislative enactments by the State of New Hampshire, the State of New Hampshire

provided two moratoria on the application of any credits based on the Excess CRF favoring Eversource. During these moratoria, the CRF continued to accrue pursuant to the PPA. The Debtors attempted to obtain legislative relief to eliminate the Debtors' obligations for accrued Excess CRF during the prior moratoria last year. Although the New Hampshire legislature passed a bill granting that relief, it was vetoed by the Governor of New Hampshire on August 18, 2023, and the legislature failed to override that veto in October. As a result, the most recent moratorium expired on November 30, 2023.

As of the end of the last Operating Year (November 30, 2023), the CRF balance was approximately $172 million. Absent rejection of the PPA and the filing of these Chapter 11 Cases, pursuant to the PPA, as of January 2024, Eversource purported to have the right to credit the Excess CRF in one-twelfth installments against monthly payments to Berlin for Energy delivered after December 1, 2023, in one-twelfth installments. Those credits would have totaled more than $6 million per month, which would have exceeded the anticipated amount of the Debtors' monthly invoices for Energy for the foreseeable future.

Prior to the Petition Date, the Debtors and their advisors analyzed the PPA and Option Agreement,[4] and determined that operating the Facility under the PPA would not be viable once Eversource began exercising its rights related to the CRF. Quite simply, the Debtors would derive no income from future Energy sales to Eversource under the PPA for the following contract year. The Debtors would effectively have to provide Energy to Eversource for no payment while still incurring substantial expenses for biomass fuel, employee wages and benefits, operating and administrative expenses, and to make contractual debt and interest payments. In addition, because the CRF provisions are embedded in the pricing terms of the Option Agreement, any effort to market or sell the Facility to maximize value is effectively frozen. The Debtors were left with two options: (a) allow their business to collapse under the strain of the CRF provision, shuttering an operationally sound power plant or (b) pursue a restructuring of their debts and obligations or seek a fair market sale of the business through a Chapter 11 reorganization.

Accordingly, in the exercise of their business judgment, the Debtors determined that continuing to operate under the PPA and Option Agreement would be unduly burdensome to the Debtors' estates. Instead of selling the Facility's Products to Eversource pursuant to the PPA, the Debtors intend to sell electricity through the open market to ISO-NE's electric grid immediately and pursue a new power purchase agreement or agreements to maximize the value of the Debtors and their estates.

As of the Petition Date, among other obligations, the Debtors had secured funded debt obligations in a principal amount of approximately $145 million, including approximately: (i) $115 million under the senior Note facility and (ii) $29.7 million under the subordinated debt facility – each as further described below, see supra "The Debtors' Prepetition Capital Structure" at Article 3.2.

The Chapter 11 Cases

[4] "**Option Agreement**" means that certain Purchase Option Agreement, dated as of November 25, 2013 between and among Eversource and the Debtors.

To effectuate a restructuring, on February 8, 2024, the Debtors, the Senior Lenders, the Affiliate Service Providers, certain holders of the Subordinated Note Claims, and Jean Hallé ("**Hallé**")—a member of the Debtors' boards of directors and the Debtors' majority equity holder—entered into a Restructuring Support Agreement (as amended, the "**Restructuring Support Agreement**" or "**RSA**"), a copy of which is attached hereto as **Exhibit B**.[5] Under the terms of that RSA, the parties agreed to the terms of the Plan. In addition, the Senior Lenders agreed to provide DIP financing to the Debtors to finance operations and the costs of Chapter 11, and the Debtors agreed to, among other things, meet certain Milestones as set forth in the RSA (the **"Milestones"**), including dates for concluding a sale process and achieving confirmation of the Plan.

The Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code on February 9, 2024, with the intent to (i) move beyond the PPA and sell power through alternate channels, either on the merchant market or through a new power purchase agreement, (ii) continue producing renewable energy by entering into new arrangements with different buyers of energy and other products produced by the Facility, and (iii) seek confirmation and implementation of a chapter 11 plan, with the support of the Senior Lenders and DIP Lenders, that provides for a toggle between (a) a debt-for-equity swap with the DIP Lenders and Senior Lenders and (b) if a superior offer emerges, a sale of the Facility and the Facility Site to a third-party buyer.

Following the commencement of the Chapter 11 Cases, Eversource raised certain objections and filed various pleadings in the Chapter 11 Cases, objecting to the proposed treatment of the PPA and its potential claims in the Chapter 11 Cases, among other things. Following initial litigation with Eversource, the parties engaged in extensive negotiations, eventually reaching a consensual resolution of the disputed matters, including rejection of the PPA and the Option Agreement. On February 24, 2024, the Debtors filed a motion with the Bankruptcy Court seeking approval of a settlement agreement by and among the Debtors and Eversource (and for certain limited purposes, the Senior Lenders), which included a term sheet reflecting the material terms of that settlement [Docket No. 153], which settlement was approved by the Bankruptcy Court by order dated February 28, 2024 [Docket No. 185] (the "**Eversource Settlement**").

Having agreed with the Senior Lenders on the principal terms of the restructuring and having reached a comprehensive settlement agreement with Eversource and the DIP Lenders and Senior Lenders, the Debtors are pursuing a competitive sale process for their assets as permitted by the RSA. To that end, on February 29, 2024, the Debtors filed a motion with the Bankruptcy Court seeking approval of procedures by which the Debtors will conduct a competitive and robust sale process. [Docket No. 205]. On [ ], 2024 the Bankruptcy Court entered the Bidding Procedures Order [Docket No.].

In addition, the Plan includes certain release, injunctive, and exculpatory provisions described in greater detail below.

This Disclosure Statement sets forth certain information regarding the prepetition operating and financial history of the Debtors, the events leading up to the commencement of the Chapter 11

[5] The revised RSA is contemporaneously filed herewith and will be included as **Exhibit B** to the Disclosure Statement distributed to the Debtors' creditors.

Cases, material events that have occurred during the Chapter 11 Cases, and, as applicable, the anticipated organization, operations, and capital structure of the Reorganized Debtors if the Plan is confirmed, the Plan Effective Date occurs, and the Sale Transaction has been consummated. This Disclosure Statement also describes terms and provisions of the Plan, including certain effects of confirmation and effectiveness of the Plan, certain risk factors (including those associated with any securities to be issued under the Plan), the manner in which distributions will be made under the Plan, and certain alternatives to the Plan.

On April [ ], 2024, the Bankruptcy Court entered the Disclosure Statement Order [Docket No.] approving this Disclosure Statement as containing "adequate information," *i.e.*, information of a kind and in sufficient detail to enable a hypothetical reasonable investor to make an informed judgment about the Plan.

THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT CONSTITUTES NEITHER A GUARANTY OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN NOR AN ENDORSEMENT BY THE BANKRUPTCY COURT OF THE MERITS OF THE PLAN.

WHERE TO FIND ADDITIONAL INFORMATION: the Debtors have made the relevant documents available at https://dm.epiq11.com/case/burgess/dockets.

PLEASE TAKE NOTE OF THE FOLLOWING KEY DATES AND DEADLINES FOR THE CHAPTER 11 CASES AS SET FORTH HEREIN:[6]

Event	Date/Deadline	Description
Voting Record Date	[April 8, 2024]	The date for determining (i) which holders of Claims in the Voting Classes (as defined below) are entitled to vote to accept or reject the Plan, and (ii) whether Claims have been properly assigned or transferred to an assignee under Bankruptcy Rule 3001(e) such that the assignee or transferee, as applicable, can vote to accept or reject the Plan as the holder of a Claim.
Bid Deadline	[May 6, 2024 at 4:00 p.m. (ET)]	The deadline for potential bidders to submit qualified bids in accordance with the bidding procedures.
Solicitation Deadline	[Within three (3) business days after the Court enters an order approving the	The date by which the Debtors will distribute Solicitation Packages, including ballots, to holders of Claims entitled to vote to accept or reject the Plan.

[6] The following dates and deadlines may be modified or amended in accordance with the terms of the Restructuring Support Agreement and the Bidding Procedures Order, as applicable.

	Disclosure Statement and the Solicitation Procedures]	
Auction (if necessary)	[May 13, 2024 at 10:00 a.m. (ET)]	If necessary, qualified bidders will attend an auction for the Debtors' assets.
Rule 3018 Motion Deadline	[Within 7 days from the later of (A) the mailing of the Confirmation Hearing Notice and (B) the filing of a Claim objection]	The deadline for the filing and serving of motions pursuant to Bankruptcy Rule 3018(a).
Deadline to Publish Notice of Confirmation Hearing	[Within five (5) Business Days after entry of the Disclosure Statement Order (or as soon as practicable thereafter)]	The date by which the Debtors will publish notice of the Confirmation Hearing.
Rule 3018 Motion Objection Deadline	[May 7, 2024]	The date by which the Debtors or other parties in interest must file objections to any 3018 Motions.
Plan Supplement Filing Date	[May 7, 2024]	The date by which the Debtors will file the Plan Supplement.
Objection Deadline for Confirmation Hearing	[May 14, 2024 at 4:00 p.m. (ET)]	The deadline by which objections to the Plan, including the Sale Transaction, must be filed with the Court and served so as to be actually **received** by the appropriate notice parties.
Voting Deadline	[May 14, 2024 at 4:00p.m. (ET)]	The deadline by which all ballots must be properly executed, completed, and delivered so that they are **actually received** by the Solicitation Agent.
Plan Objection Reply Deadline	[May 17, 2024]	The deadline by which replies to objections, if any, must be filed with the Court.
Confirmation Hearing	May 21, 2024 at 10:00 a.m. (ET)	The date on which the Court will consider confirmation of the Plan.

ARTICLE I
THE PLAN

1.1 Treatment of Claims and Interests

The Plan establishes a comprehensive classification of Claims and Interests. The table below summarizes each Claim's and Interest's classification, treatment, and voting rights under the Plan. Except to the extent that the Debtors and a holder of an Allowed Claim or Allowed Interest agree to less favorable treatment, each holder will receive under the Plan the treatment described below in full and final satisfaction, settlement, release, and discharge of and in exchange for such holder's Allowed Claim or Allowed Interest. Unless otherwise indicated, the holder of an Allowed Claim or Allowed Interest, as applicable, will receive the following treatment on the Plan Effective Date, or as soon as reasonably practicable thereafter.

(a) Berlin Claims and Interests

Class	Claim / Equity Interest	Voting Rights	Treatment of Claim/Equity Interest	Projected Amount of Claims	Projected Recovery Under the Plan
Class 1A	Other Secured Claims	Not Entitled to Vote (Deemed to Accept)	On the Plan Effective Date, except to the extent that a holder of an Other Secured Claim against Berlin has agreed to a less favorable treatment, each holder of an Other Secured Claim against Berlin, at the option of the Debtors with the consent of the Senior Lenders, shall receive payment in full in Cash on the Plan Effective Date, or otherwise receive treatment consistent with the provisions of section 1129(a) of the Bankruptcy Code that renders its Allowed Other Secured Claim Unimpaired.	$0	100%
Class 2A	Other Priority Claims	Not Entitled to Vote (Deemed to Accept)	On the Plan Effective Date, except to the extent that a holder of an Allowed Other Priority Claim against Berlin has agreed to a less favorable treatment, each holder of an Allowed Other Priority Claim against Berlin shall receive, at the option of the Debtors with the consent of the Senior Lenders, payment in full in Cash or such other treatment that would render its Allowed Other Priority Claim Unimpaired.	$0	100%
Class 3A	Senior Notes Claims	Entitled to Vote	Except to the extent a holder of a Senior Notes Claim agrees to a less favorable treatment, in full and final satisfaction of such Claims: (i) Stand-Alone Restructuring Scenario: In a Stand-Alone Restructuring Scenario, each holder of a Senior Notes Claim or its	Approximately $115,350,000, plus any accrued and unpaid interest and all accrued and unpaid fees, expenses,	

Class	Claim / Equity Interest	Voting Rights	Treatment of Claim/Equity Interest	Projected Amount of Claims	Projected Recovery Under the Plan
			designee shall receive on account of such Senior Notes Claim, to the extent there is value for such Senior Note Claims after satisfaction of DIP Claims, its Pro Rata share of [(A)] [__]% of the New Reorganized Debtor Equity in Berlin, (B) an amount of New Notes equal to $[___], and (C) [__]% of the New Reorganized Debtor Equity in Burgess,]; or (ii) Sale Scenario: In a Sale Scenario, each holder of a Senior Notes Claim or its designee shall receive on account of such Senior Notes Claim its Pro Rata share of (x) the Sale Proceeds remaining after satisfaction of the Administrative Claims (including the DIP Claims) and Claims in Classes 1 and 2, and after reserving as Wind-Down Assets an amount equal to the Wind-Down Budget, and (y) all rights to, and proceeds of, the Wind-Down Assets.	premiums and indemnities.	
Class 4A	Subordinated Notes Claims	Not Entitled to Vote (Deemed to Reject)	On the Plan Effective Date, all Subordinated Notes Claims will be cancelled and released.	Approximately $29,700,000 million	$0
Class 5A	General Unsecured Claims	Not Entitled to Vote (Deemed to Reject)	On the Plan Effective Date, all General Unsecured Claims against Berlin will be cancelled and released.	$348,727.87	$0
Class 6A	510(b) Claims	Not Entitled to Vote (Deemed to Reject)	On the Plan Effective Date, all 510(b) Claims against Berlin will be cancelled and released.	$0	$0
Class 7A	Intercompany Claims	Not Entitled to Vote (Deemed to Reject)	On the Plan Effective Date, all Intercompany Claims against Berlin will be either cancelled or released or Reinstated, at the option of the Pro Forma Owners.	$0	$0
Class 8A	Interests	Not Entitled to Vote (Deemed to Reject)	On the Plan Effective Date, all Interests in Berlin will be cancelled and released.	N/A	$0

(b) Burgess Claims and Interests

Class	Claim / Equity Interest	Voting Rights	Treatment of Claim/Equity Interest	Projected Amount of Claims	Projected Recovery Under the Plan
Class 1B	Other Secured Claims	Not Entitled to Vote (Deemed to Accept)	On the Plan Effective Date, except to the extent that a holder of an Other Secured Claim against Burgess has agreed to a less favorable treatment, each holder of an Other Secured Claim against Burgess, at the option of the Debtors with the consent of the Senior Lenders, shall receive payment in full in Cash on the Plan Effective Date, or otherwise receive treatment consistent with the provisions of section 1129(a) of the Bankruptcy Code that renders its Allowed Other Secured Claim Unimpaired.	$0	100%
Class 2B	Other Priority Claims	Not Entitled to Vote (Deemed to Accept)	On the Plan Effective Date, except to the extent that a holder of an Allowed Other Priority Claim against Burgess has agreed to a less favorable treatment, each holder of an Allowed Other Priority Claim against Burgess shall receive, at the option of the Debtors with the consent of the Senior Lenders, payment in full in Cash, or such other treatment that would render its Allowed Other Priority Claim Unimpaired.	$0	100%

Class 3B	Senior Notes Claims	Entitled to Vote	Except to the extent a holder of a Senior Notes Claim agrees to a less favorable treatment, in full and final satisfaction of such Claims: (i) Stand-Alone Restructuring Scenario: In a Stand-Alone Restructuring Scenario, each holder of a Senior Notes Claim or its designee shall receive on account of such Senior Notes Claim, to the extent there is value for such Senior Note Claims after satisfaction of DIP Claims, its Pro Rata share of [(A)] [__]% of the New Reorganized Debtor Equity in Berlin, (B) an amount of New Notes equal to $[___], and (C) [__]% of the New Reorganized Debtor Equity in Burgess,]; or (ii) Sale Scenario: In a Sale Scenario, each holder of a Senior Notes Claim or its designee shall receive on account of such Senior Notes Claim its Pro Rata share of the Sale Proceeds remaining after satisfaction of the Administrative Claims (including the DIP Claims) and all rights to, and proceeds of, the Wind-Down Assets.	Approximately $115,350,000, plus any accrued and unpaid interest and all accrued and unpaid fees, expenses, premiums and indemnities.	
Class 4B	General Unsecured Claims	Not Entitled to Vote (Deemed to Accept)	On the Plan Effective Date, except to the extent that a holder of an Allowed General Unsecured Claim against Burgess has agreed to a less favorable treatment, each holder of an Allowed General Unsecured Claim against Burgess shall receive, at the option of the Debtors with the consent of the Senior Lenders, payment in full in Cash, or such other treatment that would render its Allowed General Unsecured Claim Unimpaired.	$27,824.09	100%
Class 5B	510(b) Claims	Not Entitled to Vote (Deemed to Accept)	On the Plan Effective Date, except to the extent that a holder of an Allowed 510(b) Claim against Burgess has agreed to a less favorable treatment, each holder of an Allowed 510(b) Claim against Burgess shall receive, at the option of the Debtors with the consent of the Senior Lenders, payment in full in Cash, or such other treatment that would render its Allowed 510(b) Claim Unimpaired.	$0	N/A

Class 6B	Intercompany Claims	Not Entitled to Vote (Deemed to Accept)	On the Plan Effective Date, all Intercompany Claims against Burgess will be Reinstated.	$0	100%
Class 7B	Interests	Not Entitled to Vote (Deemed to Reject)	On the Plan Effective Date, all Interests in Burgess will be cancelled and released, and the New Reorganized Debtor Equity in Burgess will be distributed to the holders of the [Senior Notes Claims] [DIP Claims] (or their designees) in accordance with the Plan.	N/A	$0

As described below, you are receiving this Disclosure Statement because you are a holder of a Claim entitled to vote to accept or reject the Plan. Prior to voting on the Plan, you are encouraged to read this Disclosure Statement and all documents attached to this Disclosure Statement in their entirety. As reflected in this Disclosure Statement, there are risks, uncertainties, and other important factors that could cause the Debtors' actual performance or achievements to be materially different from those they may project, and the Debtors undertake no obligation to update any such statement. Certain of these risks, uncertainties, and factors are described in Article VII of this Disclosure Statement, entitled "Certain Factors To Be Considered."

1.2 Plan Options

The Debtors, with the consent of the Senior Lenders, will elect whether to effectuate the Restructuring through the Stand-Alone Restructuring Transaction or the Sale Scenario. At this time, the Debtors do not know which option they will elect. Each option is described more fully below.

1.3 Restructuring of the Debtors Through the Sale Scenario

In a Sale Scenario, the Debtors will sell all or substantially all of their assets to a third party buyer. The Confirmation Order shall authorize, pursuant to sections 363, 365, 1123(a)(5)(B), and 1123(a)(5)(D) of the Bankruptcy Code, all actions necessary or appropriate to effectuate the Sale Transaction(s), including, (i) the execution and delivery of the Purchase Agreement(s) and all other Sale Transaction Documents, (ii) the transfer of the purchased assets or the New Reorganized Debtor Equity free and clear of all Liens, Claims, charges, or other encumbrances, to the applicable Purchaser(s), (iii) all transactions contemplated by the Purchase Agreement(s), including pursuant to sections 363, 365, 1123(a)(5)(B), and 1123(a)(5)(D) of the Bankruptcy Code, (iv) if applicable, the appointment of the Plan Administrator, and (v) if applicable, the execution and delivery of the Plan Administrator Agreement.

(a) Closing of the Sale Transaction(s)

On the Plan Effective Date, the Debtors shall be authorized to consummate the Sale Transaction(s) with the Purchaser(s) and/or any other applicable party and, among other things,

the Debtors' assets specified in the Purchase Agreement(s) (including any Executory Contracts and Unexpired Leases the applicable Purchaser(s) wish to assume) or the New Reorganized Debtor Equity, as applicable, shall be transferred to and vest in the applicable Purchaser(s) free and clear of all Liens, Claims, Interests, charges or other encumbrances, purchase rights, options or rights of first refusal, pursuant to the terms of the applicable Sale Transaction Documents and the order of the Bankruptcy Court approving the Sale Transaction(s) contemplated thereby, which may be the Confirmation Order, and the Purchaser(s) may operate the purchased assets in the ordinary course, without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

(b) Wind-Down and Dissolution of the Debtors

In a Sale Scenario, sufficient proceeds from the Sale Transaction shall be retained to fund distributions under the Plan and the Plan shall be a liquidating plan. To the extent there is at least one Wind-Down Debtor on the Plan Effective Date, then such Wind-Down Debtor(s) shall continue in existence after the Plan Effective Date for purposes of: (a) winding down the Debtors' businesses and affairs as expeditiously as reasonably possible and liquidating any assets held by the Wind-Down Debtor(s) after the Plan Effective Date; (b) performing the Debtors' remaining obligations under any Sale Transaction Documents, if any; (c) resolving any Disputed Claims against the Debtors; (d) making distributions on account of Allowed Claims against the Debtors in accordance with the Plan to the extent not made on the Plan Effective Date; (e) filing appropriate tax returns, if any; and (f) administering the Plan in an efficient manner. The Wind-Down Debtor(s) shall be deemed to be substituted as the party-in-lieu of the Debtors in all matters, including (x) motions, contested matters, and adversary proceedings pending in the Bankruptcy Court, and (y) all matters pending in any courts, tribunals, forums, or administrative proceedings outside of the Bankruptcy Court, in each case without the need or requirement for the Plan Administrator to file motions or substitutions of parties or counsel in each such matter.

On the Plan Effective Date, any assets of the Debtors' Estates remaining after the closing of the Sale Transaction(s) shall vest in the Wind-Down Debtor(s) for the purpose of liquidating the Debtors' Estates and Consummation of the Plan. Such assets shall be held free and clear of all Liens, Claims, Interests, charges or other encumbrances, purchase rights, options or rights of first refusal, except as otherwise provided in the Plan. Any distributions to be made under the Plan from such assets shall be made by the Plan Administrator or its designee. The Wind-Down Debtor(s) and the Plan Administrator shall be deemed to be fully bound by the terms of the Plan and the Confirmation Order.

Following the occurrence of the Plan Effective Date and the making of distributions on the Plan Effective Date pursuant hereto, (i) any of the Debtors' Cash held by the Wind-Down Debtor(s) in excess of the Wind-Down Budget and (ii) the proceeds of any non-Cash assets of the Debtors' Estates vested in the Wind-Down Debtor(s), shall be payable to holders of DIP Claims and Senior Notes Claims until such claims are indefeasibly paid in full in Cash.

(c) The Plan Administrator

On and after the Plan Effective Date, to the extent applicable, a Plan Administrator, shall be appointed by the Debtors with the consent of the Senior Lenders.

The Plan Administrator shall not be required to post any bond or surety or other security for the performance of its duties hereunder unless otherwise ordered by the Bankruptcy Court. In the event that the Plan Administrator is so ordered, all costs and expenses of procuring any such bond or surety shall be paid for with Cash from the Wind-Down Assets.

(i) The Plan Administrator's Rights and Powers

The powers of the Plan Administrator shall include any and all powers and authority necessary or helpful to implement and carry out the provisions of the Plan and any applicable orders of the Bankruptcy Court. The Plan Administrator shall be the representative of the Debtors' Estates appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code.

Without limiting the foregoing, the Plan Administrator shall (a) hold, liquidate, invest, supervise, and protect the Wind-Down Assets; (b) effectuate the distributions contemplated under the Plan; (c) object to or settle Disputed Claims against the Debtors; (d) establish and maintain the Disputed Claims Reserve with respect to the Disputed Claims against the Debtors or their Estates; (e) prosecute any or all of the Causes of Action retained by the Wind-Down Debtor(s); (f) pay all reasonable fees, expenses, debts, charges, and liabilities of the Wind-Down Debtor(s); (g) file tax returns for, pay taxes of, and represent the interests of the Wind-Down Debtor(s) or the Debtors' Estates, as applicable, before any taxing authority in all matters, including any action, suit, proceeding, or audit; (h) File the operating report for the Debtors' Estates for the month in which the Plan Effective Date occurs and all subsequent quarterly reports; (i) take any action necessary to wind down the business and affairs of the Wind-Down Debtor(s); and (j) file appropriate certificates of dissolution of the Wind-Down Debtor(s) pursuant to applicable state or provincial law.

As soon as practicable after the Plan Effective Date, the Plan Administrator shall cause the Wind-Down Debtor(s) to comply with, and abide by, the terms of the Plan and take any actions as the Plan Administrator may determine to be necessary or desirable to carry out the purposes of the Plan. Except to the extent necessary to complete the Wind-Down of any of the Debtors' remaining assets or operations from and after the Plan Effective Date, the Debtors (1) for all purposes shall be deemed to have withdrawn their business operations from the State of New Hampshire and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, (2) shall be deemed to have canceled pursuant to the Plan all Interests in the Debtors, and (3) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Plan Effective Date. The Filing of the final monthly operating report for the Debtors' Estates (for the month in which the Plan Effective Date occurs) and all subsequent quarterly post-Confirmation reports shall be the responsibility of the Plan Administrator.

The Plan Administrator shall act for the Wind-Down Debtor(s) in the same fiduciary capacity as applicable to a board of directors and officers, subject to the provisions hereof (and all certificates of formation, membership agreements, and related documents are deemed amended by

the Plan to permit and authorize the same). On the Plan Effective Date, the persons acting as members, managers, or officers of the Debtor(s) shall be deemed to have resigned and a representative of the Plan Administrator shall be appointed as the sole manager and sole officer of the Wind-Down Debtor(s) and shall succeed to the powers of the Debtors' directors, managers and officers. From and after the Plan Effective Date, the Plan Administrator shall be the sole representative of, and shall act for, the Wind-Down Debtor(s). For the avoidance of doubt, the foregoing shall not limit the authority of the Wind-Down Debtor(s) or the Plan Administrator, as applicable, to continue the employment of any former member, manager, or officer, including pursuant to any transition services or other agreement, in each case, to the extent permitted by applicable law.

(ii) Retention of the Plan Administrator's Professionals

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

(iii) Compensation of the Plan Administrator

All reasonable costs, expenses, and obligations incurred by the Plan Administrator in administering the Plan, the Wind-Down Debtor(s)' Estates, or in any manner connected, incidental, or related thereto, shall be paid from the Wind-Down Assets in accordance with the Wind-Down Budget and on the terms set forth in the Plan Administrator Agreement. Except as otherwise ordered by the Bankruptcy Court, the fees and expenses incurred by the Plan Administrator on or after the Plan Effective Date (including taxes imposed on the Wind-Down Debtor(s) in connection with its duties hereunder and the Plan Administrator Agreement shall be paid without any further notice to, or action, order, or approval of, the Bankruptcy Court.

(iv) Indemnification, Insurance, and Liability Limitation

The Plan Administrator and all professionals retained by the Plan Administrator, each in their capacities as such, shall be deemed indemnified by the Wind-Down Debtor(s) to the fullest extent permitted by applicable law from any claims or Causes of Action relating to or arising in connection with the performance of its duties hereunder or under the Plan Administrator Agreement, except for claims and Causes of Action related to any act or omission that is determined by Final Order of a court of competent jurisdiction to have constituted fraud, willful misconduct, or gross negligence. The Plan Administrator may obtain, at the expense of the Wind-Down Debtor(s) and in accordance with the Plan Administrator Agreement, commercially reasonable liability or other appropriate insurance with respect to the foregoing indemnification obligations. Any such insurance shall be paid solely from the Wind-Down Assets in accordance with the Wind-Down Budget. The Plan Administrator may rely upon all written information previously generated by the Debtors.

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

(v) Tax Returns

The Plan Administrator shall complete and file all final or otherwise required federal, state, and local tax returns for each of the Wind-Down Debtor(s) and, pursuant to section 505(b) of the Bankruptcy Code, may request an expedited determination of any unpaid tax liability of any Wind-Down Debtor or the Estate of its predecessor Debtor, as determined under applicable tax laws.

(d) Vesting of Assets in the Wind-Down Debtor(s) or Purchaser(s)

Except as otherwise provided herein, on the Plan Effective Date, all Wind-Down Assets shall vest in the Wind-Down Debtor(s), free and clear of all Liens, Claims, Interests, charges, or other encumbrances, purchase rights, options or rights of first refusal, unless expressly provided otherwise by the Plan or the Confirmation Order. On and after the Plan Effective Date, the Wind-Down Debtor(s) may use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

(e) Sources of Consideration for Plan Distributions

The Plan Administrator shall fund distributions under the Plan, to the extent not made on the Plan Effective Date, with Cash on hand, the Sale Proceeds, if any, and proceeds of the Debtors' retained Causes of Action not settled, released, discharged, enjoined, or exculpated on or prior to the Plan Effective Date.

1.4 Restructuring of the Debtors Through a Stand-Alone Restructuring Transaction

In a Stand-Alone Restructuring Transaction, the Debtors shall emerge from Chapter 11 as Reorganized Debtors, the existing equity Interests in the Debtors shall be cancelled and released, the assets of the Debtors shall vest in the Reorganized Debtors free and clear of all liens, claims, encumbrances, and interests, and New Reorganized Debtor Equity shall be issued to holders of the DIP Claims and the Senior Notes Claims or their designee. The actions undertaken with respect to the Stand-Alone Restructuring Transaction are more fully described below.

(a) The New Notes

On the Plan Effective Date, the Reorganized Debtors shall enter into the New Note Documents. The Confirmation Order shall approve the New Notes and the New Note Documents (including the transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations and guarantees to be incurred and fees paid in connection therewith), and all Claims, Liens, and security interests to be granted in accordance with the terms of the New Note Documents, if any, (a) shall be deemed to be granted, (b) shall be legal, binding, and enforceable Claims and Liens on, and security interests in, the collateral granted thereunder in

accordance with the terms of the New Note Documents, (c) shall be deemed automatically attached and perfected on the Plan Effective Date, subject only to the Liens and security interests as may be permitted under the New Note Documents, and (d) shall not be subject to avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever and shall not constitute preferential transfers, fraudulent conveyances, or other voidable transfers under the Bankruptcy Code or any applicable non-bankruptcy law. The Debtors and the Reorganized Debtors, as applicable, and the Persons granting such Liens and security interests are authorized to make all filings and recordings and to obtain all governmental approvals and consents necessary to establish and perfect such Liens and security interests under the provisions of the applicable state, provincial, federal, or other law (whether domestic or foreign) that would be applicable in the absence of the Plan and the Confirmation Order (it being understood that perfection shall occur automatically by virtue of the entry of the Confirmation Order with respect to the Plan, and any such filings, recordings, approvals, and consents shall not be required) and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security interests to third parties.

(b) Release of Liens

Subject to the distributions provided for in the Plan, except as otherwise provided herein, in the New Note Documents, or any contract, agreement, instrument, or another document created pursuant to or in connection with the Plan, on the Plan Effective Date, all mortgages, deeds of trust, Liens, pledges, rights, or other security interests against any property of the applicable Debtors' Estates shall be fully released, settled, compromised, and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, rights, or other security interests shall revert automatically to the applicable Debtor. All holders of Secured Claims against the Debtors or any of their property (and such holders' agents) shall release any collateral or other property of the applicable Debtor (including any cash collateral and possessory collateral) held by such holder (or such holders' agents), and take such actions as may be reasonably requested by the Reorganized Debtors to evidence the release of the applicable security interests, including the execution, delivery, and filing or recording of such releases. The presentation or filing of the Confirmation Order to or with any federal, state, provincial, or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such security interests.

(c) Sources of Consideration for Plan Distributions

The Reorganized Debtors shall fund distributions under the Plan with the New Reorganized Debtor Equity, Cash on hand, and Cash generated from operations.

From and after the Plan Effective Date, the Reorganized Debtors, subject to any applicable limitations set forth in any post-Plan Effective Date agreement (including the New Note Documents and New Organizational Documents), shall have the right and authority without further notice to or action, order, or approval of the Bankruptcy Court to raise additional capital and obtain additional financing as the New Board of the applicable Reorganized Debtors deems appropriate.

(d) Issuance of New Reorganized Debtor Equity; Section 1145 Exemption

On the Plan Effective Date, the Reorganized Debtors shall issue the New Reorganized Debtor Equity to the holders of the Allowed DIP Claims, Allowed Senior Notes Claims, in each case, or their designees, as applicable and without the need for any further corporate action or further notice to, action or order of the Bankruptcy Court. The shares of the New Reorganized Debtor Equity issued under the Plan shall be duly authorized, validly issued, fully paid, and non-assessable. Each distribution and issuance of the New Reorganized Debtor Equity under the Plan shall be governed by the terms and conditions set forth in the Plan applicable to such distribution or issuance and by the terms and conditions of the instruments evidencing or relating to such distribution or issuance, which terms and conditions shall bind each Person receiving such distribution or issuance. The issuance of the New Reorganized Debtor Equity by the Reorganized Debtors shall be authorized without the need for any further corporate action or without any further action by the Debtors or Reorganized Debtors or by holders of any Claims or Interests against the Debtors, as applicable. As a condition to receiving the New Reorganized Debtor Equity, each holder entitled to a distribution of New Reorganized Debtor Equity, including holders of Senior Notes Claims and DIP Claims or their designees (as applicable), will be required to execute and deliver the New Organizational Documents, as applicable; provided however, that, notwithstanding any failure to execute the New Organizational Documents, as applicable, any Person that is entitled to and accepts a distribution of New Reorganized Debtor Equity under the Plan, by accepting such distribution, will be deemed to have accepted and consented to the terms of the New Organizational Documents, without the need for execution by any party thereto. The New Reorganized Debtor Equity will not be registered under the Securities Act or listed on any exchange as of the Plan Effective Date.

Pursuant to section 1145 of the Bankruptcy Code, the offering, issuance, and distribution of the New Reorganized Debtor Equity after the Petition Date shall be exempt from, among other things, the registration requirements of Section 5 of the Securities Act or any similar federal, state, or local law in reliance on section 1145 of the Bankruptcy Code or, only to the extent such exemption under section 1145 of the Bankruptcy Code is not available, any other available exemption from registration under the Securities Act. Pursuant to section 1145 of the Bankruptcy Code, such New Reorganized Debtor Equity will be freely tradable in the United States without registration under the Securities Act by the recipients thereof, subject to the provisions of (1) section 1145(b)(1) of the Bankruptcy Code relating to the definition of an underwriter in Section 2(a)(11) of the Securities Act and compliance with any applicable state or foreign securities laws, if any, and the rules and regulations of the SEC, if any, applicable at the time of any future transfer of such Securities or instruments, (2) any other applicable regulatory approvals, and (3) any restrictions in the New Organizational Documents.

Any Securities distributed pursuant to Section 4(a)(2) of the Securities Act will be considered "restricted securities" as defined by Rule 144 of the Securities Act and may not be resold under the Securities Act or applicable state securities laws absent an effective registration statement, or pursuant to an applicable exemption from registration, under the Securities Act and applicable state securities laws and subject to any restrictions in the New Organizational Documents.

Notwithstanding anything to the contrary in the Plan, no Person shall be entitled to require a legal opinion regarding the validity of any transaction contemplated by the Plan, including, for

the avoidance of doubt, whether the issuance of the New Reorganized Debtor Equity is exempt from the registration requirements of Section 5 of the Securities Act.

Recipients of the New Reorganized Debtor Equity are advised to consult with their own legal advisors as to the availability of any exemption from registration under the Securities Act and any applicable state securities laws.

(e) Corporate Existence

Except as otherwise provided in the Plan or any agreement, instrument, or other document incorporated in the Plan or the Plan Supplement, on and after the Plan Effective Date, each Reorganized Debtor, as applicable, shall continue to exist as a separate corporation, limited liability company, partnership, or other form of entity, as the case may be, with all the powers of a corporation, limited liability company, partnership, or other form of entity, as the case may be, pursuant to the applicable law in the jurisdiction in which the particular Debtor is incorporated or formed and pursuant to their respective certificate of incorporation and bylaws (or other similar Governance Documents) in effect prior to the Plan Effective Date, except to the extent such certificate of incorporation and bylaws (or other similar Governance Documents) are amended under the Plan or otherwise, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval (other than any requisite filings required under applicable state, provincial, or federal law).

After the Plan Effective Date, the respective certificate of incorporation and bylaws (or other formation documents) of one or more of the Reorganized Debtors may be amended or modified in accordance with their terms without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. On or after the Plan Effective Date, one or more of the Reorganized Debtors may be disposed of, dissolved, wound down, or liquidated without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

(f) New Organizational Documents

On or immediately prior to the Plan Effective Date, the New Organizational Documents shall be adopted automatically by the Reorganized Debtors. To the extent required under the Plan or applicable non-bankruptcy law, the Reorganized Debtors shall file their respective New Organizational Documents with the applicable Secretaries of State and/or other applicable authorities in their respective states, provinces, or countries of incorporation in accordance with the corporate laws of the respective states, provinces, or countries of incorporation. The New Organizational Documents shall, among other things: (1) authorize the issuance of the New Reorganized Debtor Equity; (2) not provide for any indemnification, contribution, reimbursement, or any other liability for the Reorganized Debtors to the Sponsors or their Related Parties for any claim whatsoever, including but not limited to on account of cancelation of debt income; and (3) pursuant to and only to the extent required by section 1123(a)(6) of the Bankruptcy Code, include a provision prohibiting the issuance of non-voting equity securities of the Debtors. After the Plan Effective Date, each Reorganized Debtor may amend and restate its limited liability company agreement, certificate of incorporation and other formation and constituent documents as permitted

by the laws of its respective jurisdiction of formation and the terms of the New Organizational Documents.

(g) Vesting of Assets in Reorganized Debtors

Except as otherwise provided herein, or in any agreement, instrument or other document incorporated in the Plan, on the Plan Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, all property in each Debtor's Estate, all Causes of Action of the Debtors' Estates (other than any Causes of Action that are expressly waived, relinquished, exculpated, released, compromised or settled in the Plan) and any property acquired by any of the Debtors under the Plan shall vest in each respective Reorganized Debtor, free and clear of all Liens, Claims, charges and/or other encumbrances, purchase rights, options or rights of first refusal. On and after the Plan Effective Date, except as otherwise provided herein, each Reorganized Debtor may operate its business and may use, acquire, or dispose of property and pursue, compromise or settle any Claims, Interests, or Causes of Action with respect to the Debtors without further notice to, action, or approval of the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

(h) Directors, Managers, and Officers

As of the Plan Effective Date, the term of the current members of the boards of directors or managers or any managing member of the Debtors shall expire, and the New Board and the officers or managers of each of the Reorganized Debtors shall be appointed in accordance with the respective New Organizational Documents.

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

(i) Employee and Retiree Benefits

To the extent that the Debtors and Senior Lenders determine that any Compensation and Benefits Programs shall remain in place after the Plan Effective Date, the Debtors, with the consent of the Senior Lenders, will list such agreement on the Assumed Executory Contracts and Unexpired Leases List, and such agreement will be assumed as of the Plan Effective Date. If the Debtors do not list such agreement on the Assumed Executory Contracts and Unexpired Leases List, such agreement shall be deemed rejected in accordance with Article V of the Plan without any resulting Claims assertable against the Debtors or their Estates.

1.5 Claims and Interests

(a) Unclassified Claims Summary

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Fee Claims, DIP Claims, and Priority Tax Claims have not been classified against the Debtors.

1.6 Unclassified Claims

(a) Administrative Claims

Requests for payment of Administrative Claims (except for DIP Claims, Adequate Protection Claims, Professional Fee Claims and Restructuring Expenses) must be Filed and served, if with respect to the Debtors, on the Reorganized Debtors or Wind-Down Debtor(s), as applicable, no later than the applicable Administrative Claims Bar Date pursuant to the procedures specified in the Confirmation Order(s). Holders of Administrative Claims that are required to File and serve a request for payment of such Claims that fail to do so shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors, the Reorganized Debtors, or Wind-Down Debtor(s), as applicable, or their respective property, and such Administrative Claims shall be deemed discharged as of the Plan Effective Date without the need for any objection or any notice to any Person or an order of the Bankruptcy Court.

Except to the extent that a holder of an Allowed Administrative Claim agrees to a less favorable treatment, to the extent an Allowed Administrative Claim has not been paid in full or otherwise satisfied during the Chapter 11 Cases, each holder of an Allowed Administrative Claim (other than Professional Fee Claims, DIP Claims, Adequate Protection Claims and Restructuring Expenses) shall receive, in full and final satisfaction of its Allowed Administrative Claim, payment in full in Cash in accordance with the following: (1) if such Administrative Claim is Allowed on or prior to the Plan Effective Date, on the Plan Effective Date; (2) if such Administrative Claim is not Allowed as of the Plan Effective Date, no later than thirty (30) days after the date on which such Administrative Claim is Allowed; (3) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date, in accordance with the terms and conditions of the particular transaction or course of business giving rise to such Allowed Administrative Claim; or (4) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court.

(b) Professional Fee Claims

(i) Final Fee Applications and Payment of Professional Fee Claims

All final requests for payment of Professional Fee Claims must be Filed no later than forty-five (45) days after the Plan Effective Date. The Bankruptcy Court shall determine the Allowed amounts of all Professional Fee Claims in accordance with the procedures established by the Bankruptcy Code, Bankruptcy Rules, and prior Bankruptcy Court orders.

(ii) Professional Fee Escrow Accounts

On the Plan Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Escrow Amount. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals in respect of Allowed

Professional Fee Claims until all Allowed Professional Fee Claims have been paid in full, and the funds held in the Professional Fee Escrow Account shall not be considered property of the Debtors' Estates. No Liens, Claims, or Interests shall encumber the Professional Fee Escrow Account or Cash held therein.

The applicable Debtors' obligations to pay the Allowed Professional Fee Claims shall be limited to the funds held in the Professional Fee Escrow Accounts. When all Allowed Professional Fee Claims have been paid in full, any remaining funds held in the applicable Professional Fee Escrow Accounts shall be returned to the Senior Lenders, the Reorganized Debtors or the Wind-Down Debtor(s), as applicable.

(iii) Professional Fee Escrow Amounts

The Professionals shall provide a reasonable and good-faith estimate of the Professional Fee Claims projected to be outstanding as of the Plan Effective Date, and shall deliver such estimate to the Debtors at least three (3) Business Days before the anticipated Plan Effective Date; provided, however, that such estimate shall not be considered or deemed an admission or limitation with respect to the amount of the fees and expenses that are the subject of the Professional's final request for payment of Professional Fee Claims and such Professionals are not bound by such estimates. If a Professional does not provide an estimate, the Debtors, with the consent of the Senior Lenders, may estimate the unpaid and unbilled fees and expenses of such Professional.

(iv) Post-Plan Effective Date Fees and Expenses

Except as otherwise specifically provided in the Plan, from and after the Plan Effective Date, the Reorganized Debtors or the Plan Administrator, as applicable, shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable legal, professional, or other fees and expenses related to implementation of the Plan incurred by the Reorganized Debtors, as determined by the Reorganized Debtors or the Plan Administrator, as applicable. Upon the Plan Effective Date, any requirement that the Reorganized Debtors' or Wind-Down Debtor(s)' Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy Code in seeking retention for services rendered after such date shall terminate, and the Reorganized Debtors and the Plan Administrator, as applicable, may employ any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

1.7 Administrative Claims Bar Date

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

such Administrative Claims against the Debtors or their property and such Administrative Claims shall be deemed discharged as of the Plan Effective Date.

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

1.8 DIP Claims

The DIP Claims shall be Allowed in the amount outstanding under the DIP Facility on the Plan Effective Date. In full and final satisfaction thereof, each Allowed DIP Claim shall (a) in a Sale Scenario, be paid in full in Cash (unless an Allowed DIP Claim is being credit bid as part of the bid by the Successful Bidder, in which case such Allowed DIP Claim shall be satisfied in accordance with the order approving the Sale Transaction); or (b) in a Stand-Alone Restructuring Scenario, the holder of such DIP Claim (or its designee) shall receive [___]% of the New Reorganized Debtor Equity in Berlin and 100% of the New Reorganized Debtor Equity in Burgess on account of such DIP Claim, and in either the Sale Scenario or the Stand-Alone Restructuring Scenario be afforded such other treatment as is acceptable to the DIP Lenders in their sole discretion; provided, that each holder of an Allowed DIP Claim (or its designee) shall receive the same treatment under the Plan unless a holder agrees to less favorable treatment.

1.9 Priority Tax Claims

"Priority Tax Claims" consist of all Claims of a Governmental Unit of the kind specified in Section 507(a)(8) of the Bankruptcy Code.

Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for, the Allowed Priority Tax Claims, each holder of an Allowed Priority Tax Claim shall receive treatment consistent with section 1129(a)(9) of the Bankruptcy Code by the applicable Debtor against which such Allowed Priority Tax Claims are validly asserted.

1.10 Statutory Fees

All fees pursuant to section 1930 of the Judicial Code, together with the statutory rate of interest set forth in section 3717 of title 31 of the United States Code to the extent applicable ("**Quarterly Fees**"), that are due and payable as of the Plan Effective Date shall be paid by the Debtors on the Plan Effective Date. After the Plan Effective Date, the Reorganized Debtors shall

be jointly and severally liable to pay any and all Quarterly Fees when due and payable. The Debtors shall file all monthly operating reports due prior to the Plan Effective Date when they become due, using UST Form 11-MOR. After the Plan Effective Date, the Reorganized Debtors shall file with the Bankruptcy Court separate UST Form 11-PCR reports when they become due. Notwithstanding anything called for in the Plan to the contrary, each Debtor or Reorganized Debtor, as applicable, shall remain obligated to pay Quarterly Fees to the Office of the U.S. Trustee and make such reports until the earliest of that particular Debtor's or Reorganized Debtor's case being closed, dismissed, or converted to a case under Chapter 7 of the Bankruptcy Code. The U.S. Trustee shall not be required to file any request for payment of Administrative Claim in the case and shall not be treated as providing any release under the Plan.

1.11 Payment of Restructuring Expenses

On the Plan Effective Date or as reasonably practicable thereafter (to the extent not previously paid during the course of the Debtors' Chapter 11 Cases), the Debtors shall pay in full in Cash all outstanding Restructuring Expenses incurred or estimated to be incurred by the Senior Notes Agent, the DIP Agent, the Senior Lenders and the DIP Lenders through and including the Plan Effective Date in accordance with, and subject to, the terms set forth herein and in the Restructuring Support Agreement and/or the DIP Orders (as applicable), without any requirement to file a fee application with the Bankruptcy Court, without the need for itemized time detail, and without any requirement for Bankruptcy Court review or approval.

All Restructuring Expenses to be paid by the Debtors on the Plan Effective Date shall be estimated prior to and as of the Plan Effective Date and such estimates shall be delivered to the Debtors at least three (3) Business Days before the anticipated Plan Effective Date; provided, however, that such estimates shall not be considered an admission or limitation with respect to such Restructuring Expenses. On the Plan Effective Date or as soon as reasonably practicable thereafter, invoices for all Restructuring Expenses incurred by the Senior Notes Agent, the DIP Agent, the Senior Lenders or the DIP Lenders prior to and as of the Plan Effective Date shall be submitted to the Debtors. In addition, the Debtors, the Reorganized Debtors, and the Wind-Down Debtor(s) (as applicable) shall continue to pay, when due and payable in the ordinary course, Restructuring Expenses related to implementation, Consummation, and defense of the Plan, whether incurred before, on, or after the Plan Effective Date.

(a) Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing herein shall affect the rights of the Debtors, Reorganized Debtors, or Wind-Down Debtor(s), as applicable, in respect of any Unimpaired Claims, including all legal and equitable defenses to such Claims or rights of setoffs or recoupments. Unless expressly Allowed herein, Unimpaired Claims shall remain Disputed Claims.

Notwithstanding anything to the contrary in the Plan, Plan Supplement, or Confirmation Order, until an Unimpaired Claim (including cure claims related to the assumption of Executory Contracts and Unexpired Leases, and claims for damages related to the rejection of the same), or which is an Administrative Claim or Priority Tax Claim has been (x) paid in full in accordance with applicable law, or on terms agreed to between the holder of such Claim and the Debtors, the

Reorganized Debtors or Wind-Down Debtor(s), as applicable, or (y) otherwise satisfied or disposed of as determined by a court of competent jurisdiction: (a) the provisions of Article VIII.A of the Plan (but as to Article VIII.A.2 only to the extent that such provision releases claims that could be asserted derivatively by the holder of such Claim) shall not apply or take effect with respect to such Claim, (b) such Claim shall not be deemed settled, satisfied, resolved, released, discharged, barred or enjoined, (c) the property of each of the Debtors' Estates that vests in the applicable Reorganized Debtor pursuant to the Plan shall not be free and clear of such Claims, and (d) any Liens of holders of Unimpaired Claims, Administrative Claims, or Priority Tax Claims shall not be deemed released.

Holders of Unimpaired Claims shall not be required to File a Proof of Claim with the Bankruptcy Court. Holders of Unimpaired Claims shall not be subject to any claims resolution process in Bankruptcy Court in connection with their Claims, and shall retain all their rights under applicable non-bankruptcy law to pursue their Claims against the Debtors or Reorganized Debtors or other entity in any forum with jurisdiction over the parties. The Debtors and Reorganized Debtors shall retain all defenses, counterclaims, rights to setoff, and rights to recoupment as to Unimpaired Claims. If the Debtors or the Reorganized Debtors dispute any Unimpaired Claim, such dispute shall be determined, resolved, or adjudicated in the manner as if the Chapter 11 Cases had not been commenced.

(b) Controversy Concerning Impairment

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

(c) Elimination of Vacant Classes

Any Class that does not have a Claim or Interest in an amount greater than zero as of the date of the Confirmation Hearing shall be considered vacant and deemed eliminated from the Plan for all purposes.

(d) Subordinated Claims

Except as expressly provided in the Plan, the allowance, classification, and treatment of all Allowed Claims and Allowed Interests and the respective treatment thereof under the Plan take into account the relative priority of the Claims in each Class, whether arising under a contract, principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, and subject to the RSA, the Debtors reserve the right to reclassify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

1.12 Liquidation Analysis

Often called the "best interests" test, section 1129(a)(7) of the Bankruptcy Code requires that a Bankruptcy Court find, as a condition to confirmation, that a chapter 11 plan provides, with respect to each impaired class, that each holder of a claim or an equity interest in such impaired class either (1) has accepted the plan or (2) will receive or retain under the plan property of a value

that is not less than the amount that the non-accepting holder would receive or retain if the debtors liquidated under chapter 7.

The Debtors believe that the Plan provides holders of Allowed Claims and Allowed Interests the same or greater recovery as would be achieved if the Debtors were to liquidate under chapter 7 of the Bankruptcy Code. This belief is based on a number of considerations, including that: (i) it could take a significant amount of time to liquidate the Debtors' assets; (ii) the land where the Facility sits has material, historical, environmental issues and is not fit for development without substantial remediation costs and expenses; (iii) the location of that land is in a remote area in the United States with little need for development of industrial space; (iv) there would be significant costs, as well as environmental and safety issues, associated with decommissioning the Facility; (v) the Debtors' business is worth far more as a going concern than in a liquidation; (vi) most or all of the proceeds from a chapter 7 liquidation would be paid to the DIP Lenders, on account of their superpriority liens, and the Senior Lenders, on account of their pre-petition liens, leaving little or no funds for the payment of priority or general unsecured creditors; and (vii) there are additional Administrative Claims that would be incurred if the cases were converted to a chapter 7.

The Debtors have prepared an unaudited liquidation analysis, which is attached hereto as **Exhibit C** (the "**Liquidation Analysis**"), to assist holders of Claims and Interests in evaluating the Plan. The Liquidation Analysis compares the projected recoveries that would result from the liquidation of the Debtors in a hypothetical case under chapter 7 of the Bankruptcy Code with the estimated distributions to holders of Allowed Claims and Allowed Interests under the Plan. The Liquidation Analysis is based on the value of the Debtors' assets and liabilities as of a certain date and incorporates various estimates and assumptions, including a hypothetical conversion to a chapter 7 liquidation as of a certain date. Furthermore, the Liquidation Analysis is subject to potentially material changes, including with respect to economic and business conditions as well as legal rulings. Therefore, the actual liquidation value of the Debtors could vary materially from the estimate provided in the Liquidation Analysis.

1.13 Feasibility

Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of a plan of reorganization is not likely to be followed by the liquidation, or the need for further financial reorganization of the debtor, or any successor to the debtor (unless such liquidation or reorganization is proposed in such plan of reorganization). The Plan provides for a restructuring of the Debtors' business and assets either through a Sale Scenario or a Stand-Alone Restructuring Transaction, and the Debtors believe that, under either scenario, all Plan obligations will be satisfied without the need for further reorganization of the Debtors.

1.14 Valuation of the Debtors

Under the Bidding Procedures Order, the Debtors are pursuing a competitive sale process for their assets as permitted by the RSA. The Debtors have, therefore, concluded that the best estimate of the going concern value of the Debtors will be revealed through the sale process,

provided, further, that the Debtors will prepare a valuation analysis in support of the Plan in connection with the Stand-Alone Restructuring Scenario.

ARTICLE II
VOTING PROCEDURES AND REQUIREMENTS

2.1 Voting on the Plan

The Disclosure Statement Order approved certain procedures governing the solicitation of votes on the Plan from holders of Claims against the Debtors, including setting the deadline for voting, which holders of Claims are eligible to receive ballots to vote on the Plan, and other voting procedures.

YOU SHOULD READ THE DISCLOSURE STATEMENT ORDER, THE CONFIRMATION HEARING NOTICE, AND THE INSTRUCTIONS ATTACHED TO YOUR BALLOT IN CONNECTION WITH THIS SECTION BEFORE YOU CAST YOUR VOTE TO ACCEPT OR REJECT THE PLAN, AS THEY SET FORTH IN DETAIL PROCEDURES GOVERNING VOTING DEADLINES AND OBJECTION DEADLINES.

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

2.2 Classes Entitled to Vote on the Plan

Under the Bankruptcy Code, only holders of Claims or Interests in "impaired" classes are entitled to vote on the Plan (unless, for reasons discussed below, such holders are deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code). Under section 1124 of the Bankruptcy Code, a class of claims or interests is deemed to be "impaired" unless (i) the plan leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder thereof or (ii) notwithstanding any legal right to an accelerated payment of such claim or interest, the plan cures all existing defaults (other than defaults resulting from the occurrence of events of bankruptcy) and reinstates the maturity of such claim or interest as it existed before the default.

The following table summarizes which Classes are Impaired and which of those Classes are entitled to vote on the Plan. The table is qualified in its entirety by reference to the full text of the Plan.

(a) Berlin Claims

Class	Designation	Impairment	Voting Rights
1A	Other Secured Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
2A	Other Priority Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
3A	Senior Notes Claims	Impaired	Entitled to Vote
4A	Subordinated Notes Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
5A	General Unsecured Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
6A	510(b) Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
7A	Intercompany Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
8A	Interests	Impaired	Not Entitled to Vote (Deemed to Reject)

(b) Burgess Claims

Class	Designation	Impairment	Voting Rights
1B	Other Secured Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
2B	Other Priority Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
3B	Senior Notes Claims	Impaired	Entitled to Vote
4B	General Unsecured Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
5B	510(b) Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
6B	Intercompany Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
7B	Interests	Impaired	Not Entitled to Vote (Deemed to Reject)

Accordingly, only holders of record of Senior Notes Claims in Class 3A and Senior Notes Claims in Class 3B (collectively, the "**Voting Classes**"), as of [April 8, 2024], the Voting Record Date established by the Debtors for purposes of the solicitation of votes on the Plan, are entitled

to vote on the Plan. If your Claim or Interest is not in one of the Voting Classes, you are not entitled to vote on the Plan and you will not receive a ballot with this Disclosure Statement. If your Claim is in one of these Classes, you should read your ballot and follow the listed instructions carefully before casting your vote to accept or reject the Plan. Please use only the ballot that accompanies this Disclosure Statement.

A vote on the Plan may be disregarded if the Bankruptcy Court determines, pursuant to section 1126(e) of the Bankruptcy Code, that it was not cast, solicited, or procured in good faith or in accordance with the provisions of the Bankruptcy Code. The Disclosure Statement Order also sets forth assumptions and procedures for determining the amount of Claims that each creditor is entitled to vote in these Chapter 11 Cases and how votes will be counted under various scenarios.

The Bankruptcy Code requires as a condition to confirmation of a plan of reorganization that each class that is impaired and entitled to vote under a plan votes to accept such plan, unless the plan is being confirmed under the "cramdown" provisions of section 1129(b) of the Bankruptcy Code. Section 1129(b) permits confirmation of a plan of reorganization, notwithstanding the non-acceptance of the plan by one or more impaired classes of claims or equity interests, so long as at least one impaired class of claims or interests votes to accept a proposed plan, without counting votes cast by insiders. Under that section, a plan may be confirmed by a bankruptcy court if it does not "discriminate unfairly" and is "fair and equitable" with respect to each non-accepting class. The Debtors are seeking confirmation pursuant to section 1129(b) of the Bankruptcy Code.

2.3 Votes Required for Acceptance by a Class

The Bankruptcy Code defines acceptance of a plan by a class of claims as acceptance by holders of at least two-thirds ($^2/_3$) in dollar amount and more than one-half ($^1/_2$) in number of the claims of that class that cast ballots for acceptance or rejection of a plan. Thus, acceptance by a class of claims occurs only if at least two-thirds ($^2/_3$) in dollar amount and a majority in number of the holders of claims voting cast their ballots to accept the plan.

2.4 Certain Factors to Be Considered Prior to Voting

There are a variety of factors that all holders of Claims entitled to vote on the Plan should consider prior to voting to accept or reject the Plan. These factors may impact recoveries under the Plan and include, among other things:

- unless otherwise specifically indicated, the financial information contained in the Disclosure Statement has not been audited and is based on an analysis of data available at the time of the preparation of the Plan and the Disclosure Statement;

- although the Debtors believe that the Plan complies with all applicable provisions of the Bankruptcy Code, the Debtors can neither assure such compliance nor that the Bankruptcy Court will confirm the Plan;

- the Debtors may request Confirmation without the acceptance of the Plan by all Impaired Classes in accordance with section 1129(b) of the Bankruptcy Code; and

- any delays of either Confirmation or Consummation could result in, among other things, increased Administrative Claims and Professional Fee Claims.

While these factors could affect distributions available to holders of Allowed Claims under the Plan, the occurrence or impact of such factors may not necessarily affect the validity of the vote of the Voting Classes or necessarily require a re-solicitation of the votes of holders of Claims in the Voting Classes pursuant to section 1127 of the Bankruptcy Code.

For a further discussion of risk factors, please refer to "Certain Factors to Be Considered" described in Article VII of this Disclosure Statement.

2.5 Solicitation Procedures

(a) Solicitation Agent

The Debtors have retained Epiq Corporate Restructuring, LLC to act as, among other things, the Solicitation Agent in connection with the solicitation of votes to accept or reject the Plan.

(b) Solicitation Materials

The Voting Classes will receive a solicitation package consisting of the following materials (the "**Solicitation Package**"):

- A copy of the notice of the Confirmation Hearing, the Confirmation Objection deadline, and the Voting Deadline (the "**Confirmation Hearing Notice**");

- a copy of this Disclosure Statement together with the exhibits thereto, including the Plan;

- a copy of the Disclosure Statement Order entered by the Bankruptcy Court [Docket No.] (without exhibits), which approved this Disclosure Statement, established the Solicitation Procedures, scheduled a Confirmation Hearing, and set the Voting Deadline and the deadline for objecting to Confirmation of the Plan; and

- an appropriate form of ballot, instructions on how to complete the ballot, and a prepaid, pre-addressed ballot return envelope.

The Debtors will cause the Solicitation Agent to distribute the Solicitation Package to eligible holders of Claims in the Voting Classes on [ ] (or as soon as reasonably practicable

thereafter), which is twenty-eight (28) days before the Voting Deadline (*i.e.*, [ ] (prevailing Eastern Time) on [ ]).

In addition, the following materials will be sent to holders of Claims and Interests not in the Voting Classes and holders of Unclassified Claims:

- a copy of the Confirmation Hearing Notice; and
- a notice informing such holders that they are not entitled to vote under the terms of the Plan.

The following materials will be sent to counterparties to executory contracts and unexpired leases:

- a notice (the "**Contract/Lease Notice**") that gives (i) notice of the filing of the Plan; (ii) notice that such party has been identified as a party to an Executory Contract or Unexpired Lease; (iii) instructions regarding the Confirmation Hearing and how to obtain a copy of the Solicitation Package (other than a ballot) free of charge; and (iv) notice of the scheduled time, date, and location for the Confirmation Hearing, *provided* that any contract counterparty that receives a Solicitation Package to vote to accept or reject the Plan on account of any General Unsecured Claim will not receive the Contract/Lease Notice. [7]

The Solicitation Package (except the ballots), the Plan, the Disclosure Statement and, once they are filed, all exhibits to those documents (including the Plan Supplement) may also be obtained from the Solicitation Agent by: (i) calling the Solicitation Agent at (877) 556-2937 (toll free) or (503) 843-8526 (international), (ii) emailing Burgess@epiqglobal.com, and referencing "Burgess BioPower, LLC" in the subject line, (iii) visiting the Debtors' website at https://dm.epiq11.com/case/burgess/info, and/or (iv) writing to the Solicitation Agent at Burgess BioPower, LLC., c/o Epiq Ballot Processing, P.O. Box 4422, Beaverton, OR 97076-4422.

The "Plan Supplement" consists of a compilation of documents and forms of documents, agreements, schedules, and exhibits relevant to the implementation of the Plan, to be filed no later than the Plan Supplement Filing Date, as amended, modified or supplemented from time to time in accordance with the terms of the Plan and in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the RSA, including the consent rights set forth therein, consisting of the following documents, which documents shall constitute part of the Plan: (i) Assumed Executory Contracts

[7] In connection with the Debtors' toggle Plan, and the possible sale of their assets, the Debtors have requested that the Court enter the Bid Procedures Order that include a process for assuming and assigning Executory Contracts and Unexpired Leases, establishing any cure amounts in connection with such contract and leases, and providing notice of such procedures to counterparties (the "**Executory Contract Procedures**") [Docket No. 205]. As the Stand-alone Restructuring Scenario contemplates that certain Executory Contracts and/or Unexpired Leases may be assumed, the Executory Contract Procedure provide that only a single notice will be sent to contract counterparties, with a standardized procedure for counterparties to object to the assumption and/or assumption and assignment of their respective contracts or leases, or to object to the Debtors' proposed cure amount for such assumed contracts or leases.

and Unexpired Leases List; (ii) the identity of the Plan Administrator and the compensation of the Plan Administrator (if applicable); (iii) the Plan Administrator Agreement (if applicable); (iv) the Sale Transaction Documentation, if applicable; (v) the Wind-Down Budget (if applicable); (vi) the Schedule of Retained Causes of Action; (vii) the New Organizational Documents (if applicable); (viii) to the extent known, the identity of the members of the Board(s) of the Reorganized Debtors (if applicable); (ix) the New Notes Documents (if applicable); and (x) any and all other documentation necessary to effectuate the Restructuring Transactions or that is contemplated by the Plan.

The Debtors will file the Plan Supplement with the Bankruptcy Court no later than the Plan Supplement Filing Date. If the Plan Supplement is updated or otherwise modified, such modified or updated documents will be made available on the Debtors' restructuring website. The Debtors will not serve copies of the Plan Supplement; however, parties may obtain a copy of the Plan Supplement by contacting the Solicitation Agent, as set forth above.

2.6 Voting Procedures

If you are entitled to vote to accept or reject the Plan, one or more ballots has been enclosed in your Solicitation Package for the purpose of voting on the Plan. Please vote and return your ballot(s) in accordance with the instructions accompanying your ballot(s).

Prior to voting on the Plan, you should carefully review (1) the Plan and the Plan Supplement, (2) this Disclosure Statement, (3) the Disclosure Statement Order, (4) the Confirmation Hearing Notice, and (5) the detailed instructions accompanying your ballot(s).

Each ballot has been coded to reflect the Class of Claims it represents. Accordingly, in voting to accept or reject the Plan, you must use only the coded ballot or ballots sent to you with this Disclosure Statement.

In order to be counted, all ballots must be properly completed in accordance with the voting instructions on the ballot and **actually received** by the Solicitation Agent no later than the Voting Deadline (i.e., [ ] **(prevailing Eastern Time)**) through one of the following means: (i) using the enclosed pre-paid, pre-addressed return envelope, (ii) via first class mail to Burgess BioPower, LLC., c/o Epiq Ballot Processing, P.O. Box 4422, Beaverton, OR 97076-4422, (iii) via overnight courier, or hand delivery to Burgess BioPower, LLC., c/o Epiq Ballot Processing, 10300 SW Allen Boulevard, Beaverton, OR 97005, or (iv) via the e-ballot portal using the Unique E-Ballot ID# on the holder's ballot at https://dm.epiq11.com/case/burgess.

Detailed instructions for completing and transmitting ballots are included with the ballots and provided in the Solicitation Packages.

If the Solicitation Agent receives more than one timely, properly completed ballot with respect to a single Claim prior to the Voting Deadline, the vote that will be counted for purposes of determining whether sufficient acceptances required to confirm the Plan have been received will be the vote recorded on the timely, properly completed ballot, as determined by the Solicitation Agent, received last with respect to such Claim, *provided that*, if both a paper ballot

and electronic ballot are submitted timely on account of the same General Unsecured Claim(s), the electronic ballot shall supersede and revoke the paper ballot.

If you are a holder of a Claim who is entitled to vote on the Plan and did not receive a ballot, received a damaged ballot, or lost your ballot, or if you have any questions concerning the Disclosure Statement, the Plan, the ballot, or the procedures for voting on the Plan, please contact the Solicitation Agent at the phone numbers or email address listed above.

Before voting on the Plan, each holder of a Claim in Classes 3A or 3B should read, in its entirety, this Disclosure Statement, the Plan and the Plan Supplement, the Disclosure Statement Order, the Confirmation Hearing Notice, and the instructions accompanying the ballot(s). These documents contain important information concerning how Claims are classified for voting purposes and how votes will be tabulated. Holders of Claims entitled to vote are also encouraged to review the relevant provisions of the Bankruptcy Code and Bankruptcy Rules and/or consult their own attorney.

IF A BALLOT IS RECEIVED AFTER THE VOTING DEADLINE, IT WILL NOT BE COUNTED UNLESS THE DEBTORS DETERMINE OTHERWISE OR AS ORDERED BY THE BANKRUPTCY COURT.

IT IS IMPORTANT THAT THE HOLDER OF A CLAIM ELIGIBLE TO VOTE IN THE VOTING CLASSES FOLLOW THE SPECIFIC INSTRUCTIONS PROVIDED ON SUCH HOLDER'S BALLOT AND THE ACCOMPANYING INSTRUCTIONS.

ARTICLE III
BUSINESS DESCRIPTION

3.1 The Debtors' Corporate Structure and Business Operations

(a) Overview

Berlin and Burgess are renewable energy power companies that own and operate a 75-megawatt biomass-fueled power plant located on an approximately 62-acre site in Berlin, New Hampshire. Berlin was formed on March 1, 2011, as a limited liability company organized under the laws of the State of Delaware. Berlin is directly owned by two single purpose entities, BBP #1, LLC (99%) and BBP #2, LLC (1%). Burgess was formed on March 1, 2011, as a limited liability company organized under the laws of the State of Delaware. Burgess is a wholly-owned direct subsidiary of Burgess Holding, LLC ("Burgess Holding"), a single purpose entity.[8]

As of March 1, 2024, and following their rejection of the PPA, the Debtors sell energy into the ISO-NE grid and sell RECs to third parties.

[8] The corporate structure chart attached hereto as **Exhibit D** provides a general overview of the current corporate structure and the relationship among Berlin and Burgess and Their Affiliates.

The Facility consistently ranks among the most efficient and well-run biomass plants in the country. Its capacity factor, which is a measurement of run time and efficiency, has historically averaged over 90 percent, and generally exceeds the industry average of around 58.1 percent. Each year, the Facility undergoes a comprehensive third-party evaluation of its management and operations. Those reports have repeatedly confirmed that the Facility's management team performs well above industry norms.

The Facility is an important part of the renewable energy resource portfolio in New England. It presently helps New Hampshire achieve the statutory mandates set forth in the renewable portfolio standards, NH RSA § 362-F, which require that approximately 25 percent of the state's electricity come from renewable resources. Additionally, the Facility contributes over $2 million annually directly to the City of Berlin through taxes, fees, and revenue sharing.

The Debtors are responsible for generating $70 million in annual economic activity in New Hampshire, including in the areas of forestry management, outdoor recreation and timber production. Approximately 28 individuals work at the Facility, which directly or indirectly provides over 240 jobs, mostly in Coos County, New Hampshire, and is responsible for more than $15 million in labor income on an annual basis.

The Debtors are the largest buyer of biomass in New Hampshire, buying approximately 800,000 tons of low-grade wood each year from over 115 New Hampshire suppliers across the state, including loggers, sawmills, municipal transfer stations and tree services. This low-grade wood, also known as biomass, is a residual material created as a byproduct of timber harvesting, lumber production, municipal waste, and sawmill operating. As the largest single buyer of biomass in the state, the Debtors provide a critical public service by efficiently utilizing an otherwise unusable – and potentially dangerous – material. For example, if residual material is left on the forest floor to decompose, it creates combustion risk as it dries. Without an outlet to manage mill waste, sawmills cannot operate, or they must landfill waste creating environmental liability.

For the year ended December 31, 2023, the unaudited, consolidated financial statements of Berlin and Burgess reflected total revenues of approximately $75,852,977.

(b) The Debtors' Management

The Debtors do not have any employees and do not operate or manage the Facility on a day-to-day basis. Instead, the Debtors contract with the Affiliate Service Providers—CS Operations and CS Berlin Ops—non-debtor affiliates, for the supply of personnel and services needed to operate and maintain the Facility, produce and sell energy and other products the Facility generates, manage the Facility and the Facility Site, collect revenue, provide back office and overhead support, and otherwise manage and run the Debtors' business.

3.2 The Debtors' Prepetition Capital Structure

Berlin is the borrower under that certain Note Purchase Agreement, dated as of September 2, 2011 (the "**Senior Note Purchase Agreement**") (as amended, restated, amended and restated, supplemented, waived, or otherwise modified), with Deutsche Bank Trust Company Americas, as administrative agent and collateral agent, and the lenders party thereto. Pursuant to the Senior Note

Purchase Agreement, the Senior Lenders provided the Debtors with secured debt financing in the principal amount of $200 million consisting of three tranches of *pari passu* debt. The obligations owing under the Senior Notes and Senior Note Documents are secured by first-priority liens on substantially all assets of the Debtors and inter-debtor pledge agreements, and the equity of the Debtors.

As of the Petition Date, approximately $115 million in principal amount remains outstanding under the Senior Note Purchase Agreement, which reflects a paydown of approximately $85 million, excluding interest, fees, costs and expenses.

In addition to the Senior Note Purchase Agreement, Berlin issued subordinated secured debt in the principal amount of approximately $74,734,671 pursuant to the CDE Subordinated Loan Agreement, dated as of September 2, 2011, by and between Berlin and the lenders party thereto (the "**CDE Subordinated Loan Agreement**") (as amended, restated, amended and restated, supplemented, waived, or otherwise modified), and the Greenline Subordinated Loan Agreement, dated as of October 25, 2012, by and between Berlin and the lender party thereto (the "**Greenline Subordinated Loan Agreement**," together with the CDE Subordinated Loan Agreement, the "**Subordinated Loan Agreements**") (as amended, restated, amended and restated, supplemented, waived, or otherwise modified). The lenders under the CDE Subordinated Loan Agreement assigned their rights and obligations to the notes to Berlin BioPower Investment Fund, LLC, a Missouri limited liability company, and non-debtor 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 and approximately $13.44 million remains outstanding under the Greenline Subordinated Loan Agreement. Therefore, the aggregate principal amount outstanding under the Subordinated Loan Agreements is approximately $29.7 million.

3.3 The Debtors' Board Members

Debtor Berlin is managed by a board of directors composed of six directors, three of whom were designated by the Members and three of whom are independent directors. Of the three independent directors, two are deemed "independent company directors" as such term is defined in that certain Limited Liability Company Agreement of Berlin dated as of September 2, 2011, as it may be amended or restated from time to time. The third independent director was appointed recently, specifically for his restructuring and energy experience. Consent of the independent company directors is required for Berlin to undertake certain significant corporate events, including filing for bankruptcy relief. As of the Petition Date, the members of the Berlin board were Hallé, Edward J. Dwyer, Antonio Bianco, Drew McManigle, Michelle A. Dreyer, and Miranda L. Brewer.

Burgess is managed by a board of directors composed of six directors, three of whom were designated by Burgess Holding and three of whom are independent directors. Of the three independent directors, two are deemed "independent company directors" as such term is defined in that certain Limited Liability Agreement of Burgess dated as of September 2, 2011, as it may

be amended or restated from time to time. The two independent company directors of Burgess are different individuals than the two independent company directors of Berlin. The third independent director is the same as that for Berlin, selected for his energy expertise. Consent of the independent company directors is required for Burgess to undertake certain significant corporate events, including filing for bankruptcy relief. As of the Petition Date, the members of the Burgess board were Hallé, Edward J. Dwyer, Antonio Bianco, Drew McManigle, Suzane M. Hay, and Teresa Premeaux.

In the event of a Sale Transaction, as of the Plan Effective Date, the Plan Administrator shall act as the sole officer, director, and manager, as applicable, of the Debtors with respect to their affairs. In the event of a Stand-Alone Restructuring Transaction, the board(s) of directors of the Reorganized Debtors shall be appointed by the holders of the New Reorganized Debtor Equity. The identity of the Plan Administrator and, if applicable, the composition of the board of directors of the Reorganized Debtors will be disclosed in the Plan Supplement to be filed prior to the order confirming the Plan in accordance with 11 U.S.C. § 1129(a)(5).

ARTICLE IV
EVENTS LEADING TO THE CHAPTER 11 CASES/NOTABLE PREPETITION ACTIONS

4.1 The PPA's Cumulative Reduction Factor and Dispute with Eversource

As discussed above, the PPA contained an offsetting provision that established the CRF, which effectively would have required the Debtors to provide Energy to Eversource for no payment while still incurring substantial expenses for biomass fuel, employee wages and benefits, operating and administrative expenses, and to make contractual debt and interest payments.

Leading up to the bankruptcy filings, the CRF balance was approximately $172 million. Absent rejection of the PPA and the filing of these Chapter 11 Cases, pursuant to the PPA, as of January 2024, Eversource purported to have the right to credit the Excess CRF in one-twelfth installments against monthly payments to Berlin for Energy delivered after December 1, 2023, in one-twelfth installments. Those credits would have totaled more than $6 million per month, which would have exceeded the anticipated amount of the Debtors' monthly invoices for Energy for the foreseeable future.

While the PPA allowed Eversource to credit approximately $71.5 million against its payment obligations for Energy under the PPA in the current Operating Year, it did not permit Eversource to credit any amounts against its payment obligations for Capacity or RECs. In written communications, Eversource acknowledged that the PPA did not permit Eversource to credit any amounts against its payment obligations for Capacity or RECs. Despite these representations, Eversource did not pay the required RECs payment on January 22, 2024. Rather, on or about January 23, 2024 (the date its payment obligations for Capacity and Energy were due to the Debtors), Eversource credited the entire CRF against the January invoice, which included amounts for Energy, Capacity and RECs. As a result, instead of Eversource paying Debtors $5,487,826.88 on January 23, 2024, Eversource paid only $1,801,868.33, withholding $3,685,958.55. This withholding of payment by Eversource placed the Debtors in an untenable

financial position where they were receiving no revenue for their production of energy while they were unable to enter into a new power purchase agreement with another party or to sell energy on a merchant basis, jeopardizing virtually all of the Debtors' revenue streams. Eversource's actions further prevented the Debtors from marketing their assets for a potential sale to a third party outside of bankruptcy.

On January 23, 2024, following Eversource's withholding of $3,685,958.55, the Debtors provided written notice to Eversource of its breach and noted that if Eversource did not cure its non-payment within seven business days, such non-payment would constitute an Event of Default under the PPA. Eversource failed to timely cure its non-payment. On January 25, 2024, Eversource sent a letter to the Debtors disputing that it had breached the PPA and purporting to invoke certain billing dispute provisions in the PPA.

On February 8, 2024, the Debtors provided written notices to Eversource notifying it that an Event of Default had occurred under the PPA, which Eversource disputed. The Bankruptcy Court ultimately allowed the Debtors to reject both agreements following the commencement of the Chapter 11 Cases, as discussed herein.

4.2 The Restructuring Support Agreement

On February 8, 2024, the Debtors, the Senior Lenders, the Affiliate Service Providers, Hallé, and certain holders of the Subordinated Note Claims entered into the RSA, the principal terms of which are summarized below:

- The RSA incorporates by reference the Plan (including any exhibits, annexes, supplements, schedules, and attachments thereto in each case, as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and in accordance with the RSA), which contains as its key feature a "toggle" – as further described herein.

- The Debtors agree to implement their restructuring in accordance with certain Milestones as set forth in the RSA.

- The Debtors, CS Operations and CS Berlin Ops agree to comply with certain obligations as set forth in the RSA, including using commercially reasonable efforts to pursue the Debtors' restructuring in accordance with the Milestones; using commercially reasonable efforts to obtain required regulatory approvals and provide required notices in connection with any sale and/or plan process; operating the Facility in the ordinary course of business in a reasonable manner that is consistent with the RSA and the Debtors' past practices; as to the Debtors, stipulating the allowance and amounts of claims of the Senior Lenders and the validity of liens such Senior Lenders' hold in the Debtors' assets and timely filing a formal objection to any motion challenging the Senior Lenders' claims and/or the right of the Senior Lenders to receive or retain proceeds or distributions in any sale and/or plan process; and cooperating and consenting with the Senior Lenders with respect to the development and adoption of the Debtors' business plan, including any business plan contemplated by the Plan.

- The Senior Lenders agree to comply with certain obligations of the RSA, including using commercially reasonable efforts to support the Debtors' Restructuring on the terms of the RSA; using commercially reasonable efforts to provide any information necessary to obtain required regulatory approvals and provide required notices in connection with any sale and/or plan process; and forbearing from exercising, directly or indirectly, any rights or remedies or from asserting or bringing any claims under or with respect to the Senior Note Documents against the Debtors or any of their respective assets, to the extent such exercise is consistent with the RSA.

- Hallé agrees to comply with certain obligations of the RSA, including using commercially reasonable efforts to pursue the Debtors' Restructuring on the terms of, and in accordance with the Milestones; not changing any material tax election, tax practice or procedure, or tax accounting method with respect to the Debtors; and not challenging the validity, enforceability, perfection or priority of, or seek avoidance, disallowance or subordination of, any portion of the Senior Lenders' claims or the liens securing such claims.

- The RSA is terminable by the Senior Lenders under certain circumstances, including any breach of the RSA, or any obligation, representation, or warranty by the parties thereto; the issuance of any order or revocation of any license, qualification or permit, or denial of any approvals that would preclude the Debtors from operating the Facility, or that impairs the Facility and/or the Lease in connection with the Plan or the sale; the failure of the Debtors to meet any Milestone, which has not been waived or extended with the consent of the Senior Lenders; the rejection or termination of certain material agreements, including the O&M Agreement, the Project Management Agreement, the Lease, and the Biomass Supply Agreement (as defined in the RSA); any material impact on any of the security agreements that the Debtors entered into in connection with the Senior Note Documents; and any defaults under the DIP agreement.

The entry into the RSA was the product of extensive negotiation with the Senior Lenders, has their full support along with their financial commitments through the DIP financing, and is a significant achievement that allows for a more orderly and streamlined chapter 11 process than would otherwise be feasible. The RSA provides, subject to the Court's approval of its assumption, a clear roadmap for the Debtors to promptly and efficiently emerge from bankruptcy equipped to implement their strategic plan.

The Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code with the intent to (i) move beyond the PPA and sell power through alternate channels, either on the merchant market or through a new power purchase agreement, (ii) continue producing renewable energy by entering into new arrangements with different buyers of energy and other products produced by the Facility, and (iii) seek confirmation and implementation of a chapter 11 plan, with the support of the Senior Lenders, that provides for a toggle between (a) a debt-for-equity swap with the Senior Lenders and (b) if a superior offer emerges, a sale of the Facility and the Facility Site to a third-party buyer.

The Senior Lenders' support, evidenced by the RSA and the DIP Facility, is critical to the Debtors' ability to implement the restructuring. Notably, the Debtors' business operations are sound, the Facility is well-run and no operational fix is required. Rather, the sole impediment to the success of the Facility and the Debtors' stakeholders was the uneconomic and now-rejected PPA. The Debtors should now be able to meet current trade and operational obligations by selling Products at market prices. They also do not need a lengthy period in Chapter 11 to negotiate a new capital structure. Because the PPA has been rejected and the Debtors' reorganization efforts enjoy broad support amongst their stakeholders, the Debtors believe they can move quickly to a plan of reorganization and, if preferable, a sale process.

Having agreed with the Senior Lenders on the principal terms of the restructuring and having reached a comprehensive settlement agreement with Eversource and the Senior Lenders, the Debtors are pursuing a competitive sale process for their assets as permitted by the RSA. To that end, on February 29, 2024, the Debtors filed a motion with the Bankruptcy Court seeking approval of procedures by which the Debtors will conduct a competitive and robust sale process. On [ ], the Bankruptcy Court entered the Bidding Procedures Order [Docket No.].

The RSA contains customary representations, warranties, and covenants. In addition, the RSA provides that the Plan will include customary releases (including consensual third-party releases) to the fullest extent permitted by law for the benefit of, among other parties, the Debtors, the Consenting Lenders, and certain other parties specified therein, including the Consenting Sponsor. Moreover, such releases, as well as additional exculpation and indemnification provisions, including the third-party releases, are documented in Article VIII of the Plan. As noted above, certain holders of claims or equity interests will have the opportunity to opt out of the third-party releases set forth in Article VIII of the Plan.

The RSA may be terminated (i) upon mutual written agreement, (ii) if certain Milestones are not met, and (iii) upon the occurrence and during the continuation of certain other events set forth in Section 10 of the Restructuring Support Agreement.

For the reasons set forth herein, the Debtors recommend that you vote to accept the Plan.

ARTICLE V
OTHER KEY ASPECTS OF THE PLAN

5.1 Means for Implementation

(a) General Settlement of Claims and Interests

After the Plan Effective Date, the Reorganized Debtors and/or the Wind-Down Debtor(s), as applicable, may compromise and settle any Claim and/or Cause of Action against the Debtors' Estate(s) without any further notice to or action, order, or approval of the Bankruptcy Court.

Pursuant to sections 363 and 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, after the Plan Effective Date, the provisions of the Plan shall constitute a good-faith

compromise and settlement of all Claims and Interests and controversies resolved pursuant to the Plan. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their Estates, and holders of Claims and Interests and is fair, equitable, and is within the range of reasonableness. Subject to Article VI of the Plan, all distributions made to holders of Allowed Claims in any Class are intended to be and shall be final.

(b) Restructuring Transactions

On or about the Plan Effective Date, the Debtors, the Reorganized Debtors, and the Wind-Down Debtor(s) (in each case with the consent of the Senior Lenders), may take all actions as may be necessary or appropriate to effectuate the Restructuring Transactions, including: (a) the execution and delivery of any appropriate agreements or other documents of merger, amalgamation, consolidation, restructuring, conversion, disposition, transfer, formation, organization, dissolution, or liquidation containing terms that are consistent with the terms of the Plan, and that satisfy the requirements of applicable law and any other terms to which the applicable Persons may agree, including the documents comprising the Plan Supplement; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and having other terms for which the applicable Persons agree; (c) the execution, delivery, and filing, if applicable, of appropriate certificates or articles of incorporation, formation, reincorporation, merger, amalgamation, consolidation, conversion, arrangement, continuance, or dissolution pursuant to applicable law; (d) the Sale Transaction(s), if any; (e) such other transactions that are required to effectuate the Restructuring Transactions in the most efficient manner for the Debtors and the Senior Lenders, including in regard to tax matters and any mergers, consolidations, restructurings, conversions, dispositions, transfers, formations, organizations, dissolutions, or liquidations; (f) the selection of the New Board; (g) the authorization, issuance, and distribution of the New Reorganized Debtor Equity; (h) execution, delivery, and filing, if applicable, of the New Note Documents; (i) the appointment of the Plan Administrator; (j) the execution, delivery, and adoption of the New Organizational Documents; and (k) all other act or actions contemplated or reasonably necessary or appropriate to promptly consummate the Restructuring Transactions, including making filings or recordings that may be required by applicable law.

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

(c) Insurance Policies

Each of the Debtors' insurance policies and any agreements, documents, or instruments relating thereto, are treated as Executory Contracts under the Plan. On the Plan Effective Date, unless an insurance policy (i) was specifically designated for assignment to the Purchaser, if applicable, (ii) was rejected by the Debtors pursuant to a Bankruptcy Court order, or (iii) is the subject of a motion to reject Filed by the Debtors that remains pending on the date of the

Confirmation Hearing with respect to the Plan, (a) the Reorganized Debtors or the Wind-Down Debtor(s), as applicable, shall be deemed to have assumed each such insurance policy and any agreements, documents, and instruments relating to coverage of all insured Claims and (b) such insurance policy and any agreements, documents, or instruments relating thereto shall vest in the Reorganized Debtors or the Wind-Down Debtor(s), as applicable.

(d) Section 1146 Exemption

To the maximum extent permitted pursuant to section 1146(a) of the Bankruptcy Code, any transfer of property (whether from a Debtor to a Reorganized Debtor or to any other Person) under, in furtherance of, or in connection with the Plan, including pursuant to any Sale Transaction(s) or a Stand-Alone Restructuring Transaction (in each case, as applicable) or (1) the issuance, distribution, transfer, or exchange of any debt, equity Security, or other interest in the Debtors or the Reorganized Debtors, including the New Reorganized Debtor Equity, if applicable, (2) the Restructuring Transactions; (3) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (4) the making, assignment, or recording of any lease or sublease; (5) the grant of collateral as security for the Reorganized Debtors' obligations under and in connection with the New Notes, if applicable; or (6) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any tax or governmental assessment under any law imposing a document recording tax, stamp tax, conveyance tax, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee regulatory filing or recording fee, sales and use tax, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment against the Debtors and accept for filing and recordation any of the foregoing instruments or other documents pursuant to such transfers of property without the payment of any such tax, recordation fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(c) of the Bankruptcy Code, shall forgo the collection of any such tax, recordation fee, or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. The Bankruptcy Court shall retain specific jurisdiction with respect to these matters.

(e) Cancellation of Securities and Agreements

On the Plan Effective Date, except as otherwise specifically provided for in the Plan: (1) the obligations of the Debtors under any certificate, Security, share, note, bond, credit agreement, indenture, purchase right, option, warrant, or other instrument or document directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors giving rise to any Claim or Interest (except such certificates, notes, or other instruments or documents evidencing indebtedness or obligation of or ownership interest in the Debtors that

are Reinstated pursuant to the Plan, if any) shall be cancelled solely as to the Debtors, and the Reorganized Debtors or the Wind-Down Debtor(s), as applicable, shall not have any continuing obligations thereunder or relating to the cancellation thereof; and (2) the obligations of the Debtors pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws, or certificate or articles of incorporation or similar documents governing the shares, certificates, notes, bonds, indentures, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of or ownership interest in such Debtors (except such agreements, certificates, notes, or other instruments evidencing indebtedness or obligation of or ownership interest in such Debtors that are specifically Reinstated pursuant to the Plan) shall be released and discharged.

(f) No Recourse for Any Cancellation of Debt Income

No party, including Governmental Units, the Sponsors or any Related Party of any Sponsor, shall have any recourse to the Debtors, the Reorganized Debtors, the Wind-Down Debtor(s), the Senior Lenders, the Senior Notes Agent, the DIP Agent, the DIP Lenders, the holders of the New Reorganized Debtor Equity, the holders of the New Notes, or any Related Party of the foregoing, on account of any cancellation of debt income, whether on a theory of contribution, indemnification, or otherwise, stemming from the Restructuring Transactions.

(g) Effectuating Documents; Further Transactions

On and after the Plan Effective Date, the Reorganized Debtors or Wind-Down Debtor(s), as applicable, and the officers and members of the New Board or the Plan Administrator, as applicable, are authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan, the New Note Documents and the New Organizational Documents, and the Securities issued pursuant to the Plan in the name of and on behalf of the applicable Reorganized Debtors or the Wind-Down Debtor(s), without the need for any approvals, authorization, or consents except for those expressly required pursuant to the Plan.

(h) Preservation of Causes of Action

In accordance with section 1123(b) of the Bankruptcy Code, unless expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or assigned to the Purchaser(s) in any Sale Transaction(s), the Reorganized Debtors and Wind-Down Debtor(s), as applicable, shall retain and may enforce all rights to commence or pursue any and all Causes of Action of the applicable Debtors' Estates, not otherwise so waived, relinquished, exculpated, released, compromised, settled or assigned (as the case may be), whether arising before or after the Petition Date—including, but not limited to, any actions specifically enumerated in the Schedule of Retained Causes of Action—and the Reorganized Debtors' or the Wind-Down Debtor(s)' rights to commence, prosecute, compromise, settle or release such Causes of Action shall be preserved notwithstanding the occurrence of the Plan Effective Date, other than the Claims and Causes of Action released pursuant to the releases and exculpations contained in Article VIII hereof. Unless any Cause of Action is expressly waived, relinquished, exculpated, released, compromised, or settled under the Plan or a Final Order, such Cause of Action is preserved for

later adjudication, and no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to any such Cause of Action upon, after, or as a consequence of the Confirmation of the Plan or the occurrence of the Plan Effective Date.

No Person may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Debtors, the Reorganized Debtors or the Wind-Down Debtor(s), as applicable, will not pursue any and all available Causes of Action against it. The Debtors, the Reorganized Debtors, and the Wind-Down Debtor(s), as applicable, expressly reserve all rights to prosecute any and all Causes of Action against any Person, except as otherwise expressly provided in the Plan, including Article VIII of the Plan.

The Reorganized Debtors and Wind-Down Debtor(s), as applicable, (i) reserve and shall retain all Causes of Action notwithstanding the rejection of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan and (ii) shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court.

5.2 Treatment of Executory Contracts and Unexpired Leases

(a) Assumption and Rejection of Executory Contracts and Unexpired Leases

1. In a Sale Scenario

On the Plan Effective Date, (i) each Executory Contract and Unexpired Lease designated for assumption and assignment to a Purchaser in accordance with any Purchase Agreement shall be assumed by the applicable Debtor and assigned to the applicable Purchaser pursuant to the terms of the applicable Purchase Agreement and applicable orders of the Bankruptcy Court, and (ii) all Executory Contracts and Unexpired Leases not designated for assumption and assignment to the Purchaser in any Purchase Agreement, to the extent not previously rejected or terminated, shall be automatically rejected.

Each Executory Contract and Unexpired Lease assumed pursuant to Article V.A.1 of the Plan and assigned to a Purchaser shall vest in and be fully enforceable by the applicable Purchaser in accordance with its terms, except as such terms are modified by the provisions of the Plan or any order of the Bankruptcy Court.

2. In a Stand-Alone Restructuring Scenario

On the Plan Effective Date, except as otherwise provided in the Plan or in any contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan, all Executory Contracts and Unexpired Leases, to the extent not previously rejected or

terminated, shall be deemed rejected under section 365 of the Bankruptcy Code (other than the RSA, which, if not terminated prior to Confirmation, shall be deemed assumed as of the Confirmation Date), without the need for any further notice to or action, order, or approval of the Bankruptcy Court, under section 365 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (1) was previously assumed by a Debtor; (2) expired or was terminated pursuant to its own terms or by agreement of the parties thereto; (3) is the subject of a motion to assume Filed by the Debtors on or before the date of entry of the applicable Confirmation Order; or (4) is listed on the Assumed Executory Contracts and Unexpired Leases List; provided, that that rejections of Unexpired Leases of non-residential real property shall be effective as of the later of (a) the Plan Effective Date and (b) the date on which the leased premises are unconditionally surrendered to the landlord under such rejected Unexpired Lease.

Each Executory Contract and Unexpired Lease assumed pursuant to Article V.A.2 of the Plan, shall re-vest in and be fully enforceable by the applicable Reorganized Debtor in accordance with its terms, except as such terms are modified by the provisions of the Plan or any order of the Bankruptcy Court.

3. O&M Agreement and Project Management Agreement in a Stand-Alone Restructuring Scenario

In the Stand-Alone Restructuring Scenario, on the Plan Effective Date, the O&M Agreement and the Project Management Agreement shall be, at the election of the Senior Lenders, deemed either (1) rejected or (2) assumed under section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court.

In the event the Pro Forma Owners and the counterparties to the O&M Agreement and/or the Project Management Agreement enter into any amendment in connection with the assumption of the O&M Agreement and Project Management Agreement, the form of the amended O&M Agreement and/or the amended Project Management Agreement (as applicable) shall be included in the Plan Supplement.

In the event of rejection or termination of the Project Management Agreement and/or O&M Agreement (as applicable), CS Berlin Ops, Inc. and CS Operations, Inc. (as applicable) shall (x) continue to perform under such rejected or terminated contract in a manner consistent with past practices (including continued assignment of current personnel) for a period of time as reasonably necessary for the Debtors or the Pro Forma Owners to enter into a new project management agreement or operations and maintenance agreement (as applicable) with either (i) CS Berlin Ops, Inc. and CS Operations, Inc. (as applicable) until such time as replacement agreements acceptable to the Pro Forma Owners are executed and in full force and effect or (ii) a successor operator(s) until such time that a successor operator has effective agreements, and all of the information and resources needed, to operate the Debtors' or the Reorganized Debtors' business, in the sole discretion of the Pro Forma Owners and (y) in the case of a successor operator(s), to assist the successor operator(s) through the conclusion of such transition; provided, however, that the obligations of CS Berlin Ops, Inc. and CS Operations, Inc. under this paragraph are conditioned upon each such entity being compensated for its services in a manner and amount consistent with

past practices on a monthly basis as had been provided for in the rejected and/or terminated Project Management Agreement and O&M Agreement (as applicable).

4. Lease and Right to Use Agreement in a Stand-Alone Restructuring Scenario

In the Stand-Alone Restructuring Scenario, on the Plan Effective Date, the Lease and Right to Use Agreement shall be deemed assumed by both Berlin and Burgess; provided, further, in the event the Plan as to Burgess is severed and withdrawn as provided for in Article X.E, then, in connection with the Pro Forma Owners' acquisition of Burgess' assets through a sale, the Lease and Right to Use Agreement shall, at the Pro Forma Owners' discretion, be either: (1) terminated by both parties thereto in form and substance acceptable to the Pro Forma Owners, (2) assumed by Berlin and shall be assumed and assigned by Burgess to the Reorganized Berlin or to a third party designated by the Pro Forma Owners, or (3) rejected by Burgess.

(b) Approval of Assumption, Assignment, and Rejection

Entry of the Confirmation Order shall, subject to and upon the occurrence of the Plan Effective Date, constitute the Bankruptcy Court's approval of the assumptions, assignments or rejections, as applicable, of the Executory Contracts and Unexpired Leases under the Plan. Any motion of the Debtors to assume an Executory Contract or Unexpired Lease pending on the Plan Effective Date shall be subject to approval by the Bankruptcy Court by a Final Order.

Notwithstanding anything to the contrary in the Plan, the Debtors and the Reorganized Debtors, as applicable, reserve the right to amend, modify, or supplement the Assumed Executory Contracts and Unexpired Leases List to add or remove any Executory Contract or Unexpired Lease to such list at any time prior to the Plan Effective Date (or prior to such later date as may be designated in any Purchase Agreement, as applicable), subject to the consent of the Senior Lenders. The Debtors or the Reorganized Debtors shall provide notice of any amendments to the Assumed Executory Contracts and Unexpired Leases List to their counterparties affected thereby.

(c) Claims Based on Rejection of Executory Contracts or Unexpired Leases

Unless otherwise provided by a Final Order, Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases pursuant to the Plan, if any, must be Filed with the Bankruptcy Court within thirty (30) days after the later of (1) the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection, (2) the effective date of such rejection, or (3) the Plan Effective Date. All Allowed Claims arising from the rejection of a Debtor's Executory Contracts or Unexpired Leases shall be classified as General Unsecured Claims against such Debtor. No non-Debtor party to a rejected Executory Contract or Unexpired Lease shall be permitted to setoff or recoup any amounts owed to the Debtors under such rejected Executory Contract or Unexpired Lease against any Allowed rejection damages.

Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with the Bankruptcy Court within such time shall be automatically Disallowed, released, and discharged, and forever barred from assertion without the need for any objection or further notice to, or action, order, or approval of, the Bankruptcy Court or any

other Person, any such Claim shall be released, and discharged, notwithstanding anything in the Schedules or any Proof of Claim to the contrary, and such Claim shall not be enforceable against the Debtors, the Reorganized Debtors, the Debtors' Estates, or the Wind-Down Debtor(s) as applicable, or their respective properties.

(d) Cure of Defaults for Executory Contracts and Unexpired Leases Assumed

Any monetary defaults under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied by the applicable Debtor(s) party to such Executory Contract or Unexpired Lease, pursuant to section 365(b)(1) of the Bankruptcy Code, (i) in a Stand-Alone Restructuring Scenario, by payment of the Cure Amount in Cash on the Plan Effective Date by the Debtors or on such other terms as the parties to such Executory Contracts or Unexpired Leases, with the consent of the Senior Lenders, may agree, and (ii) in a Sale Scenario, in accordance with the Assumption and Assignment Procedures and the terms of the applicable Purchase Agreement(s). In the event of an unresolved dispute regarding (1) the amount of any payments to cure such a default, (2) the ability of the Reorganized Debtors or Purchaser(s) (as applicable) or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code), or (3) any other matter pertaining to assumption, the payment of the Cure Amount required by section 365(b)(1) of the Bankruptcy Code shall be resolved by a Final Order.

The Debtors shall serve on the applicable counterparties notices of proposed assumption and proposed Cure Amounts pursuant to the terms of the Bidding Procedures. **Any objection by a counterparty to an Executory Contract or Unexpired Lease to the proposed assumption or Cure Amount must be Filed and served to be actually received by no later than the applicable objection deadline set forth in the Bidding Procedures Order.** Any counterparty to an Executory Contract or Unexpired Lease designated for assumption that fails to object timely to the proposed assumption, Cure Amount or adequate assurance of future performance shall be deemed to have consented to all of the foregoing.

Assumption (or assumption and assignment, as applicable) of an Executory Contract or Unexpired Lease pursuant to the Plan shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under such Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. **Any Proofs of Claim Filed with respect to an Executory Contract or Unexpired Lease that has been assumed shall be deemed Disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court.**

(e) Pre-Existing Obligations under Executory Contracts and Unexpired Leases

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of preexisting obligations owed to the applicable Debtor(s) thereunder. In particular, notwithstanding any non-bankruptcy law to the contrary, the Reorganized Debtors expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, outstanding Cash payments, warranties or continued maintenance

obligations on any goods previously purchased by the Debtors from a non-Debtor counterparty to a rejected Executory Contract or Unexpired Lease.

(f) Modifications, Amendments, Supplements, Restatements, or Other Agreements

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

Modifications, amendments, supplements, and restatements to the Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Debtors' Chapter 11 Cases shall not be deemed to alter the prepetition nature of the applicable Executory Contracts or Unexpired Leases, or the validity, priority, or amount of any Claims that may arise in connection therewith.

(g) Reservation of Rights

Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease on the Assumed Executory Contracts and Unexpired Leases List, nor anything contained in the Plan, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors or the Reorganized Debtors, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter the treatment of such contract or lease under the Plan.

(h) Nonoccurrence of the Plan Effective Date

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

(i) Contracts and Leases Entered Into After the Petition Date

Contracts and leases entered into by a Debtor after the Petition Date, as well as any Executory Contracts and Unexpired Leases assumed by a Debtor, shall be performed by the applicable Debtor, Reorganized Debtor(s), Purchaser(s), or Plan Administrator, as applicable, in the ordinary course of business. Such contracts and leases that are not rejected under the Plan shall survive and remain unaffected by entry of the Confirmation Order.

5.3 Provisions Governing Distributions

(a) Timing and Calculation of Amounts to Be Distributed

Unless otherwise provided in the Plan, on the Plan Effective Date (or if a Claim is not an Allowed Claim on the Plan Effective Date, on the date that such Claim becomes an Allowed Claim), each holder of an Allowed Claim shall receive, subject to the provisions of Article VII hereof, the full amount of the distribution that the applicable Plan provides on account of Allowed Claims in the applicable Class. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. Except as otherwise provided in the Plan, holders of Allowed Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or after the Plan Effective Date.

(b) Delivery of Distributions

1. Persons Responsible

Distributions under the Plan shall be made by (i) in a Sale Scenario, by the Plan Administrator or the Debtors and (ii) in a Stand-Alone Restructuring Scenario, by the Reorganized Debtors.

Except as otherwise provided herein, all distributions shall be made to the holders of Allowed Claims at the address for each such holder as indicated in the applicable Debtor's records as of the date of the relevant distribution; provided, however, that the address for each holder of an Allowed Claim shall be deemed to be the address set forth in any Proof of Claim Filed by that holder; provided further, however, that the manner of distributions shall be determined at the discretion of the Reorganized Debtors or the Plan Administrator, as applicable.

2. Record Date for Distribution

On the Distribution Record Date, the Claims Register shall be closed with respect to Claims held against the Debtors and any party responsible for making distributions under the Plan shall be authorized and entitled to recognize only those record holders of such Claims that are listed on the Claims Register as of the close of business on the Distribution Record Date.

3. Minimum Distributions

Notwithstanding any other provision of the Plan, the Reorganized Debtors, the Wind-Down Debtor(s), or the Plan Administrator, as applicable, shall not be required to make distributions of less than $50 in value (whether Cash or otherwise), and each Claim to which this limitation applies shall be discharged, and its holder shall be forever barred pursuant to Article VIII of the Plan from asserting such Claim against the Debtors, their applicable Estates, the Reorganized Debtors, the Wind-Down Debtor(s), as applicable, or their respective property, as applicable.

4. No Fractional Distributions

No fractional shares of the New Reorganized Debtor Equity shall be distributed and no Cash shall be distributed in lieu of such fractional shares. When any distribution pursuant to the Plan on account of an Allowed Claim would otherwise result in the issuance of a number of shares of New

Reorganized Debtor Equity that is not a whole number, the number of shares of New Reorganized Debtor Equity to be distributed shall be rounded as follows: (a) fractions of one-half (1/2) or greater shall be rounded to the next higher whole number and (b) fractions of less than one-half (1/2) shall be rounded to the next lower whole number. The total number of authorized shares or units of New Reorganized Debtor Equity to be distributed to holders of Allowed DIP Claims, and Allowed Senior Notes Claims or their designees (as applicable) shall be adjusted as necessary to account for the foregoing rounding.

(c) Distributions and Undeliverable or Unclaimed Distributions

In the event that a distribution to any holder of an Allowed Claim is returned as undeliverable, no distribution to such holder shall be made unless and until the Reorganized Debtors or the Plan Administrator, as applicable, have determined the then-current address of such holder, at which time the distribution shall be made to such holder without interest; provided, however, that, at the expiration of six (6) months from the Plan Effective Date, any such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code. After such date, all unclaimed property shall automatically revert to the Reorganized Debtors or the Wind-Down Debtor(s), as applicable, without need for a further order by the Bankruptcy Court (notwithstanding any applicable federal, provincial, or state escheat, abandoned, or unclaimed property laws to the contrary), and the Claim of any holder to such property shall be discharged and forever barred.

(d) Surrender of Cancelled Instruments or Securities

On the Plan Effective Date or as soon as reasonably practicable thereafter, each holder of a certificate or instrument evidencing a Claim or an Interest that has been cancelled shall be deemed to have surrendered such certificate or instrument. Such surrendered certificate or instrument shall be cancelled solely with respect to the applicable Debtors, and such cancellation shall not alter the obligations or rights of any non-Debtor third parties vis à vis one another with respect to such certificate or instrument, including with respect to any indenture or agreement that governs the rights of the holder of a Claim or Interest, which shall continue in effect for purposes of allowing holders to receive distributions under the Plan, charging liens, priority of payment, and indemnification rights. Notwithstanding anything to the contrary herein, this paragraph shall not apply to certificates or instruments evidencing Claims that are Unimpaired under the Plan.

(e) Compliance with Tax Requirements

The Debtors, Reorganized Debtors or Wind-Down Debtor(s), as applicable, shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, with respect to the distributions pursuant to the Plan, and all such distributions shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Reorganized Debtors or the Plan Administrator shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such compliance, or establishing any other mechanisms they believe are reasonable and appropriate. The Reorganized Debtors and the Plan Administrator, as applicable,

reserve the right to allocate all distributions made under the Plan in compliance with applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances.

(f) Allocations

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

(g) No Postpetition Interest on Claims

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

(h) Foreign Currency Exchange Rate

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

(i) Setoffs and Recoupment

Except as expressly provided in the Plan, each Reorganized Debtor or Wind-Down Debtor, as applicable, may, pursuant to section 553 of the Bankruptcy Code, set off and/or recoup against any Plan distributions to be made on account of an Allowed Claim any and all Claims, rights, and Causes of Action that such Reorganized Debtor or Wind-Down Debtor may hold against the holder of such Allowed Claim; provided, however, that neither the failure to effectuate a setoff or recoupment nor the allowance of any Claim shall constitute a waiver or release by a Reorganized Debtor, a Wind-Down Debtor or its successor of any and all Claims, rights, and Causes of Action that such Reorganized Debtor or Wind-Down Debtor may have against the applicable claimholder. In no event shall any holder of a Claim, notwithstanding any indication in such holder's Proof of Claim that such holder asserts, has, or intends to preserve any right of setoff or recoupment pursuant to section 553 of the Bankruptcy Code or otherwise, be entitled to set off or recoup its Claim against any claim, right, or Cause of Action of the Debtor, Reorganized Debtor or Wind-Down Debtor(s), as applicable.

(j) Claims Paid or Payable by Third Parties

1. Claims Paid by Third Parties

To the extent the holder of a Claim receives payment in full on account of such Claim from a third party, such Claim shall be Disallowed and expunged from the Claims Register without an objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court. To the extent a holder of a Claim receives a distribution on account of such Claim and thereafter receives payment from a third party on account of such Claim, such holder

shall, within two weeks of receipt of the latter, repay or return to the applicable Reorganized Debtor or Wind-Down Debtor(s), as applicable, the portion of the received Plan distribution, if any, by which its total recovery on account of the Claim exceeds the Allowed amount of such Claim.

2. Claims Payable by Third Parties

The availability, if any, of any insurance policy for the satisfaction of an Allowed Claim shall be determined by the terms of the applicable Debtor(s)'s insurance policies. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part any Allowed Claim (if and to the extent adjudicated by a court of competent jurisdiction), then, immediately upon such insurers' agreement, the applicable portion of such Claim may be Disallowed and expunged from the Claims Register without an objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

Nothing contained in the Plan shall constitute or be deemed a waiver of any Claim or Cause of Action that any Debtor or any Person may hold against any insurer under any insurance policies, nor shall anything contained herein constitute a waiver by any insurer of any defenses, including coverage defenses.

5.4 Procedures for Resolving Contingent, Unliquidated, and Disputed Claims

(a) Allowance of Claims

After the Plan Effective Date, the Reorganized Debtors and Wind-Down Debtor(s), as applicable, shall have and retain any and all rights and defenses the applicable Debtor had immediately before the Plan Effective Date. No Claim shall be deemed an Allowed Claim unless and until such Claim is Allowed under the Plan or under any order entered in the Chapter 11 Cases before the Plan Effective Date (including the Confirmation Order), when such order becomes a Final Order.

(b) No Distributions Pending Allowance

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

(c) Claims Administration Responsibilities

Except as otherwise specifically provided in the Plan, after the Plan Effective Date, the Reorganized Debtors and the Plan Administrator, as applicable, shall have the authority to: (1) File, withdraw, or litigate to judgment objections to Claims against the applicable Estate; (2) settle, compromise, or otherwise resolve Disputed Claims against the applicable Estate without any further notice to or action, order, or approval by the Bankruptcy Court; (3) administer any applicable Disputed Claims Reserve; and (4) administer and adjust the applicable Claims Register to reflect any settlements, compromises or Final Orders resolving Disputed Claims or the fact that any Claim has been paid or satisfied, or that any Proof of Claim that has been amended or superseded, cancelled or otherwise expunged (including pursuant to the Plan), in each case without any further notice to or action, order, or approval by the Bankruptcy Court.

(d) Disputed Claims Reserve

In a Sale Scenario, on the Plan Effective Date, the Plan Administrator shall establish a reserve in the amount equal to the aggregate amount that would be distributable to holders of Disputed Claims against any of the Debtors if such Disputed Claims were Allowed Claims on the Plan Effective Date; provided, for the avoidance of doubt, the Reorganized Debtors shall not be required to reserve any amount on account of Disputed Claims which shall be satisfied, resolved, litigated, or otherwise disputed in the ordinary course of business. To the extent any funds remain in the Disputed Claims Reserve after all Disputed Claims against any of the Debtors have been either Allowed and paid or Disallowed, such funds shall revert to the Wind-Down Debtor(s).

(e) Estimation of Claims

Before or after the Plan Effective Date, the Debtors, Reorganized Debtors, or Wind-Down Debtor(s), as applicable, may (but are not required to) at any time request that the Bankruptcy Court estimate any Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to such Claim or during the appeal relating to such objection. Notwithstanding any provision in the Plan, a Claim that has been expunged from the Claims Register, but that either is subject to appeal or that otherwise has not yet been resolved by a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including for purposes of distributions), and the relevant Debtor, Reorganized Debtor or Wind-Down Debtor, as applicable, may elect to pursue a supplemental proceeding to object to any ultimate allowance of such Claim.

(f) Time to File Objections to Claims

Any objections to Claims shall be Filed on or before the later of (1) 180 days after the Plan Effective Date and (2) such other period of limitation as may be fixed by the Bankruptcy Court.

(g) Disallowance of Claims

Any Claims held by Persons from which property is recoverable under section 542, 543, 550, or 553 of the Bankruptcy Code, or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed Disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims may not receive any distributions on account of such Claims until such time as such Causes of Action against that Person have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, from that Person have been turned over or paid to the Reorganized Debtors or Wind-Down Debtor(s), as applicable.

All Claims against any Debtor, whether Filed or listed in any of the Debtor's Schedules, on account of an indemnification, surety and/or contribution obligation to any of the following Persons or entities shall be deemed satisfied and expunged from the Claims Register as of the Plan

Effective Date, without any further notice to or action, order, or approval of the Bankruptcy Court: (i) current or former director of any Debtor, (ii) current or former officer of any Debtor; (iii) current or former employee of any Debtor; (iv) current or former insider of any Debtor; (v) holder, whether directly or indirectly, of an Interest in any Debtor; (vi) current or former operator of any Debtor, including the operator pursuant to the O&M Agreement; (vii) current or former project manager of any Debtor, including the manager under the Project Management Agreement; and (viii) any Affiliate of the Persons or entities set forth in the foregoing clauses (i) through (vii); provided, further, that the holder of any such Claim shall not be entitled to any distributions under the Plan on account of such Claims.

(h) Distributions After Allowance

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions (if any) shall be made to the holder of such Allowed Claim in accordance with the provisions of the Plan. As soon as practicable after the date that the order allowing a Disputed Claim becomes a Final Order, the Reorganized Debtors, the Wind-Down Debtor(s) or Plan Administrator, as applicable, shall provide to the holder of such Claim the distribution (if any) to which such holder is entitled, without interest, dividends, or accruals to be paid on account of such Claim unless required under applicable bankruptcy law.

5.5 Release, Injunction, and Related Provisions

(a) Plan Releases, Injunction and Related Provisions

1. Discharge of Claims and Termination of Interests in the Debtors

In the Stand-Alone Restructuring Scenario or any Sale Scenario involving a Plan Sponsor, upon entry of the Confirmation Order, and except as otherwise provided in the Plan, the Debtors shall be discharged to the fullest extent permitted by section 1141(d) of the Bankruptcy Code. The Confirmation Order shall be a judicial determination of the discharge of all Claims against, and Interests in, the Debtors subject to the occurrence of the Plan Effective Date, including any claims, causes of action, or prayers for relief seeking substantive consolidation, successor liability, alter ego liability and other theories of liability between and among the Debtors, any of their current or former affiliated entities, or any other Person.

In a Sale Scenario (other than a Sale Scenario involving a Plan Sponsor), pursuant to the provisions of section 1141(d)(3) of the Bankruptcy Code, the Debtors shall not be entitled to a discharge and shall be wound down as set forth in the Plan and the Plan Administrator Agreement.

2. Releases by the Debtors

Notwithstanding anything in the Plan to the contrary, pursuant to section 1123(b) of the Bankruptcy Code, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, on and after the Plan Effective Date, each Released Party is, and is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released by each of the Debtors, their respective Estates, and any Person seeking to exercise the rights of any of the Debtors or their Estates (including any successors to any of the

Debtors or their Estates or any Estate representatives appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code), in each case, on behalf of themselves and their respective successors, assigns, and representatives, and any and all other Persons who may purport to assert any Cause of Action, derivatively, by, through, for, or because of any of the foregoing Persons, from any and all Claims and Causes of Action, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, contingent or non-contingent, in law, equity, contract, tort or otherwise, that any of the Debtors, their Estates, the Reorganized Debtors or Wind-Down Debtor(s), as applicable, or any successors to or representatives of the foregoing appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code, would have been legally entitled to assert in their own right (whether individually or collectively) or that any holder of any Claim against or any Interest in, any of the Debtors could have asserted on behalf of any of the Debtors or their Estates, based on, relating to, or in any manner arising from, in whole or in part: any of the Debtors (including the capital structure, management, ownership, or operations thereof); any Security of any of the Debtors; the subject matter of, or the transactions or events giving rise to, any Claim, Cause of Action or Interest; the business or contractual arrangements between any Debtor and a Released Party; the Senior Notes Documents; any of the Debtors' restructuring efforts; any Avoidance Actions held by any of the Debtors or their Estates; any intercompany transactions performed by any of the Debtors; the Debtors' Chapter 11 Cases (including the Filing thereof and any relief obtained by the Debtors therein); the formulation, preparation, dissemination, negotiation, or Filing of the Plan, the Plan Supplement, the Restructuring Support Agreement, the DIP Facility, the Disclosure Statement, or the Bidding Procedures Order (and the procedures approved thereby); any Restructuring Transaction, contract, instrument, release, or other agreement or document (including any legal opinion requested by any Person regarding any transaction, contract, instrument, document or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order with respect to the Plan in lieu of such legal opinion) created or entered into in connection with the Plan, the Restructuring Support Agreement, or the Bidding Procedures Order; the solicitation of votes on the Plan, the pursuit of Confirmation of the Plan, the pursuit of Consummation of the Plan, the implementation of the Plan, including the issuance or distribution of Securities or any other property pursuant to the Plan; or any other act or omission, transaction, agreement, event, or other occurrence related or relating to any of the foregoing taking place on or before the Plan Effective Date other than Claims and liabilities resulting therefrom arising out of or relating to any act or omission of a Released Party that constitutes actual fraud, willful misconduct, or gross negligence, in each case, solely to the extent determined by a Final Order of a court of competent jurisdiction. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any post-Plan Effective Date Claims or obligations of any Person under the Plan, the Confirmation Order with respect to the Plan, any Restructuring Transaction, any Definitive Document, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

3. <u>Releases by Holders of Claims Against and Interests In the Debtors</u>

Except as otherwise expressly set forth in the Plan or the Confirmation Order, on and after the Plan Effective Date, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is, and is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably and forever, released by each Releasing Party from any and all Causes of Action, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, contingent or noncontingent, in law, equity, contract, tort, or otherwise, including any derivative claims asserted on behalf of the Debtors, that such Person would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part: any of the Debtors (including the capital structure, management, ownership, or operation thereof); any security of any of the Debtors or any of the Reorganized Debtors; the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan; the business or contractual arrangements between any Debtor and any Released Party; the Senior Notes Documents; the assertion or enforcement of rights and remedies against any of the Debtors; the Debtors' in- or out-ofcourt restructuring efforts; any Avoidance Actions held by any of the Debtor(s) or their Estates; intercompany transactions between or among a Debtor and another Debtor; the Chapter 11 Cases; the formulation, preparation, dissemination, negotiation, or Filing of the Restructuring Support Agreement, the Disclosure Statement, the Bidding Procedures Order, the Plan, or the Plan Supplement; any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Restructuring Support Agreement, the DIP Facility, the Disclosure Statement, the Bidding Procedures Order, the Plan, or the Plan Supplement; the Filing of the Debtors' Chapter 11 Cases; the Disclosure Statement, the Plan, the solicitation of votes with respect to the Plan, the pursuit of Confirmation of the Plan, the pursuit of Consummation of the Plan, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, the distribution of property under the Plan or any other related agreement, or any cancellation of debt income realized in connection with the Plan; or upon any other act or omission, transaction, agreement, event, or other occurrence related or relating to any of the foregoing taking place on or before the Plan Effective Date, other than Claims and liabilities resulting therefrom arising out of or relating to any act or omission of a Released Party that constitutes actual fraud, willful misconduct, or gross negligence, each solely to the extent as determined by a Final Order of a court of competent jurisdiction. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (i) any party of any obligations related to customary banking products, banking services or other financial accommodations (except as may be expressly amended or modified by the Plan or any other financing document under and as defined therein) or (ii) any post-Plan Effective Date obligations of any Person under the Plan, the Confirmation Order, any Stand-Alone Restructuring Transaction, any Definitive Document or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, including the New Note Documents, if any, the Purchase Agreement(s), if any, or any Claim or obligation arising under the Plan.

4. <u>Exculpation from Claims Relating to the Plan</u>

Except as otherwise specifically provided in the Plan or the Confirmation Order with respect to the Plan, no Exculpated Party shall have or incur liability for, and each Exculpated Party is hereby exculpated from, any Claims and Causes of Action related to any act or omission occurring between and including the Petition Date and the Plan Effective Date in connection with, relating to, or arising out of: the Debtors' Chapter 11 Cases (including the Filing thereof); the formulation, preparation, dissemination, negotiation, Filing, or termination of the Restructuring Support Agreement, the Plan, the Disclosure Statement, the Bidding Procedures Order, the DIP Facility, or any contract, instrument, release or other agreement or document created or entered into in connection with the Debtors' Chapter 11 Cases, whether or not included in the Plan Supplement or constituting a Definitive Document; the Restructuring Transactions contemplated by the Plan and any prepetition transactions relating to any of the foregoing; the pursuit of Confirmation of the Plan, the pursuit of Consummation of the Plan, the administration and implementation of the Plan, including the issuance and distribution of Securities pursuant to the Plan, or the distribution of property under the Plan; the New Note Documents; any Purchase Agreement(s); or any other related act or omission, transaction, event, or other occurrence taking place on or before or in connection with the Plan Effective Date, except for Claims and liabilities resulting therefrom related to any act or omission that is determined in a Final Order by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence by an Exculpated Party.

The Exculpated Parties shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan in all respects.

5. <u>Injunction</u>

Except as otherwise expressly provided in the Plan or the Confirmation Order with respect to the Plan, all Persons who have held, hold, or may hold any Claims or Causes of Action against, or Interests in, any of the Debtors that have been released, discharged, or are subject to release or exculpation hereunder are permanently enjoined, from and after the Plan Effective Date, from taking any of the following actions against any of the Debtors, the Reorganized Debtors, the Wind-Down Debtor(s), as applicable, or any of the other Exculpated Parties or any of the Released Parties: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with any such Claim, Cause of Action or Interest; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against any of the Exculpated Parties or Released Parties on account of or in connection with any such Claim, Cause of Action or Interest; (3) creating, perfecting, or enforcing any Lien or encumbrance of any kind against any of the Exculpated Parties, Released Parties or their property on account of or in connection with or with respect to any such Claim, Cause of Action or Interest; and (4) asserting any right of setoff or subrogation against any obligation due from any of the Exculpated Parties, Released Parties or against their property on account of or in connection with any such Claim, Cause of Action or Interest unless, with respect to setoff, such holder has Filed a motion requesting the right to perform such setoff on or before the Plan Effective Date or Filed a Proof of Claim that asserts or preserves any such right, and until such motion has been granted or the Filed Proof of Claim is Allowed.

Upon entry of the Confirmation Order with respect to the Plan, all holders of Claims and Causes of Action against, and Interests in, any of the Debtors and their respective Related Parties shall be enjoined from taking any actions to interfere with the implementation of the Plan or any Sale Transaction(s) (if applicable).

(b) Protections Against Discriminatory Treatment

To the maximum extent provided by section 525 of the Bankruptcy Code and the Supremacy Clause of the U.S. Constitution, all Persons, including all Governmental Units, shall not discriminate against the Reorganized Debtors or Wind-Down Debtor(s), as applicable, or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Reorganized Debtors or Wind-Down Debtor(s), as applicable, or another Person with whom the Reorganized Debtors or Wind-Down Debtor(s), as applicable, have been associated, solely because the relevant Debtor has been a debtor under chapter 11 of the Bankruptcy Code, was insolvent before the commencement of or during the Debtors' Chapter 11 Cases, or did not pay a debt that is discharged hereunder.

(c) Document Retention

On and after the Plan Effective Date, the Reorganized Debtors, or the Wind-Down Debtor(s), as applicable, may maintain documents in accordance with their prepetition standard document retention policy, as may be altered, amended, modified, or supplemented.

(d) Term of Injunctions or Stays

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

(e) Unknown Claims

The waivers and releases provided in this Plan are intended to include both known and unknown Claims and Causes of Action. The Debtors and the other Releasing Parties understand that they may later discover Claims, Causes of Action or facts that may be different than, or in addition to, those which the Debtors or any other Releasing Party now knows or believes to exist with respect to the Debtors, and which, if known at the Plan Effective Date may have materially affected the decision of the Debtors and any other Releasing Party to enter into it. Nevertheless, the Debtors and the Releasing Parties hereby waive any right, Causes of Action or Claim that might arise as a result of such different or additional Claims, Causes of Action or facts. The Debtors and the Releasing Parties are aware of, read, understand and have been fully advised by their attorneys as to the contents of the provisions of California Civil Code section 1542 and any other similar state, federal or foreign law and hereby expressly waive any and all rights, benefits and protections of such section 1542 and each such other similar law, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

5.6 Conditions Precedent to The Plan Effective Date

(a) Conditions Precedent to the Plan Effective Date

It shall be a condition to the occurrence of the Plan Effective Date that the following conditions shall have been satisfied or waived pursuant to the provisions of Article IX. B hereof:

1. The Restructuring Support Agreement shall remain in full force and effect and shall not have been terminated by the Senior Lenders;

2. No termination event under Section 10.1 of the Restructuring Support Agreement shall have occurred and no default thereunder shall exist that would permit the Senior Lenders to terminate the Restructuring Support Agreement, in each case that is not expressly waived in writing by the Senior Lenders;

3. The Bankruptcy Court shall have entered the DIP Orders, and the Final DIP Order shall be in full force and effect, and no termination event shall have occurred under the DIP Facility that is not expressly waived in writing by the DIP Lenders;

4. The Bankruptcy Court shall have approved the Disclosure Statement, which may be approved by the Confirmation Order, with respect to the Plan;

5. The Confirmation Order approving the Plan is in form and substance consistent in all respects with the Restructuring Support Agreement and otherwise in form and substance reasonably acceptable to the Senior Lenders, shall be a Final Order (unless otherwise waived by the Senior Lenders) and shall:

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

    b. Authorize the Debtors, if applicable, to execute and deliver all Purchase Agreements, if any;

    c. Decree the provisions in the Confirmation Order with respect to the Plan and the Plan to be non-severable and mutually dependent;

    d. Authorize the Reorganized Debtors or Wind-Down Debtor(s), as applicable, to: (i) implement the Restructuring; (ii) make all distributions

required under the Plan, including any Cash, the New Reorganized Debtor Equity, and New Notes, in each case, as applicable; and (iii) enter into any applicable agreements, transactions, and sales of property as set forth in the Plan Supplement as applicable to the Debtors and the Plan;

e. Decree that the Restructuring Transactions under the Plan are not subject to the Subordination Agreement and that the Senior Notes Agent, the holders of the Senior Notes Claims, the DIP Agent and the DIP Lenders shall have no liability whatsoever under the Subordination Agreement;

f. Provide for the Bankruptcy Court's retention of jurisdiction over implementation of the Plan and the issues set forth in Article XI of the Plan; and

g. Authorize the implementation of the Plan in accordance with its terms.

6. The final version of each Definitive Document, including each document contained in the Plan Supplement, to the extent applicable to the Plan (including any exhibits, amendments, modifications, or supplements thereto) shall (a) be in form and substance consistent in all material respects with the Restructuring Support Agreement and otherwise approved by the applicable parties thereto consistent with their respective consent and approval rights as set forth in the Restructuring Support Agreement, (b) have been executed or deemed executed and delivered by each party thereto and any conditions precedent related thereto shall have been satisfied or waived by the applicable party or parties, if applicable, and (c) shall be adopted on terms consistent with the Restructuring Support Agreement;

7. In the Stand-Alone Restructuring Scenario, (a) the Debtors shall have delivered to the Senior Lenders (1) a Phase I Environmental Assessment by TRC Environmental Corp. (or a similarly reputable firm) and (2) a detailed engineering report by Black & Veatch Management Consulting (or a similarly reputable firm), and which reports in greater detail than the annual engineering reports routinely performed by the Debtors, in each case of (1) and (2), in form and substance acceptable to the Senior Lenders in their sole discretion, (b) the Berlin Facility shall have continuously been in operation in the ordinary course of business since the Petition Date, (c) the Debtors shall have in place an agreement to sell power in form and substance acceptable to the Senior Lenders in their sole discretion; and (d) the Debtors shall have obtained any and all necessary regulatory certifications, authorizations and approvals, including any required from the Federal Energy Regulatory Commission and ISO New England;

8. In the Stand-Alone Restructuring Scenario, in the event of a rejection of any of the O&M Agreement or Project Management Agreement that would occur on or before the Plan Effective Date, then the Pro Forma Owners shall have in place an agreement with an asset manager and an agreement with an operator that each have

the employees required to continue the Reorganized Debtors' operations in the ordinary course of business on or before the Plan Effective Date;

9. Any and all authorizations, certifications, consents, regulatory approvals, rulings, actions, documents and agreements necessary to implement, consummate and effectuate the applicable Restructuring Transactions shall have been obtained, effected and executed, including prior approval by FERC under Federal Power Act Section 203 of the transactions contemplated herein and continued effectiveness of Burgess 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, in the event the Plan as to Burgess is severed and withdrawn as provided for in Article X.E, then Berlin shall be required to obtain the necessary certification, including certifications of the Berlin Facility as a qualifying small power production facility and Berlin itself as an exempt wholesale generator, and market-based rate authorization and related tariff to sell wholesale electric energy and related services, on or prior to the Plan Effective Date;

10. In a Stand-Alone Restructuring Scenario, all conditions precedent to the effectiveness of the New Note Documents shall have been satisfied or duly waived;

11. In a Stand-Alone Restructuring Scenario, in the event the Plan as to Burgess is severed and withdrawn as provided for in Article X.E of the Plan, then the closing of the sale of Burgess' assets shall occur simultaneously with the Plan Effective Date or as otherwise agreed to by the Pro Forma Owners;

12. In a Sale Scenario, all conditions precedent (except for the occurrence of the Plan Effective Date) to the closing under each Purchase Agreement have been satisfied or waived in accordance therewith;

13. In a Stand-Alone Restructuring Scenario or a Sale Scenario involving the sale of equity in the Reorganized Debtors, the New Reorganized Debtor Equity shall have been issued on or immediately before the Plan Effective Date;

14. The Professional Fee Escrow Account shall have been established and funded in accordance with Article II. B of the Plan; and

15. All Restructuring Expenses allocable to the Debtors pursuant to the Restructuring Support Agreement and the Plan and all fees and expenses payable under the DIP Orders by the Debtors shall have been paid in full.

(b) Waiver of Conditions

The conditions to the occurrence of the Plan Effective Date set forth in this Article IX may be waived by the Debtors, with the prior written consent of the Senior Lenders, without notice to, action, or approval of the Bankruptcy Court or any formal action other than proceeding to confirm or consummate the Plan.

(c) Substantial Consummation

Substantial Consummation of the Plan shall be deemed to occur on the Plan Effective Date.

(d) Effect of Failure of Conditions

If the Consummation of the Plan does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any claims by the applicable Debtor or any other Person, or any Claims or Interests by any holders thereof; (2) prejudice in any manner the rights of each applicable Debtor, any holder of Claims or Interests, or any other Person; or (3) constitute an admission, acknowledgment, offer or undertaking by the applicable Debtors, any holder of Claims or Interests, or any other Person in any respect; provided, further, that, if the Restructuring Support Agreement is terminated, all provisions of the Restructuring Support Agreement that survive termination thereof shall remain in effect in accordance with the terms thereof.

5.7 Modification, Revocation, or Withdrawal of the Plan

(a) Sale Transaction(s)

The Plan contemplates the possibility of the Sale Transaction(s). If the Sale Transaction(s) occur(s), the Debtors, with the consent of the Senior Lenders, may or may not File a modified Plan (including any necessary conforming and immaterial changes thereto), in form and substance acceptable to the Senior Lenders and, absent repayment in full in Cash of the DIP Facility, the DIP Lenders, evidencing the Sale Transaction(s). Subject to the consent of the Senior Lenders and, absent repayment in full in Cash of the DIP Facility, the DIP Lenders, the Debtors shall not be required to make additional disclosures or re-solicit votes for such modified Plan pursuant to section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019.

(b) Modification and Amendments

Subject to the terms of the Restructuring Support Agreement and subject to the consent rights set forth in the Restructuring Support Agreement (which are incorporated herein pursuant to Article I.H of the Plan), except as otherwise specifically provided in the Plan, the Debtors reserve the right to (1) modify the Plan, whether such modification is material or immaterial, and seek Confirmation consistent with the Bankruptcy Code and, as appropriate, not re-solicit votes on such modified Plan and (2) subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 (as well as those restrictions on modifications set forth in the Plan), to alter, amend or modify the Plan with respect to any Debtor, one or more times, before or after Confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend or modify the Plan, or remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement or the

Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan.

(c) Effect of Confirmation on Modifications

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

(d) Revocation or Withdrawal of Plan

Subject to the terms of the Restructuring Support Agreement and subject to the consent rights set forth in the Restructuring Support Agreement (which are incorporated herein pursuant to Article I.H of the Plan), the Debtors reserve the right to revoke or withdraw the Plan before the Confirmation Date and to File other plan(s) of reorganization. If the Debtors revoke or withdraw the Plan or if Confirmation or Consummation of the Plan does not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan, the assumption or rejection of any Executory Contracts or Unexpired Leases under the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (3) nothing contained in the Plan or Disclosure Statement shall: (a) constitute a waiver or release of any claims by the applicable Debtor or any other Person, or any Claims or Interests by any holders thereof; (b) prejudice in any manner the rights of each applicable Debtor, any holder of Claims or Interests, or any other Person; or (c) constitute an admission, acknowledgment, offer or undertaking by the applicable Debtors, any holder of Claims or Interests, or any other Person in any respect; provided, further, that, if the Restructuring Support Agreement is terminated, all provisions of the Restructuring Support Agreement that survive termination thereof shall remain in effect in accordance with the terms thereof.

(e) Severance of Burgess from Plan

At the option of the Pro Forma Owners, the Plan for Burgess shall be severed from the Plan for Berlin, and the Plan for Burgess shall be deemed withdrawn, if (i) the aggregate amount of Claims asserted against Burgess exceeds an aggregate amount of $250,000 or (ii) any order from a court of competent determining and/or enforcing any purchase right, option, warrant, or other instrument or document directly or indirectly evidencing or creating any ownership interest in, or the right to acquire an ownership interest in, Burgess or its assets (other than the holder of Class 7B on account of its Interest in Burgess). Upon such withdrawal of the Plan, (A) the Senior Lenders or the DIP Lenders, each in their sole discretion, may purchase and acquire the assets of Burgess, including the assumption and assignment to them (or their designees) of any Executory Contracts or Unexpired Leases and any and all claims Burgess may have against Public Service Company of New Hampshire (d/b/a Eversource Energy),[9] pursuant to the Bidding Procedures Order, (B) the Senior Lenders' obligations to consummate the Restructuring shall be conditioned on Berlin obtaining the necessary certifications, including certifications of the Berlin Facility as a qualifying small power production facility and Berlin itself as an exempt wholesale generator, and market-

[9] As a result of the Eversource Settlement, the Debtors believe no causes of action against Eversource other than the rights afforded to the Debtors (and Senior Lenders) pursuant to the terms of the Eversource Settlement.

based rate authorization and related tariff to sell wholesale electric energy and related services, on or prior to the Plan Effective Date, (C) Berlin shall File an amended Plan, in form and substance acceptable to the Senior Lenders, reflecting the severing of Burgess from the Plan and (D) the Confirmation Order shall provide that any treatment under the Plan of Claims against and Interests in, Burgess shall not be included in the Confirmation of Berlin's Plan. This provision may only be amended or modified with the express written consent of the Senior Lenders.

5.8 Retention of Jurisdiction

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

1. Allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of, any Claim, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims;

2. Decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals;

3. Resolve any matters related to: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease, the determination of any Claim arising therefrom, including the Cure Amounts, or any other matter related to Executory Contracts and Unexpired Leases; (b) the amending, modifying, or supplementing, after the Plan Effective Date, of the Assumed Executory Contracts and Unexpired Leases List; and (c) any dispute regarding whether a contract or lease is or was executory, expired, or terminated;

4. Ensure that distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

5. Adjudicate, decide, or resolve any motions, adversary proceedings, contested or any other matters, and grant or deny any applications pending on the Plan Effective Date;

6. Adjudicate, decide, or resolve any and all matters related to sections 1141, 1145, and 1146 of the Bankruptcy Code;

7. Enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and of all contracts, instruments, releases, and other agreements or documents created in connection

with the Plan, including the Restructuring Support Agreement and the documents comprising the Plan Supplement;

8. Resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with Consummation, including interpretation or enforcement of the Plan, any Person's obligations incurred in connection with the Plan, or, as applicable, the New Notes, the amended O&M Agreement, the amended Project Management Agreement, or the Purchase Agreement(s);

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

10. Resolve any cases, controversies, suits, disputes or Causes of Action with respect to the releases, injunctions, exculpations, and other provisions contained in Article VIII of the Plan, and enter such orders as may be necessary or appropriate to enforce or implement such releases, injunctions, exculpations, and other provisions;

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

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

13. Adjudicate any and all disputes arising from or relating to distributions under the Plan;

14. Consider any modifications of the Plan to cure any defect or omission or to reconcile any inconsistency in the Confirmation Order;

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

16. Hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, the Confirmation Order, or the Restructuring, including disputes arising under agreements, documents, or instruments executed in connection with the Plan or the Restructuring, whether they arise before, on or after the Plan Effective Date;

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

18. Enforce and interpret all orders entered by the Bankruptcy Court in the Chapter 11 Cases;

19. Hear any other matter not inconsistent with the Bankruptcy Code; and

20. Enter an order or final decree closing any of the Chapter 11 Cases.

ARTICLE VI
ANTICIPATED EVENTS DURING THE CHAPTER 11 CASES

6.1 Commencement of the Chapter 11 Cases and First Day Motions

In accordance with the RSA, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on February 9, 2024. The filing of the petitions commenced the Chapter 11 Cases, at which time the Debtors were afforded the benefits, and became subject to the limitations, of the Bankruptcy Code.

The Debtors have continued, and intend to continue, to operate their business in the ordinary course during the pendency of the Chapter 11 Cases as they have prior to the Petition Date.

To facilitate the prompt and efficient implementation of the Plan through the Chapter 11 Cases, the Debtors filed, on the Petition Date, a motion seeking to have the Chapter 11 Cases assigned to the same bankruptcy judge and administered jointly. The Debtors also filed on the Petition Date several motions seeking various forms of relief from the Bankruptcy Court.

Hearings on the First Day Motions and certain other pleadings were held on February 13, 21, and 27, 2024 (collectively, the "**First Day Hearing**"). The Bankruptcy Court granted several of the "first day" motions at the First Day Hearing, as well as the Debtors' motion to reject the PPA and the motion to approve the Eversource Settlement, resolving various contested issues between the Debtors, Eversource, and the Senior Lenders/DIP Lenders. The relief granted by the Bankruptcy Court will ensure a seamless transition between the Debtors' prepetition and postpetition business operations, facilitate a smooth reorganization through the Chapter 11 Cases, and minimize any disruptions to the Debtors' operations.

The following is a brief overview of the relief that the Bankruptcy Court granted or indicated it would grant to the Debtors to maintain their operations in the ordinary course.

(a) Debtor in Possession Financing and Cash Collateral Usage

The Debtors required immediate access to cash collateral and DIP financing to preserve and maximize the value of their assets as they sought to expeditiously confirm and consummate the Plan. On the Petition Date, the Debtors sought authority from the Bankruptcy Court to, among other things, use the Cash Collateral of the Senior Lenders and to grant those lenders adequate protection for the use of the Cash Collateral, as well as to incur DIP financing and to borrow under the terms of that DIP Financing. [Docket No. 33] (the "**DIP Motion**"). The Bankruptcy Court entered an

interim order [Docket No. 200] and a final order [Docket No. ____] granting the requested relief. The Cash Collateral and proceeds of DIP Financing have been used for operations during and for the expenses of the Chapter 11 Cases.

(b) Cash Management System

The Debtors maintain a centralized cash management system designed to receive, monitor, aggregate, and distribute cash. On the Petition Date, the Debtors sought authority from the Bankruptcy Court to continue the use of their existing cash management system, bank accounts, and related business forms to avoid a disruption in the Debtors' operations and facilitate the efficient administration of the Chapter 11 Cases. The Bankruptcy Court entered an interim order [Docket No. 186] and a final order [Docket No. 238] granting the requested relief.

(c) Taxes

To minimize any disruption to the Debtors' operations and ensure the efficient administration of the Chapter 11 Cases, on the Petition Date, the Debtors sought authority from the Bankruptcy Court to pay all taxes, fees, and similar charges and assessments that arose prepetition, including any such amounts that become due and owing postpetition, to the appropriate taxing, regulatory, or other governmental authority in the ordinary course of the Debtors' business. The Bankruptcy Court entered an interim order [Docket No. 187] and a final order [Docket No. 241] granting the requested relief.

(d) Utilities

In the ordinary course of business, the Debtors incurred certain expenses related to essential utility services that enabled the Debtors' Affiliate Service Providers to operate the Facility. Accordingly, on the Petition Date, the Debtors sought (i) authority from the Bankruptcy Court to continue payments to such utility providers in the ordinary course and (ii) approval of procedures to provide such utility providers with adequate assurance that the Debtors will continue to honor the Debtors' obligations in the ordinary course. The Bankruptcy Court entered an interim order [Docket No. 104] and a final order [Docket No. 242] granting the requested relief.

(e) Critical Vendors

The Debtors' operation of the Facility is dependent upon their access to various essential goods and services provided by certain vendors and service providers. Among the types of critical vendors identified by the Debtors are certain providers of consumables used in the operation of the Facility and certain providers of fuel, maintenance, operations, supplies and other technical services necessary for the operation of the Facility. Accordingly, on the Petition Date, the Debtors sought authority from the Bankruptcy Court to continue to pay critical vendors claims that arose prepetition and to honor their obligations in the ordinary course postpetition [Docket No. 11] (the "**Critical Vendors Motion**"). The Bankruptcy Court entered an interim order [Docket No. 189] and a final order [Docket No. ____] granting the requested relief.

(f) Insurance

The maintenance of certain insurance coverage is essential to the Debtors' operations and is required by various laws and regulations, as well as certain financing agreements, and other contracts. The Debtors believe that the satisfaction of their obligations relating to their insurance policies, whether arising pre- or postpetition, is necessary to maintain the Debtors' relationships with their insurance providers and ensure the continued availability and commercially reasonable pricing of such insurance coverage. Accordingly, on the Petition Date, the Debtors sought authority from the Bankruptcy Court to continue to pay insurance obligations that arose prepetition and to honor their obligations under their existing policies and programs in the ordinary course postpetition. The Bankruptcy Court entered an interim order [Docket No. 190] and a final order [Docket No. 239] granting the requested relief.

(g) Shared Services

The Debtors do not have any employees and not themselves operate or manage their power-generation facilities, but instead contract with non-debtor affiliates to perform certain shared services necessary to conduct the Debtors' business. The Debtors therefore believe that the satisfaction of their obligations relating to their shared services contracts, whether arising pre- or postpetition, is necessary to maintain the Debtors' relationships with their service providers and ensure the continued availability and commercially reasonable pricing of such services. Accordingly, on the Petition Date, the Debtors sought authority from the Bankruptcy Court to continue to pay obligations under shared services contracts that arose prepetition and to honor their obligations under their existing shares services agreements in the ordinary course postpetition [Docket No. 17] (the "**Shared Services Motion**"). The Bankruptcy Court entered an interim order [Docket No. 191] and a final order [Docket No. 240] granting the requested relief.

(h) LMP Motion

In order to participate in ISO-NE's markets, including those that provide for the sale of energy and capacity to wholesale customers in New England, power producers must register as a Market Participant with ISO-NE. Berlin is registered as a Market Participant with ISO-NE, which allows the Facility to sell energy and capacity to wholesale customers in New England.

As of the Petition Date, Eversource was designated as the Lead Market Participant with the ISO-NE pursuant to the terms of the PPA. In light of the then-ongoing dispute with Eversource and pending rejection of the PPA, the Debtors sought to change the Lead Market Participant to one of its Affiliate Service Providers in order to enable them to sell energy on a merchant basis.

Accordingly, on the Petition Date, the Debtors sought authority from the Bankruptcy Court to enter into a new Lead Market Participant agreement and to require Eversource to cooperate in moving the Lead Market Participant status to the Debtors' Affiliate Service Provider [Docket No. 18] (the "**LMP Motion**"). In light of the Eversource Settlement, the Bankruptcy Court entered an interim order [Docket No. 194] and a final order [Docket No. ____] granting the requested relief.

(i) Rejection Motion

As explained in further detail above, the Debtors and their advisors analyzed the PPA and Option Agreement, and determined that operating the Facility and/or pursuing a sale of the Facility

out of bankruptcy would not be viable. Further, the Debtors maintained that Eversource materially breached the PPA prior to the Petition Date by failing to pay the Debtors approximately $3.6 million on January 23, 2024. Accordingly, on the Petition Date, the Debtors filed a motion seeking to reject both agreements [Docket No. 22] (the "**Rejection Motion**"). On February 28, 2024, the Bankruptcy Court entered order granting the rejection motion [Docket No. 203].

6.2 Settlement By and Among the Debtors, Senior Lenders, and Eversource

At the commencement of the Chapter 11 Cases, the Debtors filed several motions to which Eversource objected, including: (1) the DIP Motion, (2) the LMP Motion, (3) Critical Vendors Motion, and (4) the Shared Services Motion. Furthermore, Eversource moved the Court to transfer venue of these Chapter 11 Cases to the U.S. Bankruptcy Court for the District of New Hampshire [Docket Nos. 39, 112], to which the Debtors, the Senior Lenders and others objected [Docket No. 111, 118, 119].

The Bankruptcy Court entered an order [Docket No. 185] approving the Eversource Settlement Agreement and granting related relief to resolve these disputes.

Under the Eversource Settlement, the parties agreed that the Debtors' court-approved rejection of the PPA and Option Agreement would be effective as of February 29, 2024, and that the Debtors' transfer of their lead market participant would be effective as of March 1, 2024. In exchange, Eversource withdrew with prejudice the objections it filed to the Debtors' pleadings, withdrew its motion to transfer venue, and agreed to pay $3.35 million to the Debtors' estates.

6.3 Other Procedural Motions and Retention of Professionals

The Debtors intend to file several other motions that are common to chapter 11 proceedings of similar size and complexity as the Chapter 11 Cases, including applications to retain various professionals to assist the Debtors in the Chapter 11 Cases.

6.4 Timetable for the Chapter 11 Cases

In accordance with the RSA and Cash Collateral Orders, the Debtors are obligated to proceed with the implementation of the Plan through the Chapter 11 Cases. Among the milestones contained in the Cash Collateral Orders are the requirements that the Debtors: (i) File the First Day Pleadings on the Petition Date; (ii) obtain Bankruptcy Court approval of the Confirmation Order no later than May 23, 2024; and (iii) consummate the Plan by no later than June 21, 2024 under a Stand-Alone Restructuring Scenario and July 30, 2024 under a Sale Scenario.

Although the Debtors will request that the Bankruptcy Court approve the timetable set forth in the RSA, there can be no assurance that the Bankruptcy Court will grant such relief. Achieving the various Milestones under the RSA is crucial to maintaining the support of the Senior Lenders and reorganizing the Debtors successfully, and for the Debtors to maintain access to the DIP Facility.

ARTICLE VII
CERTAIN FACTORS TO BE CONSIDERED

PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN, ALL HOLDERS OF CLAIMS THAT ARE ENTITLED TO VOTE ON THE PLAN SHOULD READ AND CAREFULLY CONSIDER THE FACTORS SET FORTH HEREIN, AS WELL AS ALL OTHER INFORMATION SET FORTH OR OTHERWISE REFERENCED IN THIS DISCLOSURE STATEMENT.

ALTHOUGH THESE RISK FACTORS ARE MANY, THESE FACTORS SHOULD NOT BE REGARDED AS CONSTITUTING THE ONLY RISKS PRESENT IN CONNECTION WITH THE DEBTORS' BUSINESS OR THE PLAN AND ITS IMPLEMENTATION.

7.1 General

The following provides a summary of various important considerations and risk factors associated with the Plan; however, it is not exhaustive. In considering whether to vote to accept or reject the Plan, holders of Claims should read and carefully consider the factors set forth below, as well as all other information set forth or otherwise incorporated by reference in this Disclosure Statement.

7.2 Risks Relating to the Plan and Other Bankruptcy Law Considerations

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

It is impossible to predict with certainty the amount of time that the Debtors may spend in bankruptcy, and the Debtors cannot be certain that the Plan will be confirmed. Even if confirmed on a timely basis, a bankruptcy proceeding to confirm the Plan could itself have an adverse effect on the Debtors' business. There is a risk, due to uncertainty about the Debtors' future that, among other things, suppliers, vendors, or other business partners could terminate their relationship with the Debtors or demand financial assurances or enhanced performance, any of which could impair the Debtors' prospects.

A lengthy bankruptcy proceeding also would involve additional expenses and divert the attention of management from the operation of the Debtors' business.

Also, the Debtors will need the prior approval of the Bankruptcy Court for transactions outside the ordinary course of business, which may limit the Debtors' ability to respond timely to certain events or take advantage of certain opportunities. Because of the risks and uncertainties associated with the Chapter 11 Cases, the Debtors cannot accurately predict or quantify the ultimate impact of events that occur during the Chapter 11 Cases that may be inconsistent with the Debtors' plans.

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

(b) Risk of Non-Occurrence of the Plan Effective Date

Although the Debtors believe that the Plan Effective Date will occur expeditiously following the Confirmation Date, there can be no assurance as to such timing or as to whether the Plan Effective Date will, in fact, occur. As more fully set forth in Article IX of the Plan, the occurrence of the Plan Effective Date is subject to a number of conditions precedent, including court approval of the RSA. If such conditions precedent are not waived or met, the Plan Effective Date will not occur and the Plan will not be Consummated.

(c) If the Debtors Do Not Complete the Restructuring Transactions, They May Seek Restructuring Alternatives That Result in Less Value to Holders of Claims Than They Would Receive Pursuant to the Plan

If the Debtors do not consummate the Restructuring Transactions, they may pursue an alternative plan or plans of reorganization. There can be no assurance that the Debtors would be able to effect any such alternative plan of reorganization or that any such alternative plan of reorganization would be on terms as favorable to the holders of Claims as the terms of the restructuring pursuant to the Plan. In addition, the Debtors' creditors may take certain legal actions against the Debtors, which could include foreclosure or liquidation of the Debtors' assets. If a liquidation or protracted reorganization of the Debtors were to occur, there is a substantial risk that the value of the Debtors' assets would be eroded to the detriment of all stakeholders.

(d) The Bankruptcy Court May Dismiss Some or All of the Chapter 11 Cases

Certain parties in interest may contest the Debtors' authority to commence and/or prosecute the Chapter 11 Cases. If, pursuant to any such proceeding, the Bankruptcy Court finds that some or all of the Debtors could not commence the Chapter 11 Cases for any reason, the Debtors may be unable to consummate the transactions contemplated by the Restructuring Support Agreement and the Plan. If some or all of the Chapter 11 Cases are dismissed, the Debtors may be forced to cease operations due to insufficient funding and/or liquidate their business in another forum to the detriment of all parties in interest.

(e) A Holder of a Claim or Interest May Object to, and the Bankruptcy Court May Disagree with, the Debtors' Classification of Claims and Interests

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an equity interest in a particular class only if such claim or equity interest is substantially similar to the other claims or equity interests in such class. The Debtors believe that the classification of Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because the Classes of Claims and Interests are substantially similar to the other Claims and Interests in

each such Class. Nevertheless, a holder of a Claim or Interest could challenge the Debtors' classification. In such an event, the cost of the Chapter 11 Cases and the time needed to confirm the Plan may increase, and there can be no assurance that the Bankruptcy Court will agree with the Debtors' classification. If the Bankruptcy Court concludes that the classification of Claims and Interests under the Plan does not comply with the requirements of the Bankruptcy Code, the Debtors may need to modify the Plan (subject to the terms of the RSA and Plan). Such modification could require re-solicitation of votes on the Plan. The Plan may not be confirmed if the Bankruptcy Court determines that the Debtors' classification of Claims and Interests is not appropriate.

(f) The Debtors May Not Be Able to Satisfy the Voting Requirements for Confirmation of the Plan

If votes are received in number and amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Debtors may seek Confirmation, as promptly as practicable thereafter. Under the terms of the RSA, the holders of Class 3A and 3B Claims have agreed to vote in favor of the Plan. Nevertheless, if the RSA is properly terminated by the Senior Lenders, such holders may be freed of their obligation to vote in favor of the Plan. If the Plan does not receive the required support from Class 3A or Class 3B, the Debtors may elect to, among other things, amend the Plan, seek an alternative restructuring transaction under chapter 11 of the Bankruptcy Code, or seek to sell their assets pursuant to section 363 of the Bankruptcy Code. There can be no assurance that the terms of any such alternative chapter 11 plan or sale pursuant to section 363 of the Bankruptcy Code would be similar or as favorable to the holders of Allowed Claims and Allowed Interests as the Restructuring Transactions contemplated by the Plan.

(g) The Support of the Lenders Is Subject to the Terms of the Restructuring Support Agreement Which Is Subject to Termination in Certain Circumstances

Pursuant to the RSA, the Senior Lenders have agreed to support the Restructuring Transactions set forth in the Plan. Nevertheless, the RSA is subject to termination upon the occurrence of certain termination events set forth therein. Accordingly, the RSA may be terminated after the date of this Disclosure Statement, and such a termination would present a material risk to Confirmation and/or Consummation of the Plan because the Plan may no longer have the support of creditors holding Claims in number and amount sufficient to obtain Confirmation the Plan and could result in the loss of use of cash collateral by the Debtors under certain circumstances. Any such loss of support could adversely affect the Debtors' ability to confirm and consummate the Plan.

(h) The Bankruptcy Court May Not Confirm the Plan

The Debtors cannot assure you that the Plan will be confirmed by the Bankruptcy Court. Section 1129 of the Bankruptcy Code, which sets forth the requirements for confirmation of a plan of reorganization, requires, among other things, a finding by the Bankruptcy Court that the plan of reorganization is "feasible," that all claims and interests have been classified in compliance with the provisions of section 1122 of the Bankruptcy Code, and that, under the plan of reorganization, each holder of a claim or interest within each impaired class either accepts the plan of reorganization or receives or retains Cash or property of a value, as of the date the plan of reorganization becomes effective, that is not less than the value such holder would receive or retain

if the debtor were liquidated under chapter 7 of the Bankruptcy Code. With respect to impaired classes of claims or interests that do not accept a plan of reorganization, section 1129(b) requires such plan be fair and equitable (including, without limitation the "absolute priority rule") and not discriminate unfairly with respect to such classes. There can be no assurance that the Bankruptcy Court will conclude that the feasibility test and other requirements of section 1129 of the Bankruptcy Code (including, without limitation, finding that the Plan satisfies the "new value" exception to the absolute priority rule, if applicable) have been met with respect to the Plan. If and when the Plan is filed with the Bankruptcy Court, there can be no assurance that modifications to the Plan would not be required in order to obtain Confirmation, or that such modifications would not require a re-solicitation of votes on the Plan.

If the Plan is not confirmed, the Chapter 11 Cases may be converted into cases under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be appointed or elected to liquidate the Debtors' assets for distribution in accordance with the priorities established by the Bankruptcy Code. A discussion of the effects that a chapter 7 liquidation would have on the recoveries of holders of Claims and Interests and the Debtors' analysis thereof are set forth in the unaudited Liquidation Analysis, attached hereto as **Exhibit C**. The Debtors believe that liquidation under chapter 7 of the Bankruptcy Code would result in, among other things, smaller distributions being made to holders of Claims and Interests than those provided for in the Plan because of:

1. the potential absence of a market for the Debtors' assets on a going concern basis;

2. additional administrative expenses involved in the appointment of a chapter 7 trustee; and

3. additional expenses and Claims, some of which would be entitled to priority, that would be generated during the liquidation and from the rejection of Unexpired Leases and other Executory Contracts in connection with a cessation of the Debtors' operations.

(i) The Debtors May Object to the Amount or Classification of a Claim

Except as otherwise provided in the RSA, DIP Order and/or Plan, the Debtors reserve the right to object to the amount or classification of any Claim under the Plan. The estimates set forth in this Disclosure Statement cannot be relied upon by any holder of a Claim where such Claim is subject to an objection. Any holder of a Claim that is subject to an objection thus may not receive its expected share of the estimated distributions described in this Disclosure Statement.

(j) Contingencies Could Affect Votes of Impaired Classes to Accept or Reject the Plan

The distributions available to holders of Allowed Claims under the Plan can be affected by a variety of contingencies, including, without limitation, whether the Bankruptcy Court orders certain Allowed Claims to be subordinated to other Allowed Claims and Allowed Interests. The occurrence of any and all such contingencies, which could affect distributions available to holders

of Allowed Claims and Allowed Interests under the Plan, will not affect the validity of the vote taken by the Impaired Classes to accept or reject the Plan or require any sort of revote by the Impaired Classes.

(k) The Debtors May Fail to Satisfy Vote Requirements

If votes are received in number and amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Debtors intend to seek, as promptly as practicable thereafter, Confirmation of the Plan. In the event that sufficient votes are not received, the Debtors may seek to confirm an alternative chapter 11 plan or transaction. There can be no assurance that the terms of any such alternative chapter 11 plan or other transaction would be similar or as favorable to the holders of Allowed Claims as those proposed in the Plan and the Debtors do not believe that any such transaction exists or is likely to exist that would be more beneficial to the Estates than the Plan.

(l) Nonconsensual Confirmation

In the event that any impaired class of claims or interests does not accept a chapter 11 plan, a bankruptcy court may nevertheless confirm a plan at the proponents' request if at least one impaired class (as defined under section 1124 of the Bankruptcy Code) has accepted the plan (with such acceptance being determined without including the vote of any "insider" in such class), and, as to each impaired class that has not accepted the plan, the bankruptcy court determines that the plan "does not discriminate unfairly" and is "fair and equitable" with respect to the dissenting impaired class(es). The Debtors believe that the Plan satisfies these requirements, and the Debtors may request such nonconsensual Confirmation in accordance with subsection 1129(b) of the Bankruptcy Code. Nevertheless, there can be no assurance that the Bankruptcy Court will reach this conclusion. In addition, the pursuit of nonconsensual Confirmation or Consummation of the Plan may result in, among other things, increased expenses relating to professional compensation.

(m) Continued Risk Upon Confirmation

Even if the Plan is Consummated, the Debtors will continue to face a number of risks, including certain risks that are beyond their control, such as further deterioration or other changes in economic conditions, changes in the industry, potential revaluing of their assets due to the Chapter 11 Cases, changes in demand for renewable energy (and thus demand for the services the Debtors provide), changes in the regulatory environment, and increasing expenses. *See* Article 7.3 of this Disclosure Statement, entitled "Risks Related to the Business of the Debtors," which begins on page 101. Some of these concerns and effects typically become more acute when a chapter 11 case continues for a protracted period without indication of how or when the case may be completed. As a result of these risks and others, there is no guarantee that a chapter 11 plan of reorganization reflecting the Plan will achieve the Debtors' stated goals.

Furthermore, even if the Debtors' debts are reduced and/or discharged through the Plan, the Debtors may need to raise additional funds through public or private debt or equity financing or other various means to fund the Debtors' business after the completion of the proceedings related to the Chapter 11 Cases. Adequate funds may not be available when needed or may not be available on favorable terms.

(n) Contingencies May Affect Distributions to Holders of Allowed Claims

The distributions available to holders of Allowed Claims under the Plan can be affected by a variety of contingencies, including, without limitation, whether the Bankruptcy Court orders certain Allowed Claims to be subordinated to other Allowed Claims. The occurrence of any and all such contingencies, which could affect distributions available to holders of Allowed Claims under the Plan, will not affect the validity of the vote taken by the Impaired Classes to accept or reject the Plan or require any sort of revote by the Impaired Classes.

(o) Even if the Debtors Receive All Necessary Acceptances for the Plan to Become Effective, the Debtors May Fail to Meet All Conditions Precedent to Effectiveness of the Plan

Although the Debtors believe that the Plan Effective Date would occur expeditiously following the Confirmation Date, there can be no assurance as to such timing.

The Confirmation and Consummation of the Plan are subject to certain conditions that may or may not be satisfied. Specifically, a failure by the Debtors to meet certain Milestones set forth in the RSA, including dates for concluding a sale process and achieving confirmation of the Plan, would result in the loss of DIP financing from the lenders. The Debtors cannot assure you that all requirements for Confirmation and effectiveness required under the Plan will be satisfied, including meeting the certain Milestones. If each condition precedent to Confirmation is not met or waived, the Plan will not be confirmed, and if each condition precedent to Consummation is not met or waived, the Plan Effective Date will not occur. In the event that the Plan is not confirmed or is not consummated, the Debtors may seek Confirmation of an alternative plan of reorganization.

(p) The Debtors May Fail to Successfully Sell Assets at Auction

Every sale of assets at a bankruptcy auction carries the inherent risk of failure to produce a buyer. The risk increases if, as in the case of the Debtors, a debtor does not conduct prepetition marketing to notify interested parties of the sale. It is not uncommon for auctions to occur without competing bids, creating the potential that the only bid for assets is significantly below appraisal value. For these reasons, sale at auction is not always prudent or feasible.

(q) The United States Trustee or Other Parties May Object to the Plan on Account of the Debtor Releases, Third-Party Releases, Exculpations, or Injunction Provisions

Article VIII of the Plan provides for certain releases, injunctions, and exculpations, including a release of liens and third-party claims that may otherwise be asserted against the Debtors, Reorganized Debtors, or Released Parties, as applicable. The releases, injunctions, and exculpations provided in the Plan are subject to objection by parties in interest and may not be approved. If the releases are not approved, certain Released Parties may withdraw their support for the Plan.

The releases provided to the Released Parties and the exculpation provided to the Exculpated Parties are necessary to the success of the Debtors' reorganization because the Released Parties and Exculpated Parties have made significant contributions to the Debtors' reorganizational efforts that are important to the success of the Plan and have agreed to make

further contributions, including by agreeing to massive reductions in the amounts of their Claims against the Debtors' Estates and facilitating a critical source of post-emergence liquidity, but only if they receive the full benefit of the Plan's release and exculpation provisions. The Plan's release and exculpation provisions are an inextricable component of the RSA and Plan and the significant benefits that they embody.

Any party in interest, including the U.S. Trustee, could object to the Plan, including with respect to the (i) Debtor release contained in Article VIII.2 of the Plan, (ii) third-party releases contained in Article VIII.3 of the Plan, (iii) exculpation contained in Article VIII.4 of the Plan, or (iv) the injunction contained in Article VIII .5 of the Plan. Although the Debtors would certainly oppose any such objection, in response to such an objection, the Bankruptcy Court could determine that any of these provisions are not valid under the Bankruptcy Code. If the Bankruptcy Court makes such a determination, the Plan could not be confirmed without modifying the Plan to alter or remove the applicable provision. This determination could result in substantial delay in Confirmation of the Plan, the Plan not being confirmed at all, the loss of support for the Plan from the parties to the Restructuring Support Agreement, or certain Released Parties may withdraw their support for the Plan.

(r) The Debtors May Seek To Amend, Waive, Modify, or Withdraw the Plan at Any Time Prior to Confirmation

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

(s) The Plan May Have Material Adverse Effects on the Debtors' Operations

The solicitation of acceptances of the Plan and commencement of the Chapter 11 Cases could adversely affect the relationships between the Debtors and their respective vendors, partners, and other parties. Such adverse effects could materially impair the Debtors' operations.

(t) Other Parties in Interest Might Be Permitted to Propose Alternative Plans of Reorganization That May Be Less Favorable to Certain of the Debtors' Constituencies Than the Plan

Other parties in interest could seek authority from the Bankruptcy Court to propose an alternative plan of reorganization to the Plan. Under the Bankruptcy Code, a debtor in possession

initially has the exclusive right to propose and solicit acceptances of a plan of reorganization for a period of one hundred twenty (120) days from the Petition Date. Nevertheless, such exclusivity period can be reduced or terminated upon order of the Bankruptcy Court. If such an order were entered, parties in interest other than the Debtors would then have the opportunity to propose alternative plans of reorganization.

If another party in interest proposed an alternative plan of reorganization following expiration or termination of the Debtors' exclusivity period, such a plan may be less favorable to existing holders of Claims and Interests.

The Debtors consider maintaining relationships with their stakeholders, vendors, and other partners as critical to maintaining the value of their enterprise following the Plan Effective Date and have sought to treat those constituencies accordingly. However, proponents of alternative plans of reorganization may not share the Debtors' assessments and may seek to impair the Claims or Interests of such constituencies to a greater degree. If there were competing plans of reorganization, the Chapter 11 Cases likely would become longer, more complicated, more litigious, and much more expensive. If this were to occur, or if the Debtors' stakeholders or other constituencies important to the Debtors' business were to react adversely to an alternative plan of reorganization, the adverse consequences discussed in the foregoing Sections also could occur.

(u) The Debtors' Business May Be Negatively Affected if the Debtors Are Unable to Assume (or Assume and Assign) Their Executory Contracts

An executory contract is a contract as to which performance remains due to some extent by both contract parties. The Debtors intend to preserve as much of the benefit of their existing Executory Contracts and Unexpired Leases as possible. However, if the Debtors are unable for any reason to assume their Executory Contracts and Unexpired Leases as of the Plan Effective Date, then they would be required to either forego the benefits offered by such contracts or to find alternative arrangements to replace them.

(v) Material Transactions Could Be Set Aside as Fraudulent Conveyances or Preferential Transfers

Certain payments received by stakeholders prior to the bankruptcy filing could be challenged under applicable debtor/creditor or bankruptcy laws as either a "fraudulent conveyance" or a "preferential transfer." A fraudulent conveyance occurs when a transfer of a debtor's assets is made with the intent to defraud creditors or in exchange for consideration that does not represent reasonably equivalent value to the property transferred. A preferential transfer occurs upon a transfer of property of the debtor while the debtor is insolvent for the benefit of a creditor on account of an antecedent debt owed by the debtor that was made on or within ninety (90) days before the petition date or one year before the petition date, if the creditor, at the time of such transfer, was an insider. If any transfer were challenged in the Bankruptcy Court and found to have occurred with regard to any of the Debtors' material transactions, the Bankruptcy Court could order the recovery of all amounts received by the recipient of the transfer. Notwithstanding the above, the Debtors do not believe they have made any transactions that constitute a fraudulent conveyance, preference, or would otherwise be subject to avoidance under the Bankruptcy Code.

(w) Certain Claims May Not Be Discharged and Could Have a Material Adverse Effect on the Debtors' Financial Condition and Results of Operations

The Bankruptcy Code provides that the confirmation of a plan of reorganization discharges a debtor from substantially all debts arising prior to confirmation. With few exceptions, all Claims that arise prior to the Petition Date or before Confirmation of the Plan (i) would be subject to compromise and/or treatment under the Plan and/or (ii) would be discharged in accordance with the terms of the Plan. Any Claims not ultimately discharged through the Plan could be asserted against the applicable Reorganized Debtors and may have an adverse effect on the Reorganized Debtors' financial condition and results of operations on a post-reorganization basis.

(x) The Debtors Will Be Subject to Business Uncertainties and Contractual Restrictions Prior to the Plan Effective Date

Uncertainty about the effects of the Plan on third parties may have an adverse effect on the Debtors. These uncertainties could cause vendors and others that deal with the Debtors to defer entering into contracts with the Debtors or making other decisions concerning the Debtors or seek to change existing business relationships with the Debtors.

(y) Certain Tax Implications of the Plan

Holders of Allowed Claims should carefully review Article IX of this Disclosure Statement entitled "Certain Tax Consequences of the Plan" which begins on page 117, to determine how the tax implications of the Plan and the Chapter 11 Cases may affect the Debtors, the Reorganized Debtors, and holders of Claims, as well as certain tax implications of owning and disposing of the consideration to be received pursuant to the Plan.

(z) Necessary Approvals May Not Be Granted

To complete a restructuring, the Debtors' may require certain approvals by governmental authorities, regulatory bodies, and third parties. The Debtors' inability to obtain such approvals could prevent consummation of the Plan.

7.3 Risks Related to the Business of the Debtors

(a) The Debtors May Not Be Able to Repay or Refinance All of Their Post-Plan Effective Date Indebtedness

The Debtors' ability to repay or refinance their post-Plan Effective Date debt obligations depends on their financial condition and operating performance, which are subject to prevailing economic, industry, and competitive conditions and to certain financial, business, legislative, regulatory, and other factors beyond the Debtors' control. The Debtors may be unable to maintain a level of cash flow from operating activities sufficient to permit the Debtors to repay or refinance their post-Plan Effective Date indebtedness.

(b) Operating in Bankruptcy for a Long Period of Time May Harm the Debtors' Business

The Debtors' future results will be dependent upon the successful confirmation and implementation of the Plan. A long period of operations under Bankruptcy Court protection could have a material adverse effect on the Debtors' business, financial condition, results of operations, and liquidity. So long as the proceedings related to the Chapter 11 Cases continue, management will be required to spend a significant amount of time and effort dealing with the reorganization instead of focusing exclusively on business operations. In addition, the longer the proceedings related to the Chapter 11 Cases continue, the more likely it is that customers and suppliers will lose confidence in the Debtors' ability to reorganize their business successfully and will seek to establish alternative commercial relationships.

So long as the proceedings related to the Chapter 11 Cases continue, the Debtors may be required to incur substantial costs for professional fees and other expenses associated with the administration of the Chapter 11 Cases. If the Chapter 11 Cases last longer than anticipated, the Debtors may require additional debtor in possession financing to fund the Debtors' operations. If the Debtors are unable obtain such financing if those circumstances arise, the chances of successfully reorganizing the Debtors' business may be seriously jeopardized, the likelihood that the Debtors will instead be required to liquidate or sell their assets may be increased, and, as a result, creditor recoveries may be significantly impaired.

Furthermore, the Debtors cannot predict the ultimate amount of all settlement terms for the liabilities that will be subject to a plan of reorganization. Even after a plan of reorganization is approved and implemented, Debtors' operating results may be adversely affected by the possible reluctance of prospective lenders and other counterparties to do business with a company that recently emerged from bankruptcy protection.

(c) Financial Results May Be Volatile and May Not Reflect Historical Trends

During the Chapter 11 Cases, the Debtors expect that their financial results will continue to be volatile as restructuring activities and expenses, contract terminations and rejections, and/or claims assessments significantly impact the Debtors' consolidated financial statements. As a result, the Debtors' historical financial performance likely will not be indicative of their financial performance after the Petition Date.

In addition, if the Debtors emerge from chapter 11, the amounts reported in subsequent consolidated financial statements may materially change relative to historical consolidated financial statements, including as a result of revisions to the Debtors' operating plans pursuant to a plan of reorganization. The Debtors also may be required to adopt "fresh start" accounting in accordance with Accounting Standards Codification 852, in which case their assets and liabilities will be recorded at fair value as of the fresh start reporting date, which may differ materially from the recorded values of assets and liabilities on the Debtors' consolidated balance sheets. The Debtors' financial results after the application of fresh start accounting also may be different from historical trends.

(d) The Market Value of the Debtors' Power-Generation Facility May Decrease

The fair market values of the Facility the Debtors currently own and operate may increase or decrease depending on a number of factors, many of which are beyond the Debtors' control,

including the general economic and market conditions affecting the electricity industry. Any such deterioration in the market values of the Debtors' Facility could require them to record an impairment charge in their financial statements, which could adversely affect their results of operations.

(e) The Debtors May Experience Downtime as a Result of Repairs or Maintenance, Human Error, Defective or Failed Equipment, or Delays While Waiting for Replacement Parts

The Debtors' operations may be suspended because of machinery breakdowns, human error, abnormal operating conditions, failure of subcontractors to perform or supply goods or services, delays on replacement parts, or personnel shortages, any of which could cause the Debtors to experience operational downtime and could have an adverse effect on their results of operations.

(f) The Debtors May Experience Operational Disruptions or Cost Increases Related to Fuel Supplies, Labor, or Other Causes

In addition, the Debtors rely on certain third parties to provide supplies and services necessary for their power-generating operations, including, but not limited to, suppliers of the biomass on which the Debtors rely for energy generation and non-debtor affiliates that supply the workforce to operate the Facility. The failure of these suppliers and/or non-debtor affiliates to provide the materials or human resources required to operate the Facility could result in an operational disruption, leading to lost revenue. Further, because the Debtors are dependent on a continuous supply of biomass to generate energy, increased market prices for biomass and/or supply problems could increase their operational expenses and reduce their profitability.

(g) The Debtors' Business is Subject to Numerous Governmental Laws and Regulations That May Impose Significant Costs and Liabilities on the Debtors

The Debtors' operations are subject to federal, state, and local laws and regulations that may, among other things, require them to obtain and maintain specific permits or other governmental approvals. Failure to comply with these laws and regulations may result in the assessment of financial penalties, the imposition of remedial obligations, the denial or revocation of permits or other authorizations, and the issuance of injunctions that may limit or prohibit some or all of the Debtors' operations. The application of these laws and regulations, the modification of these laws or regulations, or the adoption of new laws or regulations could materially limit future opportunities or materially increase the Debtors' costs, including their capital expenditures.

(h) Any Significant Cyber-Attack or Interruption in Network Security Could Materially and Adversely Disrupt and Affect the Debtors' Operations and Business

Like all businesses, the Debtors have become increasingly dependent upon digital technologies to conduct and support their operations, and they rely on their operational and financial computer systems to conduct almost all aspects of their business. Threats to the Debtors' information technology systems associated with cybersecurity risks and incidents or attacks continue to grow. Any failure of the Debtors' computer systems, or those of their clients, vendors, or others with whom they do business, could materially disrupt their operations and could result in the corruption of data or unauthorized release of proprietary or confidential data concerning the

Debtors, their business operations and activities, or customers. Computers and other digital technologies could become impaired or unavailable due to a variety of causes, including, among others, theft, cyber-attack, design defects, terrorist attacks, utility outages, human error, or complications encountered as existing systems are maintained, repaired, replaced, or upgraded. Any cyber-attack or interruption could have a material adverse effect on the Debtors' financial position, results of operations or Cash flows, and their reputation.

(i) The Debtors' Insurance May Not be Adequate in the Event of a Catastrophic Loss

Losses caused by the occurrence of a significant event against which the Debtors are not fully insured or caused by a number of lesser events against which the Debtors are insured but are subject to substantial deductibles, aggregate limits and/or self-insured amounts, could materially increase the Debtors' costs and impair their profitability and financial position. Their policy limits for property, casualty, liability, and business interruption insurance, including coverage for severe weather, terrorist acts, war, or civil disturbances, may not be adequate should a catastrophic event occur related to their property, plant, or equipment, or the Debtors' insurers may not have adequate financial resources to sufficiently or fully pay related claims or damages. When any of the Debtors' coverage expires, adequate replacement coverage may not be available, offered at reasonable prices, or offered by insurers with sufficient financial resources.

(j) Public Health Threats Could Have a Material Adverse Effect on the Debtors' Financial Position, Results of Operations, or Cash Flows

Public health threats could adversely impact the Debtors' operations or the demand for electricity and therefore the level of demand for the Debtors' services.

(k) The Business Operations of Debtors That Sell Wholesale Power Are Subject to Regulation by FERC and Could be Adversely Affected by Such Regulation

FERC granted the Debtors authority to sell energy, capacity, and ancillary services at market-based rates. These orders also granted waivers of certain FERC accounting, record-keeping and reporting requirements, as well as, for certain of these subsidiaries, waivers of the requirements to obtain FERC approval for issuances of securities. FERC's orders that grant this market-based rate authority reserve with FERC the right to revoke or revise that authority if FERC subsequently determines that these companies can exercise market power in transmission or generation, or create barriers to entry, or have engaged in prohibited affiliate transactions. In the event that one or more of the Debtors' market-based rate authorizations were to be revoked or adversely revised, the Debtors may be subject to sanctions and penalties, and would be required to file with FERC for authorization of individual wholesale sales transactions, which could involve costly and possibly lengthy regulatory proceedings and the loss of flexibility afforded by the waivers associated with the current market-based rate authorizations.

(l) Energy Efficiency and Peak Demand Reduction Mandates Applicable to the Debtors' Energy Output Could Negatively Impact the Debtors' Financial Condition and Results of Operations

A number of regulatory and legislative bodies have introduced requirements and/or incentives to reduce peak demand and energy consumption. Such conservation programs could result in load reduction and adversely impact the Debtors' financial results in different ways.

(m) Any Default by Customers or Other Counterparties Could Have a Material Adverse Effect on the Debtors' Results of Operations and Financial Condition

The Debtors are exposed to the risk that counterparties that owe them money or other commodities could breach their obligations. Should the counterparties to these arrangements fail to perform, the Debtors may be forced to enter into alternative arrangements at then-current market prices that may exceed their contractual prices, which would cause their financial results to be diminished, and they might incur losses. Although the Debtors' estimates take into account the expected probability of default by a counterparty, the Debtors actual exposure to a default by customers or other counterparties may be greater than the estimates predict, which could have a material adverse effect on the Debtors' results of operations and financial condition.

(n) The Debtors Are Exposed to Price Risks Associated With Marketing and Selling Products in the Power Markets

The Debtors sell power at the wholesale level under market-based rate tariffs authorized by FERC, and also have entered, and may in the future enter, into agreements to sell available energy and capacity from its generation assets. If the Debtors are unable to deliver capacity and energy, whether in wholesale markets or under these agreements, under these agreements, they may be required to pay damages, including significant penalties. Depending on price volatility in the wholesale energy markets, such damages and penalties could be significant. Extreme weather conditions, unplanned power plant outages, transmission disruptions, and other factors could affect the Debtors' ability to meet their obligations, or cause increases in the market price of replacement capacity and energy.

(o) Temperature Variations as well as Weather Conditions or other Natural Disasters Could Adversely Affect the Debtors' Energy Margins, and Could Have an Adverse Effect on the Debtors' Financial Condition and Results of Operations, and the Demand for Power.

Weather conditions directly influence the demand for electric power. Demand for power generally peaks during the summer and winter months, with market prices also typically peaking at that time. Overall operating results may fluctuate based on weather conditions. In addition, the Debtors have historically sold less power, and consequently received less revenue, when weather conditions are milder. Severe weather, such as tornadoes, hurricanes, ice or snowstorms, droughts, or other natural disasters, may cause outages and property damage that may require the Debtors to incur additional costs that are generally not insured and that may not be recoverable from customers. The effect of the failure of the Debtors' facilities to operate as planned under these conditions would be particularly burdensome during a peak demand period and could have an adverse effect on the Debtors' financial condition and results of operations.

(p) The Risks Associated with Climate Change May Have an Adverse Impact on the Debtors' Business Operations

Physical risks associated with climate change, such as more frequent or more extreme weather events, changes in temperature and precipitation patterns, and other related phenomena, could affect some, or all, of the Debtors' operations. Severe weather or other natural disasters could be destructive, which could result in increased costs, including supply chain costs. Further, as extreme weather conditions increase system stress, the Debtors may incur costs relating to additional system backup or service interruptions, and in some instances, the Debtors may be unable to recover such costs. These physical risks could have an adverse financial impact on the Debtors' business operations, operating results and cash flows. Climate change poses other financial risks as well. To the extent weather conditions are affected by climate change, customers' energy use could increase or decrease depending on the duration and magnitude of the changes. Increased energy use due to weather changes may require the Debtors to invest in additional system assets and purchase additional power. Additionally, decreased energy use due to weather changes may affect the Debtors' financial condition through decreased rates, revenues, margins, or earnings.

7.4 Disclosure Statement Disclaimer

(a) Information Contained Herein Is Solely for Soliciting Votes

The information contained in this Disclosure Statement is for the purpose of soliciting acceptances of the Plan and may not be relied upon for any other purpose. Specifically, this Disclosure Statement is not legal advice to any Person or Entity. The contents of this Disclosure Statement should not be construed as legal, business, or tax advice. Each reader should consult its own legal counsel and accountant with regard to any legal, tax, and other matters concerning its Claim. This Disclosure Statement may not be relied upon for any purpose other than to determine how to vote to accept or reject the Plan and whether to object to Confirmation.

(b) Disclosure Statement May Contain Forward-Looking Statements

This Disclosure Statement may contain "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995, as amended. Such statements consist of any statement other than a recitation of historical fact and can be identified by the use of forward-looking terminology such as "may," "expect," "anticipate," "estimate," or "continue," the negative thereof, or other variations thereon or comparable terminology.

The Debtors consider all statements regarding anticipated or future matters, including the following, to be forward-looking statements:

1. any future effects as a result of the filing or pendency of the Chapter 11 Cases;

2. future client contract opportunities;

3. the Debtors' future liquidity position and future efforts to improve its liquidity position;

4. revenue efficiency levels;

5. market outlook;

6. forecasts of trends;

7. estimated duration of client contracts;

8. backlog;

9. expected capital expenditures;

10. projected costs and savings;

11. the Debtors' business strategies and plans or objectives of management; and

12. future contract rates.

Statements concerning these and other matters are not guarantees of the Debtors' future performance. The reader is cautioned that all forward-looking statements are necessarily speculative. The Liquidation Analysis and other information contained herein and attached hereto are estimates only, and the timing and amount of actual distributions to holders of Allowed Claims may be affected by many factors that cannot be predicted. Forward-looking statements represent the Debtors' estimates and assumptions only as of the date such statements were made. There are risks, uncertainties, and other important factors that could cause the Debtors' actual performance or achievements to be materially different from those they may project, and the Debtors undertake no obligation to update any such statement.

(c) This Disclosure Statement Has Not Been Approved by the SEC

This Disclosure Statement has not been and will not be filed with the SEC or any state regulatory authority. Neither the SEC nor any state regulatory authority has approved or disapproved of the Securities described in this Disclosure Statement or has passed upon the accuracy or adequacy of this Disclosure Statement, or the exhibits or the statements contained in this Disclosure Statement.

(d) No Legal, Business, or Tax Advice Is Provided to You by This Disclosure Statement

THIS DISCLOSURE STATEMENT IS NOT LEGAL, BUSINESS, OR TAX ADVICE TO YOU. The contents of this Disclosure Statement should not be construed as legal, business, or tax advice. Each holder of a Claim should consult their own legal counsel and accountant with regard to any legal, tax, and other matters concerning their Claim. This Disclosure Statement may not be relied upon for any purpose other than to determine how to vote on the Plan or object to Confirmation.

(e) No Admissions Made

The information and statements contained in this Disclosure Statement will neither constitute an admission of any fact or liability by any entity (including, without limitation, the

Debtors) nor (ii) be deemed evidence of the tax or other legal effects of the Plan on the Debtors, holders of Allowed Claims, or any other parties-in-interest.

(f) Failure to Identify Litigation Claims or Projected Objections

No reliance should be placed on the fact that a particular litigation Claim or projected objection to a particular Claim is, or is not, identified in this Disclosure Statement. All parties, including the Debtors, reserve the right to continue to investigate Claims and file and prosecute objections to Claims.

(g) No Waiver of Right to Object or Right to Recover Transfers and Assets

The vote by a holder of an Allowed Claim for or against the Plan does not constitute a waiver or release of any Claims or rights of the Debtors to object to that holder's Allowed Claim, or to bring Causes of Action or recover any preferential, fraudulent, or other voidable transfer of assets, regardless of whether any Claims or Causes of Action of the Debtors or their respective Estates are specifically or generally identified herein.

(h) Information Was Provided by the Debtors and Was Relied Upon by the Debtors' Advisors

Counsel to and other advisors retained by the Debtors have relied upon information provided by the Debtors in connection with the preparation of this Disclosure Statement. Although the Debtors' counsel and restructuring advisor have performed certain limited due diligence in connection with the preparation of this Disclosure Statement, they have not independently verified the information contained herein.

(i) The Potential Exists for Inaccuracies and the Debtors Have No Duty to Update

The Debtors make the statements contained in this Disclosure Statement as of the date hereof, unless otherwise specified herein, and the delivery of this Disclosure Statement after that date does not imply that there has not been a change in the information set forth herein since such date. Although the Debtors have used their reasonable business judgment to ensure the accuracy of all the information provided in this Disclosure Statement and in the Plan, the Debtors nonetheless cannot, and do not, confirm the current accuracy of all statements appearing in this Disclosure Statement. Further, although the Debtors may subsequently update the information in this Disclosure Statement, the Debtors have no affirmative duty to do so unless ordered by the Bankruptcy Court.

(j) No Representations Outside of the Disclosure Statement Are Authorized

No representations concerning or relating to the Debtors, the Chapter 11 Cases, or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. In deciding whether to vote to accept or reject the Plan, you should not rely upon any representations or inducements made to secure your acceptance or rejection of the Plan that are other than as contained in, or included with, this Disclosure Statement, unless otherwise indicated herein. You should promptly report unauthorized representations or inducements to counsel to the Debtors and the U.S. Trustee.

ARTICLE VIII
CONFIRMATION PROCEDURES

The following is a brief summary of the Confirmation process. Holders of Claims and Interests are encouraged to review the relevant provisions of the Bankruptcy Code and to consult with their own advisors.

8.1 The Confirmation Hearing

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court to hold a confirmation hearing upon appropriate notice to all required parties. The Confirmation Hearing is scheduled for May 21, 2024 at 10:00 a.m. **(prevailing Eastern Time)**. The Confirmation Hearing may, however, be continued from time to time without further notice other than an adjournment announced in open court or a notice of adjournment filed with the Bankruptcy Court and served in accordance with the Bankruptcy Rules, without further notice to parties in interest. The Bankruptcy Court, in its discretion and prior to the Confirmation Hearing, may put in place additional procedures governing the Confirmation Hearing. Subject to section 1127 of the Bankruptcy Code and the Restructuring Support Agreement, the Plan may be modified, if necessary, prior to, during, or as a result of the Confirmation Hearing, without further notice to parties in interest.

Additionally, section 1128(b) of the Bankruptcy Code provides that a party in interest may object to Confirmation. The Debtors, in the same motion requesting a date for the Confirmation Hearing, will request that the Bankruptcy Court set a date and time for parties in interest to file objections to Confirmation of the Plan. An objection to Confirmation of the Plan must be filed with the Bankruptcy Court and served on the Debtors and certain other parties in interest in accordance with the applicable order of the Bankruptcy Court so that it is actually received on or before the deadline to file such objections as set forth therein.

8.2 Confirmation Standards

Among the requirements for Confirmation are that the Plan (i) is accepted by all Impaired Classes of Claims and Interests or, if rejected by an Impaired Class, that the Plan "does not discriminate unfairly" and is "fair and equitable" as to such Class; (ii) is feasible; and (iii) is in the "best interests" of holders of Claims and Interests that are Impaired under the Plan.

The following requirements must be satisfied pursuant to section 1129(a) of the Bankruptcy Code before a bankruptcy court may confirm a plan of reorganization. The Debtors believe that the Plan fully complies with all the applicable requirements of section 1129 of the Bankruptcy Code set forth below, other than those pertaining to voting, which has not yet taken place.

1. The Plan complies with the applicable provisions of the Bankruptcy Code.

2. The Debtors (or any other proponent of the Plan) have complied with the applicable provisions of the Bankruptcy Code.

3. The Plan has been proposed in good faith and not by any means forbidden by law.

4. Any payment made or to be made by the Debtors (or any other proponent of the Plan) or by a Person issuing Securities or acquiring property under the Plan, for services or for costs and expenses in or in connection with the Chapter 11 Cases, in connection with the Plan and incident to the Chapter 11 Cases is subject to the approval of the Bankruptcy Court as reasonable.

5. The Debtors (or any other proponent of the Plan) have disclosed or will disclose the identity of the Plan Administrator. The appointment to, or continuance in, such office of such individual is consistent with the interests of creditors and equity security holders and with public policy.

6. The Debtors (or any other proponent of the Plan) have disclosed or will disclose the identity of any insider that will be employed or retained by the Reorganized Debtors and the nature of any compensation for such insider.

7. With respect to each holder within an Impaired Class of Claims or Interests, as applicable, each such holder (i) has accepted the Plan or (ii) will receive or retain under the Plan on account of such Claim or Interest property of a value, as of the Plan Effective Date, that is not less than the amount that such holder would so receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date.

8. With respect to each Class of Claims or Interests, such Class (i) has accepted the Plan or (ii) is Unimpaired under the Plan (subject to the "cram-down" provisions discussed below); *see* Section 8.5 of the Plan ("**Confirmation Without Acceptance by All Impaired Classes**").

9. The Plan provides for treatment of Claims, as applicable, in accordance with the provisions of section 507(a) of the Bankruptcy Code.

10. If a Class of Claims is Impaired under the Plan, at least one Class of Claims that is Impaired under the Plan has accepted the Plan, determined without including any acceptance of the Plan by any insider.

11. Confirmation is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Reorganized Debtors, or any successor to the Debtors under the Plan, unless such liquidation or reorganization is proposed in the Plan.

12. All fees payable under 28 U.S.C. § 1930 have been paid or the Plan provides for the payment of all such fees on the Plan Effective Date.

13. If applicable, the Plan provides for the continuation after its Plan Effective Date of payment of any retiree benefits, as that term is defined in section 1114 of the

Bankruptcy Code, at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of the Bankruptcy Code, at any time prior to Confirmation, for the duration of the period the applicable Debtor has obligated itself to provide such benefits. The Debtors do not believe this requirement is applicable in these Chapter 11 Cases as they do not employ individuals and have no obligations for retiree benefits.

8.3 Best Interests Test / Liquidation Analysis

As described above, section 1129(a)(7) of the Bankruptcy Code requires that each holder of an Impaired Claim or Interest either (i) accept the Plan or (ii) receive or retain under the Plan property of a value, as of the Plan Effective Date, that is not less than the value such holder would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. Based on the unaudited Liquidation Analysis attached hereto as **Exhibit C**, the Debtors believe that, if the Chapter 11 Cases were converted to cases under chapter 7 of the Bankruptcy Code, the value of any distributions would be no greater than the value of distributions under the Plan. As a result, the Debtors believe holders of Claims and Interests in all Impaired Classes will recover at least as much as a result of Confirmation of the Plan as they would recover through a hypothetical chapter 7 liquidation.

THE LIQUIDATION ANALYSIS HAS BEEN PREPARED SOLELY FOR USE IN THIS DISCLOSURE STATEMENT AND DOES NOT REPRESENT VALUES THAT ARE APPROPRIATE FOR ANY OTHER PURPOSE. NOTHING CONTAINED IN THE LIQUIDATION ANALYSIS IS INTENDED TO BE OR CONSTITUTES A CONCESSION BY OR ADMISSION OF ANY DEBTOR FOR ANY PURPOSE.

8.4 Feasibility

Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of a plan of reorganization is not likely to be followed by the liquidation, or the need for further financial reorganization of the debtor, or any successor to the debtor (unless such liquidation or reorganization is proposed in such plan of reorganization). The Plan provides for a potential sale of the Debtors' business and assets, and the Debtors believe that, following the Sale Transaction, sufficient funds would exist to make all payments required by the Plan. Accordingly, the Debtors believe that all Plan obligations will be satisfied without the need for further reorganization of the Debtors. Thus, the Debtors believe that the Plan satisfies the feasibility requirement of section 1129(a)(11) of the Bankruptcy Code.

8.5 Acceptance by Impaired Classes

The Bankruptcy Code requires, as a condition to confirmation, except as described in the following section, that each class of claims or equity interests impaired under a plan, accept the plan. A class that is not "impaired" under a plan is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to such a class is not required.[10]

[10] A class of claims is "impaired" within the meaning of section 1124 of the Bankruptcy Code unless the plan (a) leaves unaltered the legal, equitable and contractual rights to which the claim or equity interest

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two thirds in dollar amount and more than one half in a number of allowed claims in that class, counting only those claims that have actually voted to accept or to reject the plan. Thus, a class of Claims will have voted to accept the Plan only if two thirds in amount and a majority in number of the Allowed Claims in such class that vote on the Plan actually cast their ballots in favor of acceptance.

Section 1126(d) of the Bankruptcy Code defines acceptance of a plan by a class of impaired equity interests as acceptance by holders of at least two thirds in amount of allowed interests in that class, counting only those interests that have actually voted to accept or to reject the plan. Thus, a Class of Interests will have voted to accept the Plan only if two-thirds in amount of the Allowed Interests in such class that vote on the Plan actually cast their ballots in favor of acceptance.

Pursuant to Article III.7 of the Plan, if a Class contains Claims eligible to vote and no holders of Claims eligible to vote in such Class vote to accept or reject the Plan, the holders of such Claims in such Class shall be deemed to have accepted the Plan.

8.6 Confirmation Without Acceptance by All Impaired Classes

The Bankruptcy Code permits confirmation of a plan even if it is not accepted by all impaired classes, as long as (i) the plan otherwise satisfies the requirements for confirmation, (ii) at least one impaired class of claims has accepted the plan without taking into consideration the votes of any insiders in such class and (iii) the plan is "fair and equitable" and does not "discriminate unfairly" as to any impaired class that has not accepted the plan. These so-called "cram down" provisions are set forth in section 1129(b) of the Bankruptcy Code.

(a) No Unfair Discrimination

The no "unfair discrimination" test applies to Classes of Claims and Interests that are of equal priority and are receiving different treatment under the Plan. The test does not require that the treatment be the same or equivalent, but that such treatment be "fair." The Debtors do not believe the Plan discriminates unfairly against any Impaired Class of Claims or Interests. The Debtors believe the Plan and the treatment of all Classes of Claims and Interests under the Plan satisfy the foregoing requirements for nonconsensual confirmation.

(b) Fair and Equitable Test

This test applies to classes of different priority and status (*e.g.*, secured versus unsecured) and includes the general requirement that no class of Claims or Interests receive more than 100% of the amount of the Allowed Claims or Allowed Interests in such class. As to a dissenting class, the test sets different standards depending on the type of Claims or Interests in such class. In order

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entitles the holder of such claim or equity interest or (b) cures any default, reinstates the original terms of such obligation, compensates the holder for certain damages or losses, as applicable, and does not otherwise alter the legal, equitable, or contractual rights to which such claim or equity interest entitles the holder of such claim or equity interest.

to demonstrate that a plan is fair and equitable with respect to a dissenting class, the plan proponent must demonstrate the following:

- Secured Creditors: Each holder of a secured claim (i) retains its liens on the property, to the extent of the allowed amount of its secured claim, and receives deferred Cash payments having a value, as of the Plan Effective Date, of at least the allowed amount of such claim, (ii) has the right to credit bid the amount of its claim if its property is sold and retains its liens on the proceeds of the sale (or if sold, on the proceeds thereof), or (iii) receives the "indubitable equivalent" of its allowed secured claim.

- Unsecured Creditors: Either (i) each holder of an impaired unsecured claim receives or retains under the plan property of a value equal to the amount of its allowed claim or (ii) the holders of claims and interests that are junior to the claims of the non-accepting class will not receive any property under the plan.

- Holders of Interests: Either (i) each holder of an impaired interest will receive or retain under the plan property of a value equal to the greatest of the fixed liquidation preference to which such holder is entitled, the fixed redemption price to which such holder is entitled, or the value of the interest or (ii) the holders of interests that are junior to the non-accepting class will not receive or retain any property under the plan.

The Debtors believe that the Plan and treatment of all Classes of Claims and Interests therein satisfies the "fair and equitable" requirement, notwithstanding the fact that certain Classes are deemed to reject the Plan.

8.7 Alternatives to Confirmation and Consummation of the Plan

The Plan reflects a consensus among the Debtors, the Senior Lenders, the Affiliate Service Providers, certain holders of the Subordinated Note Claims, and Hallé. The Debtors have determined that the Plan is the best alternative available for their successful emergence from chapter 11. If the Plan is not confirmed and consummated, the alternatives to the Plan are (A) continuation of the Chapter 11 Cases, which could lead to the filing of an alternative plan of reorganization or plan of liquidation, (B) a liquidation under chapter 7 of the Bankruptcy Code, or (C) dismissal of the Chapter 11 Cases, leaving holders of Claims and Interests to pursue available non-bankruptcy remedies. These alternatives to the Plan are not likely to benefit holders of Claims and Interests.

(a) Continuation of Chapter 11 Cases

If the Plan is not confirmed, the Debtors (or, if the Debtors' exclusive period in which to file a plan of reorganization has expired, any other party in interest) could attempt to formulate a different plan. Such a plan might involve either a reorganization and continuation of the Debtors' business, or an orderly liquidation of the Debtors' assets. In addition, if the Plan is not confirmed pursuant to the terms of the RSA, the parties thereto have the right to terminate the RSA and all obligations thereunder.

(b) Liquidation under Chapter 7

If no plan can be confirmed, the Chapter 11 Cases may be converted to cases under chapter 7 of the Bankruptcy Code, in which a trustee would be elected or appointed to liquidate the assets of the Debtors for distribution to their creditors in accordance with the priorities established by the Bankruptcy Code. The effect a chapter 7 liquidation would have on the recovery of holders of Allowed Claims and Interests is set forth in the Liquidation Analysis attached hereto as **Exhibit C**.

As demonstrated in the Liquidation Analysis, the Debtors believe that liquidation under Chapter 7 would result in smaller and later distributions to creditors than those provided for in the Plan because of, among other things, the Debtors' primary assets would likely need to be sold on a piecemeal basis in a chapter 7 liquidation, the Debtors' business is worth far more as a going concern than in a piecemeal liquidation, the DIP Lenders and the Senior Lenders have liens on all or substantially all of the Debtors' assets, there would be no money available for other creditors in a liquidation, there are the additional Administrative Claims that would be incurred if the cases were converted to a chapter 7, including the appointment of a trustee and the trustee's retention of professionals.

(c) Dismissal of Chapter 11 Cases

If the Chapter 11 Cases were dismissed, holders of Claims would be free to pursue non-bankruptcy remedies in their attempts to satisfy such Claims against the Debtors. Nevertheless, in that event, holders of Claims would be faced with the costs and difficulties of attempting, each on its own, to recover on its Claims. Additionally, it could result in a race to the courthouse, whereby there may be insufficient assets to distribute assets to creditors on an equitable basis. Accordingly, the Debtors believe that the Plan will enable all creditors to realize the greatest possible recovery on their respective Claims with the least delay.

ARTICLE IX
CERTAIN TAX CONSEQUENCES OF THE PLAN

9.1 Certain U.S. Federal Income Tax Consequences of the Plan

(a) Introduction

The following discussion is a summary of certain U.S. federal income tax consequences of the implementation of the Plan to the Debtors and to certain holders of Claims. The following summary does not address the U.S. federal income tax consequences to holders of Claims who are unimpaired, deemed to accept or reject the Plan, or otherwise entitled to payment in full in cash under the Plan.

The discussion of U.S. federal income tax consequences below is based on the Internal Revenue Code of 1986, as amended (the "**Tax Code**"), regulations promulgated by the United States Department of the Treasury under the Tax Code (the "**Treasury Regulations**"), judicial authorities, published positions of the Internal Revenue Service ("**IRS**"), and other applicable authorities, all as in effect on the date of this Disclosure Statement, and all of which are subject to

change or differing interpretations (possibly with retroactive effect). The U.S. federal income tax consequences of the contemplated transactions are complex and subject to significant uncertainties. The Debtors have not requested an opinion of counsel or a ruling from the IRS with respect to any of the tax aspects of the contemplated transactions, and the discussion below is not binding upon the IRS or the courts. Accordingly, there can be no assurance that the IRS would not take a contrary position as to the U.S. federal income tax consequences described herein.

This summary does not address foreign, state, local, gift, or estate tax consequences of the Plan, nor does it purport to address all aspects of U.S. federal income taxation that may be relevant to a holder in light of its individual circumstances, or to a holder that may be subject to special tax rules (such as persons who are related to any of the Debtors within the meaning of one of various provisions of the Tax Code, broker-dealers, banks, mutual funds, insurance companies, financial institutions, small business investment companies, real estate investment trusts, regulated investment companies, tax-exempt organizations, trusts, governmental authorities or agencies or entities controlled by them, dealers and traders in securities, retirement plans, individual retirement and other tax-deferred accounts, holders that are, or hold Claims through, S corporations, persons whose functional currency is not the U.S. dollar, dealers in foreign currency, holders who hold Claims as part of a straddle, hedge, conversion transaction or other integrated investment, holders using a mark-to-market method of accounting, holders of Claims who are themselves in bankruptcy, holders subject to the alternative minimum tax, or the "Medicare" tax on net investment income and holders who are accrual method taxpayers that report income on an "applicable financial statement"). In addition, this discussion does not address U.S. federal taxes other than income taxes.

Additionally, this discussion assumes that (i) the various debt and other arrangements to which any of the Debtors is a party will be respected for U.S. federal income tax purposes in accordance with their form and (ii) except where otherwise indicated, the Claims are held as "capital assets" (generally, property held for investment) within the meaning of section 1221 of the Tax Code.

The following discussion does not describe any considerations or consequences arising in connection with the formation or ownership of any holding entities or blocker entities formed as part of the Restructuring.

THE FOLLOWING SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON YOUR INDIVIDUAL CIRCUMSTANCES. ALL HOLDERS OF CLAIMS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS FOR THE U.S. FEDERAL, STATE, LOCAL AND OTHER TAX CONSEQUENCES APPLICABLE UNDER THE PLAN.

(b) Consequences to Debtors

In general, a debtor will realize and recognize cancellation of debt ("**COD**") income upon satisfaction of its outstanding indebtedness for total consideration less than the amount of such indebtedness. The amount of COD income generally is the excess of (i) the adjusted issue price of

the indebtedness satisfied over (ii) the sum of (a) the amount of cash paid and (b) the fair market value of any consideration (including equity of a debtor or a party related to such debtor) given in satisfaction, or as part of the discharge, of such indebtedness at the time of the exchange. However, COD income should not arise to the extent that payment of the indebtedness would have given rise to a deduction. Under section 108 of the Tax Code, a taxpayer is not required to include COD income in gross income (i) if the taxpayer is under the jurisdiction of a court in a case under chapter 11 of the Bankruptcy Code and the discharge of debt occurs pursuant to that proceeding, or (ii) to the extent that the taxpayer is insolvent immediately before the discharge. In that case, however, the taxpayer must reduce its tax attributes, such as its net operating losses, general business credits, capital loss carryforwards, and tax basis in assets, by the amount of the COD income so excluded from gross income. Generally, the reduction in the tax basis of assets cannot exceed the excess of the total basis of the debtor's property held immediately after the debt discharge over the total liabilities of the debtor immediately after the discharge. Any attribute reduction will be applied as of the first day following the taxable year in which COD income is recognized.

Furthermore, the Plan provides that no party (including Governmental Units, the Sponsors or any Related Party of any Sponsor) shall have any recourse to the Debtors, the Reorganized Debtors, the Wind-Down Debtor(s), the Senior Lenders, the Senior Notes Agent, the DIP Agent, the DIP Lenders, the holders of the New Reorganized Debtor Equity the holders of the New Notes, or any Related Party of the foregoing, on account of any COD income, whether on a theory of contribution, indemnification, or otherwise, stemming from the Restructuring Transactions.

(c) Consequences to Holders of Certain Claims

For purposes of this discussion, a "U.S. Holder" is a holder of an Allowed Claim that is (i) an individual citizen or resident of the United States for U.S. federal income tax purposes; (ii) a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created or organized under the laws of the United States, any state thereof, or the District of Columbia; (iii) an estate the income of which is subject to U.S. federal income taxation regardless of the source of such income; or (iv) a trust (a) if a court within the United States is able to exercise primary jurisdiction over the trust's administration and one or more United States persons (as defined in section 7701(a)(30) of the Tax Code) have authority to control all substantial decisions of the trust, or (b) that has a valid election in effect under applicable Treasury Regulations to be treated as a United States person. A "Non-U.S. Holder" is a holder of an Allowed Claim that is not a U.S. Holder.

If a partnership (or other entity or arrangement treated as a partnership or other pass-through entity for U.S. federal income tax purposes) is a Holder of a Claim, the tax treatment of a partner (or other beneficial owner) of such partnership (or other pass-through entity or arrangement) generally will depend upon the status of the partner (or other beneficial owner) and the activities of the partner (or other beneficial owner) and the entity. Partners (or other beneficial owners) of partnerships (or other pass-through entities or arrangements) that are Holders of Claims should consult their respective tax advisors regarding the U.S. federal income tax consequences of the Plan.

(1) U.S. Holders of Senior Notes Claims, Subordinated Notes Claims and General Unsecured Claims—Recognition of Gain or Loss

Pursuant to the Plan:

- Holders of Allowed General Unsecured Claims against Burgess will receive, in final satisfaction of their Claims, 100% of their Allowed Claims unless the Pro Forma Owners exercise their option to sever Burgess from the Plan.

- Holders of Allowed General Unsecured Claims and Subordinated Notes Claims against Berlin will receive no distribution on account of their Allowed Claims.

- Holders of Senior Notes Claims are entitled to receive consideration on account of their Senior Notes Claims if the value of the Facility is in excess of the DIP Claims.

Each U.S. Holder of Claims against the Debtors generally will recognize gain or loss in an amount equal to the difference, if any, between (i) the amount of consideration received in respect of the Claims and (ii) the Holder's adjusted tax basis in the Claims exchanged therefor.

Holders are urged to consult their own tax advisors regarding the treatment of additional post-Plan Effective Date distributions, including the potential application of the installment sale rules.

(2) Character of Gain or Loss

Where gain or loss is recognized by a U.S. Holder, the character of such gain or loss as long-term or short-term capital gain or loss or as ordinary income or loss will be determined by a number of factors, including the tax status of such Holder, whether the Claim constitutes a capital asset in the hands of such Holder and how long it has been held, whether the Claim was acquired at a market discount, and whether and to what extent the Holder previously claimed a bad debt deduction with respect to the Claim. In general, any gain or loss generally should be long-term capital gain or loss if the U.S. Holder held the Claim as a capital asset and such Holder's holding period in the Claim is more than one year at the time of the relevant exchange. A reduced tax rate on long-term capital gain may apply to non-corporate U.S. Holders. The deductibility of capital losses is subject to significant limitations.

A U.S. Holder that purchased its Claims from a prior holder at a "market discount" (relative to the principal amount of the Claims at the time of acquisition) may be subject to the market discount rules of the Tax Code. In general, a debt instrument is considered to have been acquired with market discount if the holder's adjusted tax basis in the debt instrument is less than (i) its "stated redemption price at maturity" (which generally would be equal to the stated principal amount if all stated interest was required to be paid in cash or property at least annually) or (ii) in the case of a debt instrument issued with original issue discount ("**OID**"), its adjusted issue price, in each case, by more than a de minimis amount. Under these rules, any gain realized on the exchange of Claims (other than in respect of accrued but unpaid interest or OID, if any) generally will be treated as ordinary income to

the extent of the market discount accrued (on a straight line basis or, at the election of the Holder, on a constant yield basis) during the Holder's period of ownership, unless such Holder elected to include the market discount in income as it accrued. If a U.S. Holder of a Claim did not elect to include market discount in income as it accrued and, thus, under the market discount rules, was required to defer all or a portion of any deductions for interest on debt incurred or maintained to purchase or carry its Claim, such deferred amounts would become deductible at the time of the exchange.

(d) Information Reporting and Backup Withholding

All distributions to holders of Allowed Claims under the Plan are subject to any applicable tax withholding and information reporting requirements. Under U.S. federal income tax law, interest, dividends and other reportable payments may, under certain circumstances, be subject to "backup withholding" (currently at a rate of 24%) if a recipient of those payments fails to furnish to the payor certain identifying information, fails properly to report interest or dividends, and, under certain circumstances, fails to provide a certification that the recipient is not subject to backup withholding. Backup withholding is not an additional tax. Any amounts deducted and withheld generally should be allowed as a credit against that recipient's U.S. federal income tax, provided that appropriate proof is timely provided under rules established by the IRS. Furthermore, certain penalties may be imposed by the IRS on a recipient of payments who is required to supply information but who does not do so in the proper manner. Backup withholding generally should not apply with respect to payments made to certain exempt recipients, such as certain corporations and financial institutions. Information may also be required to be provided to the IRS concerning payments, unless an exemption applies. Holders are urged to consult their own tax advisors regarding their qualification for exemption from backup withholding and information reporting and the procedures for obtaining such an exemption.

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

(e) Foreign Account Tax Compliance Act

Under the Foreign Account Tax Compliance Act ("**FATCA**"), foreign financial institutions and certain other foreign entities must report certain information with respect to their U.S. account holders and investors or be subject to withholding on the receipt of "withholdable payments." For this purpose, "withholdable payments" generally are U.S.-source payments of fixed or determinable, annual, or periodical income. Additionally, although FATCA withholding may also apply to gross proceeds of a disposition of property of a type that can produce U.S.-source interest or dividends, proposed Treasury Regulations suspend withholding on such gross proceeds payments indefinitely. FATCA withholding will apply even if the applicable payment would not otherwise be subject to U.S. federal nonresident withholding tax.

THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. THE FOREGOING SUMMARY DOES NOT DISCUSS ALL ASPECTS OF U.S.

FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR HOLDER IN LIGHT OF SUCH HOLDER'S CIRCUMSTANCES AND INCOME TAX SITUATION. ALL HOLDERS OF CLAIMS AND INTERESTS SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL, OR FOREIGN TAX LAWS, AND OF ANY CHANGE IN APPLICABLE TAX LAWS.

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CONCLUSION AND RECOMMENDATION

The Debtors believe that Confirmation and Consummation of the Plan is preferable to all other alternatives. Consequently, the Debtors urge all holders of Claims entitled to vote to accept the Plan and to evidence such acceptance by returning their ballots so they will be received **by the Solicitation Agent no later than [_____]:00 p.m. (prevailing Eastern Time) on [_____], 2024.**

Dated this March 11, 2024

/s/ Dean Vomero
Dean Vomero
Chief Restructuring Officer

EXHIBIT A

Joint Chapter 11 Plan for Burgess BioPower, LLC and Berlin Station, LLC, available at Docket Entry No. 250.

EXHIBIT B

Amended Restructuring Support Agreement, available at Docket Entry No. 171

EXHIBIT C

Burgess BioPower LLC and Berlin Station LLC Liquidation Analysis

Burgess BioPower LLC and Berlin Station LLC
Liquidation Analysis

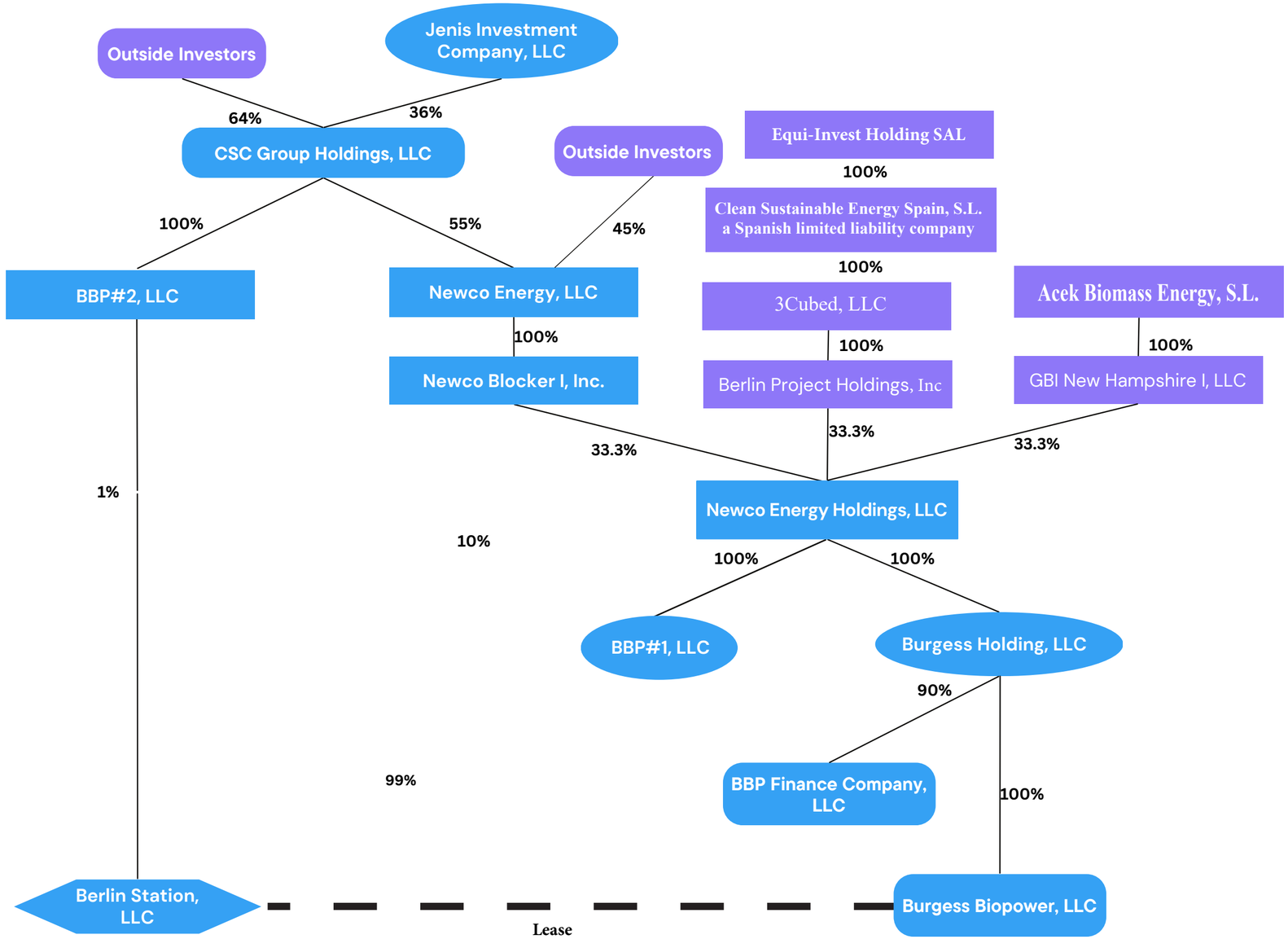
(USD 000's)

Chapter 7: Liquidation

	Potential Recovery					
Liquidation Analysis	Recovery Estimate (%)			Recovery Estimate ($)		
Estimated January Balance Sheet	Low	Midpoint	High	Low	Midpoint	High
Current Assets						
Unrestricted Cash	100%	100%	100%	$ 36	$ 36	$ 36
Restricted Cash	100%	100%	100%	3,508	3,508	3,508
Accounts Receivable	0%	0%	0%			
RECS Receivable				6,200	6,200	6,200
Wood Inventory	0%	0%	0%	-	-	-
Spare Parts Inventory	0%	5%	10%	-	2	4
Prepaid Expenses	50%	63%	75%	-	-	-
Fixed & Other Assets						
Land & Buildings	10%	15%	20%	2,743	4,115	5,487
Machinery & Equipment	10%	15%	20%	2,688	4,033	5,377
Furniture & Fixtures	1%	11%	20%	-	-	-
Construction in Progress	0%	0%	0%	-	-	-
Deposits	100%	100%	100%	10	10	10
Total Assets and Recovery Estimate	26%	31%	36%	$ 15,185	$ 17,908	$ 20,630
Liquidation Adjustments						
Liquidation Expenses				$ (7,011)	$ (7,910)	$ (8,808)
Net Liquidation Proceeds Available for Distribution				$ 8,174	$ 9,998	$ 11,822

EXHIBT D

Corporate Organization Chart for Debtors, Affiliates and Related Entities


Outside Investors
Jenis Investment Company, LLC
64%
36%
CSC Group Holdings, LLC
Outside Investors
Equi-Invest Holding SAL
100%
Clean Sustainable Energy Spain, S.L. a Spanish limited liability company
100%
100%
55%
45%
BBP#2, LLC
Newco Energy, LLC
3Cubed, LLC
Acek Biomass Energy, S.L.
100%
100%
100%
Newco Blocker I, Inc.
Berlin Project Holdings, Inc
GBI New Hampshire I, LLC
33.3%
33.3%
33.3%
1%
Newco Energy Holdings, LLC
10%
100%
100%
BBP#1, LLC
Burgess Holding, LLC
90%
99%
BBP Finance Company, LLC
100%
Berlin Station, LLC
Burgess Biopower, LLC
Lease