

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

	X	
In re:	:	Chapter 11
	:	
LINCOLN POWER, L.L.C., <i>et al.</i> , ¹	:	Case No. 23-10382 (____)
	:	
Debtors.	:	(Joint Administration Requested)
	:	
	X	

MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES, (III) MODIFYING THE AUTOMATIC STAY, AND (IV) GRANTING RELATED RELIEF

The debtors and debtors in possession (collectively, the “**Debtors**”) in the above-captioned cases (these “**Chapter 11 Cases**”) hereby file this motion (this “**Motion**”) for entry of an interim order, substantially in the form attached hereto as Exhibit 1 (the “**Interim Order**”), and a final order (the “**Final Order**”) under sections 105(a), 361, 362, 363, 503, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and rules 2002-1(b), 4001-2 and 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”):

- (i) authorizing the Debtors’ use of Cash Collateral (as defined below);
- (ii) granting adequate protection to the Prepetition Secured Parties (as defined below) for any Diminution in Value (as defined below) of their respective

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

interests in the Prepetition Collateral (as defined below), including Cash Collateral;

- (iii) subject to entry of the Final Order, waiving the Debtors' right to surcharge the Collateral (as defined below) pursuant to section 506(c) of the Bankruptcy Code;
- (iv) subject to entry of the Final Order, waiving application of the "equities of the case" exception under section 552(b) of the Bankruptcy Code to any of the Prepetition Secured Parties with respect to the proceeds, products, offspring, or profits of any of the Collateral (including the Prepetition Collateral) under section 552(b) of the Bankruptcy Code or any other applicable principal of equity or law;
- (v) vacating or modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to permit the Debtors and the Prepetition Secured Parties to implement and effectuate the terms and provisions of the Interim Order and the Final Order;
- (vi) scheduling a final hearing (the "**Final Hearing**") to consider the relief requested in this Motion and entry of the Final Order, and approving the form of notice with respect to the Final Hearing;
- (vii) waiving of any applicable stay with respect to the effectiveness and enforceability of the Interim Order and the Final Order (including a waiver pursuant to Bankruptcy Rule 6004(h)); and
- (viii) granting related relief.

In support of this Motion, the Debtors rely upon and incorporate by reference the *Declaration of Justin D. Pugh, Chief Restructuring Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings*, filed with this Court concurrently herewith (the "**First Day Declaration**").²

In further support of this Motion, the Debtors, by and through their undersigned counsel, respectfully represent:

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration or the Interim Order, as applicable.

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 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 under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are sections 105(a), 361, 362, 363, 503, and 507 of the Bankruptcy Code. Such relief is warranted under Bankruptcy Rules 2002, 4001, 6003, 6004, 7062, and 9014, and Local Rules 2002-1(b), 4001-2, and 9013-1(m).

BACKGROUND

3. On the date hereof (the “**Petition Date**”), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these Chapter 11 Cases, is set forth in detail in the First Day Declaration.

4. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in these Chapter 11 Cases, and no committees have yet been appointed.

5. Simultaneously with the filing of this Motion, the Debtors have filed a motion with this Court pursuant to Bankruptcy Rule 1015(b) seeking joint administration of these Chapter 11 Cases that would provide for the joint administration of these cases and for consolidation for procedural purposes only.

RELIEF REQUESTED

6. By this Motion, the Debtors request entry of the Interim Order and Final Order:
- (i) authorizing the Debtors’ use of Cash Collateral;

- (ii) granting adequate protection to the Prepetition Secured Parties for any Diminution in Value of their respective interests in the Prepetition Collateral, including Cash Collateral;
- (iii) subject to entry of the Final Order, waiving the Debtors' right to surcharge the Collateral pursuant to section 506(c) of the Bankruptcy Code;
- (iv) subject to entry of the Final Order, waiving application of the "equities of the case" exception under section 552(b) of the Bankruptcy Code to any of the Prepetition Secured Parties with respect to the proceeds, products, offspring, or profits of any of the Collateral (including the Prepetition Collateral) under section 552(b) of the Bankruptcy Code or any other applicable principal of equity or law;
- (v) vacating or modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to permit the Debtors and the Prepetition Secured Parties to implement and effectuate the terms and provisions of the Interim Order and the Final Order;
- (vi) scheduling the Final Hearing to consider the relief requested in this Motion and entry of the Final Order, and approving the form of notice with respect to the Final Hearing;
- (vii) waiving of any applicable stay with respect to the effectiveness and enforceability of the Interim Order and the Final Order (including a waiver pursuant to Bankruptcy Rule 6004(h)); and
- (viii) granting related relief.

BASIS FOR RELIEF

7. Immediate access to cash collateral is critical to the Debtors' ability to accomplish a smooth transition into chapter 11 and implement a successful restructuring, allowing them to emerge from these Chapter 11 Cases in an efficient and timely manner.

8. The Debtors' ability to successfully reorganize and maximize recoveries to their stakeholders hinges on their ability to conduct operations, maintain their equipment, and continue to supply electricity and capacity to the market throughout these Chapter 11 Cases in the ordinary course. That, in turn, requires the Debtors to have full and immediate access to their cash on hand – substantially all of which is Cash Collateral within the meaning of section 363(a) of the

Bankruptcy Code – to fund operating expenses and the costs of these Chapter 11 Cases, including other operational costs due in the ordinary course. Obtaining that access – particularly on a consensual basis – will send a message of strength and stability to the market and the community of critical stakeholders on whom the Debtors’ businesses rely and set the stage for a value-maximizing and successful reorganization. In contrast, failure to secure access to the Cash Collateral would cause the Debtors severe and immediate harm, likely resulting in a liquidation and significant value destruction to the detriment of all stakeholders.

9. To that end, in the weeks leading up to the Petition Date, the Debtors negotiated with the Prepetition Secured Parties (as defined herein), in an effort to obtain consensual use of cash collateral and, as of the date hereof, the Prepetition Agents, at the direction of the Required Lenders (as defined under the Prepetition Credit Agreement) in accordance with the Prepetition Intercreditor Agreement, have agreed to Cash Collateral usage on the terms set forth in the Interim Order. The Interim Order is the product of those good faith, arm’s length negotiations. Its terms are fair, reasonable, and provide the Debtors’ secured creditors with the adequate protection to which they are entitled under the Bankruptcy Code, without giving them undue influence over the course of these Chapter 11 Cases or prejudicing the rights of the Debtors or their estates. And most importantly, entry of the Interim Order will provide the Debtors and their stakeholders with certainty that the Debtors will have access to the liquidity they need to preserve the significant value in their assets and businesses while they proceed through these Chapter 11 Cases. For these reasons and others, the Debtors respectfully submit that the relief requested in this Motion should be granted.

I. The Debtors’ Prepetition Secured Indebtedness

10. As of the Petition Date, the Debtors had approximately \$151 million of secured funded debt obligations outstanding (the “**Prepetition Secured Obligations**”).

A. Prepetition First Lien Facility

11. Pursuant to that certain Credit Agreement, dated as of July 5, 2017 (as amended, restated, supplemented, waived, and/or modified from time to time, the “**Prepetition Credit Agreement**,” and, collectively with any other agreements and documents executed or delivered in connection therewith, each as amended, restated, supplemented, waived, and/or modified from time to time, the “**Prepetition Credit Agreement Documents**”) by and among Lincoln Power, L.L.C. (“**Lincoln**”), as borrower, Cogentrix Lincoln Holdings II, LLC (“**Holdings**”), ABN AMRO Capital USA LLC, as issuing lender and revolving lender (the “**Issuing Lender**”), the lenders party thereto (together with the Issuing Lender, the “**Prepetition Lenders**”), the subsidiary guarantors party thereto (the “**Guarantors**”, and together with Lincoln and Holdings, collectively, the “**Prepetition Obligors**”), and Investec Bank plc, as administrative agent (including its successors and assigns, the “**Prepetition Administrative Agent**”, and together with the Prepetition Lenders and the Prepetition Collateral Agent (as defined herein), the “**Prepetition Credit Agreement Secured Parties**”), the Prepetition Lenders provided a term loan facility and a revolving credit facility (collectively, the “**Prepetition Credit Facilities**”) to the Debtors pursuant to the terms of the Prepetition Credit Agreement Documents.

12. Pursuant to the Prepetition Credit Agreement, the Prepetition Lenders provided Lincoln with a term loan facility in the principal amount of \$262 million (the “**Prepetition Term Loan Facility**”) and a revolving credit facility in the principal amount of \$35 million (the “**Prepetition Revolving Facility**”). As of the Petition Date, not less than \$136 million and \$15 million in respect of the loans made under, respectively, the Prepetition Term Loan Facility and the Prepetition Revolving Facility remain outstanding, in addition to approximately \$7.9 million of letters of credit issued pursuant to the Prepetition Revolving Facility which remain outstanding

(together with all other applicable Obligations (as defined in the Prepetition Credit Agreement), and any and all accrued and unpaid interest thereon (including default interest), outstanding letters of credit and bankers' acceptances, reimbursement obligations (contingent or otherwise) in respect of letters of credit and bankers' acceptances or otherwise, fees, expenses, and disbursements (including attorneys' fees, accountants' fees, auditor fees, appraisers' fees, and financial advisors' fees, and related expenses and disbursements), treasury, cash management, bank product, and derivative obligations, indemnification obligations, guarantee obligations, and any and all other fees, charges, amounts, costs, and expenses of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Obligations, and all interest, fees, prepayment premiums, early termination fees, costs, and other charges in connection therewith, and all other charges allowable under section 506(b) of the Bankruptcy Code, the "**Prepetition Credit Agreement Obligations**").

B. Prepetition Interest Rate Swap Agreements

13. The Debtors' are exposed to risks arising from volatility in interest rates. To mitigate the effects of such volatility, the Debtors have engaged, and continue to engage, in certain interest rate swaps, as required under the Prepetition Credit Agreement.

14. As of the Petition Date, Lincoln and CIT Bank, N.A. ("**CIT Bank**"), Investec Bank plc ("**Investec**"), and Truist Bank (f/k/a SunTrust Bank) ("**Truist**" and together with CIT Bank and Investec, the "**Prepetition Swap Counterparties**" and together with Macquarie and the Prepetition Credit Agreement Secured Parties, the "**Prepetition Secured Parties**") are party, as applicable, to (i) (a) that certain 2002 ISDA Master Agreement, dated as of July 19, 2017, between Lincoln and CIT Bank (the "**Prepetition CIT Bank ISDA**"), (b) that certain Accession Agreement, dated as of July 19, 2017, between Lincoln, CIT Bank, as an additional secured party,

and the Prepetition Collateral Agent (the “**Prepetition CIT Bank Accession**”), and (c) that certain Confirmation of Interest Rate Swap with Embedded Floor Transaction, dated as of August 31, 2018, between Lincoln and CIT Bank (the “**Prepetition CIT Bank Interest Rate Swap**” and collectively with the Prepetition CIT Bank ISDA, the Prepetition CIT Bank Accession, and any other agreements and documents executed or delivered in connection with the Prepetition CIT Bank ISDA, the Prepetition CIT Bank Accession, or the Prepetition CIT Bank Interest Rate Swap, each as amended, restated, supplemented, waived, and/or modified from time to time, the “**Prepetition CIT Bank Agreements**” and the obligations thereunder, the “**Prepetition CIT Bank Obligations**”); (ii) (a) that certain 2002 ISDA Master Agreement, dated as of July 19, 2017, between Lincoln and Investec (the “**Prepetition Investec ISDA**”), (b) that certain Accession Agreement, dated as of July 19, 2017, between Lincoln, Investec, and the Collateral Agent (the “**Prepetition Investec Accession Agreement**”), and (c) that certain Floored Interest Rate Swap Transaction, dated as of August 31, 2018, between Lincoln and Investec (the “**Prepetition Investec Interest Rate Swap**” and collectively with the Prepetition Investec ISDA, the Prepetition Investec Accession, and any other agreements and documents executed or delivered in connection with the Prepetition Investec ISDA, the Prepetition Investec Accession, or the Prepetition Investec Interest Rate Swap, each as amended, restated, supplemented, waived, and/or modified from time to time, the “**Prepetition Investec Agreements**” and the obligations thereunder, the “**Prepetition Investec Obligations**”); and (iii) (a) that certain 2002 ISDA Master Agreement, dated as of July 19, 2017, between Lincoln and Truist (the “**Prepetition Truist ISDA**”), (b) that certain Accession Agreement, dated as of July 19, 2017, between Lincoln, Truist, and the Collateral Agent (the “**Prepetition Truist Accession Agreement**”), (c) that certain Confirmation of Swap Transaction, dated as of August 31, 2018, between Lincoln and Truist (the “**2018 Prepetition Truist Interest**”

Rate Swap”), and (d) that certain Confirmation of Swap Transaction, dated as of November 17, 2020, between Lincoln and Truist (the “**2020 Prepetition Truist Interest Rate Swap**” and collectively with the Prepetition Truist ISDA, the Prepetition Truist Accession, and the 2018 Prepetition Truist Interest Rate Swap and any other agreements and documents executed or delivered in connection with the Prepetition Truist ISDA, the Prepetition Truist Accession, or the Prepetition Truist Interest Rate Swap, each as amended, restated, supplemented, waived, and/or modified from time to time, the “**Prepetition Truist Agreements**” and together with the Prepetition CIT Bank Agreements and the Prepetition Investec Agreements, the “**Prepetition Interest Rate Swap Agreements**” and the obligations under the Prepetition Truist Agreements, the “**Prepetition Truist Obligations**,” and together with the Prepetition CIT Bank Obligations and the Prepetition Investec Obligations, the “**Prepetition Interest Rate Swap Obligations**”). The “**Prepetition Obligations**” are, collectively, the Prepetition Credit Agreement Obligations, the Prepetition Macquarie Obligations, and the Prepetition Interest Rate Swap Obligations. All of the Prepetition Interest Rate Swap Agreements include pay-fixed, receive-variable interest rate contract agreements, pursuant to which Lincoln makes fixed interest rate payments to the Prepetition Swap Counterparties and receives variable interest rate payments from the Prepetition Swap Counterparties based on notional principal amounts.

15. The Prepetition Interest Rate Swap Agreements are an important means for reducing the impact of interest-rate volatility on the Debtors’ cash flows. Further, as of the Petition Date, the Debtors estimate that the Prepetition Interest Rate Swap Agreements are valued at approximately \$3.2 million and, thus, represent a significant asset of the Debtors’ estates.

C. Heat Rate Call Option

16. Lincoln and Macquarie Bank Limited (“**Macquarie**,”) are party to (i) that certain 2002 ISDA Master Agreement, dated as of August 24, 2018 (the “**Prepetition Macquarie ISDA**”), and (ii) that certain Confirmation for Heat Rate Option, dated as of March 3, 2021 (the “**Prepetition Macquarie HRCO**,” and collectively with the Prepetition Macquarie ISDA and any other agreements and documents executed or delivered in connection with the Prepetition Macquarie ISDA or the Prepetition Macquarie HRCO, each as amended, restated, supplemented, waived, and/or modified from time to time, the “**Prepetition Macquarie Agreements**,” and the obligations thereunder up to the amount permitted to be covered by a Prepetition Lien (as defined herein), the “**Prepetition Macquarie Obligations**”). Up to \$27 million of the Prepetition Macquarie Obligations constitute secured obligations under the Prepetition Macquarie ISDA.

D. Prepetition Liens and Prepetition Collateral

17. As more fully set forth in the Prepetition Credit Agreement Documents, prior to the Petition Date, the Prepetition Obligors granted to First Citizens Bank & Trust Company (as successor by merger to CIT Bank, N.A.), as collateral agent (including its successors and assigns, the “**Prepetition Collateral Agent**”, and together with the Prepetition Administrative Agent, the “**Prepetition Agents**”), for the benefit of itself and the Prepetition Secured Parties, a security interest in and continuing lien on (the “**Prepetition Liens**”) substantially all of their assets and property (with certain exceptions set out in the Prepetition Credit Agreement Documents) including a first priority security interest in and continuing lien on the Collateral (as defined in the Prepetition Credit Agreement Documents) and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (collectively, the “**Prepetition Collateral**”).

E. The Intercreditor Agreement

18. The Prepetition Agents are parties to that certain Collateral Agency and Intercreditor Agreement, dated as of July 5, 2017 (as amended, restated, supplemented, waived, and/or modified from time to time, the “**Intercreditor Agreement**”), which governs, among other things, the respective rights, interests, obligations, priority, and positions of the Prepetition Secured Parties with respect to the assets and properties of the Debtors and other obligors. Pursuant to the Intercreditor Agreement, the Prepetition Secured Obligations rank *pari passu*.

F. Unsecured Debt

19. The Debtors have no funded unsecured debt. In the ordinary course, the Debtors incur trade debt with certain vendors and suppliers in connection with the operation of their business. In addition, the Debtors have other potential and contingent liabilities related to litigation and regulatory obligations.

II. The Debtors’ Immediate Need to Use Cash Collateral

20. Substantially all of the Loan Parties’ cash constitutes the Cash Collateral under section 363(a) of the Bankruptcy Code. Because the Debtors do not have access to any meaningful cash with which to fund their businesses and operations other than Cash Collateral, the Debtors require immediate access to Cash Collateral in order to preserve the value of their assets and fund the expenses of these cases. Failure to obtain access to Cash Collateral now will disrupt operations and potentially lead to the Debtors’ liquidation, resulting in immediate and irreparable harm to the Debtors and their stakeholders.

21. The Debtors propose to use Cash Collateral during the interim period pursuant to the budget attached to the Interim Order as Exhibit A, which sets forth the first thirteen weeks of the budget. The expenditures set forth therein are necessary to preserve the value of the Debtors’ estates and facilitate the Debtors’ pursuit of a value-maximizing restructuring.

BANKRUPTCY RULE 4001 AND LOCAL RULE 4001-2 CONCISE STATEMENT:³

22. Pursuant to Bankruptcy Rule 4001(b)(1) and (d) and Local Rule 4001-2(a)(ii), the

Debtors submit the following concise statement of the material terms of the Interim Order:

Summary of Material Terms		Location
Entities with an Interest in Cash Collateral <i>Bankruptcy Rule 4001(b)(1)(B)(i)</i>	Investec, in its capacity as administrative agent under the Prepetition Credit Agreement, First Citizens Bank & Trust Company (as successor by merger to CIT Bank, N.A.), in its capacity as collateral agent under the Prepetition Credit Documents, and the Secured Parties pursuant to the Prepetition Credit Documents.	¶F(i), ¶F(ii), ¶F(iii), ¶F(iv)
Purposes for Use of Cash Collateral <i>Bankruptcy Rule 4001(b)(1)(B)(ii)</i>	To avoid immediate and irreparable harm to their estates, the Debtors request access to Cash Collateral on an interim and final basis to fund the operation of their businesses in the ordinary course postpetition, as well as the administrative costs of these Chapter 11 Cases.	¶K
Budget <i>Bankruptcy Rule 4001(b)(1)(B)(ii)</i>	<p>The Debtors' use of cash collateral will be subject to the Approved Budget and Budget Covenant.</p> <p>Each Approved Budget shall set forth the Debtors' projected cash receipts, disbursements, and net cash flow, beginning with the thirteen-week period reflected on the Initial Budget attached as <u>Exhibit A</u> to the Interim Order.</p> <p>The Interim Order provides for testing of the Debtors' aggregate operating disbursements (excluding certain professional fees and administrative expenses related to these Chapter 11 Cases) and professional fee disbursements once every week in accordance with the Budget Covenant.</p>	¶3(b), 4(f)
Duration of Use of Cash Collateral/ Termination Events/ Relief from Stay <i>Bankruptcy Rule</i>	The Debtors' right to use Cash Collateral pursuant to the Interim Order shall last for the duration of the Interim Period, provided that no Event of Default occurs.	¶3(a), ¶8, ¶9, Exhibit B

³ Any summary of the terms of the Interim Order contained in this Motion is qualified in its entirety by reference to the provisions of the Interim Order. To the extent there is a conflict between this Motion and the Interim Order, the Interim Order shall control. The Debtors reserve the right to supplement the statements made herein. Capitalized terms used in this summary of terms but not otherwise defined herein shall have the meanings ascribed to such terms in the Interim Order except as otherwise set forth herein.

Summary of Material Terms	Location
<p><i>4001(b)(1)(B)(iii), Local Rule 4001– 2(a)(ii)</i></p>	<p>As used in the Interim Order the “<u>Interim Period</u>” begins on the Petition Date and terminates on the date which is the earliest to occur of:</p> <ul style="list-style-type: none"> i. the expiration of the Remedies Notice Period; and ii. the date that is twenty-eight (28) days from the Petition Date if this Court has not entered the Final Order on or before such date. <p>As used in the Interim Order an “<u>Event of Default</u>” includes the following events:</p> <ul style="list-style-type: none"> i. the failure to obtain the Final Order in form and substance acceptable to the Required Prepetition Lenders (as defined in the Interim Order) within thirty-five (35) days after the Petition Date; ii. the failure of the Debtors to meet any of the following milestones: <ul style="list-style-type: none"> a. <u>General</u>. This Court shall have entered the Final Order no later than thirty-five (35) calendar days following the Petition Date. b. <u>Plan and Disclosure Statement</u>. <ul style="list-style-type: none"> i. No later than ten (10) days after the Petition Date, the Debtors shall file a plan in form and substance acceptable to the Required Prepetition Lenders (the “<u>Approved Plan</u>”), and a disclosure statement for the Approved Plan, which shall be in form and substance acceptable to the Required Prepetition Lenders (the “<u>Disclosure Statement</u>”); ii. Within thirty-five (35) days of the date on which the Approved Plan and Disclosure Statement are filed, this Court shall have entered an order approving the Disclosure Statement, which order shall be in form and substance acceptable to the Required Prepetition Lenders; iii. Within seventy (70) days of the date on which the Approved Plan and Disclosure Statement are filed, this Court shall have entered an order confirming the Approved Plan, which order shall be in form and

Summary of Material Terms		Location
	<p>substance acceptable to the Prepetition Administrative Agent; and</p> <p>iv. Within ninety-five (95) days of the Petition Date, the Approved Plan shall be effective.</p> <p>c. The Sale Option.</p> <p>i. On the Petition Date, the Debtors shall, in coordination with the Administrative Agent, commence a marketing process to gauge interest in the sale of some or all of the Debtors’ business enterprise pursuant to either section 363 of the Bankruptcy Code or a chapter 11 plan (a “Sale”). Such process shall be conducted within forty-five (45) days of the Petition Date; and</p> <p>ii. If the Prepetition Administrative Agent, on behalf of the Required Prepetition Lenders (at their sole discretion), directs the Debtors in writing to pursue consummation of a Sale (the day of such written direction the “Sale Direction Date”), then:</p> <ol style="list-style-type: none"> 1. No later than five (5) calendar days following the Sale Direction Date, the Debtors shall have filed a motion for approval of procedures for the marketing and sale of some or all of the Debtors’ business enterprise (the “Bidding Procedures Motion,” and the bidding procedures proposed therein, the “Bidding Procedures”), which Bidding Procedures Motion and proposed Bidding Procedures shall be in form and substance acceptable to the Required Prepetition Lenders; 2. This Court shall have entered an order approving the Bidding Procedures Motion no later than twenty- 	

Summary of Material Terms		Location
	<p>six (26) days following the Sale Direction Date;</p> <ol style="list-style-type: none"> 3. The deadline to submit final qualified bids pursuant to the Bidding Procedures shall be no later than fifty (50) days after the Sale Direction Date; 4. Any auction to select a winning bidder pursuant to the Bidding Procedures shall be conducted no later than fifty-five (55) days after the Sale Direction Date; and 5. An order approving the Sale shall have been entered by the Court no later than the later of (i) seventy-five (75) days following the Petition Date or (ii) sixty (60) days following the Sale Direction Date, which order shall be in form and substance acceptable to the Required Prepetition Lenders. <p>d. The PJM Litigation.</p> <ol style="list-style-type: none"> i. No later than two (2) Business Days following the Petition Date, the Debtors shall initiate the PJM Litigation (as defined in the Restructuring Term Sheet); ii. A hearing concerning the PJM Litigation shall occur no later than seventy-five (75) days after the Petition Date; and iii. A final order resolving the Debtors' summary judgment motion and any PJM Motion to dismiss shall be entered no later than eighty-five (85) days after the Petition Date. <p>iii. the Debtors shall have (a) filed a motion seeking to create, or (b) created, incurred, or suffered to exist, any postpetition liens or security interests, other than those granted or permitted pursuant to the Interim Order without the written consent of the Required Prepetition Lenders;</p>	

Summary of Material Terms	Location
<ul style="list-style-type: none"> <li data-bbox="527 268 1266 478">iv. the Debtors shall have filed a disclosure statement or chapter 11 plan that (a) is not reasonably acceptable to the Required Prepetition Lenders and (b) does not provide for the Prepetition Obligations to be repaid in full in Cash on the effective date thereof; <li data-bbox="527 506 1266 646">v. any of the documents or other information required to be delivered to any of the Prepetition Secured Parties pursuant to the Interim Order shall contain any material misrepresentation; <li data-bbox="527 667 1266 1241">vi. the entry of a final order by this Court, other than the Interim Order, granting relief from or modifying the automatic stay of section 362 of the Bankruptcy Code (a) to allow any creditor to execute upon or enforce a lien on or security interest in any Collateral (as such term is defined in the Interim Order), or (b) with respect to any lien of or the granting of any lien on any Collateral to any state or local environmental or regulatory agency or authority; provided, however, that the entry of a final order by this Court granting relief from the automatic stay of section 362 of the Bankruptcy Code in respect of Collateral having a value equal to or less than \$25,000 shall not be an Event of Default, so long as the aggregate value under any such orders does not exceed \$100,000; <li data-bbox="527 1268 1266 1367">vii. this Court shall enter an order approving any claims for recovery of amounts under section 506(c) of the Bankruptcy Code with respect to any Collateral; <li data-bbox="527 1394 1266 1570">viii. the Debtors shall support, commence, or join as an adverse party in any suit or other proceeding against the Prepetition Agents or the Prepetition Secured Parties relating to the Prepetition Obligations or Collateral; <li data-bbox="527 1598 1266 1738">ix. reversal, amendment, supplement, vacatur, or modification (without the express prior written consent of the Required Prepetition Lenders) of the Interim Order; <li data-bbox="527 1766 1266 1818">x. the entry of a final order by this Court avoiding or requiring repayment of any portion of any 	

Summary of Material Terms	Location
<p>applicable Adequate Protection provided by the Debtors under the Interim Order;</p> <p>xi. the Final Order or any pleading filed in these Chapter 11 Cases by the Debtors provides for the nonconsensual priming of the Prepetition Liens;</p> <p>xii. the Debtors shall create, incur, or suffer to exist any other claim which is <i>pari passu</i> with or senior to the 507(b) Claims (as defined herein) without the written consent of the Required Prepetition Lenders;</p> <p>xiii. dismissal of any of these Chapter 11 Cases or conversion of any of these Chapter 11 Cases to chapter 7 cases, or appointment of a trustee, receiver, interim receiver, or manager, or appointment of a responsible officer or examiner with enlarged powers in any of these Chapter 11 Cases (having powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code);</p> <p>xiv. the cessation of all or any material part of the Debtors' business operations, considered on a consolidated basis, without the consent of the Required Prepetition Lenders;</p> <p>xv. the Debtors' exclusive right to file and solicit acceptances of a plan of reorganization is terminated or terminates;</p> <p>xvi. the failure to make any material payments as set forth herein when due and such failure shall remain unremedied for more than five (5) business days after receipt by the Debtors of written notice thereof from the Prepetition Administrative Agent;</p> <p>xvii. the Debtors shall sell, transfer, lease, encumber, or otherwise dispose of any portion of the Prepetition Collateral or Collateral other than in the ordinary course of business without the prior written consent of the Required Prepetition Lenders (and no such consent shall be implied from any other action, inaction, or acquiescence by any of the Prepetition Secured Parties or from any order of this Court);</p> <p>xviii. the failure by the Debtors to perform, in any respect, any of the terms, provisions, conditions, or</p>	

Summary of Material Terms		Location
	<p>obligations under the Interim Order, including a breach of the Budget Covenant; and</p> <p>xix. the Debtors violate or breach the terms of the Interim Order and such violation or breach is not cured within two (2) business days of receipt by the Debtors of notice of such breach or violation.</p> <p>Upon the occurrence of an Event of Default, the Debtors; authorization to use Cash Collateral will terminate following the giving of five (5) business days’ written notice to the Debtors, the U.S. Trustee, and counsel to any official committee appointed in these cases (the “Remedies Notice Period”), and the automatic stay will be deemed modified to the extent necessary to permit certain Prepetition Secured Parties to exercise their rights and remedies in accordance with the Intercreditor Agreement, the Prepetition Credit Agreement Documents and the Interim Order. During the Remedies Notice Period, the Debtors and/or any Committee (if appointed) shall be entitled to seek an emergency hearing to contest whether an Event of Default has occurred and/or is continuing and/or seek non-consensual use of Cash Collateral and continuation of the automatic stay.</p> <p>Unless the Court orders otherwise during the Remedies Notice Period, at the end of the Remedies Notice Period (i) the Debtors shall automatically, without further notice or order of this Court, no longer have the right to use Cash Collateral, (ii) the automatic stay pursuant to section 362 of the Bankruptcy Code shall be automatically terminated, without further notice or order of this Court, and (iii) the Prepetition Secured Parties shall, subject to the Intercreditor Agreement and the Carve Out, be permitted to exercise all rights and remedies set forth in this Interim Order, the Prepetition Credit Agreement Documents, and as otherwise available at law without further order, application, or motion to this Court, and without restriction or restraint by any stay under section 362 or 105 of the Bankruptcy Code.</p>	
<p>Proposed Adequate Protection <i>Bankruptcy Rule 4001(b)(1)(B)(iv),</i></p>	<p>As adequate protection for their proposed use of Cash Collateral as set forth above, the Debtors propose to provide the following to the Prepetition Secured Parties:</p>	<p>¶4</p>

Summary of Material Terms	Location
<p><i>Local Rule 4001–2(a)(ii)</i></p>	<ul style="list-style-type: none"> i. solely to the extent of any Diminution in Value of the Prepetition Secured Parties’ interests in the Prepetition Collateral and subject in all cases to the Carve Out and any validly perfected, enforceable, and unavoidable Prepetition Permitted Liens in existence as of the Petition Date, continuing valid, binding, enforceable, non-avoidable, and automatically fully-perfected postpetition security in and liens on: (i) the Prepetition Collateral and (ii) all other of the Debtors’ now-owned and hereafter-acquired real and personal property, assets and rights of any kind or nature, wherever located, whether encumbered or unencumbered (the “Collateral”); provided that, notwithstanding the foregoing, the Collateral shall exclude all claims and causes of action arising under any section of chapter 5 of the Bankruptcy Code or any other similar state or federal law (the “Avoidance Actions”), but, subject to entry of a Final Order, shall include proceeds of and other property that is recovered or becomes unencumbered as a result of (whether by judgement, settlement, or otherwise) any Avoidance Actions; ii. allowed superpriority administrative expense claims in these Chapter 11 Cases ahead of and senior to any and all other administrative expense claims in these Chapter 11 Cases to the extent of, and in an aggregate amount equal to, any Diminution in Value (the “507(b) Claims”), but subject to the Carve Out; iii. payment of certain fees and expenses of professionals to the Prepetition Secured Parties, including the Prepetition Administrative Agent, the Collateral Agent and the Depositary Agent, and the Issuing Lender, as and to the extent set forth in the Interim Order; iv. interest on all outstanding Obligations shall accrue at the applicable default contract interest rate set forth in the Prepetition Credit Agreement and all outstanding Eurodollar loans (as defined in the Prepetition Credit Agreement) and shall automatically be converted to ABR Loans (as defined in the Prepetition Credit Agreement) on the

Summary of Material Terms		Location
	<p>last day of the then-current Interest Period (as defined in the Prepetition Credit Agreement) ending after the Petition Date, and thereafter;</p> <p>v. the Debtors' compliance with the Approved Budget, the Budget Covenant, and certain reporting obligations, including the Budget Variance Report; and</p> <p>vi. access to the Debtors' properties, books and records and the ability to meet with the Debtors and their management and professionals to discuss the Debtors' affairs, finances, and conditions, subject to certain terms and conditions.</p>	
<p>Carve Out <i>Bankruptcy Rule 4001(b)(1)(B)(iii)</i></p>	<p>The Interim Order provides a "Carve Out" from the Collateral and Prepetition Collateral to cover the following expenses: (i) Court and U.S. Trustee fees, (ii) reasonable fees and out-of-pocket expenses up to \$25,000 incurred by a chapter 7 trustee, (iii) Allowed Professional Fees of the Debtor Professionals and the Committee Professionals incurred prior to the delivery of a Carve-Out Trigger Notice; (iv) Allowed Professional Fees up to \$1,000,000, incurred after delivery of a Carve-Out Trigger Notice; and (v) any Transaction Fee owed to Guggenheim Securities, LLC, incurred at any time before or after delivery of a Carve-Out Trigger Notice.</p>	¶10

23. Pursuant to Local Rule 4001-2(a)(ii), the Debtors submit the following additional concise statement of certain additional key terms of the Interim Order:

Local Rule 4001-2 Concise Statements		Location
<p>Cross-Collateralization <i>Local Rule 4001-2(a)(i)(A)</i></p>	<p>The Interim Order does not provide for cross-collateralization, other than replacement liens as adequate protection.</p>	N/A
<p>Stipulations and Releases <i>Local Rule 4001-2(a)(i)(B)</i></p>	<p>Subject to the challenge rights of any Committee and other parties in interest (other than the Debtors) under paragraph 11 of the Interim Order (the "Challenges"), the Interim Order contains stipulations and acknowledgements by the Debtors with respect to the following matters, including, among others, the amount, validity, perfection and priority</p>	¶F, ¶11

	Local Rule 4001-2 Concise Statements	Location
	<p>of the Prepetition Liens on the Prepetition Collateral and Prepetition Obligations.</p> <p>Subject to the Challenge Period, paragraph 11 of the Interim Order includes a release by the Debtors of claims and causes of action against the Prepetition Secured Parties relating to the Prepetition Obligations, the Prepetition Liens, the Prepetition Credit Documents, the documentation thereof, and the Interim Order, and the transactions contemplated thereby.</p> <p>In accordance with Local Rule 4001-2(a)(i)(B), paragraph 11 of the Interim Order provides that such stipulations and releases are subject to challenge by any Committee or other party in interest with standing so long as such challenge is properly commenced within seventy-five (75) calendar days after the entry of the Interim Order.</p>	
<p>Section 506(c) Waiver <i>Local Rule 4001-2(a)(i)(C)</i></p>	<p>Subject to entry of a Final Order, the Interim Order provides a waiver of the estate's rights under a section 506(c) waiver, except to the extent of the Carve Out.</p>	<p>¶17</p>
<p>Liens on Chapter 5 Causes of Action <i>Local Rule 4001-2(a)(i)(D)</i></p>	<p>Subject to entry of a Final Order, the Interim Order grants the Prepetition Secured Parties liens on the proceeds of claims or causes of action under sections 542, 544, 545, 547, 548, or 550 of the Bankruptcy Code.</p>	<p>¶4(a)</p>
<p>Provisions Deeming Prepetition Debt to be Postpetition Debt <i>Local Rule 4001-2(a)(i)(E)</i></p>	<p>Not applicable.</p>	<p>N/A</p>
<p>Disparate Treatment of Professionals Under Carve Out <i>Local Rule 4001-2(a)(i)(F)</i></p>	<p>The Interim Order contains no provision for disparate treatment for Committee professionals, if any, with respect to the Carve Out.</p>	<p>N/A</p>
<p>Non-Consensual Priming Liens</p>	<p>Not applicable.</p>	<p>N/A</p>

Local Rule 4001-2 Concise Statements		Location
<i>Local Rule 4001–2(a)(i)(G)</i>		
Section 552(b)(1) Waiver <i>Local Rule 4001–2(a)(i)(H)</i>	Subject to entry of a Final Order, the Interim Order provides for an immediate waiver of the estate’s rights under the “equities of the case” exception under section 552(b).	N/A

BASIS FOR RELIEF

I. The Debtors Should Be Authorized to Use Cash Collateral

24. A debtor’s use of property of the estate, including cash collateral, is governed by section 363 of the Bankruptcy Code, which provides in relevant part that:

If the business of the debtor is authorized to be operated under section . . . 1108 . . . of this title and unless the court orders otherwise, the [debtor] may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c)(1). Additionally, pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor may use cash collateral if: “(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of [section 363].” 11 U.S.C. § 363(c)(2).

25. As described above, the Debtors negotiated the Interim Order with the Prepetition Secured Parties prior to the Petition Date, and the Prepetition Agents, acting at the direction of the Required Lenders (as defined in the Prepetition Credit Agreement) in accordance with the Prepetition Intercreditor Agreement, have consented to the Debtors’ Cash Collateral usage on the terms set forth therein. Accordingly, the Debtors believe that the requirements of section 363(c)(2)(A) are satisfied and that the Debtors’ use of Cash Collateral can be authorized on that basis. In addition, the Debtors submit that such usage can be authorized pursuant to section

363(c)(2)(B) because the Prepetition Secured Parties' interests in the Prepetition Collateral, including Cash Collateral, are adequately protected against diminution in value under the terms of the Interim Order, as discussed below.

II. The Debtors' Proposed Adequate Protection Is Sufficient and Appropriate

26. Section 363(e) of the Bankruptcy Code provides that "on request of an entity that has an interest in property . . . to be used, sold or leased, by the trustee, the court . . . shall prohibit or condition such use, sale or lease as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e). Further, section 362(d)(1) of the Bankruptcy Code provides for adequate protection of interests in property due to the imposition of the automatic stay. *See* 11 U.S.C. § 362(d)(1); *see also In re Cont'l Airlines*, 91 F.3d 553, 556 (3d Cir. 1996).

27. The Bankruptcy Code does not expressly define "adequate protection." Section 361 of the Bankruptcy Code, however, provides a non-exhaustive list of examples of adequate protection, including replacement liens and administrative priority claims. *See* 11 U.S.C. § 361. Generally, courts decide what constitutes adequate protection on a case-by-case basis. *See, e.g., Resolution Trust Corp. v. Swedeland Dev. Grp., Inc. (In re Swedeland Dev. Grp., Inc.)*, 16 F.3d 552, 564 (3d Cir. 1994) ("a determination of whether there is adequate protection is made on a case by case basis"); *In re N.J. Affordable Homes Corp.*, No. 05-60442, 2006 WL 2128624, at *14 (Bankr. D.N.J. June 29, 2006) ("The term 'adequate protection' is intended to be a flexible concept."); *In re Columbia Gas Sys., Inc.*, Nos. 91-803, 91-804, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992) (emphasizing that "the varying analyses and results contained in the . . . slew of cases demonstrate that what interest is entitled to adequate protection and what constitutes adequate protection must be decided on a case-by-case basis"); *see also In re Dynaco Corp.*, 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (explaining that adequate protection can take many forms and

“must be determined based upon equitable considerations arising from the particular facts of each proceeding”) (internal citation omitted).

28. In *Swedeland*, the Third Circuit pointedly noted that the purpose of adequate protection “is to insure that the creditor receives the value for which he bargained prebankruptcy.” *In re Swedeland Dev. Grp., Inc.*, 16 F.3d at 564 (quoting *In re O’Connor*, 808 F.2d 1393, 1396 (10th Cir. 1987)); see also *Shaw Indus., Inc. v. First Nat’l Bank of Pa. (In re Shaw Indus., Inc.)*, 300 B.R. 861, 865 (Bankr. W.D. Pa. 2003) (“The purpose of providing ‘adequate protection’ is to insure that a secured creditor receives in value essentially what he bargained for.”); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986) (noting that the application of adequate protection “is left to the vagaries of each case, but its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process”) (citation omitted), *rev’d on other grounds*, 89 B.R. 336 (S.D.N.Y. 1988). The Third Circuit has held that adequacy, “depends directly on how effectively it compensates the secured creditor for loss of value” caused by the priming lien granted to the new lender. *In re Swedeland Dev. Grp., Inc.*, 16 F.3d at 564 (quoting *In re Am. Mariner Inds., Inc.*, 734 F.2d 426, 432 (9th Cir. 1984)).

29. The Interim Order grants the Prepetition Secured Parties a reasonable adequate protection package including (i) replacement liens and superpriority claims under section 507(b) of the Bankruptcy Code to the extent of any diminution in value of their interest in their collateral, (ii) payment of certain professional fees and expenses incurred by the Prepetition Secured Parties, and (iii) various other protections, including compliance with certain covenants (including budget covenants) and the provision of reporting. This adequate protection package is designed to ensure that the Prepetition Secured Parties will be compensated for postpetition diminution in value of their interests in the Prepetition Collateral, if any.

30. At the same time, the proposed adequate protection will not harm or otherwise prejudice the Debtors' unsecured creditors and other stakeholders. The value of any replacement liens and claims will be limited to the amount of diminution in value actually realized by the Prepetition Secured Parties, such that the Prepetition Secured Parties will receive full compensation for such diminution, but no more. *See* Interim Order, ¶ 4. And, any payments of professional fees, are without prejudice to any parties' rights to assert that such amounts should be recharacterized as payments of principal if appropriate under applicable law. *Id.* As described in the First Day Declaration, this adequate protection package was extensively negotiated in good faith by the Debtors and the Prepetition Secured Parties, with all parties making concessions in an effort to achieve consensus, and the Debtors particularly focused on not ceding inappropriate case controls to the Prepetition Secured Parties and preserving rights of the estate and parties in interest, including unsecured creditors.

III. Interim Relief Is Necessary to Avoid Immediate and Irreparable Harm

31. Bankruptcy Rule 4001(b) provides that a final hearing on a motion to use cash collateral pursuant to section 363 of the Bankruptcy Code may not be commenced earlier than 14 days after the service of such motion. Upon request, however, this Court is authorized to conduct an interim expedited hearing on the motion at which it may authorize a debtor to use cash collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate pending a final hearing. *See* Fed. R. Bankr. P. 4001(b)(2). Section 363(c)(3) of the Bankruptcy Code authorizes this Court to conduct a preliminary hearing and to authorize the use of cash collateral "if there is a reasonable likelihood that the [debtor] will prevail at the final hearing under [section 363(e) of the Bankruptcy Code]." 11 U.S.C. § 363(c)(3).

32. The Debtors require immediate access to Cash Collateral to satisfy the day-to-day needs of the Debtors' business operations during the interim period. Absent the use of Cash

Collateral, the Debtors will not have sufficient working capital to: (i) make payments to, vendors, or suppliers (including the critical payments contemplated by the Debtors' first day motions), (ii) satisfy operating costs, and (iii) fund the administrative costs of these Chapter 11 Cases, and the Debtors would presumably have no choice but to immediately shut down their operations and liquidate. The ability to satisfy these expenses when due is essential to avoid immediate and irreparable harm to the Debtors' estates and allow the Debtors to operate in chapter 11 in a way that maximizes value. In addition, access to liquidity will address any concerns regarding the Debtors' financial health and ability to continue operations in light of these Chapter 11 Cases.

33. Accordingly, pursuant to section 363(c)(3) of the Bankruptcy Code and Bankruptcy Rule 4001(b), the Debtors request an expedited hearing to consider this Motion and entry of the Interim Order authorizing the Debtors' use of Cash Collateral.

BANKRUPTCY RULE 4001(a)(3) SHOULD BE WAIVED

34. The Debtors request a waiver of the stay of the effectiveness of the order approving this Motion under Bankruptcy Rule 4001(a)(3). Bankruptcy Rule 4001(a)(3) provides, "[a]n order granting a motion for relief from an automatic stay made in accordance with Rule 4001(a)(1) is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 4001(a)(3). As explained above and in the First Day Declaration, the use of Cash Collateral is essential to prevent irreparable damage to the Debtors' operations. Accordingly, ample cause exists to justify the waiver of the fourteen-day stay imposed by Bankruptcy Rule 4001(a)(3), to the extent such stay applies.

CONSENT TO JURISDICTION

35. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that this Court would lack Article III jurisdiction to enter such final judgment or order absent consent of the parties.

RESERVATION OF RIGHTS

36. Nothing contained herein is or should be deemed or construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to the proposed Interim Order and Final Order (once entered). Nothing contained in the Interim Order or the Final Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

NOTICE

37. Notice of this Motion will be given to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the United States Attorney's Office for the District of Delaware; (iii) the United States Department of Justice; (iv) the attorneys general for the states in which the Debtors conduct business; (v) the Internal Revenue Service; (vi) the United States Environmental Protection Agency and similar state environmental agencies for states in which the Debtors conduct business; (vii) the Federal Energy Regulatory Commission; (viii) PJM Interconnection, L.L.C.; (ix) PJM Settlement, Inc.; (x) the creditors listed on the Debtors' consolidated list of thirty (30) creditors holding the largest unsecured claims; (xi) counsel to the Administrative Agent; (xii) counsel to the Collateral and Depositary Agent; (xiii) counsel to the Issuing Lender; (xiv) counsel to Macquarie; (xv) all parties who are known, after reasonable inquiry, to have asserted a lien, encumbrance, or claim in the Prepetition Collateral; and (xvi) all parties entitled to

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

38. A copy of this Motion is available on (i) this Court's website, at www.deb.uscourts.gov, and (ii) the website maintained by the Debtors' proposed Claims and Noticing Agent, Omni Agent Solutions, at <https://omniagentsolutions.com/LincolnPower>.

NO PRIOR REQUEST

39. No previous request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Debtors respectfully request that this Court enter the proposed Interim Order, substantially in the form attached hereto as Exhibit 1, and, following a noticed hearing on the relief sought, the Final Order, and grant the relief requested in this Motion and such other and further relief as may be just and proper.

[Remainder of page intentionally left blank]

Dated: March 31, 2023
Wilmington, Delaware

Respectfully Submitted,

/s/ Heather P. Smillie

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Proposed Counsel for Debtors and Debtors in Possession

EXHIBIT 1

Proposed Interim Order

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

----- X
 In re: : Chapter 11
 :
 LINCOLN POWER, L.L.C., *et al.*,¹ : Case No. 23-10382 (____)
 :
 Debtors. : (Joint Administration Requested)
 :
 ----- X

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO USE
CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION TO THE
PREPETITION SECURED PARTIES, (III) MODIFYING THE AUTOMATIC STAY,
(IV) SCHEDULING A FINAL HEARING, AND (V) GRANTING RELATED RELIEF**

Upon the motion, dated March 31, 2023 (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), pursuant to sections 105, 361, 362, 363, 503, and 507 of title 11 of the United States Code (the “Bankruptcy Code”), rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 2002-1(b), 4001-2, and 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Bankruptcy Rules”), seeking entry of this interim order (this “Interim Order”) and a final order (the “Final Order”), among other things:

- (i) authorizing the Debtors’ use of Available Cash Collateral (as defined below);

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

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

(ii) granting adequate protection to the Prepetition Secured Parties (as defined below) for any Diminution in Value (as defined below) of their respective interests in the Prepetition Collateral (as defined below), including Cash Collateral;

(iii) subject to entry of the Final Order and to the extent set forth herein, waiving the Debtors' right to surcharge the Collateral (as defined below) pursuant to section 506(c) of the Bankruptcy Code;

(iv) subject to entry of the Final Order and to the extent set forth herein, waiving application of the "equities of the case" exception under section 552(b) of the Bankruptcy Code to any of the Prepetition Secured Parties with respect to the proceeds, products, offspring, or profits of any of the Collateral (including the Prepetition Collateral) under section 552(b) of the Bankruptcy Code or any other applicable principal of equity or law;

(v) vacating or modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to permit the Debtors and the Prepetition Secured Parties to implement and effectuate the terms and provisions of this Interim Order;

(vi) scheduling a final hearing (the "Final Hearing") to consider the relief requested in the Motion and the entry of the Final Order, and approving the form of notice with respect to the Final Hearing;

(vii) waiving any applicable stay with respect to the effectiveness and enforceability of this Interim Order (including a waiver pursuant to Bankruptcy Rule 6004(h)); and

(viii) granting related relief.

This Court (as defined below) having considered the Motion, the First Day Declaration, the exhibits attached thereto, and the evidence submitted or adduced and the arguments of counsel made at the interim hearing held pursuant to Bankruptcy Rule 4001(b)(2) on April [●], 2023

(the “Interim Hearing”); and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

BASED UPON THE RECORD ESTABLISHED BY THE DEBTORS AT THE INTERIM HEARING, THIS COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:³

A. Disposition. The relief requested in the Motion is granted on an interim basis in accordance with the terms of this Interim Order. Any objections to the Motion with respect to the entry of this Interim Order that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby denied and overruled on the merits. This Interim Order shall become effective immediately upon its entry and any applicable stay (including under Bankruptcy Rule 6004) is waived to permit such effectiveness.

B. Petition Date. On March 31, 2023 (the “Petition Date”), each of the Debtors filed a voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (this “Court”) commencing these Chapter 11 Cases.

C. Debtors in Possession. The Debtors continue to manage and operate their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Chapter 11 Cases.

D. Jurisdiction and Venue. This Court has jurisdiction over this matter, these proceedings, and the persons and property affected hereby 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 matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Debtors confirm their consent pursuant to Local Bankruptcy

³ Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, pursuant to Bankruptcy Rule 7052. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

Rule 9013-1(f) to the entry of a final order by this Court in connection with this Motion to the extent that it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue for these Chapter 11 Cases is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

E. Committee. As of the date hereof, no statutory committee has been appointed in these Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (a “Committee”).

F. Debtors’ Stipulations. Subject to paragraph 11 hereof, each stipulation, admission, and agreement contained in this Interim Order, including, without limitation, the Debtors’ Stipulations (as defined herein), shall be binding upon the Debtors, and any successors thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors), under all circumstances and for all purposes. The Debtors are deemed to have irrevocably waived and relinquished all Challenges (as defined herein) as of the Petition Date. Without prejudice to the rights of parties in interest as set forth in paragraph 11 herein, the Debtors, on their own behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree as follows (paragraphs F(i) through F(x) below are referred to, collectively, as the “Debtors’ Stipulations”):

(i) Prepetition Credit Facilities. Pursuant to that certain Credit Agreement, dated as of July 5, 2017 (as amended, restated, supplemented, waived, and/or modified from time to time, the “Prepetition Credit Agreement,” and, collectively with any other agreements and documents executed or delivered in connection therewith, each as amended, restated, supplemented, waived, and/or modified from time to time, the “Prepetition Credit Agreement Documents”) by and among Lincoln Power, L.L.C. (“Lincoln”), as borrower, Cogentrix Lincoln Holdings II, LLC (“Holdings”), ABN AMRO Capital USA LLC, as issuing lender and revolving

lender (the “Issuing Lender”), the lenders party thereto (together with the Issuing Lender, the “Prepetition Lenders”), the subsidiary guarantors party thereto (the “Guarantors”), and Investec Bank plc, as administrative agent (including its successors and assigns, the “Prepetition Administrative Agent,” and together with the Prepetition Lenders and the Prepetition Collateral Agent (as defined below), the “Prepetition Credit Agreement Secured Parties”), the Prepetition Lenders provided a term loan facility and a revolving credit facility (collectively, the “Prepetition Credit Facilities”) to the Debtors pursuant to the terms of the Prepetition Credit Agreement Documents.

(ii) *Prepetition Credit Agreement Obligations.* As of the Petition Date, Lincoln, Holdings, and the Guarantors (in such capacity, collectively, the “Prepetition Obligors”) were justly and lawfully indebted and liable to the Prepetition Credit Agreement Secured Parties, without defense, counterclaim, or offset of any kind, in the aggregate principal amount of \$151,076,025 (together with all other applicable Obligations (as defined in the Prepetition Credit Agreement), and any and all accrued and unpaid interest thereon (including default interest), outstanding letters of credit and bankers’ acceptances, reimbursement obligations (contingent or otherwise) in respect of letters of credit and bankers’ acceptances or otherwise, fees, expenses, and disbursements (including attorneys’ fees, accountants’ fees, auditor fees, appraisers’ fees, and financial advisors’ fees, and related expenses and disbursements), treasury, cash management, bank product, and derivative obligations, indemnification obligations, guarantee obligations, and any and all other fees, charges, amounts, costs, and expenses of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Obligations, and all interest, fees, prepayment premiums, early termination fees, costs, and

other charges in connection therewith, and all other charges allowable under section 506(b) of the Bankruptcy Code, the “Prepetition Credit Agreement Obligations”).

(iii) *Prepetition Macquarie Agreements.* As of the Petition Date, Lincoln and Macquarie Bank Limited (“Macquarie”) are party to (a) that certain 2002 ISDA Master Agreement, dated as of August 24, 2018 (the “Prepetition Macquarie ISDA”), and (b) that certain Confirmation for Heat Rate Option, dated as of March 3, 2021 (the “Prepetition Macquarie HRCO,” and collectively with the Prepetition Macquarie ISDA and any other agreements and documents executed or delivered in connection with the Prepetition Macquarie ISDA or the Prepetition Macquarie HRCO, each as amended, restated, supplemented, waived, and/or modified from time to time, the “Prepetition Macquarie Agreements,” and the obligations thereunder up to the amount permitted to be covered by a Prepetition Lien, the “Prepetition Macquarie Obligations”).

(iv) *Prepetition Interest Rate Swap Agreements.* As of the Petition Date, Lincoln and First-Citizens Bank & Trust Company (as successor by merger to CIT Bank, N.A.) (“CIT Bank”), Investec Bank plc (“Investec”), and Truist Bank (f/k/a SunTrust Bank) (“Truist,” and together with CIT Bank and Investec, the “Prepetition Swap Counterparties,” and together with Macquarie and the Prepetition Credit Agreement Secured Parties, the “Prepetition Secured Parties”) are party, as applicable, to (a) (i) that certain 2002 ISDA Master Agreement, dated as of July 19, 2017, between Lincoln and CIT Bank (the “Prepetition CIT Bank ISDA”), (ii) that certain Accession Agreement, dated as of July 19, 2017, between Lincoln, CIT Bank, as an additional secured party, and the Prepetition Collateral Agent (the “Prepetition CIT Bank Accession”), and (iii) that certain Confirmation of Interest Rate Swap with Embedded Floor Transaction, dated as of August 31, 2018, between Lincoln and CIT Bank (the “Prepetition CIT Bank Interest Rate”).

Swap,” and collectively with the Prepetition CIT Bank ISDA, the Prepetition CIT Bank Accession, and any other agreements and documents executed or delivered in connection with the Prepetition CIT Bank ISDA, the Prepetition CIT Bank Accession, or the Prepetition CIT Bank Interest Rate Swap, each as amended, restated, supplemented, waived, and/or modified from time to time, the “Prepetition CIT Bank Agreements,” and the obligations thereunder, the “Prepetition CIT Bank Obligations”); (b) (i) that certain 2002 ISDA Master Agreement, dated as of July 19, 2017, between Lincoln and Investec (the “Prepetition Investec ISDA”), (ii) that certain Accession Agreement, dated as of July 19, 2017, between Lincoln, Investec, and the Collateral Agent (the “Prepetition Investec Accession Agreement”), and (iii) that certain Floored Interest Rate Swap Transaction, dated as of August 31, 2018, between Lincoln and Investec (the “Prepetition Investec Interest Rate Swap,” and collectively with the Prepetition Investec ISDA, the Prepetition Investec Accession, and any other agreements and documents executed or delivered in connection with the Prepetition Investec ISDA, the Prepetition Investec Accession, or the Prepetition Investec Interest Rate Swap, each as amended, restated, supplemented, waived, and/or modified from time to time, the “Prepetition Investec Agreements,” and the obligations thereunder, the “Prepetition Investec Obligations”); and (c) (i) that certain 2002 ISDA Master Agreement, dated as of July 19, 2017, between Lincoln and Truist (the “Prepetition Truist ISDA”), (ii) that certain Accession Agreement, dated as of July 19, 2017, between Lincoln, Truist, and the Collateral Agent (the “Prepetition Truist Accession Agreement”), (iii) that certain Confirmation of Swap Transaction, dated as of August 31, 2018, between Lincoln and Truist (the “2018 Prepetition Truist Interest Rate Swap”), and (iv) that certain Confirmation of Swap Transaction, dated as of November 17, 2020, between Lincoln and Truist (the “2020 Prepetition Truist Interest Rate Swap,” and collectively with the Prepetition Truist ISDA, the Prepetition Truist Accession, and the 2018 Prepetition Truist Interest Rate Swap

and any other agreements and documents executed or delivered in connection with the Prepetition Truist ISDA, the Prepetition Truist Accession, or the Prepetition Truist Interest Rate Swap, each as amended, restated, supplemented, waived, and/or modified from time to time, the “Prepetition Truist Agreements,” and together with the Prepetition CIT Bank Agreements and the Prepetition Investec Agreements, the “Prepetition Interest Rate Swap Agreements,” and the obligations under the Prepetition Truist Agreements, the “Prepetition Truist Obligations,” and together with the Prepetition CIT Bank Obligations and the Prepetition Investec Obligations, the “Prepetition Interest Rate Swap Obligations”). The “Prepetition Obligations” shall mean, collectively, the Prepetition Credit Agreement Obligations, the Prepetition Macquarie Obligations, and the Prepetition Interest Rate Swap Obligations.

(v) *Prepetition Liens and Prepetition Collateral.* As more fully set forth in the Prepetition Credit Agreement Documents, prior to the Petition Date, the Prepetition Obligors granted to First-Citizens Bank & Trust Company (as successor by merger to CIT Bank, N.A.), as collateral agent (including its successors and assigns, the “Prepetition Collateral Agent,” and together with the Prepetition Administrative Agent, the “Prepetition Agents”), for the benefit of itself and the Prepetition Secured Parties, a security interest in and continuing lien on (the “Prepetition Liens”) substantially all of their assets and property (with certain exceptions set out in the Prepetition Credit Agreement Documents) including a first priority security interest in and continuing lien on the Collateral (as defined in the Prepetition Credit Agreement Documents) and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (collectively, the “Prepetition Collateral”).

(vi) *Validity, Perfection, and Priority of the Prepetition Liens and Prepetition Obligations.* As of the Petition Date: (a) the Prepetition Liens on the Prepetition Collateral were

valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Prepetition Secured Parties for fair consideration and reasonably equivalent value; (b) the Prepetition Liens were senior in priority over any and all other liens on the Prepetition Collateral, subject only to certain liens senior by operation of law or otherwise permitted by the Prepetition Credit Agreement Documents (solely to the extent any such permitted liens were valid, properly perfected, non-avoidable, and senior in priority to the Prepetition Liens as of the Petition Date, or valid, non-avoidable, senior priority liens in existence as of the Petition Date that are perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code, the “Prepetition Permitted Liens”); (c) the Prepetition Obligations constitute legal, valid, binding, and non-avoidable obligations of the Prepetition Secured Parties enforceable in accordance with the terms of the applicable Prepetition Credit Agreement Documents; (d) no offsets, recoupments, challenges, objections, defenses, claims, or counterclaims of any kind or nature, whether arising at law or in equity, to any of the Prepetition Liens or the Prepetition Obligations exist, and no portion of the Prepetition Liens or the Prepetition Obligations is subject to any challenge or defense including, without limitation, impairment, set-off, avoidance, attachment, disallowance, disgorgement, reduction, recharacterization, subordination (whether equitable or otherwise), counterclaims, or cross-claims pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including, without limitation, “lender liability” causes of action or avoidance claims under chapter 5 of the Bankruptcy Code or applicable state law or federal law equivalents or actions for recovery or disgorgement, against any of the Prepetition Secured Parties or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, consultants, directors, and employees arising out of, based upon, or related to the Prepetition Credit Facilities, the

Prepetition Macquarie Agreements, or the Prepetition Interest Rate Swap Agreements; (f) the Debtors have waived, discharged, and released any right to challenge, and are forever barred from bringing any challenge to, any of the Prepetition Obligations, the priority thereof, and the legality, validity, extent, and priority of the Prepetition Liens; and (g) the Prepetition Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

(vii) *Cash Collateral*. All or substantially all of the Debtors' cash and cash equivalents, including cash on deposit in any account or accounts as of the Petition Date, securities and other property, wherever located, whether as original collateral or the proceeds of other Prepetition Collateral constitutes cash collateral ("Cash Collateral") of the Prepetition Secured Parties.

(viii) *Intercreditor Agreement*. The Prepetition Agents are parties to that certain Collateral Agency and Intercreditor Agreement, dated as of July 5, 2017 (as amended, restated, supplemented, waived, and/or modified from time to time, the "Intercreditor Agreement"), which governs, among other things, the respective rights, interests, obligations, priority, and positions of the Prepetition Secured Parties with respect to the assets and properties of the Debtors and other obligors. Pursuant to section 510 of the Bankruptcy Code, the Intercreditor Agreement and any other applicable intercreditor or subordination provisions contained in any of the Prepetition Credit Agreement Documents shall (a) remain in full force and effect, (b) continue to govern the relative obligations, priorities, rights, and remedies of the Prepetition Secured Parties, and (c) not be deemed to be amended, altered, or modified by the terms of this Interim Order.

(ix) *Credit Bids*. Subject to the Intercreditor Agreement and the other Prepetition Credit Agreement Documents, the Debtors admit, stipulate, acknowledge, and agree that, subject to entry of the Final Order, the Prepetition Secured Parties shall have the rights granted

pursuant to and consistent with section 363(k) of the Bankruptcy Code with respect to any credit bidding of the Prepetition Obligations.

(x) *Releases.* The Debtors, on behalf of themselves and their respective estates (including any successor trustee or other estate representative in the Chapter 11 Cases and any Successor Cases (as defined herein), and any party acting by, through, or under the Debtors or their estates) hereby forever, unconditionally and irrevocably release, discharge, and acquit each of the Prepetition Secured Parties, and each of their respective successors, assigns, affiliates, subsidiaries, parents, officers, shareholders, directors, employees, attorneys, agents, and professionals, past, present, and future, and their respective heirs, predecessors, successors, and assigns (collectively, the “Released Parties”) of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, expenses (including, without limitation, reasonable attorneys’ fees), debts, liens, actions, and causes of action of any and every nature whatsoever, whether arising in law or otherwise, and whether or not known or matured, arising out of or relating to, as applicable, the Prepetition Credit Agreement Documents, the Prepetition Macquarie Agreements, the Prepetition Interest Rate Swap Agreements, and/or the respective transactions contemplated thereunder, including, without limitation, (a) any so-called “lender liability” or equitable subordination claims or defenses, (b) any and all claims and causes of action arising under the Bankruptcy Code, and (c) any and all claims and causes of action with respect to the extent, validity, priority, perfection, or avoidability of the Prepetition Liens and the Prepetition Obligations. The Debtors further waive and release any defense, right of counterclaim, right of set-off, or deduction to the payment of the Prepetition Obligations that the Debtors now have or may claim to have against the Released Parties, arising out of, connected with, or relating to any and all acts, omissions, or events occurring prior to this Court entering the Interim Order.

Notwithstanding anything in this Interim Order to the contrary, the Debtors' rights to reject the Prepetition Macquarie Agreements and the Prepetition Interest Rate Swap Agreements pursuant to section 365 of the Bankruptcy Code are expressly reserved.

G. Adequate Protection. To protect their interests in the Prepetition Collateral, the Prepetition Secured Parties are entitled to receive adequate protection for any diminution in value of their interests in the Prepetition Collateral from and after the Petition Date resulting from, among other things, the use of Available Cash Collateral, the use, sale, lease, consumption, or disposition of Prepetition Collateral, or the imposition of the automatic stay (collectively, "Diminution in Value") pursuant to sections 361, 362, and 363 of the Bankruptcy Code. Pursuant to sections 361, 363, 503(b), and 507(b) of the Bankruptcy Code, as adequate protection, (i) the Prepetition Collateral Agent, for the benefit of itself and the applicable Prepetition Secured Parties, shall receive the Adequate Protection Liens (as defined below) and the 507(b) Claims and (ii) the Prepetition Administrative Agent, for the benefit of itself and the Prepetition Credit Agreement Secured Parties, shall receive the applicable Adequate Protection set forth in paragraph 4 hereof. The adequate protection provided herein and other benefits and privileges contained herein are necessary to protect the Prepetition Secured Parties from any Diminution in Value of their interests in the Prepetition Collateral and to obtain the consents and agreements contained herein, including that the adequate protection provided herein is subject and subordinate to the Carve Out (as defined below). Based on the Motion and on the record presented to this Court, the terms of the proposed adequate protection arrangements and of the use of the Prepetition Collateral (including Available Cash Collateral) were negotiated in good faith, are fair and reasonable, reflect the Debtors' prudent exercise of business judgment, and constitute reasonably equivalent value and fair consideration for the use of Available Cash Collateral. The Prepetition Secured Parties reserve the right to seek

additional adequate protection beyond the adequate protection provided in this Interim Order. Nothing in this Interim Order shall in any way be construed or interpreted to impose or allow the imposition upon the Released Parties of any liability for any claims arising from any and all activities by the Debtors or any of their subsidiaries or affiliates in the operation of their businesses or in connection with their restructuring efforts. Notwithstanding anything to the contrary herein, nothing in this Interim Order shall (1) be construed as a consent by any Prepetition Secured Party that it would be adequately protected in the event debtor-in-possession financing is obtained or a consent to the terms of any other such financing, including the consent to any lien encumbering the Prepetition Collateral (whether senior or junior) or (2) be construed as a consent by any Prepetition Secured Party to the use of any Prepetition Collateral (including Available Cash Collateral) except on the terms set forth in this Interim Order.

H. Prepetition Permitted Liens. Nothing herein shall constitute a finding or ruling that any alleged Prepetition Permitted Lien is valid, senior, enforceable, prior, perfected, non-avoidable, or permitted under any of the Prepetition Collateral Agreement Documents. Moreover, nothing herein shall prejudice the rights of any party in interest, including, but not limited to, the Debtors, the Prepetition Secured Parties, and any Committee (if appointed), to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Prepetition Permitted Lien.

I. Sections 506(c) and 552(b). In light of the Prepetition Secured Parties' agreement to subordinate their liens and superpriority claims to the Carve Out and to permit the use of the Available Cash Collateral as set forth herein, the Prepetition Secured Parties are entitled (subject to entry of the Final Order) to (i) the rights and benefits of section 552(b) of the Bankruptcy Code

and a waiver of any “equities of the case” claims under section 552(b) of the Bankruptcy Code and (ii) a waiver of the provisions of section 506(c) of the Bankruptcy Code.

J. Consent by Prepetition Secured Parties. The Prepetition Agents (at the direction of the Required Prepetition Lenders in accordance with the Intercreditor Agreement)⁴ consent, conditioned on the entry of this Interim Order, to the Debtors’ proposed use of Available Cash Collateral, on the terms and conditions set forth in this Interim Order, and the terms of the adequate protection provided for in this Interim Order, including that the Adequate Protection Liens and 507(b) Claims are subject and subordinate only to the Carve Out and the Permitted Prepetition Liens.

K. Necessity of Relief Requested. The ability of the Debtors to finance their operations and complete a successful chapter 11 reorganization requires continued use of Available Cash Collateral. In the absence of the use of Available Cash Collateral, the continued operation of the Debtors’ businesses would not be possible and immediate and irreparable harm to the Debtors, their estates, and their creditors would occur. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses in the ordinary course of business or to maintain their property without the use of Available Cash Collateral. The relief requested in the Motion is therefore necessary for the continued operation of the Debtors’ businesses and the preservation of their property. The Prepetition Secured Parties have acted in good faith and without negligence, misconduct, or violation of public policy or law, in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, documenting, or obtaining requisite approvals of the Debtors’ continued use of the Prepetition Collateral (including

⁴ “Required Prepetition Lenders” means, at any time, Prepetition Lenders holding more than 50% of the Prepetition Credit Agreement Obligations.

Available Cash Collateral) to fund the administration of the Debtors' estates and permit the continued operation of their businesses in accordance with the terms hereof, including in respect of the incurrence, granting, and payment of the Adequate Protection Obligations and the granting of the Adequate Protection Liens, any challenges or objections to the use of Available Cash Collateral, and all documents related to and all transactions contemplated by the foregoing. The Prepetition Lenders and the Debtors have negotiated at arms' length and in good faith regarding the Debtors' use of Available Cash Collateral to fund the continued operation of the Debtors' businesses during the Interim Period (as defined below). Entry of this Interim Order is in the best interests of the Debtors and their estates, and is necessary, essential, and appropriate to avoid immediate and irreparable harm to the Debtors and the Debtors' estates, stakeholders, assets, goodwill, reputation, and employees.

L. Good Cause Shown; Best Interest. The Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and Local Bankruptcy Rule 4001-2. Absent entry of this Interim Order, the Debtors' businesses, properties, and estates will be immediately and irreparably harmed. This Court concludes that good cause has been shown and entry of this Interim Order is in the best interests of the Debtors' respective estates and creditors as its implementation will, among other things, allow for the continued operation of the Debtors' existing businesses and enhance the Debtors' prospects for a successful reorganization or sale.

M. Final Hearing. The Debtors will seek final approval of the relief requested in the Motion pursuant to a Final Order at the Final Hearing, notice of which will be provided in accordance with paragraph 25 of this Interim Order.

N. Notice. In accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d), and 9014, and the Local Bankruptcy Rules, notice of the Interim Hearing and the emergency relief requested

in the Motion has been provided by the Debtors, whether by facsimile, email, overnight courier, or hand delivery, to certain parties in interest, including: (a) the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”); (b) the United States Attorney’s Office for the District of Delaware; (c) the United States Department of Justice; (d) the attorneys general for the states in which the Debtors conduct business; (e) the Internal Revenue Service; (f) the Environmental Protection Agency and similar state environmental agencies for states in which the Debtors conduct business; (g) the creditors listed on the Debtors’ consolidated list of thirty (30) creditors holding the largest unsecured claims; (h) the Prepetition Agents, and respective counsel thereto; (i) all parties who are known, after reasonable inquiry, to have asserted a lien, encumbrance, or claim in the Prepetition Collateral; and (j) all parties entitled to notice pursuant to Bankruptcy Rule 2002 or Local Rule 9013-1(m). The parties have made reasonable efforts to afford the best notice possible under the circumstances to permit the relief set forth in this Interim Order.

Based upon the foregoing findings and conclusions, the Motion and the record before this Court with respect to the Motion, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. Motion Granted. The Motion is granted on an interim basis as set forth herein, and the use of Available Cash Collateral on an interim basis is authorized, subject to the terms of this Interim Order.
2. Objections Overruled. All objections to the Motion to the extent not withdrawn or resolved are overruled. This Interim Order shall become effective immediately upon its entry.

3. Authorization to Use Available Cash Collateral.

(a) Authorization. Subject to the terms and conditions of this Interim Order, the Debtors are authorized to use all Cash Collateral *other than* Reserved Cash⁵ (such Cash Collateral, the “Available Cash Collateral”) in accordance with the Approved Budget (as defined below) for the period (the “Interim Period”) from the Petition Date through the date which is the earliest to occur of (i) the expiration of the Remedies Notice Period (as defined herein) and (ii) the date that is twenty-eight (28) days from the Petition Date if this Court has not entered the Final Order on or before such date, subject to extension at the sole discretion of the Required Prepetition Lenders. Nothing in this Interim Order shall authorize the disposition of any assets of the Debtors or their estates or proceeds resulting therefrom outside of the ordinary course of business, except as expressly permitted herein (subject to any required Court approval).

(b) Use of Cash Collateral. Subject to the provisions of this Interim Order, including the Approved Budget, Available Cash Collateral may be used during the Interim Period by the Debtors to: (i) finance their working capital needs and for any other general corporate purposes; and (ii) pay related transaction costs, fees, liabilities, and expenses (including all professional fees and expenses) and other administration costs incurred in connection with and for the benefit of prosecuting these Chapter 11 Cases, in each case solely to the extent consistent with the Approved Budget and this Interim Order. Except on the terms and conditions of this Interim Order, the Debtors shall be enjoined and prohibited from using the Cash Collateral at any time absent further order of this Court.

4. Adequate Protection. The Prepetition Secured Parties are entitled, pursuant to sections 361 and 363(e) of the Bankruptcy Code, to adequate protection of their interests in the

⁵ “Reserved Cash” shall mean cash in the amount of \$10,000,000.

Prepetition Collateral (including Cash Collateral) (such adequate protection as set forth in clauses (a) through (h) below, the “Adequate Protection Obligations”). The Prepetition Collateral Agent, on behalf of itself and for the benefit of the Prepetition Secured Parties, is hereby granted, as applicable, the following:

(a) Adequate Protection Liens. As adequate protection of the interests of the Prepetition Secured Parties in the Prepetition Collateral against any Diminution in Value of such interests, pursuant to sections 361 and 363(e) of the Bankruptcy Code, the Debtors are authorized to grant, and as of entry of this Interim Order are deemed to have granted, to the Prepetition Collateral Agent, for the benefit of itself and the Prepetition Secured Parties, additional and replacement continuing valid, binding, enforceable, non-avoidable, and automatically fully perfected postpetition security interests in and liens on (the “Adequate Protection Liens”) all of each Debtor’s presently owned or hereafter acquired property and assets (including, subject to entry of a Final Order, any of the Debtors’ claims and causes of action under sections 542, 544, 545, 547, 548, or 550 of the Bankruptcy Code or any other similar state or federal law, and any proceeds thereof), whether such property and assets were acquired by such Debtor before or after the Petition Date, of any kind or nature, whether real or personal, tangible or intangible, wherever located, including, without limitation, all inventory, accounts receivable, general intangibles, chattel paper, contracts, owned real estate, real and personal property leaseholds, property, plants, fixtures and machinery and equipment, vehicles, vessels, deposit accounts, cash and any investment thereof, letter of credit rights, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property and stock of subsidiaries of the Debtors, and the proceeds and products of the foregoing (collectively, together with the Prepetition Collateral (including, for the avoidance of doubt, Cash Collateral), the “Collateral”); provided that,

notwithstanding the foregoing, the Collateral shall exclude all claims and causes of action arising under any section of chapter 5 of the Bankruptcy Code or any other similar state or federal law (the “Avoidance Actions”), but, subject to entry of a Final Order, shall include proceeds of and other property that is recovered or becomes unencumbered as a result of (whether by judgment, settlement, or otherwise) any Avoidance Actions. For the avoidance of doubt, the Adequate Protection Liens shall encumber the Debtors’ interests (residual or otherwise) in any deposits provided by bidders on some or all of the Debtors’ assets. The Adequate Protection Liens shall be enforceable against the Debtors, their estates, and any successors thereto, including, without limitation, any trustee or other estate representative appointed in these Chapter 11 Cases, or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of these Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, “Successor Cases”). Except as otherwise ordered by this Court or expressly provided herein (including with respect to the Carve Out (as defined below)), absent the express written consent of the Required Prepetition Lenders (at their sole discretion), the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Cases, and the Adequate Protection Liens shall be valid and enforceable against any trustee or other estate representative appointed in any of these Chapter 11 Cases or any Successor Cases, or upon the dismissal of any of these Chapter 11 Cases or Successor Cases. The Adequate Protection Liens shall not be subject to sections 510, 549, or 550 of the Bankruptcy Code and, if approved in the Final Order, the Adequate Protection Liens shall not be subject to section 506(c) of the Bankruptcy Code. The Adequate Protection Liens shall be deemed legal, valid, binding, enforceable, and perfected liens, not subject to subordination, impairment, or avoidance, for all purposes in these Chapter 11 Cases and any

Successor Cases. For the avoidance of doubt, the Adequate Protection Liens shall be deemed to be effective and perfected automatically as of the Petition Date and without the necessity of the execution by the Debtors, or the filing of, as applicable, mortgages, security agreements, pledge agreements, financing statements, state or federal notices, recordings (including, without limitation, any recordings with the United States Patent and Trademark or Copyright Office), or other agreements and without the necessity of taking possession or control of any Collateral. Except as otherwise expressly provided herein (including with respect to the Carve Out and the Prepetition Permitted Liens), under no circumstances shall the Adequate Protection Liens be made subordinate to the lien of any other party, no matter when arising, absent the express written consent of the Required Prepetition Lenders. The Adequate Protection Liens granted to the Prepetition Collateral Agent for the benefit of the Prepetition Secured Parties shall be subject and subordinate only to (i) the Carve Out and (ii) any Prepetition Permitted Liens, and shall otherwise be senior to all other security interests in, liens on, or claims against any of the Collateral.

(b) Adequate Protection Superpriority Claims. To the extent of any Diminution in Value of the interests of the Prepetition Secured Parties in the Prepetition Collateral, the Prepetition Collateral Agent, on behalf of itself and the Prepetition Secured Parties, shall be granted an allowed superpriority administrative expense claim pursuant to sections 503(b), 507(a), and 507(b) of the Bankruptcy Code (the “507(b) Claims”), which 507(b) Claims shall have recourse to and be payable from all prepetition and postpetition property of the Debtors and the proceeds thereof, excluding the Carve Out. Subject only to the Carve Out, the 507(b) Claims granted to the Prepetition Collateral Agent for the benefit of the Prepetition Secured Parties shall not be junior to any administrative expense claims and shall have priority over all administrative expense claims and all other claims against each of the Debtors, now existing or hereafter arising,

of any kind or nature whatsoever, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to sections 105, 326, 327, 328, 330, 331, 364, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113, and 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other nonconsensual lien, levy, or attachment.

(c) Fees of Collateral Agent and Depositary Agent. The Debtors are authorized and directed to pay when due all fees due and payable to First-Citizens Bank & Trust Company (as successor by merger to CIT Bank, N.A.) in its capacity as Prepetition Collateral Agent and Depositary Agent in accordance with that certain Fee Letter, dated as of July 5, 2017, by and between Lincoln and First-Citizens Bank & Trust Company (as successor by merger to CIT Bank, N.A.). Any payments made pursuant to this paragraph 4(c) shall be without prejudice to whether any such payments should be recharacterized or reallocated pursuant to section 506(b) of the Bankruptcy Code as payments of principal, interest, or otherwise.

(d) Fees and Expenses of Advisors. The Debtors are authorized and directed to pay, within five (5) business days of delivery of an invoice (which shall provide only the total aggregate number of hours billed and a summary description of services provided and the expenses incurred by the applicable party and/or professionals, and shall be subject to all applicable privilege and work product doctrines), all reasonable and documented prepetition and postpetition fees, expenses, and disbursements payable to the advisors to the Prepetition Agents and the Depositary Agent, including, without limitation, the reasonable fees and out-of-pocket expenses of (a) Kirkland & Ellis LLP, (b) RPA Advisors, LLC, (c) Stroock & Stroock & Lavan LLP, (d) Willkie Farr & Gallagher LLP, and (e) Richards, Layton & Finger, P.A. through the Interim Period. Payment of all such fees and out-of-pocket expenses shall not be subject to allowance by

this Court or the necessity of filing formal fee applications or compliance with the U.S. Trustee's fee guidelines; provided, however, that the Prepetition Administrative Agent and the Collateral and Depositary Agent shall promptly provide copies of invoices received on account of the fees and out-of-pocket expenses set forth above to the U.S. Trustee and counsel to any Committee appointed in the Chapter 11 Cases, and this Court shall have exclusive jurisdiction over any objections raised by any Committee (if appointed) or the U.S. Trustee to the invoiced amount of the fees and out-of-pocket expenses proposed to be paid, which objections may only be raised within ten (10) calendar days after delivery of an invoice(s) therefor and shall be limited to the issue of the reasonableness of such fees and out-of-pocket expenses. In the event that within ten (10) calendar days from delivery of such invoices the U.S. Trustee or counsel to any Committee (if appointed) raises an objection to a particular invoice, and the parties are unable to resolve such objection, this Court shall hear and determine such dispute; provided, further, that payment of invoices shall not be delayed based on any such objections and the relevant professional shall only be required to disgorge amounts objected to upon being "so ordered" pursuant to a final order of this Court. Any payments made pursuant to this paragraph 4(d) shall be without prejudice to whether any such payments should be recharacterized or reallocated pursuant to section 506(b) of the Bankruptcy Code as payments of principal, interest, or otherwise; provided, however, that the recipients of any such payments reserve their rights to assert defenses to any such arguments and to otherwise oppose any such recharacterization or application.

(e) Default Interest. At all times during the Chapter 11 Cases, interest on all outstanding Obligations shall accrue at the applicable default contract interest rate set forth in the Prepetition Credit Agreement; provided that the Prepetition Administrative Agent reserves the right to assert claims for the payment of such interest or additional interest calculated at any other

applicable rate of interest, or on any other basis, provided for under the Prepetition Credit Agreement Documents, and for the payment of any other amounts provided for in the Prepetition Credit Agreement Documents; provided, further, that all outstanding Eurodollar loans (as defined in the Prepetition Credit Agreement) shall automatically be converted to ABR Loans (as defined in the Prepetition Credit Agreement) on the last day of the then-current Interest Period (as defined in the Prepetition Credit Agreement) ending after the Petition Date, and thereafter. For the avoidance of doubt, the Debtors' use of Collateral (including Available Cash Collateral) pursuant to the terms of this Interim Order is not conditioned on the payment of interest on the outstanding Obligations as adequate protection; provided that the foregoing clause shall not, and shall not be deemed to, modify or limit section 4(j).

(f) Budget and Variance Reporting. Attached as **Exhibit A** hereto and incorporated herein by reference is a cash flow forecast for the thirteen-week period beginning with the week of the Petition Date, including the anticipated uses of Available Cash Collateral for such period (the "Initial Budget"). Beginning with the fourth week following entry of this Interim Order and every four weeks thereafter, on the third business day of such week, the Debtors will provide the Prepetition Administrative Agent with an updated budget (an "Updated Budget") for the subsequent thirteen-week period. Each subsequent Updated Budget shall be in form and substance acceptable to the Prepetition Administrative Agent and each such subsequent Updated Budget shall not be deemed to constitute an Approved Budget (as defined below) for purposes of this Interim Order until such consent has been confirmed in writing by counsel to the Prepetition Administrative Agent; provided that a proposed Updated Budget shall be deemed an Approved Budget if such lenders have neither confirmed nor denied the proposed Updated Budget by 5:00 p.m. (prevailing Eastern Time) three (3) business days following delivery of such proposed

Updated Budget. “Approved Budget” means the Initial Budget or the then most current Updated Budget approved by the Prepetition Administrative Agent in accordance with the preceding sentence. Every week beginning on the third business day of the first week following entry of this Interim Order, the Debtors shall provide to the Prepetition Administrative Agent a report setting forth in reasonable detail actual cash receipts and disbursements for the prior week. Every week, beginning on the third business day of the fifth week following entry of this Interim Order, the Debtors shall also provide to the Prepetition Administrative Agent a variance report/reconciliation (the “Budget Variance Report”) setting forth in reasonable detail actual cash receipts and disbursements for the prior week and all variances, on an individual line-item basis and an aggregate basis, as compared to the applicable Approved Budget on a cumulative and weekly basis over a rolling four-week period, together with a statement certifying compliance with the Budget Covenants (as defined below). The Budget Variance Report shall include an explanation, in reasonable detail, of any material variance. The Debtors shall ensure that at no time any of the following occur (collectively, the “Budget Covenants”): (i) a positive variance of 15.0% or more from the Total Operating Disbursements (as defined below) set forth in the applicable Approved Budget, tested every week on a cumulative rolling four-week basis; and (ii) a positive variance of 15.0% or more from the Total Professional Fee Disbursements (as defined below) set forth in the applicable Approved Budget for the period from the Petition Date through the week most recently ended, tested every week. “Total Operating Disbursements” shall include disbursements made by the Debtors (including, but not limited to, any payments, expenditures, or advances) other than variable fuel costs and professional fees and expenses related to the administration of these Chapter 11 Cases. “Total Professional Fee Disbursements” shall mean all disbursements on account of professional fees and expenses of the Debtor Professionals.

(g) Access to Records. At reasonable times during normal business hours, the Debtors shall permit representatives, agents, counsel, and employees of the Prepetition Agents to have reasonable access to (i) inspect the Debtors' properties, (ii) examine the Debtors' books and records, and (iii) to discuss the Debtors' affairs, finances, and condition with the Debtors' senior management (and, to the extent appropriate, their relevant professional advisors) (it being understood that such authorization cannot, and should not be construed to, obligate any of the Debtors' aforementioned professionals to provide such information, absent an express contractual requirement to do so, nor should such authorization be construed to override existing confidentiality and other obligations owed by the Debtors to such of their professionals, including with respect to the sharing of any such information with third parties), including regularly scheduled meetings as mutually agreed with senior management of the Debtors (during normal business hours), and the Prepetition Agents (including their counsel) shall be provided with reasonable access to the information they shall reasonably request; provided, that, none of the foregoing clauses (i) through (iii) will require any of the Debtors (whether directly or indirectly through any of their respective officers, employees, agents, professionals, or other representatives) to disclose, permit the inspection, examination, or making copies or abstracts of, or discussion of, any document, information, or other matter, or provide information (x) in respect of which disclosure is prohibited by law or binding agreement or (y) that is subject to attorney-client or similar privilege or constitutes attorney work product.

(h) DIP Financing. In the event the Debtors determine that they require a post-petition debtor-in-possession credit facility or similar financing (a "DIP Facility"), the Debtors shall promptly notify the Prepetition Agents and provide the Prepetition Lenders a first opportunity to provide such DIP Facility. For the avoidance of doubt, nothing herein shall limit,

impair, or impede the Debtors' right or authority to market any DIP Facility offered by the Prepetition Lenders to determine whether the Debtors are able to obtain a DIP Facility on terms and conditions superior to the DIP Facility offered by the Prepetition Lenders, or obligate the Debtors to (i) accept any DIP Facility offered by the Prepetition Lenders, or (ii) decline to accept any DIP Facility proposed by lender(s) other than the Prepetition Lenders.

(i) Executory Contracts and Unexpired Leases. The Debtors will consult with the Prepetition Agents regarding the assumption and rejection of the Debtors' executory contracts and unexpired leases and shall provide the Prepetition Agents with at least two (2) business days prior notice of the filing of any motion to assume or reject executory contracts or unexpired leases, subject in all respects to the terms and conditions of that certain Restructuring Support Agreement, dated as of March 30, 2023, by and among the Debtors and certain of the Prepetition Credit Agreement Secured Parties (the "Restructuring Support Agreement," and the Restructuring Term Sheet attached thereto as Exhibit B, the "Restructuring Term Sheet").

(j) Right to Seek Additional Adequate Protection. This Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Prepetition Secured Parties to request further or alternative forms of adequate protection at any time or the rights of the Debtors or any other party to contest such request; provided that the foregoing sentence shall not, and shall not be deemed to, modify the rights and obligations set forth in the Intercreditor Agreement.

5. Modification of Automatic Stay. The automatic stay imposed under section 362(a) of the Bankruptcy Code is modified as necessary to effectuate all of the terms and provisions of this Interim Order, including, without limitation, to: (a) permit the Debtors to grant the Adequate Protection Liens and the 507(b) Claims; (b) permit the Debtors to perform such acts as the

Prepetition Agents or Prepetition Secured Parties may request in their reasonable discretion to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the Prepetition Agents and the Prepetition Secured Parties under this Interim Order; and (d) authorize the Debtors to pay, and the Prepetition Agents and the Prepetition Secured Parties to retain and apply, payments made in accordance with the terms of this Interim Order.

6. Grant and Perfection of Adequate Protection Liens. This Interim Order shall be sufficient and conclusive evidence of the granting, attachment, validity, perfection, enforceability, and priority of the Adequate Protection Liens without the necessity of obtaining, filing, executing, or recording any financing statement, security agreement, vehicle lien application, patent filing, trademark filing, copyright filing, fixture filing, mortgage, notice, or other instrument or document that may otherwise be required under the law or regulation of any jurisdiction or the taking of possession of, or control over, assets, or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement and any other action required to obtain “control” pursuant to section 9-104, 9-105, 9-106, and/or 9-107 of the Uniform Commercial Code) to grant, attach, validate, or perfect (in accordance with applicable non-bankruptcy law) the Adequate Protection Liens, or to entitle the Prepetition Secured Parties to the priorities granted herein. Notwithstanding the foregoing, each of the Prepetition Agents is authorized, but not required, to file, as it deems necessary or advisable in its sole discretion, such financing statements, security agreements, vehicle lien applications, patent filings, trademark filings, copyright filings, fixture filing, mortgages, notices of liens, and other instruments or similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the Adequate Protection Liens, and all such financing statements, security agreements, vehicle lien applications, patent

filings, trademark filings, copyright filings, fixture filings, mortgages, notices of lien, and other documents shall be deemed to have been filed or recorded as of the Petition Date; provided, however, that no such filing or recordation shall be necessary or required in order to create, evidence, or perfect the Adequate Protection Liens. The Debtors are authorized and directed to execute and deliver to the Prepetition Agents promptly upon demand all such financing statements, security agreements, vehicle lien applications, mortgages, notices, instruments, and other documents as the Prepetition Agents may reasonably request. Each of the Prepetition Agents may file a copy of this Interim Order as a financing statement or notice with any filing or recording office or with any registry of deeds or similar office, in addition to, or in lieu of, such financing statements, mortgages, notices of lien, instrument, or similar document. In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized to do and perform all acts to make, execute, and deliver all instruments and documents and to pay all fees that may be reasonably required or necessary for the Debtors' performance hereunder. To the extent that a Prepetition Agent is the secured party under any account control agreements, listed as loss payee under any of the Debtors' insurance policies, or is a secured party under any Prepetition Credit Agreement Document, Prepetition Macquarie Agreement, or Prepetition Interest Rate Swap Agreement such Prepetition Agent is also hereby deemed to be the secured party under such account control agreements, loss payee under any of the Debtors' insurance policies, and the secured party under each such Prepetition Credit Agreement Document, Prepetition Macquarie Agreement, or Prepetition Interest Rate Swap Agreement and shall have all rights and powers attendant to that position (including, without limitation, rights of enforcement) and shall act in that capacity and distribute any proceeds recovered or received in accordance with the terms of this Interim Order.

7. Credit Bid. Subject to entry of the Final Order and paragraph 11 hereof, the Prepetition Secured Parties shall have the right to credit bid under section 363(k) of the Bankruptcy Code all or any portion of their respective Prepetition Obligations, including any accrued and unpaid interest, expenses, and fees, in connection with a sale of any Prepetition Collateral or Collateral, without the need for further order of this Court, and whether such sale is effectuated under section 363 of the Bankruptcy Code, under a chapter 11 plan of reorganization for any or all of the Debtors, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise, subject in each case to the priorities set forth herein and the terms of the Intercreditor Agreement and the Prepetition Credit Agreement Documents.

8. Events of Default. The occurrence and continuance of any of the following events, unless waived in writing by the Required Prepetition Lenders, shall constitute an event of default (each, an “Event of Default”):

(a) the failure to obtain the Final Order in form and substance acceptable to the Required Prepetition Lenders within thirty-five (35) days after the Petition Date;

(b) the Debtors’ failure to satisfy any of the Milestones (as defined and set forth in **Exhibit B** attached hereto);

(c) the Debtors shall have (i) filed a motion seeking to create, or (ii) created, incurred, or suffered to exist, any postpetition liens or security interests, other than those granted or permitted pursuant to this Interim Order without the written consent of the Required Prepetition Lenders;

(d) the Debtors shall have filed a disclosure statement or chapter 11 plan that (i) is not reasonably acceptable to the Required Prepetition Lenders and (ii) does not provide for the Prepetition Obligations to be repaid in full in Cash on the effective date thereof;

(e) any of the documents or other information required to be delivered to any of the Prepetition Secured Parties pursuant to the Interim Order shall contain any material misrepresentation;

(f) the entry of a final order by this Court, other than this Interim Order, granting relief from or modifying the automatic stay of section 362 of the Bankruptcy Code (i) to allow any creditor to execute upon or enforce a lien on or security interest in any Collateral, or (ii) with respect to any lien of or the granting of any lien on any Collateral to any state or local environmental or regulatory agency or authority; provided, however, that the entry of a final order by this Court granting relief from the automatic stay of section 362 of the Bankruptcy Code in respect of Collateral having a value equal to or less than \$25,000 shall not be an Event of Default, so long as the aggregate value under any such orders does not exceed \$100,000.

(g) this Court shall enter an order approving any claims for recovery of amounts under section 506(c) of the Bankruptcy Code with respect to any Collateral;

(h) the Debtors shall support, commence, or join as an adverse party in any suit or other proceeding against the Prepetition Agents or the Prepetition Secured Parties relating to the Prepetition Obligations or Collateral;

(i) reversal, amendment, supplement, vacatur, or modification (without the express prior written consent of the Required Prepetition Lenders) of this Interim Order;

(j) the entry of a final order by this Court avoiding or requiring repayment of any portion of any applicable Adequate Protection provided by the Debtors hereunder;

(k) the Final Order or any pleading filed in the Chapter 11 Cases by the Debtors provides for the nonconsensual priming of the Prepetition Liens;

(l) the Debtors shall create, incur, or suffer to exist any other claim which is *pari passu* with or senior to the 507(b) Claims without the written consent of the Required Prepetition Lenders;

(m) dismissal of any of these Chapter 11 Cases or conversion of any of these Chapter 11 Cases to chapter 7 cases, or appointment of a trustee, receiver, interim receiver, or manager, or appointment of a responsible officer or examiner with enlarged powers in any of these Chapter 11 Cases (having powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code);

(n) the cessation of all or any material part of the Debtors' business operations, considered on a consolidated basis, without the consent of the Required Prepetition Lenders;

(o) the Debtors' exclusive right to file and solicit acceptances of a plan of reorganization is terminated or terminates;

(p) the failure to make any material payments as set forth herein when due and such failure shall remain unremedied for more than five (5) business days after receipt by the Debtors of written notice thereof from the Prepetition Administrative Agent;

(q) the Debtors shall sell, transfer, lease, encumber, or otherwise dispose of any portion of the Prepetition Collateral or Collateral other than in the ordinary course of business without the prior written consent of the Required Prepetition Lenders (and no such consent shall be implied from any other action, inaction, or acquiescence by any of the Prepetition Secured Parties or from any order of this Court);

(r) the failure by the Debtors to perform, in any respect, any of the terms, provisions, conditions, or obligations under this Interim Order, including a breach of the Budget Covenants set forth in paragraph 4(f) hereof; and

(s) the Debtors violate or breach the terms of this Interim Order and that violation or breach is not cured within two (2) business days of receipt by the Debtors of notice of such violation or breach.

9. Rights and Remedies Upon Event of Default. Upon occurrence of an Event of Default and following the giving of five (5) business days' written notice to the Debtors, the U.S. Trustee, and counsel to any official committee appointed in these cases (the "Remedies Notice Period"), the Prepetition Secured Parties may, subject to the Intercreditor Agreement, exercise the remedies available to them under this Interim Order and applicable non-bankruptcy law, including, but not limited to, revoking the Debtors' right to use Available Cash Collateral and collecting and applying any proceeds of the Collateral in accordance with the terms of this Interim Order and the Prepetition Credit Agreement Documents. During the Remedies Notice Period, the Debtors and/or any Committee (if appointed) shall be entitled to seek an emergency hearing to contest whether an Event of Default has occurred and/or is continuing and/or seek non-consensual use of Cash Collateral and continuation of the automatic stay; provided, that if a hearing to consider the foregoing is requested to be heard before the end of the Remedies Notice Period but is scheduled for a later date by this Court, the Remedies Notice Period shall be automatically extended to the date of such hearing. During the Remedies Notice Period, the Debtors may continue to use Available Cash Collateral in accordance with the terms of this Interim Order solely to pay necessary expenses set forth in the Approved Budget to avoid immediate and irreparable harm to the Debtors' estates. Unless this Court orders otherwise during the Remedies Notice Period, at the end of the Remedies Notice Period (i) the Debtors shall automatically, without further notice or order of this Court, no longer have the right to use Available Cash Collateral, (ii) the automatic stay pursuant to section 362 of the Bankruptcy Code shall be automatically terminated, without

further notice or order of this Court, and (iii) the Prepetition Secured Parties shall, subject to the Intercreditor Agreement and the Carve Out, be permitted to exercise all rights and remedies set forth in this Interim Order, the Prepetition Credit Agreement Documents, and as otherwise available at law without further order, application, or motion to this Court, and without restriction or restraint by any stay under section 362 or 105 of the Bankruptcy Code. Notwithstanding anything herein to the contrary, the automatic stay pursuant to section 362 of the Bankruptcy Code shall be automatically terminated for the purposes of giving any notice contemplated hereunder. The delay or failure to exercise rights and remedies under this Interim Order or the Prepetition Credit Agreement Documents shall not constitute a waiver of the Prepetition Secured Parties' rights thereunder or otherwise.

10. Carve Out.

(a) Definition of Carve Out. As used in this Interim Order, the “Carve Out” means the sum of: (i) all fees required to be paid to the Clerk of this Court and to the Office of the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable and documented fees and out-of-pocket expenses up to \$25,000 in the aggregate incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, final order, procedural order, or otherwise, all unpaid fees and out-of-pocket expenses (the “Allowed Professional Fees”) incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the “Debtor Professionals”) and (subject to the Approved Budget and the Committee Investigation Budget) any Committee appointed in the Chapter 11 Cases pursuant to section 1103 of the Bankruptcy Code (the “Committee Professionals”), less the amount of any fee retainers

received by such professionals (but only to the extent not otherwise applied) at any time before delivery by the Prepetition Agents of a Carve-Out Trigger Notice (as defined below), whether allowed by this Court prior to or after delivery of a Carve-Out Trigger Notice; (iv) Allowed Professional Fees less the amount of any fee retainers received by such professionals (but only to the extent not otherwise applied) in an aggregate amount not to exceed \$1,000,000, incurred after delivery by the Prepetition Agents of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, final order, procedural order, or otherwise; and (v) all amounts required to be paid to Guggenheim Securities, LLC on account of any Transaction Fee under and as defined in that certain engagement letter between Guggenheim Securities, LLC and the Debtors, dated as of February 7, 2023, incurred at any time before or after delivery of a Carve-Out Trigger Notice, and payable under sections 328, 330, and/or 331 of the Bankruptcy Code, to the extent not yet paid or due as of the delivery of the Carve-Out Trigger Notice and allowed by order of this Court at any time (the amounts set forth in clauses (iv) and (v) being the “Post-Carve Out Trigger Notice Cap”). In the event that Allowed Professional Fees exceed or are expected to exceed the amounts provided in the Approved Budget, the parties will negotiate in good faith regarding a proposed amendment to the Approved Budget to address such additional Allowed Professional Fees. For purposes of the foregoing, “Carve-Out Trigger Notice” shall mean a written notice delivered by email (or other electronic means) by the Prepetition Administrative Agent (at the direction of the Required Prepetition Lenders) to counsel to the Debtors, the U.S. Trustee, and counsel to any Committee (if appointed), which notice may be delivered following the occurrence of an Event of Default, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

(b) Carve Out Reserves. On the day on which a Carve-Out Trigger Notice is given by the Prepetition Administrative Agent to the Debtors, the U.S. Trustee, and any counsel

to the Committee (if appointed) (the "Termination Declaration Date"), the Carve-Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand as of such date (including the Reserved Cash) and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the then unpaid amounts of the Allowed Professional Fees. The Debtors shall deposit and hold such amounts in a segregated account in trust to pay such then unpaid Allowed Professional Fees (the "Pre-Carve-Out Trigger Notice Reserve") prior to any and all other claims. On the Termination Declaration Date, after funding the Pre-Carve Out Trigger Notice Reserve, the Debtors shall utilize all remaining cash on hand as of such date (other than the Pre-Carve-Out Trigger Notice Reserve) and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the Post-Carve Out Trigger Notice Cap (the "Post-Carve-Out Trigger Notice Reserve" and, together with the Pre-Carve-Out Trigger Notice Reserve, the "Carve-Out Reserves"). The Debtors shall deposit and hold the Post-Carve-Out Trigger Notice Reserve in a segregated account in trust to pay such Allowed Professional Fees benefiting from the Post-Carve-Out Trigger Notice Reserve prior to any and all other claims. All funds in the Pre-Carve-Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve Out set forth above (the "Pre-Carve-Out Amounts"), but not, for the avoidance of doubt, the Post-Carve-Out Trigger Notice Cap, until paid in full, and then, to the extent the Pre-Carve-Out Trigger Notice Reserve has not been reduced to zero, to pay the Prepetition Administrative Agent for the benefit of the Prepetition Secured Parties in accordance with their rights and priorities as of the Petition Date. All funds in the Post-Carve-Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (iv) and (v) of the definition of Carve Out set forth above (the "Post-Carve-Out Amounts"), and then, to the extent the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the Prepetition

Administrative Agent for the benefit of the Prepetition Secured Parties in accordance with their rights and priorities as of the Petition Date. Notwithstanding anything to the contrary in the Prepetition Credit Documents or this Interim Order, if either of the Carve-Out Reserves is not funded in full in the amounts set forth in this paragraph 10(b), then any excess funds in one of the Carve-Out Reserves following the payment of the Pre-Carve-Out Amounts and Post-Carve-Out Amounts, respectively, shall be used to fund the other Carve-Out Reserve, up to the applicable amount set forth in this paragraph 10(b), prior to making any payments to the Prepetition Secured Parties. Notwithstanding anything to the contrary in the Prepetition Credit Agreement Documents or this Interim Order, following delivery of a Carve-Out Trigger Notice, the Prepetition Agents shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve-Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve-Out Reserves, with any excess paid to the applicable Prepetition Agent(s) for application in accordance with the Prepetition Credit Agreement Documents. Further, notwithstanding anything to the contrary in this Interim Order, (i) disbursements by the Debtors from the Carve-Out Reserves shall not constitute Obligations (as defined in the Prepetition Credit Agreement), (ii) the failure of the Carve-Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out, and (iii) in no way shall the Approved Budget, Carve Out, Post-Carve-Out Trigger Notice Cap, Carve-Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary in this Interim Order or in any Prepetition Credit Agreement Documents, the Carve Out shall be senior to all liens and claims securing the Prepetition Obligations, including, for the avoidance of doubt, the Prepetition Liens, the Adequate Protection Liens, and the 507(b)

Claims, and any and all other forms of adequate protection, liens, or claims securing the Prepetition Obligations.

(c) Payment of Compensation. Nothing herein shall be construed as a consent to the allowance of any professional fees or expenses of any of the Debtors or any Committee (if appointed) or shall limit or otherwise affect the right of any of the Prepetition Secured Parties or any other party in interest to object to the allowance and payment of any such fees and expenses. No professional fees shall be paid absent a Court order allowing such payment, pursuant to a fee application on notice, or other procedure permitted by any Court order allowing interim compensation or the payment of fees of ordinary course professionals. Subject to the applicable Approved Budget, the Carve Out, and the Committee Investigation Budget, so long as no Termination Event has occurred, the Debtors shall be permitted to pay compensation and reimbursement of expenses allowed by this Court and payable under sections 330 and 331 of the Bankruptcy Code or compensation procedures approved by this Court and in form and substance reasonably acceptable to the Debtors and the Prepetition Secured Parties, as the same may be due and payable, and the same shall not reduce the Post-Carve-Out Trigger Notice Cap.

11. Reservation of Certain Committee and Third-Party Rights and Bar of Challenges and Claims. The stipulations, releases, and admissions contained in this Interim Order, including, without limitation, the Debtors' Stipulations, shall be binding upon the Debtors and their affiliates in all circumstances and for all purposes, and the Debtors are deemed to have irrevocably waived and relinquished all Challenges (as defined below) as of the Petition Date. The stipulations, releases, and admissions contained in this Interim Order, including, without limitation, the Debtors' Stipulations, shall be binding upon all other parties in interest, including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for a Debtor or any Committee

(if appointed) and any other person acting on behalf of the Debtors' estates, unless and to the extent that a party in interest with proper standing granted by order of this Court (or other court of competent jurisdiction) has filed an adversary proceeding (a) on or before the date that is the earlier of seventy-five (75) calendar days after entry of this Interim Order, subject to further extension by written agreement of the Debtors and the Required Prepetition Lenders, each acting in their sole discretion (the "Challenge Period," and the date of expiration of each Challenge Period, a "Challenge Period Termination Date"), (b) seeking to avoid, object to, or otherwise challenge the findings or Debtors' Stipulations regarding (i) the validity, enforceability, extent, priority, or perfection of the mortgages, security interests, and liens of any Prepetition Secured Party or (ii) the validity, enforceability, allowability, priority, secured status, or amount of the Prepetition Obligations (any such claim, a "Challenge"), and (c) there is a final, non-appealable order entered in favor of the plaintiff sustaining any such Challenge in any such timely filed adversary proceeding. The filing of a motion seeking standing to file a Challenge before the termination of the Challenge Period, which attaches a proposed Challenge, shall toll the Challenge Period Termination Date only as to the party that filed such standing motion, and only with respect to the Challenges asserted by such party in connection with such standing motion, until such motion is resolved or adjudicated by this Court. Upon the expiration of the Challenge Period Termination Date without the filing of a Challenge (or if any such Challenge is filed and overruled): (a) any and all such Challenges by any party (including, without limitation, any Committee (if appointed), any chapter 11 trustee, and/or any examiner or other estate representative appointed or elected in these Chapter 11 Cases, and any chapter 7 trustee and/or examiner or other estate representative appointed or elected in any Successor Case) shall be deemed to be forever waived, released, and barred; (b) the Prepetition Obligations shall constitute allowed claims, not subject to counterclaim,

setoff, recoupment, reduction, subordination, recharacterization, defense, or avoidance for all purposes in the Debtors' Chapter 11 Cases and any Successor Cases; (c) the Prepetition Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, and perfected, not subject to recharacterization, subordination, or avoidance; and (d) all of the Debtors' stipulations and admissions contained in this Interim Order, including, without limitation, the Debtors' Stipulations, and all other waivers, releases, affirmations, and other stipulations as to the priority, extent, and validity as to the Prepetition Secured Parties' claims, liens, and interests contained in this Interim Order shall be of full force and effect and forever binding upon the Debtors, the Debtors' bankruptcy estates, and all creditors, interest holders, and other parties-in-interest in these Chapter 11 Cases and any Successor Cases. If any such adversary proceeding is timely filed, the stipulations and admissions contained in this Interim Order, including the Debtors' Stipulations, shall nonetheless remain binding and preclusive on any Committee (if appointed) and any other person or entity except to the extent that such stipulations and admissions were expressly challenged in such adversary proceeding prior to the Challenge Period Termination Date. Nothing in this Interim Order vests or confers on any Person (as defined in the Bankruptcy Code), including any Committee (if appointed) in these Chapter 11 Cases, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation, any Challenges with respect to the Prepetition Obligations, and an order of this Court conferring such standing on a Committee (if appointed) or other party in interest shall be a prerequisite for the prosecution of a Challenge by the Committee (if appointed) or such other party-in-interest. The Prepetition Secured Parties agree that each of the Prepetition Secured Parties shall not raise as a defense in connection with any Challenge the ability of creditors to file derivative suits on behalf of limited liability companies. If the Committee (if any) pursues or brings forth a Challenge, the defendant

of such Challenge shall not object on the grounds that the Committee lacks standing. For the avoidance of doubt, any trustee appointed or elected in these Chapter 11 Cases shall, until the expiration of the period provided herein for asserting Challenges, and thereafter for the duration of any adversary proceeding or contested matter commenced pursuant to this paragraph (whether commenced by such trustee or commenced by any other party in interest on behalf of the Debtors' estates), shall be deemed to be a party other than the Debtors and shall not, for purposes of such adversary proceeding or contested matter, be bound by the acknowledgments, admissions, confirmations, and stipulations of the Debtors in this Interim Order.

12. Limitations on the Use of Available Cash Collateral. Notwithstanding anything herein to the contrary, the Debtors shall not assert or prosecute, and no portion of the proceeds of the Collateral, including any Available Cash Collateral or the Carve Out, and no disbursements set forth in the Approved Budget, shall be used in connection with (a) preventing, hindering, or delaying the Prepetition Secured Parties' enforcement or realization upon any of the Collateral once an Event of Default has occurred and after the Remedies Notice Period, (b) objecting, challenging, or contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the Prepetition Obligations or Collateral, or any other rights or interest of the Prepetition Secured Parties, (c) investigating, asserting, commencing, or prosecuting any claims or causes of action, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, against any of the Prepetition Secured Parties or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, or employees, or (d) paying any amount on account of any claims arising prior to the Petition Date or any non-ordinary course administrative claim unless such payments are (i) approved by an order of this Court and (ii) in accordance with the Budget Covenants; provided, however, that up to \$15,000

of Available Cash Collateral may be used to pay the allowed fees and out-of-pocket expenses incurred solely by any Committee (if appointed) in investigating (but not commencing or prosecuting), the validity, enforceability, perfection, priority, or extent of the liens under the Prepetition Credit Agreement Documents (the “Committee Investigation Budget”).

13. Cash Management and Maintenance of Collateral. The Debtors shall maintain their cash management arrangements in a manner consistent with the order approving the Debtors’ *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Continued Use of Their Existing Cash Management System, Including Maintenance of Existing Bank Accounts, Checks; and Business Forms, and (II) Authorizing Continuation of Existing Deposit Practices.* The Debtors shall comply with the covenants contained in the Prepetition Credit Agreement Documents regarding the maintenance and insurance of the Prepetition Collateral and the Collateral.

14. Disposition of Collateral. Subject to the Carve Out, to the extent that any Prepetition Collateral is sold, transferred, leased, encumbered, or otherwise disposed of as contemplated by the terms of the Prepetition Credit Agreement Documents, any proceeds of such sale, lease, or other disposition of the Prepetition Collateral shall be applied in a manner consistent with the Intercreditor Agreement and the Prepetition Credit Agreement Documents.

15. Proceeds of Subsequent Financing. Subject to the Carve Out, if any Debtor, any trustee, any examiner with enlarged powers, or any responsible officer subsequently appointed in these Chapter 11 Cases shall obtain credit or incur debt pursuant to sections 364(b), 364(c), or 364(d) of the Bankruptcy Code or in violation of the Prepetition Credit Agreement Documents at any time prior to the time at which the Prepetition Credit Agreement Obligations have been paid in full in cash, then, unless otherwise agreed by the Required Prepetition Lenders in writing in

their sole discretion, all the cash proceeds derived from such credit or debt shall immediately be turned over to the Prepetition Collateral Agent to be applied in a manner consistent with the Prepetition Credit Agreement Documents.

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

17. Section 506(c) Claims. Upon entry of the Final Order, and except to the extent of the Carve Out, no costs or expenses of administration which have been or may be incurred in these Chapter 11 Cases at any time, or any future proceeding that may result therefrom, including any Successor Cases, shall be charged against or recovered from the Prepetition Secured Parties or any of their respective claims or the Collateral (including the Prepetition Collateral) pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior express written consent of the Prepetition Administrative Agent or the Required Prepetition Lenders, and no such consent shall be implied, directly or indirectly, from any other action, inaction, or acquiescence by any such representatives, agents, or lenders. Upon entry of the Final Order, and except to the extent of the Carve Out, the Debtors and their estates shall be deemed to have irrevocably waived, and shall be prohibited from asserting, any surcharge claim, under section 506(c) of the Bankruptcy Code or otherwise, for any costs incurred, including those in connection with the preservation, protection, enhancement of, or realization by the Prepetition Secured Parties upon, the Collateral.

18. No Waiver of Prepetition Secured Parties' Rights; Reservation of Rights. Notwithstanding any provision in this Interim Order to the contrary, this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, any Prepetition Secured

Parties' rights with respect to any person or entity or with respect to any other collateral owned or held by any person or entity. The rights of the Prepetition Secured Parties are expressly reserved and entry of this Interim Order shall be without prejudice to, and does not constitute a waiver, expressly or implicitly, of: (a) the Prepetition Secured Parties' rights under any of the Prepetition Credit Agreement Documents, the Prepetition Macquarie Agreements, and the Prepetition Interest Rate Swap Agreements; (b) the Prepetition Secured Parties' rights to seek any other or supplemental relief in respect of the Debtors, including with respect to the Debtors' use of the Available Cash Collateral; (c) the Prepetition Secured Parties' rights to seek modification of the grant of adequate protection provided under this Interim Order so as to provide different or additional adequate protection at any time; (d) any of the Prepetition Secured Parties' rights under the Bankruptcy Code or applicable non-bankruptcy law, including to: (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of the Chapter 11 Cases, conversion of the Chapter 11 Cases under chapter 7 of the Bankruptcy Code, or appointment of a chapter 11 trustee or examiner with extended powers, or (iii) propose, subject to section 1121 of the Bankruptcy Code, a chapter 11 plan or plans; or (e) any other rights, claims, or privileges (whether legal, equitable, or otherwise) of the Prepetition Secured Parties.

19. No Liability to Third Parties. By reason of permitting the Debtors to use Available Cash Collateral under the terms set forth herein or in taking any other actions related to this Interim Order, the Prepetition Secured Parties (a) shall have no liability to any third party and shall not be deemed to be in control of the operations of any Debtors or to be acting as a "controlling person," "responsible person," or "owner or operator" with respect to the operation or management of any Debtors (as such term, or any similar terms, are used in the Internal Revenue Code, the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, or

any similar federal or state statute), and (b) shall not owe any fiduciary duty to any of the Debtors, their creditors, or their estates, and shall not be party to or be deemed to be party to a joint venture or partnership with any of the Debtors. Furthermore, nothing in this Interim Order shall in any way be construed or interpreted to impose or allow the imposition upon the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors and their affiliates (as defined in section 101(2) of the Bankruptcy Code).

20. No Marshaling/Applications of Proceeds. Subject to entry of the Final Order, the Prepetition Secured Parties shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Collateral (including the Prepetition Collateral), as the case may be, and proceeds or payments shall be received and applied in accordance with the Prepetition Credit Agreement Documents, notwithstanding any other agreement or provision to the contrary.

21. Section 552(b). Subject to entry of the Final Order, the Prepetition Secured Parties shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Secured Parties with respect to proceeds, product, offspring, or profits of any of the Collateral (including the Prepetition Collateral).

22. Proofs of Claim. Notwithstanding any order entered by this Court in relation to the establishment of a bar date in any of these Chapter 11 Cases or any Successor Cases to the contrary, the Prepetition Secured Parties will not be required to file proofs of claim in any of these Chapter 11 Cases or any Successor Cases for any claim described herein, and the Debtors’ Stipulations in paragraph F herein shall be deemed to constitute a timely filed proof of claim for each of the Prepetition Agents and the Prepetition Secured Parties. Notwithstanding the foregoing,

the Prepetition Administrative Agent, for the benefit of itself and the Prepetition Lenders, and the Prepetition Lenders are authorized, but not directed or required, in their sole discretion, to file (and amend and/or supplement, as they see fit) a proof of claim and/or aggregate proofs of claim in each of these Chapter 11 Cases or any Successor Cases for any claim described herein.

23. Binding Effect of Interim Order. Immediately upon entry by this Court (notwithstanding any applicable law or rule to the contrary), the terms and provisions of this Interim Order shall become valid and binding upon and inure to the benefit of the Debtors, the Prepetition Secured Parties, all other creditors of any of the Debtors, any Committee (if appointed) or any other Court-appointed committee appointed in any Chapter 11 Cases, and all other parties in interest and the respective successors and assigns of each of the foregoing, including any chapter 7 or chapter 11 trustee or other fiduciary hereafter appointed or elected for the estates of the Debtors or with respect to the property of the estate of any Debtors in any of these Chapter 11 Cases, any Successor Cases, or upon dismissal of any case or any Successor Case. In the event of any inconsistency between the provisions of this Interim Order and the Prepetition Credit Agreement Documents or any other order of this Court (including any “first day” order), the provisions of this Interim Order shall govern and control. Any payments to be made by any of the Debtors under any order (including any “first day” order) shall be made in accordance with this Interim Order.

24. Survival.

(a) The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (i) confirming any plan of reorganization in any of these Chapter 11 Cases; (ii) converting any of these Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code; or (iii) dismissing any of these Chapter 11 Cases or any

Successor Cases. The terms and provisions of this Interim Order, including, without limitation, the granting of the Adequate Protection Liens and 507(b) Claims, and the other protections granted to the Prepetition Secured Parties pursuant to this Interim Order, shall continue in full force and effect notwithstanding entry of any such order.

(b) If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated, or stayed, such reversal, modification, vacation, or stay shall not affect the validity and enforceability of the Adequate Protection Obligations granted in connection therewith, subject to paragraph 11 hereof. Notwithstanding any such reversal, modification, vacation, or stay, any use of Available Cash Collateral or Adequate Protection Obligations incurred by the Debtors to the applicable Prepetition Secured Parties prior to the actual receipt of written notice by the Required Prepetition Lenders of the effective date of such reversal, modification, vacation, or stay shall be governed in all respects by the original provisions of this Interim Order.

(c) Except as expressly provided in this Interim Order, the Adequate Protection Obligations and all other rights and remedies of the Prepetition Secured Parties granted by the provisions of this Interim Order shall survive, and shall not be modified, impaired, or discharged by the entry of an order converting any of these Chapter 11 Cases to a case under chapter 7, dismissing these Chapter 11 Cases, approving the sale of any Collateral (including any Prepetition Collateral) pursuant to section 363(b) of the Bankruptcy Code or the entry of an order confirming a plan of reorganization in these Chapter 11 Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived any discharge as to any remaining Adequate Protection Obligations. The terms and provisions of this Interim Order shall continue in these Chapter 11 Cases, in any Successor Cases, or in any superseding chapter 7 case under the Bankruptcy Code, and the Adequate Protection Obligations and all other rights and remedies of the Prepetition

Secured Parties granted by the provisions of this Interim Order shall continue in full force and effect until the Adequate Protection Obligations are indefeasibly paid in full in cash.

25. Final Hearing. The Final Hearing shall be _____, 2023, at __:__ a.m./p.m., prevailing Eastern Time. The Debtors shall provide notice of the Final Hearing to the Notice Parties (as defined below). Any party in interest objecting to the relief sought at the Final Hearing shall serve and file written objections, which objections shall be served upon (i) the Debtors, 13860 Ballantyne Corporate Place, Suite 300, Charlotte, North Carolina 28277, Attn: George Knapp and Emily Prince (emails: GeorgeKnapp@cogentrix.com and EmilyPrince@cogentrix.com); (ii) Latham & Watkins LLP, counsel to the Debtors, 1271 Avenue of the Americas, New York, NY 10020, Attn: George A. Andrew D. Sorkin, Davis, Brett M. Neve, and Randall Carl Weber-Levine (emails: George.Davis@lw.com, Andrew.Sorkin@lw.com, Brett.Neve@lw.com, and Randall.Weber-Levine@lw.com); (iii) Latham & Watkins LLP, counsel to the Debtors, 330 North Wabash Avenue, Suite 2800, Chicago, IL 60611, Attn: Caroline Reckler, Esq. (email: Caroline.Reckler@lw.com); (iv) Young Conaway Stargatt & Taylor, LLP, counsel to the Debtors, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Michael R. Nestor, Kara Hammond Coyle, Heather P. Smillie, and Kristin L. McElroy (emails: MNestor@ycst.com, KCoyle@ycst.com, HSmillie@ycst.com, and KMcelroy@ycst.com); (v) Kirkland & Ellis LLP, counsel to the Administrative Agent, 601 Lexington Avenue, New York, NY 10022, Attn: Christopher Marcus and Peter Candel (email: Christopher.Marcus@kirkland.com and Peter.Candel@kirkland.com); (vi) Stroock & Stroock & Lavan LLP, counsel to the Collateral Agent and Depositary Agent, 180 Maiden Lane, New York, NY 10038, Attn: Stephan E. Hornung and Matthew O'Donnell (emails: SHornung@stroock.com and MDonnell@stroock.com); (vii) Willkie Farr & Gallagher LLP, counsel to the Issuing Lender, AXA Equitable Building, 787

7th Avenue, New York, NY 10019, Attn: Ana Alfonso (email: aalfonso@willkie.com); and (viii) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801, Attn: Richard L. Schepacarter, Esq. (email: Richard.Schepacarter@usdoj.gov); and (ix) counsel to any official committee appointed in these Chapter 11 Cases (collectively, the “Notice Parties”), and shall be filed with the Clerk of the United States Bankruptcy Court, District of Delaware, in each case so as to be received no later than [_____], 2023 at 4:00 p.m. (prevailing Eastern Time). If no objections are timely filed, this Court may enter the Final Order without further notice or hearing.

26. Effect of This Interim Order. This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable immediately upon execution hereof.

27. Headings. Sections headings used herein are for convenience only and are not to affect the construction of, or to be taken into consideration in, interpreting this Interim Order.

28. Bankruptcy Rules. The requirements of Bankruptcy Rules 4001, 6003, and 6004, in each case to the extent applicable, are satisfied by the contents of the Motion.

29. Necessary Action. The Debtors and the Prepetition Secured Parties are authorized to take all such actions as are necessary or appropriate to implement the terms of this Interim Order.

30. Retention of Jurisdiction. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Interim Order.

Exhibit A

Initial Budget

Lincoln Power														
<i>Weekly Cash Forecast</i>														
	Filing													
Week ending:	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	Wks 1-13
\$ in '000s	4/2	4/9	4/16	4/23	4/30	5/7	5/14	5/21	5/28	6/4	6/11	6/18	6/25	6/25/23
	Prelim	Frcst	Frcst	Frcst	Frcst	Frcst	Frcst	Frcst	Frcst	Frcst	Frcst	Frcst	Frcst	Total
Disbursements:														
Fixed Fuel	\$ -	\$ -	\$ -	\$ (524)	\$ (146)	\$ -	\$ -	\$ (524)	\$ (146)	\$ -	\$ -	\$ (491)	\$ (180)	\$ (2,012)
Variable Fuel	(47)	-	-	-	-	(100)	-	-	(44)	(50)	-	-	(145)	(386)
InterCo Service Support	-	-	-	-	-	-	-	(480)	-	-	-	-	(471)	(951)
Property Insurance	-	-	-	-	-	-	(4)	-	-	(2)	-	-	-	(6)
Tax Payments	-	(1)	-	(1)	-	-	-	(1)	-	-	-	-	(1)	(4)
Maintenance & CapEx	(20)	(40)	(80)	(298)	(265)	(169)	(169)	(71)	(71)	(34)	(34)	(34)	(34)	(1,320)
Other G&A	(177)	(1)	(31)	(2)	(0)	(82)	(263)	(3)	(0)	(52)	(0)	(63)	(1)	(677)
Events Not Anticipated	-	(1)	(6)	(62)	(53)	(45)	(56)	(108)	(26)	(14)	(3)	(59)	(83)	(517)
Total Disbursements	\$ (244)	\$ (43)	\$ (117)	\$ (887)	\$ (465)	\$ (397)	\$ (492)	\$ (1,187)	\$ (287)	\$ (153)	\$ (38)	\$ (647)	\$ (915)	\$ (5,874)
Financing & Restructuring Activities:														
Interest (Rvlr, L/Cs, Term)	\$ 5	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5
Swap Settlement	158	-	-	-	-	158	-	-	-	164	-	-	-	479
Draws / Repay / Amort.	-	-	-	-	-	-	-	-	-	-	-	-	-	-
DSR & MM Account Activity	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Adequate Protection Depos.	(100)	-	-	-	-	-	-	-	-	-	-	-	-	(100)
Professional Fees	(1,558)	(160)	(160)	(421)	(328)	(160)	(488)	(1,669)	(284)	(134)	(2,256)	(227)	(1,673)	(9,518)
Total Financing & Restruct.	\$ (1,496)	\$ (160)	\$ (160)	\$ (421)	\$ (328)	\$ (2)	\$ (488)	\$ (1,669)	\$ (284)	\$ 30	\$ (2,256)	\$ (227)	\$ (1,673)	\$ (9,134)

Exhibit B

Milestones

The Debtors shall achieve each of the following milestones (as may be extended from time to time with the consent of the Prepetition Administrative Agent on behalf of the Required Prepetition Lenders, as applicable, the “Milestones”):

1. General.

- a) The Court shall have entered the Final Order no later than thirty-five calendar days following the Petition Date.

2. Plan and Disclosure Statement.

- a) No later than ten days after the Petition Date, the Debtors shall file a Plan in form and substance acceptable to the Required Prepetition Lenders (the “Approved Plan”), and a disclosure statement for the Approved Plan, which shall be in form and substance acceptable to the Required Prepetition Lenders (the “Disclosure Statement”).
- b) Within thirty-five days of the date on which the Approved Plan and Disclosure Statement are filed, the Court shall have entered an order approving the Disclosure Statement, which order shall be in form and substance acceptable to the Required Prepetition Lenders.
- c) Within seventy days of the date on which the Approved Plan and Disclosure Statement are filed, the Court shall have entered an order confirming the Approved Plan, which order shall be in form and substance acceptable to the Required Prepetition Lenders.
- d) Within ninety-five days of the Petition Date, the Approved Plan shall be effective.

3. The Sale Option.

- a) On the Petition Date, the Debtors shall, in coordination with the Prepetition Administrative Agent’s professionals, commence a marketing process to gauge interest in the sale of some or all of the Debtors’ business enterprise pursuant to either section 363 of the Bankruptcy Code or a chapter 11 plan (a “Sale”). Such process shall be conducted within forty-five days of the Petition Date.
- b) If the Prepetition Administrative Agent, on behalf of the Required Prepetition Lenders (at their sole discretion), directs the Debtors in writing to pursue consummation of a Sale (the day of such written direction the “Sale Direction Date”), then:
 - (i) No later than five calendar days following the Sale Direction Date, the Debtors shall have filed a motion for approval of procedures for the marketing and sale of some or all of the Debtors’ business enterprise (the “Bidding Procedures Motion,” and the bidding procedures proposed therein, the “Bidding Procedures”), which Bidding Procedures Motion and proposed Bidding

Procedures shall be in form and substance acceptable to the Required Prepetition Lenders.

- (ii) The Court shall have entered an order approving the Bidding Procedures Motion no later than twenty-six days following the Sale Direction Date.
- (iii) The deadline to submit final qualified bids pursuant to the Bidding Procedures shall be no later than fifty days after the Sale Direction Date.
- (iv) Any auction to select a winning bidder pursuant to the Bidding Procedures shall be conducted no later than fifty-five days after the Sale Direction Date.
- (v) An order approving the Sale shall have been entered by the Court no later than the later of (a) seventy-five days following the Petition Date or (b) sixty days following the Sale Direction Date, which order shall be in form and substance acceptable to the Required Prepetition Lenders.

4. The PJM Litigation.

- a) No later than two Business Days after the Petition Date, the Debtors shall initiate the PJM Litigation (as defined in the Restructuring Term Sheet).
- b) A hearing concerning the PJM Litigation shall occur no later than seventy-five days after the Petition Date.
- c) No later than eighty-five days after the Petition Date, the Bankruptcy Court shall have entered a final order resolving the Debtor's summary judgment motion and any PJM motion to dismiss.