

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

In re

BURGESS BIOPOWER, LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 24-10235 (LSS)

(Jointly Administered)

DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE DEBTORS TO RETAIN APPLIED BUSINESS STRATEGY, LLC TO PROVIDE A CHIEF RESTRUCTURING OFFICER FOR THE DEBTORS; (II) DESIGNATING DEAN VOMERO AS THE DEBTORS' CHIEF RESTRUCTURING OFFICER, NUNC PRO TUNC TO THE PETITION DATE; AND (III) GRANTING RELATED RELIEF

Burgess BioPower, LLC (“Burgess”) and Berlin Station, LLC (“Berlin”), the debtors and debtors in possession in the above captioned cases (collectively, the “Debtors”) hereby submit this motion (the “Motion”) seeking entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), (i) authorizing the Debtors to retain Applied Business Strategy, LLC (“ABS”) to provide a Chief Restructuring Officer (“CRO”) for the Debtors; (ii) designating Dean Vomero as the Debtors’ CRO, *nunc pro tunc* to the Petition Date (as defined herein); and (iii) granting related relief. In support of the Motion, the Debtors rely upon, incorporate by reference and submit the *Declaration of Dean Vomero In Support of the Debtors’ Motion for Entry of an Order (I) Authorizing the Debtors to Retain Applied Business Strategy, LLC to Provide a Chief Restructuring Officer for the Debtors; (II) Designating Dean Vomero as the Debtors’ Chief Restructuring Office, Nunc Pro Tunc to the Petition Date; and (III) Granting Related Relief* (the

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.

“Vomero Declaration”) attached hereto as **Exhibit B** In further support of the Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider and determine the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are sections 105(a) and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “Bankruptcy Code”), Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 9013-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

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

BACKGROUND

4. On February 9, 2024 (the “Petition Date”), the Debtors commenced the above-captioned chapter 11 cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the Court.

5. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession, pursuant to Bankruptcy Code sections 1107(a) and 1108. As

of the date of the Motion, no trustee, examiner or statutory committee has been appointed in the Chapter 11 Cases.

6. Additional information regarding the circumstances leading to the commencement of the Chapter 11 Cases and information regarding the Debtors' business and capital structure is set forth in detail in the *Declaration of Dean Vomero in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* [D.I. 4] (the "First Day Declaration"), filed on the Petition Date and incorporated herein by reference.²

RELIEF REQUESTED

7. By this Motion, the Debtors request entry of the Proposed Order (i) authorizing the Debtors to retain ABS, pursuant to the terms and conditions in the Engagement Agreement between the Debtors and ABS, dated October 27, 2023 (the "Engagement Agreement"), a copy of which is attached hereto as **Exhibit C**³ and incorporated by reference; (ii) designating Mr. Vomero to serve as the Debtors' CRO, in each instance *nunc pro tunc* to the Petition Date; and (iii) granting related relief. For the reasons set forth herein, the relief requested is in the best interest of the Debtors, the Debtors' estates, creditors, and other stakeholders, and therefore should be granted.

BASIS FOR RELIEF

A. Qualifications of ABS and Mr. Vomero

8. Pursuant to the terms of the Engagement Agreement, Dean Vomero will serve as CRO to assist the Debtors with their restructuring efforts and these Chapter 11 Cases, as further

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

³ The Engagement Agreement was amended in November 2023 to revise the last sentence of Paragraph 3 by deleting the period (".") and inserting the following: provided however, that, ABS acknowledges that such Billing Statements may be paid in accordance with the Company's payment processes required by the Company's lenders as in existence on the date hereof and that the legal entity paying its invoices may differ based on said requirements of the Company's lenders. Separately, the Fee Cap was increased in January 2024 by \$5,000.00.

described below. ABS will provide additional employees (collectively, the “Additional Personnel,” and, together with the CRO, the “Engagement Personnel”), as necessary to assist the CRO in the execution of the duties set forth more fully in the Engagement Agreement. The Engagement Personnel will perform all management services under the supervision of the Debtors’ board of directors.

9. ABS is well qualified to provide a CRO to the Debtors given their extensive knowledge and expertise with respect to chapter 11 proceedings. As set forth in the Vomero Declaration, Mr. Vomero and ABS have had considerable experience in the operation and financial management of businesses in the context of reorganization and insolvency proceedings. The Debtors respectfully submit that the engagement of ABS, with its considerable experience in providing the full range of services needed by underperforming and troubled companies, including those in Chapter 11, is necessary and appropriate in this case.

10. Mr. Vomero is a founding Member and Managing Director of ABS. He has over thirty (30) years of executive management, financial advisory, forecasting, strategy and business valuation experience. His experience spans several industries including consumer products, food and beverage, financial services, automotive, retail, metals, energy, and general manufacturing. Throughout his career, Mr. Vomero has served as Chief Restructuring Officer in numerous out-of-court restructurings and chapter 11 cases.

B. Scope of Services

11. The parties have entered into the Engagement Agreement, which governs the relationship between ABS and the Debtors. The terms and conditions of the Engagement Agreement were heavily negotiated, at arm’s length and reflect the parties’ mutual agreement as to the substantial efforts and resources that will be required in this engagement. Under the

Engagement Agreement, the Debtors have requested that ABS provide interim management and restructuring services to the Debtors (the “Services”). These Services include, but are not limited to, the following:

- a) Assist in preparation of short-term liquidity projections, including 13-week cash flows;
- b) Assist or lead in negotiations with secured creditors, customers, suppliers or other creditors;
- c) Assist in formulation of Chapter 11 plan, and if needed, assist with section 363 process, including coordination with the Debtors’ investment bankers;
- d) Assist in preparing information and analysis required for any restructuring; and
- e) Prepare and review business plans and detailed liquidity projections/budget, if needed.
- f) Subsequent to its retention has been requested to support the Chapter 11 filing by supporting various filings and associated requirements.

12. It is necessary that the Debtors employ ABS to render the foregoing Services. The Debtors believe that the Services will not duplicate the services that any other professional will be providing to the Debtors in these Chapter 11 Cases. Specifically, ABS will carry out a unique function and will use reasonable efforts to coordinate with the Debtors and the other professionals retained in these Chapter 11 Cases to avoid unnecessary duplication of services.

C. Compensation

13. As set forth with greater specificity in the Engagement Agreement, ABS will charge the Debtors on an hourly basis at the rates outlined below:

Position	Hourly Rates
Dean Vomero	\$350
Additional Personnel	\$300

14. Total professional fees billed by the Engagement Personnel will not exceed \$65,000 (“Fee Cap”)⁴, per month, adjusted for Carryforward or Carryback amounts as follows:

- a) Carryforward: If total professional fees in any calendar month exceed the Fee Cap, the excess can be carried forward to the following month such that total professional fees in the following month do not exceed the Fee Cap.
- b) Carryback: If total professional fees in any calendar month are less than the Fee Cap, the difference will increase the Fee Cap in the following month by such difference.

15. It is ABS’s policy to charge its clients in all areas of practice for all other out-of-pocket expenses incurred in connection with the client’s engagement. The expenses charged to clients include, but are not limited to, travel related expenses and research, if necessary.

16. Prior to the commencement of the Chapter 11 Cases and upon the execution of the Engagement Agreement, the Debtors paid ABS a retainer of \$70,000 (the “Retainer”). Immediately prior to the petition, ABS applied Professional Fees incurred which reduced the Retainer balance to \$33,845.00. As of the Petition Date, the Debtors do not owe ABS any amounts for pre-petition services rendered or for out-of-pocket expenses incurred. During the one year prior to the Petition Date (the period of February 9, 2023 to the Petition Date), ABS received payments, inclusive of the Retainer, for Professional Fees and out of pocket expenses totaling \$282,990.62. ABS intends to seek permission from the Court to apply the Retainer to any outstanding invoices at the conclusion of its engagement.

17. As set forth in the Vomero Declaration, the compensation structure described in the Engagement Agreement is reasonable, and ABS believes it is comparable to those generally charged by advisory firms of similar stature for comparable engagements, both in and out of court.

⁴ The Fee Cap was increased by \$5,000.00 for January 2024.

18. The hours worked, the results achieved, and the ultimate benefit to the Debtors of the work performed by ABS in connection with its engagement may vary, and the Debtors and ABS have taken this into account in setting the above fees.

19. In addition, given the numerous issues that may be required to address during its engagement, ABS's commitment of time and effort necessary to address such issues, and ABS's foregoing of other opportunities during its engagement, the Debtors believe that the fee arrangements of the Engagement Agreement are reasonable under the standards set forth in Bankruptcy Code section 328(a).

20. As set forth in the Vomero Declaration, no promises have been received by ABS or by any member or associate thereof as to compensation in connection with these Chapter 11 Cases. Furthermore, ABS has not shared or agreed to share any of its compensation from the Debtors with any other persons, other than employees of ABS.

D. Fee and Reporting Requirements

21. Upon Court approval of the relief requested herein, Mr. Vomero will be designated as the Debtors' CRO pursuant to section 363 of the Bankruptcy Code. Because Mr. Vomero is not being employed as a professional under section 327 of the Bankruptcy Code, Mr. Vomero will not be required to submit fee applications pursuant to sections 330 and 331 of the Bankruptcy Code. Instead, Mr. Vomero will submit monthly invoices to the Debtors for payment. In addition, Mr. Vomero will file with the Court and serve copies on (a) the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn.: Jane Leamy (jane.m.leamy@usdoj.gov) and (b) counsel to any statutory committee appointed in the Chapter 11 Cases (collectively, the "Notice Parties") a report on staffing (the "Staffing Report") by the fifteenth (15th) day of each month for the previous month's work, which report shall include the

names, hours worked, and requested compensation by the CRO and any Additional Personnel involved in the Chapter 11 Cases for the month and a summary of the reimbursable expenses incurred for the relevant period. The Notice Parties shall have fourteen (14) days after the date a Staffing Report is served on the Notice Parties to object to such Staffing Report, which will be subject to review by the Court in the event an objection is filed. ABS will file its first staffing report on April 15, 2024, for the period from the Petition Date through and including April 15, 2024.

E. Indemnification

22. The Engagement Letter contains indemnification language with respect to ABS's services including, without limitation, an agreement by the Debtor to indemnify, and hold harmless Mr. Vomero and ABS from any and all claims whatsoever that may be made against any or all of them, arising from the performance of their duties in the Engagement Agreement and as modified from time to time in the future. Notwithstanding such language, however, and as set forth in the Proposed Order, for purposes of the Chapter 11 Cases, the Debtors will be indemnifying only those persons serving as executive officers on the same terms as provided to the Debtors' other officers and directors under the corporate bylaws and applicable state law. For the avoidance of doubt, there shall be no other indemnification of ABS. In addition, the Debtors will take appropriate action to add Mr. Vomero as a covered party to the Debtors' directors and officers insurance, and all other relevant active insurance policies carried by the Debtors or to obtain a separate directors and officers' insurance policy covering Mr. Vomero.

23. The Debtors believe that the indemnification provisions contained in the Engagement Agreement, as modified herein and by the Proposed Order (the "Indemnification Provisions"), are customary and reasonable for restructuring and financial advisory services, both

out-of-court and in chapter 11 cases, and reflect the qualifications and limitations on indemnification provisions that are customary in this district and in other jurisdictions. Moreover, the terms and conditions of the Indemnification Provisions were negotiated by the Debtors and ABS at arm's-length and in good faith. Accordingly, as part of this Motion, the Debtors request that this Court approve the Indemnification Provisions, as set forth in the Engagement Agreement and as expressly modified herein and by the Proposed Order.

ABS'S DISINTERESTEDNESS

24. To the best of the Debtors' knowledge, information and belief, and based on the Vomero Declaration: (a) ABS holds no interest materially adverse to the Debtors, their significant creditors, and equity interest holders for the matters for which ABS is to be employed; and (b) ABS has no connection to the Debtors, their significant creditors, equity interest holders or related parties herein except as disclosed in the Vomero Declaration. Moreover, the retention and employment of ABS is necessary and in the best interests of the Debtors, their estate, creditors, and equity interest holders.

25. Further, to the best of the Debtors' knowledge, information and belief, and based on the Vomero Declaration, none of ABS's past or current engagements would or do appear to create an interest materially adverse to the interests of the Debtors, their creditors, or equity interest holders in these Chapter 11 Cases.

26. Based on the Vomero Declaration, the Debtors submit that ABS is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code. The Debtors have been informed that ABS will conduct an ongoing review of its files to ensure that no disqualifying circumstances arise. If any new relevant facts or relationships are discovered, ABS will supplement its disclosure to the Court.

27. The Debtors believe that ABS is qualified to act as CRO to the Debtors, that the terms and conditions of the Engagement Agreement are reasonable and, therefore, that the Court should authorize the retention of ABS and approve the Engagement Agreement.

BASIS FOR RELIEF

28. Section 363(b)(1) permits a debtor to, after notice and a hearing, use property of the estate other than in the ordinary course of business. “In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions.” *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (Bankr. D. Del. 1999).

29. Entry into the Engagement Agreement and the retention of ABS to provide Mr. Vomero as CRO, upon the terms set forth in the Engagement Letter, this Motion, and the Proposed Order, would enable the Debtors to most efficiently administer the Chapter 11 Cases, address issues arising in chapter 11 and preserve the value of the estates. Indeed, the Debtors require the assistance of qualified and experienced personnel to assist in these matters. Thus, the Debtors believe it would be in their best interest and in the best interests of their estate, creditors, and other parties-in-interest for the Court to grant the relief requested herein, with such relief being deemed effective as of the Petition Date.

30. The Debtors also submit that the retention of ABS and the designation of Mr. Vomero to serve as CRO is a sound exercise of the Debtors’ business judgment. As discussed herein, Mr. Vomero and ABS have had considerable experience in the operation and financial management of businesses in the context of reorganization and insolvency proceedings. In light of the foregoing, the Debtors believe that the relief requested in this Motion is appropriate and a sound exercise of the Debtors’ business judgment.

31. The Debtors further request approval of ABS *nunc pro tunc* to the Petition Date. Such relief is warranted by the circumstances of the Chapter 11 Cases. The United States Court of Appeals for the Third Circuit has identified “time pressure to begin service” and absence of prejudice as factors favoring retention on a *nunc pro tunc* basis. *See Matter of Arkansas Co.*, 798 F.2d 645, 650 (3d Cir. 1986). The complexity and speed that have characterized the Chapter 11 Cases has necessitated that the Debtors, ABS, and the Debtors’ other professionals focus their immediate attention on time-sensitive matters and promptly devote substantial resources to the affairs of the Debtors pending submission and approval of the Motion.

NOTICE AND NO PRIOR REQUEST

32. Notice of the Motion will be provided to (a) the Office of the United States Trustee for the District of Delaware (Attn: Jane M. Leamy); (b) the holders of the twenty (20) largest unsecured claims against each Debtor; (c) counsel to UMB Bank, National Association in its capacity as Collateral Agent, Locke Lord LLP; (d) counsel to the DIP Lenders and the Senior Secured Noteholders, Greenberg Traurig, LLP; (e) Berlin Biopower Investment Fund, LLC, with a copy to Murray Plumb & Murray; (f) Greenline CDF Subfund XVIII LLC, with a copy to Kutak Rock LLP, U.S. Bancorp Community Development Corporation and Leverage Law Group, LLC; (g) Public Service of New Hampshire d/b/a Eversource Energy, with a copy to Hunton Andrews Kurth LLP; (h) the United States Attorney’s Office for the District of Delaware; (i) the United States Attorney’s Office for the District of New Hampshire; (j) the United States Environmental Protection Agency; (k) the Nuclear Regulatory Commission; (l) the United States Department of Energy; (m) the Federal Energy Regulatory Commission; (n) New Hampshire Department of Environmental Services; (o) New Hampshire Public Utilities Commission; (p) New Hampshire Site Evaluation Committee; (q) New Hampshire Department of Energy; (r) City of Berlin; (s) ISO

New England, Inc.; (t) the United States Securities and Exchange Commission; (u) the Internal Revenue Service; and (v) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice is required.

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

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto (i) authorizing the Debtors to retain ABS to provide a CRO for the Debtors, (ii) designating Dean Vomero as the Debtors' CRO, *nunc pro tunc* to the Petition Date, and (ii) granting such other and further relief as the Court deems just and proper.

Dated: March 11, 2024
Wilmington, Delaware

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

-and-

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

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

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

-and-

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

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

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

In re

BURGESS BIOPOWER, LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 24-10235 (LSS)

(Jointly Administered)

Hearing Date: April 15, 2024 at 10:00 a.m. (E.T)

Objection Deadline: March 25, 2024 at 4:00 p.m. (ET)

NOTICE OF MOTION

TO: (A) THE UNITED STATES TRUSTEE FOR THE DISTRICT OF DELAWARE; (B) THE HOLDERS OF THE TWENTY (20) LARGEST UNSECURED CLAIMS AGAINST EACH DEBTOR; (C) COUNSEL TO UMB BANK, NATIONAL ASSOCIATION IN ITS CAPACITY AS COLLATERAL AGENT, LOCKE LORD LLP; (D) COUNSEL TO THE DIP LENDERS AND THE SENIOR SECURED NOTEHOLDERS, GREENBERG TRAURIG, LLP; (E) BERLIN BIOPOWER INVESTMENT FUND, LLC, WITH A COPY TO MURRAY PLUMB & MURRAY; (F) GREENLINE CDF SUBFUND XVIII LLC, WITH A COPY TO KUTAK ROCK LLP, U.S. BANCORP COMMUNITY DEVELOPMENT CORPORATION AND LEVERAGE LAW GROUP, LLC; (G) PUBLIC SERVICE OF NEW HAMPSHIRE D/B/A EVERSOURCE ENERGY, WITH A COPY TO HUNTON ANDREWS KURTH LLP; (H) THE UNITED STATES ATTORNEY’S OFFICE FOR THE DISTRICT OF DELAWARE; (I) THE UNITED STATES ATTORNEY’S OFFICE FOR THE DISTRICT OF NEW HAMPSHIRE; (J) THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; (K) THE NUCLEAR REGULATORY COMMISSION; (L) THE UNITED STATES DEPARTMENT OF ENERGY; (M) THE FEDERAL ENERGY REGULATORY COMMISSION; (N) NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES; (O) NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION; (P) NEW HAMPSHIRE SITE EVALUATION COMMITTEE; (Q) NEW HAMPSHIRE DEPARTMENT OF ENERGY; (R) CITY OF BERLIN; (S) ISO NEW ENGLAND, INC.; (T) THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION; (U) THE INTERNAL REVENUE SERVICE; AND (V) ANY PARTY THAT HAS REQUESTED NOTICE PURSUANT TO BANKRUPTCY RULE 2002.

PLEASE TAKE NOTICE that the above captioned debtors and debtors in possession (the “Debtors”) in these chapter 11 cases (the “Chapter 11 Cases”) filed the *Debtors’ Motion for Entry of an Order (I) Authorizing the Debtors to Retain Applied Business Strategy, LLC to Provide a Chief Restructuring Officer for the Debtors; (II) Designating Dean Vomero as the Debtors’ Chief Restructuring Officer, Nunc Pro tunc to the Petition Date; and (III) Granting Related Relief* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

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.

PLEASE TAKE FURTHER NOTICE that any objections or responses to the relief requested in the Motion must be filed on or before **March 25, 2024 at 4:00 p.m. (ET)** (the “Objection Deadline”) with the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801 and served upon, so as to be actually received by, the undersigned counsel for the Debtors on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE that a hearing to consider the Motion will be held on **April 15, 2024 at 10:00 a.m. (ET)** before the Honorable Laurie Selber Silverstein in the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, Wilmington, Delaware 19801 (the “Hearing”).

PLEASE TAKE FURTHER NOTICE that a copy of the Motion and all other pleadings filed in these Chapter 11 Cases are available, free of charge, from the website of the Court-appointed claims agent, Epiq: <https://dm.epiq11.com/case/burgess/info>.

PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS OR RESPONSES TO THE MOTION ARE TIMELY FILED, SERVED, AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: March 11, 2024

/s/ Katharina Earle

Chantelle D. McClamb (No. 5978)

Katharina Earle (No. 6348)

GIBBONS P.C.

300 Delaware Avenue, Suite 1015

Wilmington, Delaware 19801

Telephone: (302) 518-6300

E-mail: cmclamb@gibbonslaw.com

kearle@gibbonslaw.com

-and-

Robert K. Malone (admitted *pro hac vice*)

Kyle P. McEvilly (admitted *pro hac vice*)

GIBBONS P.C.

One Gateway Center

Newark, New Jersey 07102

Telephone: (973) 596-4500

E-mail: rmalone@gibbonslaw.com

kmcevilly@gibbonslaw.com

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

Alison D. Bauer (admitted *pro hac vice*)

William F. Gray, Jr. (admitted *pro hac vice*)

Jiun-Wen Bob Teoh (admitted *pro hac vice*)

FOLEY HOAG LLP

1301 Avenue of the Americas, 25th Floor

New York, New York 10019

Telephone: (212) 812-0400

Email: abauer@foleyhoag.com

wgray@foleyhoag.com

jteoh@foleyhoag.com

-and-

Kenneth S. Leonetti (admitted *pro hac vice*)

Christian Garcia (admitted *pro hac vice*)

FOLEY HOAG LLP

155 Seaport Boulevard

Boston, Massachusetts 02210

Telephone: (617) 832-1000

Email: ksl@foleyhoag.com

cgarcia@foleyhoag.com

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

Exhibit A
Proposed Order

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

In re

BURGESS BIOPOWER, LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 24-10235 (LSS)
(Jointly Administered)

**ORDER (I) AUTHORIZING THE DEBTORS TO RETAIN APPLIED BUSINESS
STRATEGY, LLC TO PROVIDE A CHIEF RESTRUCTURING OFFICER FOR THE
DEBTORS; (II) DESIGNATING DEAN VOMERO AS THE DEBTORS' CHIEF
RESTRUCTURING OFFICER, *NUNC PRO TUNC* TO THE PETITION DATE;
AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors an debtors in possession (together, the “Debtors”) for entry of an order (this “Order”) (i) authorizing the Debtors to retain and employ Applied Business Strategy, LLC (“ABS”) to provide a Chief Restructuring Officer (“CRO”) to the Debtors; (ii) designating Dean Vomero as the Debtors’ CRO, *nunc pro tunc* to the Petition Date, pursuant to sections 105(a) and 363(b) of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Rule 9013-1 of the Local Rules for the District of Delaware (the “Local Rules”); and (iii) granting related relief; and the Court having reviewed the Motion, the *Declaration of Dean Vomero in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* (“First Day Declaration”), the *Declaration of Dean Vomero In Support of the Debtors’ Motion for Entry of an Order (I) Authorizing the Employment and Retention of Applied Business Strategy, LLC to Provide Interim Management and Restructuring Services and (II) Designating*

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.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

Dean Vomero as the Debtors' Chief Restructuring Officer, Nunc Pro Tunc to the Petition Date (the "Vomero Declaration"); and the Court having found that: (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (c) venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; (d) the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and (e) the Debtors provided adequate and appropriate notice of the Motion under the circumstances and that no other or further notice is required; and the Court having reviewed the Motion and having heard statements in support of the Motion at a hearing held before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and any objections to the relief requested herein having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor; it is hereby

ORDERED THAT:

1. The Motion is APPROVED as set forth herein.
2. The Debtors are authorized to retain and employ ABS to provide a CRO to the Debtors, and Dean Vomero is designated as the Debtors' CRO, *nunc pro tunc* to the Petition Date, pursuant to Bankruptcy Code sections 105(a) and 363(b), and the Motion, the Engagement Agreement (attached to the Motion) and the Vomero Declaration.
3. ABS will file with the Court and serve copies on the Notice Parties by the fifteenth (15th) day of each month for the previous month's work, which report shall include the names, hours worked, and requested compensation by the CRO and any Additional Personnel involved in

the Chapter 11 Cases for the month and a summary of the reimbursable expenses incurred for the relevant period. The Notice Parties shall have fourteen (14) days after the date a Staffing Report is served on the Notice Parties to object to such Staffing Report, which will be subject to review by the Court in the event an objection is filed.

4. The Retainer held by ABS may be held as security through these Chapter 11 Cases securing final payment of ABS's invoices for services rendered and expenses incurred, and the advance will be returned upon payment in full of ABS's outstanding invoices or applied to any outstanding invoices at the conclusion of the engagement.

5. All fees and expenses incurred by ABS that are approved by the Court shall be treated as administrative expenses under Bankruptcy Code section 503.

6. Debtors are authorized and empowered to take such actions as may be necessary and appropriate to implement the terms of this Order.

7. If there is any inconsistency between the terms of the Motion, the Vomero Declaration, and this Order, this Order shall govern.

8. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

9. This Court shall retain jurisdiction with respect to all matters related to the interpretation or implementation of this Order.

Exhibit B

Vomero Declaration

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

In re

BURGESS BIOPOWER, LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 24-10235 (LSS)
(Jointly Administered)

**DECLARATION OF DEAN VOMERO IN SUPPORT OF DEBTORS' MOTION FOR
ENTRY OF AN ORDER (I) AUTHORIZING THE DEBTORS TO RETAIN APPLIED
BUSINESS STRATEGY, LLC TO PROVIDE A CHIEF RESTRUCTURING OFFICER
FOR THE DEBTORS; (II) DESIGNATING DEAN VOMERO AS THE DEBTORS'
CHIEF RESTRUCTURING OFFICER, *NUNC PRO TUNC* TO THE PETITION DATE;
AND (III) GRANTING RELATED RELIEF**

I, Dean Vomero, hereby declare under penalty of perjury under the laws of the United States of America that, to the best of my knowledge and belief, and after reasonable inquiry, the following is true and correct:

1. I am a Certified Public Accountant (inactive status), licensed in the State of Ohio. I am also a Certified Professional Forecaster as designated by the Institute of Business Forecasting. I am a founding Member and Managing Director in the firm of Applied Business Strategy LLC ("ABS"), which maintains offices at 1100 Superior Avenue E., Suite 1750, Cleveland, OH 44114, among other places.

2. I make this Declaration in support of the motion (the "Motion")² of the Debtors, filed contemporaneously herewith, for the entry of an order authorizing the Debtors to retain ABS to provide a Chief Restructuring Officer ("CRO") to the Debtors and designating me as the Debtors' CRO, *nunc pro tunc* to the Petition Date.

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.

² All capitalized terms used but otherwise not defined herein shall have the same meanings set forth in the Motion.

3. Except as otherwise noted, I have personal knowledge of the matters set forth herein and, if called as a witness, I would testify thereto. Certain of the disclosures herein, however, relate to matters within the personal knowledge of other professionals at ABS and are based on information provided by them.

ABS'S QUALIFICATIONS

4. ABS's services to troubled companies include turnaround, restructuring, recapitalization, and operational performance advisory capabilities.

5. Since our initial retention, we have worked closely with the Debtors' management and other professionals to understand the Debtor's business and coordinate the necessary professional services and other vital aspects of preparing for these Chapter 11 Cases.

6. I believe that ABS is qualified to represent the Debtors in these Chapter 11 Cases.

ABS'S DISINTERESTEDNESS

7. In connection with its proposed retention by the Debtors in these Chapter 11 Cases, ABS undertook to determine (a) whether it had any relationships that might cause it not to be disinterested or to hold or represent an interest adverse to the Debtors and (b) all "connections" (as such term is used in Bankruptcy Rule 2014) to the Debtors, their creditors, other parties in interest, the United States Trustee or any person employed in the Office of the United States Trustee (the "U.S. Trustee").

8. To check potential relationships and connections in these Chapter 11 Cases, ABS searched its client database to determine whether it had any relationship or connection with the entities identified by the Debtors or their representatives as potential parties in interest listed on **Schedule 1** hereto (collectively, the "Potential Parties in Interest"). ABS also circulated the Parties of Interest list to all Managing Directors for further review. ABS did not identify any active (i.e.,

current or within the past five years) connections with any Potential Parties in Interest other than those listed on **Schedule 2** hereto.

9. ABS is involved in a number of cases, proceedings, and transactions involving many different attorneys, accountants, investment bankers, and financial consultants, some of whom may represent claimants and parties in interest in these Chapter 11 Cases. Moreover, ABS has in the past, and may in the future, be represented by several attorneys and law firms, some of which may be involved in these Chapter 11 Cases. Finally, ABS has in the past, and will likely in the future, be working with or opposite other professionals involved in these Chapter 11 Cases with respect to matters wholly unrelated to these Chapter 11 Cases. Based on our current knowledge of the professionals involved in these Chapter 11 Cases and to the best of my knowledge, none of these business relationships constitute interests adverse to the estate in matters upon which ABS is to be employed and none are in connection with these Chapter 11 Cases.

10. The Debtors have numerous creditors and relationships with a large number of individuals and entities that may be parties in interest in these Chapter 11 Case. Consequently, although every reasonable effort has been made to discover and eliminate the possibility of any conflict including the efforts outlined above, ABS is unable to state with certainty whether any of its clients or an affiliated entity of a client holds a claim or otherwise is a party in interest in these Chapter 11 Cases. If ABS discovers any information that is contrary or pertinent to the statements made herein, ABS will promptly disclose such information to the Court.

11. ABS does not advise, has not advised, and will not advise any entity other than the Debtors in matters related to these Chapter 11 Cases. ABS will, however, continue to provide professional services to entities or persons that may be creditors of the Debtors or parties in interest

in these Chapter 11 Cases, provided that such services do not relate to, or have any direct connection with, these Chapter 11 Cases or the Debtors.

12. Except as otherwise set forth herein and in the Motion, to the best of my knowledge, information, and belief, neither ABS nor any employee of ABS is a creditor, an equity holder or an insider of the Debtors. To the best of my knowledge, information and belief, neither ABS nor any employee of ABS is or was, within two (2) years before the Petition Date, a director, an officer or an employee of the Debtors. Also, to the best of my knowledge, information and belief, neither the undersigned nor any ABS employee expected to assist the Debtors in these Chapter 11 Cases are related or connected to any United States Bankruptcy Judge for the District of Delaware, the U.S. Trustee, or any persons employed in the office of the U.S. Trustee.

13. Accordingly, to the best of my knowledge, information and belief: (a) ABS is a “disinterested person” within the meaning of Bankruptcy Code section 101(14) and holds no interest materially adverse to the Debtors, their creditors and shareholders for the matters for which ABS is to be employed; and (b) ABS has no connection to the Debtors, their creditors, shareholders or related parties herein.

ABS’S COMPENSATION

14. As set forth with greater specificity in the Engagement Agreement, ABS will charge the Debtors on an hourly basis at the rates outlined below:

Position	Hourly Rates
Dean Vomero	\$350
Additional Personnel	\$300

15. Total professional fees billed by the Engagement Personnel will not exceed \$65,000 (“Fee Cap”), per month, adjusted for Carryforward or Carryback amounts as follows:

- a. Carryforward: If total professional fees in any calendar month exceed the Fee Cap, the excess can be carried forward to the following month such that total professional fees in the following month do not exceed the Fee Cap.
- b. Carryback: If total professional fees in any calendar month are less than the Fee Cap, the difference will increase the Fee Cap in the following month by such difference.

16. It is ABS's policy to charge its clients in all areas of practice for all other out-of-pocket expenses incurred in connection with the client's engagement. The expenses charged to clients include, but are not limited to, travel, lodging, duplicating, messenger and telephone charges.

17. Prior to the commencement of the Chapter 11 Cases and upon the execution of the Engagement Agreement, the Debtors paid ABS a retainer of \$70,000 (the "Retainer"). ABS intends to seek permission from the Court to apply the Retainer to any outstanding invoices at the conclusion of its engagement to the remaining retainer amount of \$33,845.00.

18. The fees are set at a level designed to compensate ABS fairly for the work of its professionals and assistants and to cover fixed and routine overhead expenses. It is ABS's policy to charge its clients for specifically identifiable out of pocket expenses incurred in the rendition of services.

19. The hours worked, the results achieved, and the ultimate benefit to the Debtors of the work performed by ABS in connection with its engagement may vary, and the Debtors and ABS have taken this into account in setting the above fees.

20. No promises have been received by ABS or by any member or associate thereof as to compensation in connection with this case. Furthermore, ABS has not shared or agreed to share any of its compensation from the Debtors with any other persons, other than employees of ABS.

21. The foregoing constitutes the statement of ABS pursuant to Bankruptcy Code section 504, Bankruptcy Rules 2014(a) and 5002, and Local Rule 2014-1.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 11, 2024

/s/ Dean Vomero

Dean Vomero
Member and Managing Director
Applied Business Strategy, LLC

Schedule 1

Potential Parties in Interest

SCHEDULE 1

PARTIES IN INTEREST

DEBTORS

BURGESS BIOPOWER, LLC
BERLIN STATION, LLC

**BANKRUPTCY JUDGES FOR THE DISTRICT
OF DELAWARE**

CHIEF JUDGE LAURIE SELBER SILVERSTEIN
JUDGE ASHELY M. CHAN
JUDGE BRENDAN L. SHANNON
JUDGE CRAIG T. GOLDBLATT
JUDGE J. KATE STICKLES
JUDGE JOHN T. DORSEY
JUDGE KAREN B. OWENS
JUDGE MARY F. WALRATH
JUDGE THOMAS M. HORAN

**OFFICE OF THE UNITED STATES TRUSTEE,
REGION 3, DISTRICT OF DELAWARE**

ANGELIQUE OKITA
BENJAMIN HACKMAN
CHRISTINE GREEN
DAVID BUCHBINDER
DENIS COOKE
DIANE GIORDANO
DION WYNN
EDITH A. SERRANO
HANNAH M. MCCOLLUM
HOLLY DICE
JAMES R. O'MALLEY
JANE LEAMY
JOSEPH CUDIA
JOSEPH MCMAHON
JULIET SARKESSIAN
KAREN STARR
LAUREN ATTIX
LINDA CASEY
LINDA RICHENDERFER
MICHAEL PANACIO
NYANQUOI JONES
RAMONA HARRIS
RICHARD SCHEPACARTER
ROSA SIERRA
SHAKIMA L. DORTCH
T. PATRICK TINKER
TIMOTHY J. FOX, JR.

DIRECT AND INDIRECT PARENT ENTITIES

ACEK BIOMASS ENERGY, S.L.
ANTONIO BIANCO
BBP 2, LLC
BENJAMIN HANCOCK

BERLIN PROJECT HOLDINGS, INC.
CARRIE TILLMAN
CHRISTOPHER CHALOT
CSC GROUP HOLDINGS, LLC
EDWARD J. DWYER
EMILIO LUIS LOPEZ CARMONA
GBI NEW HAMPSHIRE I, LLC
JEAN R. HALLE
JENIS INVESTMENT COMPANY, LLC
JOHN HEBERT
KRISTINE EPPES
NEWCO BLOCKER I, INC.
PAMELA A. JASINSKI
SEG BERLIN MASTER INC.
VICTORIA NOVACK

CS OPERATIONS INC. COUNSEL

MURRAY PLUMB & MURRAY

NONDEBTOR AFFILIATES COUNSEL

WARD DAMON

BANK

M&T BANK
M&T BANK CORPORATION

CORE

OFFICE OF GENERAL COUNSEL 2310A
U.S. NUCLEAR REGULATORY COMMISSION
DELAWARE SECRETARY OF STATE
DELAWARE STATE TREASURY
HOGAN LOVELLS LLP
INTERNAL REVENUE SERVICE
OFFICE OF THE UNITED STATES TRUSTEE
PUBLIC SERVICE COMPANY OF NEW
HAMPSHIRE
SECURITIES & EXCHANGE COMMISSION
U.S. DEPARTMENT OF ENERGY

CUSTOMER

3DEGREES GROUP, INC.
ACT COMMODITIES, INC
BIOURJA NEHME COMMODITIES, LLC
CALPINE ENERGY SOLUTIONS, LLC
CHAMPION ENERGY SERVICES LLC
CONSTELLATION ENERGY GENERATION, LLC
CP ENERGY MARKETING (US), INC
CS BERLIN OPS, RENT
DISCOUNT ENERGY INC.

DISCOUNT POWER INC
DTE ENERGY TRADING, INC
DYNEGY MARKETING AND TRADE, LLC
EVERSOURCE
FIRST POINT POWER, LLC - NY
FIRST POINT POWER, LLC - RI
IDT ENERGY, INC.
NEXTERA ENERGY MARKETING, LLC
NRG POWER MARKETING, LLC
SKYVIEW FINANCE COMPANY, LLC
SOL SYSTEMS, LLC
UNITIL ENERGY SYSTEMS, INC

GOVERNMENT

CENTERS FOR DISEASE CONT. & PREVENTION
EPA - REGION 1
EPA - REGION 10
EPA - REGION 2
EPA - REGION 3
EPA - REGION 4
EPA - REGION 5
EPA - REGION 6
EPA - REGION 7
EPA - REGION 8
EPA - REGION 9
GENERATOR INTERCONNECTIONS
INTERNAL REVENUE SERVICE LOCAL OFFICE
N.H. OFFICE OF ATTORNEY GENERAL
NEW HAMPSHIRE DEPT OF
NEW HAMPSHIRE INSURANCE DEPARTMENT
NHDES LAND RESOURCES MANAGEMENT
NHDES, AIR RESOURCES DIVISION
OFFICE OF SEC. OF STATE OF N.H.
SOCIETY FOR CORPORATE GOVERNANCE
STATE OF NEW HAMPSHIRE ATTORNEY
GENERAL
STATE OF NEW HAMPSHIRE TREASURY
U.S. DEPT HEALTH & HUMAN SERVICES
U.S. DEPT OF STATE
U.S. CUSTOMS AND BORDER PROTECTION
U.S. DEPARTMENT OF JUSTICE
U.S. ENVIRONMENTAL PROTECTION AGENCY
UNITED STATES TREASURY
US DEPARTMENT OF LABOR

INSURANCE

AON RISK SERVICES SOUTH, INC.
FIRST INSURANCE FUNDING CORP
IPFS CORP
LIBERTY MUTUAL INSURANCE - BBP
RISK PLACEMENT SERVICES, INC.

INTERCOMPANY

CATE STREET CAPITAL, INC.
CS BERLIN OPS - MANAGEMENT FEES

CS BERLIN OPS - MEDICAL REIMBURSEMENT
CS BERLIN OPS - PAYROLL

INTERCONNECTING TRANSMISSION OWNER
NORTHEAST UTILITIES SERVICE COMPANY

INVESTMENT BANKER

SSG CAPITAL ADVISORS, LLC

INVESTOR

RICHARDS, DONALD
SHEIBLEY, PHILLIP

LENDERS

ATHENE ANNUITY AND LIFE CO
ATHENE ANNUITY AND LIFE CO (F1)
BERLIN BIOPOWER INVESTMENT FUND, LLC
GREENLINE CDF SUBFUND XVIII
PACIFIC LIFE & ANNUITY CO 1302
PACIFIC LIFE & ANNUITY CO 6102
PRUCO LIFE INS CO.
PRUDENTIAL INS OF AMERICA
PRUDENTIAL LIFE - MANAGED PORTFOLIO
PRUDENTIAL RETIREMENT (PRIAC)

LICENSES / PERMITS / SUBS&DUES

ANDROSCOGGIN VALLEY CHAMBER OF
COMMERCE
AVH
BERLIN MAIN STREET PROGRAM
CITY OF PORTSMOUTH TAX OFFICE
CONWAY DAILY SUN
CSC
FITCH RATINGS, INC.
LUMINANT GENERATION COMPANY LLC
NH TIMBERLAND OWNERS ASSOCIATION
NORTH COUNTRY MENS LEAGUE
STILWELL & ASSOCIATES OF THE USA, INC.
TRANS AMERICA HYDRO SEEDING INC.
TREASURER STATE OF NEW HAMPSHIRE

PROFESSIONAL

MARCUM LLP
NOVOGRADAC & COMPANY LLP

SECURED-UCC LIEN

BERLIN STATION LLC
CATERPILLAR FINANCIAL SERVICES CORP
DAHAR, TRUSTEE AND DESROSIERS

SENIOR LENDERS

AVIVA LIFE AND ANNUITY COMPANY
PACIFIC LIFE & ANNUITY COMPANY
PACIFIC LIFE INSURANCE COMPANY

PRUCO LIFE INSURANCE COMPANY
PRUDENTIAL RETIREMENT INSUR & ANNUITY
CO
SEG BERLIN 1603, L.L.C.
THE PRUDENTIAL INSURANCE CO OF
AMERICA

SENIOR LENDERS COUNSEL

BERNSTEIN SHUR
GREENBERG TRAURIG

SENIOR LENDERS FINANCIAL ADVISORS

FTI CONSULTING

TAXING AUTHORITY

CITY OF BERLIN TAX COLLECTOR
EVERSOURCE TAX BILL 1528
NEW HAMPSHIRE DEPT OF REVENUE ADMIN
NORTH CAROLINA DEPT OF REVENUE
STATE OF NEW HAMPSHIRE
STATE OF NH
WYOMING DEPT OF REVENUE

UTILITIES

2 WAY COMMUNICATIONS SERVICE, INC.
AC ELECTRIC CORP
AMERICAN TELESIS
BARREIRA CLEANING SERVICE, LLP
BERLIN WATER WORKS
BMC GROUP VDR, LLC
CITY OF BERLIN - PUBLIC WORKS
CITY OF BERLIN - SEWER
CITY OF BERLIN CODE ENFORCEMENT
CLEAN HARBORS ENV SERVICES INC.
CMMS DATA GROUP INC
CONSOLIDATED COMMUNICATIONS
(FAIRPOINT)
CREATIVE INFORMATION SYSTEMS, INC.
EVERSOURCE - 0396 - LARGE POWER
EVERSOURCE - 0414 - ISO NE
EVERSOURCE - 6022
EVERSOURCE - 6052
EVERSOURCE - 7081
EVERSOURCE- 5050
EVERSOURCE 6036 TRANS
EVERSOURCE- 6096
EVERSOURCE- 7046
EVERSOURCE- 7088
EVERSOURCE- 7093
FLYLIGHT MEDIA
IRVING ENERGY DISTRIBUTION AND
MARKETING
MILAN CONTAINER COMPANY
PREMIERE GLOBAL SERVICES
SIMPLY COMPUTING INTERNATIONAL INC.
SMS CLOUD SERVICES, LLC

SPECTRUM BUSINESS INTERNET
SUBURBAN PROPANE
US CELLULAR
WHITE MOUNTAIN WIRELESS

VENDOR

ABB INC.
ABSOLUTE RESOURCE ASSOCIATES LLC
ACCESS CONSTRUCTION EQUIPMENT
ACV ENVIRO
AD CONSTRUCTION LLC
ADVANCED FLUID SYSTEMS
ADVANCED TURBINE SUPPORT LLC
AEROFIN HEAT TRANSFER PRODUCTS
AESI-US, INC.
AETHER DBS, LLC
AIR MONITOR CORPORATION
AIRGAS USA, LLC
ALDATA SOFTWARE MANAGEMENT INC.
ALEXANDERS MECHANICAL SOLUTIONS
ALLIANT INSURANCE SERVICES INC.
ALTA CONSTRUCTION EQUIPMENT NEW
ENGLAND
ALVAREZ & MARSAL NORTH AMERICA, LLC
ALVIN J. COLMAN & SONS, INC.
AMEREX BROKERS, LLC - EMISSIONS
AMERICAN CRANE CO. LLC
AMERICAN LOGGERS FIRE SUPPRESSION, LLC
AMERICARB INC. FKA IMERY'S CLAYS, INC.
AMETEK SOLIDSTATE CONTROLS
ANDROSCOGGIN ELECTRIC
ANDROSCOGGIN VALLEY HOSPITAL, INC
APOLLO INDUSTRIES
APPLIED BUSINESS STRATEGY, LLC
AQUAPHOENIX SCIENTIFIC, LLC
ATLANTIC PUMP & ENGINEERING
AUBUCHON HARDWARE
AVANTECH INC.
AVRRDD MT CARBERRY
B & B AUTO AND TRUCK SUPPLY
B.I.D. CANADA LTD
BABCOCK & WILCOX COMANY
BABCOCK & WILCOX COMPANY INC.
BANCROFT CONTRACTING CORPORATION,
INC
BEATTIE ENTERPRISES, INC.
BEELMAN LOGISTICS LLC
BERLIN BAMBINO LEAGUE
BERLIN CITY AUTO GROUP
BERLIN GORHAM CAL RIPKEN LEAGUE
BERLIN INSULATION COMPANY, LLC
BERLIN POLICE DEPARTMENT
BERLIN PUBLIC SCHOOLS
BERNSTEIN, SHUR, SAWYER & NELSON, P.A.
BETE FOG NOZZLE, INC.
BGC GROUP

BIANCO PROFESSIONAL ASSOCIATION
 BLACK & VEATCH MGMT CONSULTING, LLC
 BLENDER PRODUCTS, INC.
 BOBS OVERHEAD DOOR CO., INC.
 BOILER TUBE COMPANY OF AMERICA
 BORDEWIEK ENGINEERING SALES COMPANY
 BOSTON CHIMNEY & TOWER
 BROCK SERVICES, LLC
 C.D.S. PORTABLE TOILETS
 C.N. BROWN COMPANY
 CAL CHECK LLC
 CAPITOL ALARM SYSTEMS, INC.
 CARON BUILDING CENTER INC.
 CASCADE MACHINERY VIBRATION
 SOLUTIONS
 CATERPILLAR GLOBAL SERVICES, LLC
 CDI METERS, INC
 CEMTEK ENVIRONMENTAL, INC.
 CENTRAL ASPHALT PAVING CO., LLC
 CERAM USA, INC
 CHADBOURNE & PARKE, LLP
 CHADWICK-BAROSS INC.
 CHALMERS & KUBECK NORTH
 CHAPMAN SCRAP METAL RECYCLING
 CHAS G. ALLEN INC.
 CHRISTY MINERALS LLC
 CINTAS CORPORATION
 CINTAS FIRST AID & SAFETY
 CITY OF BERLIN FIRE DEPARTMENT
 CLARAGE
 CLASSIC AUTOMATION LLC
 CLEAN ENERGY NH
 CLEVELAND WIRE CLOTH & MFG. CO.
 COGENCY GLOBAL INC.
 COLBY COMPANY ENGINEERING
 COLEMAN CONCRETE INC.
 COLUMBIA WEATHER SYSTEMS, INC.
 CONTINENTAL CONVEYOR & MACHINE
 WORKS LTD
 CONVAL, INC.
 COOK LITTLE ROSENBLATT & MANSON PLLC
 CPI CONTROLS INC
 CREDENCE CORP
 CROSS MACHINE INC.
 D.L. THURROTT AIR PRODUCTS, INC.
 DARRYL BENNETT PLUM & HEATING
 CONTRACTOR
 DAYMARK ENERGY ADVISORS, INC.
 DEAN & ALLYN INC.
 DELTA DUCON, LLC.
 DELTA MEASUREMENT & CONTROL CORP
 DENNISON LUBRICANTS INC.
 DETROIT STOKER COMPANY, LLC
 DIAMOND THERMAL SYSTEMS INC
 DIAMOND TURF, INC
 DIESELWORKS, LLC

DIVERSIFIED PUMP AND COMPRESSOR, INC.
 DJS AUTO GLASS, LLC
 DONOVAN EQUIPMENT CO INC
 DOOLEY GASKET AND SEAL, INC.
 E & R WEARTECH, INC.
 EAST COAST FILTER, INC.
 EASTERN ANALYTICAL, INC.
 ECLIPSE TINT
 EFFOX - FLEXTOR
 EJCON CORPORATION
 ELECTRICAL INSTALLATIONS, INC.
 EMERSON PROCESS MANAGEMENT LLLP
 ENDRESS HAUSER
 ENERGY RESOURCES GROUP, INC
 ENERSYS, INC.
 ENVIRONEX, INC
 EPICOR, INCORPORATED
 EPIQ CORPORATE RESTRUCTURING LLC
 EPM POWER & WATER SOLUTIONS INC.
 ERIEZ MANUFACTURING CO, INC.
 ES BOULOS COMPANY
 EUCI
 EVERETT J. PRESCOTT, INC.
 F&M MAFCO INC.
 FARNHAMS SCALE SYSTEMS
 FASTCO FABRICATION INC
 FASTENAL COMPANY
 FEDERAL EXPRESS
 FERGUSON ENTERPRISES, LLC
 FIREHOSEDIRECT.COM
 FITCH FUEL COMPANY, INC.
 FLOWSERVE US INC
 FOREST 2 MARKET
 FOX & DOLE TECHNICAL SALES
 FREDERICKSEAL INC.
 FTI CONSULTING, INC
 FUJI ELECTRIC CORP. OF AMERICA
 FW WEBB COMPANY
 GENERAL ALUM NEW ENGLAND CORP.
 GENERAL KINEMATICS CORP
 GENERAL RUBBER CORPORATION
 GENESYS TECHNOLOGIES, LLC
 GESTAMP BIOMASS SOLUTIONS
 GFI GROUP
 GIBBONS P.C.
 GLOBAL EQUIPMENT COMPANY, INC.
 GOODWAY TECHNOLOGIES CORPORATION
 GORHAM MIDDLE & HIGH SCHOOL
 GP STRATEGIES CORPORATION
 GRAINGER
 GREENMAN-PEDERSON, INC.
 HACH COMPANY
 HAZEN RESEARCH, INC.
 HEALY ENGINEERING, INC.
 HEARING ENHANCEMENT CENTER, INC
 HELFRICH BROS BOILER WORKS, INC.

HOGAN LOVELLS US LLP
 HOLTEC INTERNATIONAL
 HYER INDUSTRIES INC - THAYER SCALE
 I-MARK COMMODITY SOLUTIONS
 INDUSTRIAL ACCESSORIES CO
 INDUSTRIAL PACKING INC
 INGENIATOR GROUP, LLC
 INNOVATIVE NATURAL RESOURCES
 SOLUTIONS
 INTEGRATED GLOBAL SERVICES INC
 INTELLIBIND TECHNOLOGIES, LLC
 INTERSTATE FIRE INSPECTION
 IRVING BLENDING & PACKAGING
 IRVING OIL MARKETING, INC.
 J. S. BARRY INDUSTRIES, INC.
 JBC TRANSPORT GROUP LLC
 JEWELL TIRE CENTER, INC.
 JML TRUCKING & EXCAVATING
 JORDAN EQUIPMENT CORP
 K&G INDUSTRIAL SERVICES, LLC
 KATAHDIN FIRE COMPANY, INC.
 KENTUCKY-TENNESSEE CLAY COMPANY
 KNOX, JR, BRUCE R
 KPM ANALYTICS NORTH AMERICA
 CORPORATION
 KSB, INC.
 LA CAPRA ASSOCIATES, INC
 LABONVILLE, INC.
 LANDSCAPING WITH STYLES
 LEON COSTELLO CO
 LINDSKOG BALANCING
 LITTLETON REGIONAL HEALTHCARE-
 LOTHROP COMPANIES, INC.
 LOWES HEATING & COOLING
 M&C TECHGROUP NORTH AMERICA
 M&T BANK - BENNETT
 M&T BANK - WALKER
 MACCO RESTRUCTURING GROUP, LLC
 MADER DAMPERS
 MAINE CONVEYOR, INC.
 MALTZ SALES COMPANY, INC.
 MARTEK INSTRUMENTS, INC.
 MARTIN ENGINEERING MICHIGAN
 MCCOSH LIGHT TRUCKING
 MCHALE & ASSOCIATES, INC.
 MCLANE MIDDLETON
 MCMASTER-CARR SUPPLY CO
 MD FLUID SERVICES, LLC
 MEBULBS
 MENARDI, LLC
 MICROVISION LABS, INC.
 MIDWESCO FILTER RESOURCES
 MILAN EXCAVATING INC.
 MILLENNIUM POWER SERVICES INC.
 MILLER ENERGY, INC.
 MILTON RENTS

MLI ENVIRONMENTAL LLC
 MOMS JERICHO
 MONTAGNE POWERS, LLC
 MONTROSE
 MORGAN, LEWIS & BOCKIUS LLP
 MOTION INDUSTRIES, INC.
 MOUNT WASHINGTON SEWER & DRAIN
 MOUNTAIN TIRE CORPORATION
 MSC INDUSTRIAL SUPPLY CO, INC
 N.E.T.S., INC.
 NATIONAL FILTER MEDIA CORPORATION
 NAULTS POWERSPORTS LITTLETON
 NECI
 NES RENTALS
 NEW ENGLAND AIR SYSTEMS LLC
 NEW ENGLAND MECHANICAL OVERLAY, INC.
 NEW ENGLAND SECURITY INC.
 NEW PIG CORPORATION
 NHS-CUSTOM CLEANERS
 NITCO, LLC
 NO SCURVY MEDIA
 NORDIC CONSTRUCTION SERVICES LLC
 NORDSTRONG EQUIPMENT LIMITED
 NORMANDEAU TRUCKING, INC.
 NORTH AMERICAN CONTROLS CO. LTD
 NORTH AMERICAN EXPLOSIVE SERVICES, LLC
 NORTH AMERICAN INDUSTRIAL SERVICES,
 INC.
 NORTH COUNTRY LOCK & KEY
 NORTHEASTERN INSULATION SERVICES
 NORTHERN SAFETY CO., INC.
 OIL ENERGY RECOVERY, INC.
 ON QUEUE COMPUTER
 OREILLY AUTO PARTS
 OTIS ELEVATOR COMPANY
 OVER ALL CRANE SERVICE, LLC
 PAUL OUELLETTE TRUCKING, INC.
 PEREZ RESTORATION SERVICES, LLC
 PETES TIRE BARN INC.
 PHASOR ENGINEERING SERVICES
 PHELPS INDUSTRIES
 PIKE INDUSTRIES, INC.
 PINE ENVIRONMENTAL SERVICES LLC
 PINGREE BOILER REPAIR, INC.
 PLATTCO CORPORATION
 POLECON RESEARCH
 POND TECHNICAL SALES, INC.
 POSTMASTER
 POWER GEN ASSOCIATES, INC.
 POWER RESOURCES, INC.
 POWER SPECIALISTS ASSOC., INC.
 POWER UP GENERATOR SERVICE COMPANY
 PRC INDUSTRIAL SUPPLY, INC.
 PRESBY R&D & MANUFACTURING, LLC
 PRESBY STEEL LLC
 PROCESS EQUIPMENT, INC.

PROGRESSIVE BUSINESS PUBLICATIONS
PRUFTECHNIK, INC.
PSA LABORATORY FURNITURE
PSC LLC
PURE AQUA, INC.
QUALUS SERVICES, LLC
RADWELL INTERNATIONAL, INC
RAIN FOR RENT
RAM PRINTING, INC.
RATH YOUNG
RAY ENGINEERING COMPANY INC.
RAYS ELECTRIC & GENERAL CONTRACTING
INC
RECON PUMP INC.
REDKOH INDUSTRIES INC
RELADYNE RELIABILITY SERVICES
RESOURCE MANAGEMENT INC.
REXEL USA, INC
RICHARD CARRIER TRUCKING, INC.
ROMIK DEVELOPERS LLC
ROSEMOUNT INC.
ROURA MATERIAL HANDLING
ROYAL ELECTRIC CO. INC.
RUMFORD MANAGEMENT, LLC
SAFETY-KLEEN SYSTEMS, INC.
SANEL NAPA
SCHWEITZER ENGINEERING LABORATORIES
INC
SCOTTS RECREATION
SCT ENGINEERING
SD SZETELA LLC
SEVENTH STREET GRAPHICS, LLC
SHERWIN WILLIAMS
SHORELINE ALIGNMENT & VIBRATION LLC
SIGMA C POWER SERVICES LLC
SMITH & TOWN PRINTERS, LLC
SOHRE TURBOMACHINERY, INC.
SOLENIS LLC
SOMATEX INC
SOUTHERN ILLINOIS MOTOR XPRESS, INC.
SOUTHWORTH-MILTON INC
SPX COOLING TECHNOLOGIES, INC.
SSG ADVISORS, LLC
ST. KIERAN COMMUNITY CENTER FOR THE
ARTS
STANTEC CONSULTING SERVICES INC
STERLING ANALYTICAL, INC.
STRATHAM TIRE INC.
STRONG TECHNOLOGY CO
TELEDYNE INSTRUMENTS, INC.
TEMPERATURE CONTROLS OF VERMONT, INC
TENCARVA MACHINERY CO. LLC
TERRASOURCE GLOBAL CORP
TEXAS REFINERY CORPORATION
THE BABCOCK & WILCOX COMPANY
THE COLLINS COMPANIES, INC.

THE NORTHERN LOGGER
THE SCOTT LAWSON GROUP
THG CORPORATION - DBA THE HOPE GROUP
THOMPSON REFRIGERATION LLC
THREE-C ELECTRICAL CO. INC.
TNT INSTRUMENTATION SOLUTIONS LLC
TPI ENGINEERED SYSTEMS, INC
TR MILES TECHNICAL CONSULTANTS INC.
TRANSCAT, INC.
TRANSFORMER SERVICE, INC.
TREASURER STATE OF NH
TRI-STATE PACKING SUPPLY, INC.
TROY INDUSTRIAL SOLUTIONS
TTI, INC. DBA INSTRUMART
TUNSTALL CORPORATION
UNITED RENTALS, INC.
UNIVAR SOLUTIONS
UPS FREIGHT
US POSTAL SERVICE
VAILLANCOURT ELECTRIC
VALMET INC.
VEGA AMERICAS INC.
VERMONT RECREATIONAL SURFACING &
FENCING
WATSON-MARLOW, INC.
WB MASON CO., INC.
WHITE MOUNTAIN LUMBER COMPANY INC.
WHITE WOLF STRIPING
WILSON ENGINEERING SERVICES, PC
WUNDERLICH-MALEC
WV ENGINEERING ASSOCIATES, PA
YANKE ENERGY INC.
ZAMPELL REFRACTORIES, INC.
ZEE MEDICAL, INC.
ZEP SALES & SERVICE

OTHER INTERESTED PARTY

BASIN ASSET MANAGEMENT, INC.

Schedule 2

ABS Burgess/Berlin Relationships

Dean Vomero

- **Pacific Life** (Senior Secured Lender and DIP Lender): Variable Annuity Mutual Fund with Pacific Life (held since early 2000's, inactive management)
- **Hogan Lovells** (Counsel to pre-petition Administrative Agent): mutual non-bankruptcy client (2022-2023)

Exhibit C

Engagement Agreement



APPLIED BUSINESS STRATEGY

1100 Superior Avenue, E. | Suite 1750 | Cleveland, OH 44114 | Tel: 216.239.1815

October 27, 2023

Berlin Station, LLC and Burgess BioPowerLLC
One Community Street
Berlin, NH 03570

ATN: Mr. John R. Halle, Director

Sent Via Email

Dear Mr. Halle:

This letter agreement (the "Agreement") will confirm the understanding and agreement between Applied Business Strategy LLC ("ABS") and Berlin Station, LLC and Burgess BioPowerLLC (collectively the "Company") with respect to ABS's retention (collectively, the "Engagement").

Dean Vomero will serve as the Chief Restructuring Officer and will perform the duties and have the obligations typical and customary for this position and under applicable law. Mr. Vomero will report directly to the Company's Boards of Directors (the "Boards") or any special committees of the Boards as may be constituted and delegated authority to act on behalf of the Company. I maybe assisted by other professionals as needed. Duties, as directed by the Company's Board may, but not be limited to, include:

- Assist in preparation of short-term liquidity projections, including 13-week cash flows
- Assist or lead in negotiations with secured creditors, customers, suppliers or other creditors, including providing information reasonably requested by secured creditors and other parties-in-interest subject to appropriate confidentiality restrictions
- Assist in formulation of Chapter 11 plan and, if needed, assist with section 363 process, including coordination with the Company's investment bankers
- Assist in preparing information and analysis required for any restructuring
- If needed, preparation and review of business plans and detailed liquidity projections/budget
- If cases under the Bankruptcy Code are commenced, court attendance and testimony, if required, attendant to the above tasks

1. **Framework of the Engagement.** The Engagement shall not constitute an audit, review or compilation, or any other type of financial reporting engagement that is subject to the rules of the AICPA or other such state and national professional bodies. It is further understood and agreed that ABS does not in any respect guarantee the outcome of the Engagement, or any level of recovery thereunder to the Company or to any stakeholder. Furthermore, this Engagement does not involve tax advice of any kind. It is clearly understood that ABS does not provide any tax advice or formal opinions with respect to the treatment of capital or fairness of any transaction or treatment. The Company understands that any working papers are the property of ABS and that ABS will retain working papers for a period that ABS deems necessary.

The Company agrees: (a) to provide promptly, upon request, all financial and nonfinancial information



and documentation reasonably deemed necessary or desirable by us in connection with this engagement. ABS may rely upon such information and documentation without independent investigation or verification, including projections and forecasts prepared by the Company; (b) that, without ABS's prior written permission, any letters, schedules, documents, or other materials provided by ABS ("ABS Work Product") are not to be used, in whole or in part, for any purpose other than in connection with the purposes of the Engagement described above; and (c) Neither the ABS Work Product nor the services provided hereunder are intended for the express or implied benefit of any third party, and no third party is entitled to rely, in any manner or for any purpose, on such ABS Work Product or services. The ABS Work Product is the sole property of ABS. The Company agrees to make all employees, professionals, or contractors, available to ABS.

Our role will encompass advising the Company, the Boards and any committees of the Boards on in-court and out-of-court strategic alternatives, including potential sales, recapitalizations or reorganizations, and will encompass activities attendant to these tasks.

2. **Compensation.** Professional Fees will be billed at \$350.00 per hour for time incurred by Dean Vomero and \$300.00 per hour for all other ABS professionals. Total Professional Fees billed to the Company will not exceed \$65,000.00 ("Fee Cap") per month, adjusted for Carryforward or Carryback amounts. The purpose of the Fee Cap is to ensure Professional Fees average the amount of the Fee Cap during the term of ABS retention, unless otherwise changed in writing.
 - a. Carryforward: If Professional Fees in any calendar month exceed the Fee Cap, the excess can be carried forward to the following month such that total Professional Fees in the following month do not exceed the Fee Cap.
 - b. Carryback: If Professional Fees in any calendar month are less than the Fee Cap, the difference will increase the Fee Cap in the following month by such difference.

In addition to Professional Fees, the Company shall pay directly or reimburse ABS for all reasonable, actual, and necessary out-of-pocket and incidental expenses incurred in connection with the Engagement including but not limited to purchased research, travel related expenses, postage and overnight delivery, and document copies ("Expenses"). Expenses will not be subject to the Fee Cap.

3. **Billing:** ABS will provide an invoice for Professional Fees and Expenses every two weeks. ABS will provide a detailed statement of the Professional Fees charged (including an itemized description of the time in tenths of an hour) spent by each professional billing time to the Engagement plus a detail of Expenses incurred in support of the Engagement (the "Billing Statement"). ABS and the Company will work in good faith to resolve any billing disputes; however, ABS can terminate the Engagement if Billing Statements are not paid according to the terms contained in this agreement. Billing Statements presented to the Company will be due and payable within seven (7) business days from receipt of the Billing Statement.
4. **Retainer and Payment.** ABS will receive a retainer of \$70,000.00 (the "Retainer") upon execution of the Agreement. The Retainer will be maintained in a separate retainer deposit account that ABS maintains. Professional Fees and Expenses will be applied against the Retainer when the Billing Statement is prepared. The Retainer will be replenished by the Company based on the total amount of the Billing Statement within seven (7) days after the Billing Statement is submitted to the Company. At the end of the Engagement, ABS will apply any unpaid Professional Fees and Expenses to the Retainer balance. Any remaining Retainer balance shall be returned to the Company within seven business days. The purpose

of the Retainer is to act as security against failure to pay. ABS will commence work upon receipt of the Retainer and will not do so prior to the receipt of the Retainer. In the event of any bankruptcy filing by the Company, ABS will apply any funds on Retainer against all outstanding Professional Fees and Expenses which exist immediately prior to the date of such filing.

The Retainer and Billing Statements will be paid by wire transfer in accordance with the instructions contained in Appendix "A".

5. **Indemnification.** The Company hereby agrees to indemnify and hold harmless ABS, its officers, members, principals, affiliates, independent contractors and their respective directors, officers, agents and employees (collectively the "Indemnified Person(s)") from and against any and all claims, demands, suits, proceedings, judgments, awards, liabilities, losses, damages, and expenses incurred by any Indemnified Person (including but not limited to any Indemnified Person's reasonable fees and disbursements of legal counsel and the reasonable costs of such Indemnified Person's professional time as they are incurred), arising in connection with investigating, preparing for, or defending any action, formal or informal claim, investigation, inquiry or other proceeding, whether or not in connection with pending or threatened litigation, which are related to or arise in any manner out of the engagement contemplated hereby, including any legal proceeding in which any Indemnified Person may be required or agree to participate, but in which such Indemnified Person is not a party; provided, however, that the Company shall not be responsible for any claims, liabilities, losses, damages, or expenses pursuant to this paragraph, which are finally determined to have resulted from the gross negligence, recklessness or willful misconduct of any Indemnified Person.

ABS will indemnify and hold harmless the Company, its officers, directors, shareholders, agents, and employees (collectively the "Indemnified Persons") from and against all claims, demands, suites, proceedings, judgments, awards, liabilities, losses, damages, and expenses incurred by any Indemnified Person (including reasonable legal fees) arising from the gross negligence, recklessness or willful misconduct on the part of ABS, its employees, members, managers and officers.

6. **Confidentiality.** ABS agrees to keep confidential all non-public information obtained from the Company, and will not disclose any such information without the consent of the Company (such consent which cannot come from a member of ABS itself). ABS agrees that neither it nor its officers, members, principals, affiliates, independent contractors and their respective directors, officers, agents and employees or attorneys (the "Confidential Parties") will disclose to any other person or entity, except to agents of the Company, or use for any purpose other than as specified herein, any information pertaining to the Company or any affiliate thereof, which is either non-public, confidential or proprietary in nature (the "Information"), it obtains or is given access to during the performance of the services provided for hereunder. ABS may, however, make reasonable disclosure of Information to third parties in connection with their performance of their obligations and assignments hereunder, so long as such third parties, other than the Company's creditors, customers, and advisors, are made aware of the nondisclosure terms and conditions of this Agreement and agree in writing to be bound to the same. In any event, ABS shall be held responsible for any breaches of the confidentiality provisions of this Agreement by any such third parties. In addition, for purposes of this Agreement, the Information does not include information which (a) is generally available to the public other than as a result of a disclosure by the Confidential Parties, (b) was available to the Confidential Parties on a non-confidential basis prior to its disclosure to the Confidential Parties pursuant to this Agreement, (c) becomes available to the Confidential Parties on a non-confidential basis from a source other than the Company, provided

that the source is not bound by a confidentiality agreement with, or other obligation of confidentiality to, the Company.

Should the Confidential Parties be requested or required, by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand, court order or other process issued by a court of competent jurisdiction or any federal or state agency or administrative review board to which the Confidential Parties are or may be subject, to disclose any or all of the Information, the Confidential Parties will promptly provide written notice of same to the Company so that the Company may seek a protective order or other appropriate remedy. In no event will Confidential Parties disclose more than that portion of the Information that is legally required, as determined in writing by ABS's legal counsel, and the Confidential Parties shall cooperate with the Company in its effort to obtain a protective order or other assurance that the Information will not be disclosed, or, if it is disclosed, will be disclosed in such a manner as to limit to the greatest extent possible the number of persons who are granted access to the Information. Notwithstanding anything contained herein, the confidentiality provisions set forth in this Agreement shall be controlling.

7. **Termination.** Either Party may terminate the Engagement at any time by giving ten (10) days written notice to the other party of such termination ("Termination"); provided that, notwithstanding such Termination, ABS will be entitled to any fees and expenses earned pursuant to the provisions of this Agreement. It is understood that ABS can terminate the Engagement without notice as outlined in the Professional and Regulatory Actions section below or if the Company: (i) acts in bad faith (provided, however, that no act of omission or commission by ABS shall trigger this clause), (ii) fails to comply with Billing and Payment terms set forth in this Agreement, (iii) fails to cooperate with ABS in the performance by ABS of its services hereunder, including, without limitation, providing ABS with reasonable facilities and timely access to data, information and personnel of the Company. The Company shall be responsible for the performance of its respective personnel and agents. ABS's performance of the services hereunder is dependent upon the Company providing ABS with such information and assistance as ABS may reasonably require from time to time. The Company shall be responsible for ensuring that all information ABS may reasonably require is provided on a timely basis and is accurate and complete. It is further understood that The Company will not terminate the Engagement without "Cause" without giving at least ten (10) days written notice and, in any event, will not terminate the Engagement without "Cause" before the end of the second month after the commencement of the Engagement. For purposes of this Agreement, "Cause" is defined as gross negligence or willful misconduct on the part of ABS or ABS's failure to timely perform its services hereunder unless the Company fails to provide reasonable and necessary information requested of the Company by ABS on a timely basis.
8. **Survival.** The obligations of the parties hereto pursuant to paragraphs 5, 6, 11, 12, 13, 14, 15, and 16 shall survive the Termination of this Agreement along with any other section that expressly provides that it shall survive the Termination.
9. **Relationship of the Parties.** The parties hereto intend that an independent contractor relationship will be created by this Agreement. ABS and its officers, members, principals, affiliates, subcontractors, and their respective directors, officers, agents, and employees are not to be considered employees or agents of the Company and are not entitled to any of the benefits that the Company provides for its employees, except as may otherwise be expressly provided for in this Agreement.

10. **Assignability.** The benefits of this Agreement shall inure to the benefit of the parties hereto, the successors and assigns of ABS and of the Indemnified Persons hereunder and their successors, assigns and representatives, and the obligations and liabilities assumed in this Agreement by the parties hereto shall be binding upon them and upon the successors and assigns of ABS. This Agreement may not be assigned without the prior written consent of the parties hereto.
11. **Entire Agreement.** This Agreement incorporates the entire understanding between the parties with respect to its subject matter and supersedes all previous agreements or understandings that might exist or have existed. This Agreement may not be amended or modified, except in writing, executed by the parties hereto.
12. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to principles of conflicts of laws. The parties hereto acknowledge and agree that they shall submit to the jurisdiction and venue of the federal and/or state courts located in Cleveland, Ohio or New Hampshire to enforce the terms and conditions of this Agreement and/or any dispute that arises out of the Engagement. ABS AND THE COMPANY HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER IN CONTRACT, STATUTE, TORT (SUCH AS NEGLIGENCE), OR OTHERWISE) RELATING TO THIS ENGAGEMENT.
13. **Disclosure of Conflicts.** Other than for work previously disclosed, ABS knows of no fact or situation that would represent a conflict of interest for it in connection with this Engagement and regarding the Company. However, there may be relationships, either past or currently existing, that need to be brought to the attention of the Company as ABS becomes familiar with the universe of parties who are involved in this Engagement. Any such disclosure will be promptly made by ABS upon it becoming aware of the need to make such disclosure.
14. **Severability.** Any provision of this Agreement that shall be determined to be invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.
15. **Notices.** All Notices required or permitted to be delivered under this Agreement shall be sent, if to ABS, to the address set forth at the head of this Agreement, to Dean Vomero, or to such other name or address as ABS may provide the Company in writing and as the Company may provide ABS in writing, attention the Executive Chairman, Vice Chairman or Secretary of the Company. All notices under this Agreement shall be deemed delivered if sent by email, overnight mail, or courier. All notices shall be deemed to have been delivered only upon receipt by the receiving party.
16. **Counterparts.** This Agreement may be executed in any number of counterparts and by the different parties on separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all which counterparts, taken together, shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or readable .pdf file shall be as effective as delivery of a manually executed counterpart of this Agreement.
17. **Force Majeure.** ABS shall not be liable for any delays or non-performance resulting from circumstances or causes beyond its reasonable control, including, without limitation, acts or omissions or the failure to cooperate by the Company (including, without limitation, entities or individuals under its control, or any

of its officers, directors, employees, other personnel and agents), acts or omissions or the failure to cooperate by any third party, the death, disability, severance of association or similar event with respect to any of ABS's personnel (whether or not identified in this Agreement) fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority.

18. **Professional and Regulatory Actions.** Without limiting any other right to terminate this Engagement that ABS may have under the Engagement Letter, these terms or law, ABS may terminate this Engagement upon written notice to the Company if it determines that (a) a governmental, regulatory, or professional entity (including, without limitation, the American Institute of Certified Public Accountants, the Public Company Accounting Oversight Board, or the Securities and Exchange Commission), or an entity having the force of law has introduced a new, or modified an existing, law, rule, regulation, interpretation, or decision, the result of which would render ABS's performance of any part of the Engagement illegal or otherwise unlawful or in conflict with independence or professional rules applicable to ABS, or (b) circumstances change (including, without limitation, changes in ownership of the Company or any of its affiliates) such that ABS's performance of any part of the Engagement would be illegal or otherwise unlawful or in conflict with independence or professional rules applicable to ABS or its affiliates. Upon Termination of the Engagement, the Company will compensate ABS for the services performed and expenses incurred through the Termination date.

The Engagement cannot be relied on to disclose errors, fraud, or other illegal acts that may exist, nor will ABS be responsible for the impact on our services of incomplete, missing, or withheld information or mistaken fraudulent data provided from any source or sources.

Please confirm that the foregoing is in accordance with ABS's understanding by signing and returning to ABS the enclosed duplicate of this letter, whereupon it shall constitute an agreement binding upon yourselves and ourselves.


Very truly yours,

Applied Business Strategy LLC



Name: Dean Vomero
Its: Managing Director
Accepted and agreed as of:
October 23, 2023

The Company:



By: _____
Name: John R. Halle
Its: Director
Accepted and agreed as of:
October 27, 2023

Appendix "A"

**Applied Business Strategy LLC
Incoming Wire and ACH transfer instructions**

First Federal of Lakewood
14806 Detroit Ave
Lakewood, Ohio 44107

For the benefit of: Applied Business Strategy
 Retainer Account

Routing and Transit number: 241071212

Account number: 0513027995