IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

DECLARATION OF JUSTIN D. PUGH,
CHIEF RESTRUCTURING OFFICER OF THE DEBTORS,
IN SUPPORT OF CHAPTER 11 PETITIONS AND FIRST DAY PLEADINGS

I, Justin D. Pugh, hereby declare under the penalty of perjury:

1. I am the Chief Restructuring Officer of Lincoln Power, L.L.C. ("**Lincoln Power**") and certain of its affiliates (collectively, the "**Company**"), which are the debtors and debtors in possession (collectively, the "**Debtors**") in the above-captioned cases (collectively, the "**Chapter 11 Cases**"). I am also a Senior Managing Director of FTI Consulting, Inc. ("**FTI**"). The Company engaged FTI, effective February 7, 2023, to provide turnaround management and contingency-planning advisory services. I am over the age of 18, and I am authorized by each of the Debtors to submit this declaration (the "**First Day Declaration**") on behalf of the Debtors.

2. I have more than 12 years of experience in the restructuring industry, which has consisted of a broad range of corporate recovery services and interim management roles. My restructuring experience includes operating and managing businesses in and out of court, conducting and managing sales and liquidations of assets and business interests, advising boards

[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.

of directors on countless restructuring issues, developing and adjudicating claims, managing and assisting in litigation, negotiating settlements, and administering claims-payment structures in a variety of cases. My industry specializations include power generation, renewable energy, manufacturing, retail, real estate, and financial services.

3. I hold a Bachelor of Science in Finance from Louisiana Tech University, a Master of Science in Finance and Mathematics from Louisiana State University, and a Master of Business Administration in Finance and Corporate Accounting from the University of Rochester. I am also a Chartered Financial Analyst and a Certified Public Accountant (accredited in business valuation), and I hold Series 7, 63, and 79 licenses.

4. As the Debtors' Chief Restructuring Officer, I am familiar with the day-to-day operations of the Debtors. Thus, I have personal knowledge of the Debtors' financial affairs and business operations. In addition, I have been responsible for overseeing the Debtors' preparations for these Chapter 11 Cases and their business plans. I have further familiarized myself with the Debtors' day-to-day operations, financial affairs, business affairs, and books and records by reviewing key financial documents and engaging in discussions with other members of the management team of the Debtors. Except as otherwise stated in this First Day Declaration, the statements set forth herein are based on (i) my personal knowledge or opinion derived from my experience, (ii) information that I received from the Debtors' management working directly with me or under my supervision, direction, or control, or from the various advisors of the Debtors, and/or (iii) my review of relevant documents. Any references to the Bankruptcy Code (as defined below), the chapter 11 process, and related legal matters herein reflect my understanding of such matters based on the explanations and advice counsel to the Debtors has provided. If called upon, I would testify competently to the facts set forth in this First Day Declaration.

5. On the date hereof (the "**Petition Date**"), each of the Debtors filed a voluntary petition for relief in the United States Bankruptcy Court for the District of Delaware (the "**Court**") under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "**Bankruptcy Code**"). The Debtors will continue to operate their business and manage their properties as debtors in possession.

6. I submit this First Day Declaration on behalf of the Debtors in support of their (i) voluntary petitions for relief and (ii) "first-day" pleadings, which the Debtors are filing concurrently herewith (collectively, the "**First Day Pleadings**"). The Debtors seek the relief set forth in the First Day Pleadings to minimize the adverse effects of the commencement of these Chapter 11 Cases on their business. I have reviewed the Debtors' petitions and the First Day Pleadings or have otherwise had their contents explained to me, and it is my belief that the relief sought therein is essential to ensure the uninterrupted operation of the Debtors' business and to successfully maximize the value of the Debtors' estates.

7. To familiarize this Court with the Debtors, their business, the circumstances leading to the commencement of these Chapter 11 Cases, the objectives of such cases, and the relief the Debtors are seeking in the First Day Pleadings, this First Day Declaration is organized as follows:

- Part I provides an overview of the Company's history and organizational structure, business operations, and relationship with PJM Interconnection, L.L.C. ("**PJM**");
- Part II summarizes the Company's prepetition capital structure and indebtedness;
- Part III discusses the circumstances leading to the Debtors' commencement of these Chapter 11 Cases;
- Part IV outlines the objectives of these Chapter 11 Cases and the means for implementing these Chapter 11 Cases; and
- Part V introduces the various First Day Pleadings and sets forth my belief that the relief sought therein is crucial to the Debtors' business.

I. GENERAL BACKGROUND

A. Overview of the Company's History and Organizational Structure

8. The Debtors comprise a power company that owns two gas-fired power-generation facilities—one of which is located in Elgin, Illinois (the "**Elgin Plant**"), and the other of which is located in East Dundee, Illinois (the "**Rocky Road Plant**" and, together with the Elgin Plant, the "**Lincoln Power Plants**").

9. As reflected in the Organizational Chart attached hereto as Exhibit A, Debtor Lincoln Power is the wholly-owned indirect subsidiary of Debtor Cogentrix Lincoln Holdings, LLC ("**Holdings**"). Lincoln Power is a holding company that was formed on March 20, 2017. The Debtors are managed and operated by an affiliated power-generation asset-manager company, Cogentrix Energy Power Management, LLC (together with its affiliates, as applicable, "**Cogentrix**").[2]

10. Lincoln Power had no significant operations until July 5, 2017, when it purchased from a fund managed by Rockland Capital 100% of the ownership interests (the "**Lincoln Power Acquisition**") in Debtor Elgin Energy Center Holdings, LLC ("**Elgin Holdings**") and Debtor Valley Road Holdings, LLC ("**Valley Road Holdings**"). Elgin Holdings wholly owns Debtor Elgin Energy Center, LLC ("**Elgin**"), which owns the Elgin Plant. Valley Road Holdings indirectly owns 100% of the ownership interests in Debtor Rocky Road Power, LLC ("**Rocky Road**"), which owns the Rocky Road Plant. Thus, through the Lincoln Power Acquisition, Lincoln Power acquired the Lincoln Power Plants.[3]

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[2] Cogentrix is a leading independent power producer that manages power portfolios and develops, constructs, operates and improves power generation assets.

[3] The Lincoln Power Acquisition included a third natural-gas fired facility located in Tilton, Illinois, but Valley Road Funding, LLC sold that facility on November 17, 2020.

11. All of the Debtors are Delaware limited liability companies. Holdings is managed by a board of managers—consisting of two sponsor-designated directors, one Cogentrix representative, and Eugene I. Davis as independent manager—and the remaining Debtors are member- managed by their direct Debtor parents.

B. The Company's Business Operations

1. The Plants

12. The Elgin Plant consists of four Siemens-Westinghouse W501D5A combustion turbines with a total capacity of about 480 megawatts ("**MW**"). The Rocky Road Plant consists of three natural-gas fired Siemens 501D5A combustion turbines and one General Electric LM5000 combustion turbine with a total capacity of about 330 MW. All of the turbines at both of the Lincoln Power Plants are connected to the transmission system of Commonwealth Edison Company ("**ComEd**"). Through the Lincoln Power Plants, the Debtors generate and sell electric energy into the wholesale markets operated by PJM (collectively, the "**PJM Market**").

2. Gas Supply, Transportation, and Electric Interconnection Agreements

13. The Lincoln Power Plants obtain the natural gas needed to generate the energy they sell into the PJM Market pursuant to various supply and transportation agreements between (i) Elgin or Rocky Road and (ii) several gas suppliers and pipeline transportation companies. Pursuant to these agreements, Elgin or Rocky Road purchase a certain quantity of gas at a specified rate as needed on a daily basis, which gas is then transported to the Lincoln Power Plants directly or held at various storage facilities and subsequently transported to the Lincoln Power Plants as needed.

14. The energy generated by the Lincoln Power Plants is then delivered to the PJM Market through ComEd's electrical power grids in accordance with electric interconnection

agreements ("**ISAs**")—one of which is between Elgin, ComEd, and PJM; and the other of which is between Rocky Road and ComEd. The ISAs detail the obligations of the Lincoln Power Plants (as interconnection customers), ComEd (as transmission owner), and PJM (as transmission provider) with respect to the operation and interconnection of the Lincoln Power Plants to ComEd and the delivery of energy to PJM.

3. Key Operational Agreements

15. The Debtors do not have any employees and do not operate or manage the Lincoln Power Plants on a day-to-day basis. Instead, the Debtors contract with Cogentrix and its affiliates, pursuant to a series of agreements, for the supply of services needed to conduct the Debtors' business. Absent the contractual arrangements with Cogentrix and its affiliates, the Debtors would be incapable of operating and maintaining the Lincoln Power Plants reliably and generating revenue, thereby diminishing the value of the assets and introducing a number of safety concerns.

16. ***The Operation and Maintenance Agreements***. Debtors Rocky Road and Elgin are each party to separate Operation and Maintenance Agreements, dated January 15, 2018 (together, the "**O&M Agreements**") with Lincoln Operating Services, LLC ("**Lincoln Operating**")—an affiliate of Cogentrix. Pursuant to the O&M Agreements, Lincoln Operating provides the operation, maintenance, and technical support services necessary to operate the Lincoln Power Plants. Such services include (but are not limited to):

- Maintaining daily, weekly, monthly, and annual operating logs and hazardous materials reports;
- Developing the annual operating budget, including production and expense forecasts;
- Providing notice of any actual or threatened litigation or claims relating to the Lincoln Power Plants;

- Coordinating the supply of equipment, goods, and materials, including spare parts, required to operate and maintain the Lincoln Power Plants;
- Managing inventory;
- Performing inspections;
- Coordinating repairs, including teardowns and major overhauls of major equipment;
- Coordinating with PJM and gas suppliers, and preparing invoices and backup data related thereto;
- Obtaining environmental allowances;
- Obtaining, and maintaining compliance with, all permits and project documents;
- Coordinating the submission of reports required by governmental authorities having jurisdiction over the Lincoln Power Plants;
- Organizing waste management;
- Assisting with remedial measures in emergencies and plant outages; and
- Obtaining and maintaining insurance.

O&M Agreement § 3.1.[4]

17. In exchange for such services, Rocky Road and Elgin pay Lincoln Operating under each of the O&M Agreements an annual base fee, which escalates yearly, and reimbursable costs—such as (i) payroll costs and related expenses with respect to the services rendered by the employees of Lincoln Operating; (ii) supplies, equipment, materials, services, and other items provided by third parties; (iii) reimbursement to employees of Lincoln Operating for travel and subsistence; and (iv) costs associated with consultants, subcontractors and other third-party service providers. *Id.* §§ 7.1.1-7.1.2. Lincoln Operating has the right to suspend services if Elgin or Rocky

[4] Except as otherwise specifically noted herein, any citations to an O&M Agreement apply to both of the O&M Agreements.

Road do not timely pay any O&M Obligations within seven business days following the due date, and Lincoln Operating has the right to terminate services under the O&M Agreements if Elgin or Rocky Road do not timely pay any amounts due to Lincoln Operating within five business days of receiving written notice of failure to pay. O&M Agreement § 8.3. At the end of each calendar year, the O&M Agreements automatically extend for one year unless terminated upon 90 days' written notice. *Id.* § 8.1.

18. ***The Management Services Agreements***. Debtors Holdings, Lincoln Power, Elgin, and Rocky Road (collectively, the "**MSA Debtors**") are each party to separate Management Services Agreements (collectively, the "**MSAs**") with Cogentrix. Pursuant to the MSAs, Cogentrix provides administrative services in connection with the management, operation, and maintenance of the day-to-day business of the Company. Such services include (but are not limited to):

- Managing and maintaining accounts receivables, accounts payables, general ledgers, financial records and books of account;
- Preparing specific accounting statements and schedules in addition to monthly, quarterly, and annual financial statements;
- Providing treasury, finance, and tax accounting services;
- Preparing tax returns and supervising audits;
- Providing legal support, including engaging outside counsel in addition to preparing and filing any documentation in regulatory matters;
- Providing insurance support, including obtaining and maintaining insurance, pursuing insurance claims, and obtaining collections owed under insurance policies;
- Managing environmental matters, including compliance with applicable environmental laws and permits and the submission of required filings; and
- Providing information technology services, including maintaining all proprietary and licensed systems of the covered companies.

Holdings and Lincoln MSA § 3.1; Elgin and Rocky Road MSA § 2.2.

19. In exchange for such services, the MSA Debtors pay Cogentrix an annual base fee, which is adjusted annually for inflation (the "**MSA Annual Fee**"), and any costs incurred by Cogentrix in performing the relevant services—such as (i) payroll and related employee benefit costs and (ii) costs for materials, spare parts, tools, equipment, consumables, supplies, and legal, consulting, accounting, engineering, and technical services. Holdings and Lincoln MSA § 8.1-8.2; Elgin and Rocky Road MSA § 5.1. Cogentrix has the right to suspend services under any of the MSAs if the relevant MSA Debtors do not timely pay any amounts due to Cogentrix within seven business days following the due date, and Cogentrix has the right to terminate services under any of the MSAs if the relevant MSA Debtors not timely pay any amounts due to Cogentrix within ten business days of receiving written notice of failure to pay. Holdings and Lincoln MSA § 10.2(a); Elgin and Rocky Road MSA § 6.3(a). At the end of each calendar year, the MSAs automatically extend for one year unless terminated upon 60 days' written notice. Holdings and Lincoln MSA § 2.3; Elgin and Rocky Road MSA § 6.1.

20. ***The Energy Management Services Agreements***. Debtors Rocky Road and Elgin are also each party to separate Energy Management Services Agreements (the "**EMSAs**") with Cogentrix. Pursuant to the EMSAs, Cogentrix provides energy management services—including certain electric, fuel and risk management services—for the Lincoln Power Plants. Such services include (but are not limited to):

- Advising with respect to the scheduling of testing for the Lincoln Power Plants;
- Maintaining trained personnel to direct communications with PJM;
- Offering capacity, energy, and ancillary services from the Lincoln Power Plants and directing all communications with PJM relating thereto;

- Submitting all required reports and filings to PJM, the Federal Energy Regulatory Commission ("**FERC**"),[5] the North American Electric Reliability Corporation ("**NERC**"),[6] and any governmental authority having jurisdiction over the Lincoln Power Plants;

- Managing, negotiating, and executing fuel supply agreements, fuel transportation agreements, derivative transactions designed to manage the risk of operating the Lincoln Power Plants, and environmental allowances;

- Transacting for the purchase of fuel under fuel supply agreements and sales of any excess fuel back to the fuel supplier or into the market; and

- Coordinating the delivery of fuel, including daily and hourly scheduling.

EMSA § 3.1.[7]

21. In exchange for such services, Rocky Road and Elgin pay Cogentrix on a monthly basis all payroll, indirect, and other costs that Cogentrix incurs in connection with performance of the services—including the costs of all materials, spare parts, tools, equipment, consumables, supplies in addition to the costs of legal, consulting, accounting, engineering and technical services. Cogentrix has the right to suspend services under the EMSAs if Elgin or Rocky Road do not timely pay any amounts due to Cogentrix within seven business days following the due date. EMSA § 8.3. At the end of each year, the EMSAs automatically extend for one year unless terminated upon 90 days' written notice. *Id.* § 8.1.

22. The Company also uses the services of Cogentrix subsidiaries for certain facility maintenance services and certain facility monitoring and operating services.

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[5] Congress established FERC as the federal agency charged with regulating the rates, terms, and conditions of interstate transmission and wholesale sales of power under 16 U.S.C. §§ 791-825 (the "**Federal Power Act**").

[6] NERC is a not-for-profit international regulatory authority that monitors and assesses the reliability of energy grids, and develops and enforces reliability standards with respect thereto. NERC is the FERC-certified electric reliability organization for the United States and is subject to FERC's jurisdiction.

[7] Except as otherwise specifically noted herein, any citations to an EMSA apply to both of the EMSAs.

4. Overview of PJM and the Company's Relationship with PJM

23. PJM is a regional transmission organization ("**RTO**")[8] that directs the operation of the wholesale electricity system in the PJM Market, which serves all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia. The PJM Market provides access to approximately 65 million customers and approximately 85,000 miles of transmission lines. Access to the PJM Market is critical to the Debtors' operations.

24. Access to, and the rules of, the PJM Market is governed by a suite of agreements and governing documents, including: (i) the ISAs; (ii) the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (as amended or otherwise modified from time to time, the "**PJM Operating Agreement**"); and (iii) the PJM Open Access Transmission Tariff (as amended or otherwise modified from time to time, the "**PJM Tariff**" and, together with the PJM Operating Agreement and the ISAs, the "**PJM Documents**"). The PJM Operating Agreement establishes the membership of Rocky Road and Elgin—in addition to approximately 1,100 other members (collectively, the "**PJM Members**")—in the PJM Market. And the PJM Tariff generally governs the operations of PJM and sets out the rules that govern the PJM Market, including the Lincoln Power Plants' participation therein (like the participation of all PJM Members).[9]

25. Electricity markets are generally designed to assure an appropriate amount of generating capacity is available to satisfy demand at any given moment. To meet this need, PJM operates a capacity market, called the Reliability Pricing Model, that procures power supply

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[8] FERC encouraged the voluntary formation of RTOs to administer the power transmission grid on a regional basis throughout North America (including Canada).

[9] The PJM Documents and related agreements fall under the jurisdiction of FERC pursuant to section 205 of the Federal Power Act.

resources, including power plant generating capacity, to meet predicted energy demand in the future. PJM holds capacity auctions ("**Capacity Auctions**") pursuant to which PJM Members offer their available capacity for a future Delivery Year[10] in exchange for compensation in that future Delivery Year. If a resource is selected through the Capacity Auction, then PJM Members have capacity supply obligations ("**CSOs**") that require such members to be available to deliver the electric energy that cleared in the applicable Capacity Auction during the applicable future Delivery Year, including during certain emergency periods of time (known as "**Performance Assessment Intervals**") that are triggered upon PJM declaring an emergency action under the PJM Tariff. As described in more detail below, the Lincoln Power Plants participated in the Capacity Auction for the delivery of capacity during the 2022-2023 Delivery Year, and its offers were selected in that Capacity Auction, resulting in the Lincoln Power Plants having CSOs from June 1, 2022 through May 31, 2023.[11]

26. Failure to satisfy such CSOs during Performance Assessment Intervals potentially subjects power generators to financial penalties for non-performance ("**Non-Performance Penalties**"). Notably, pursuant to the PJM Tariff and PJM Operating Agreement, if PJM has reasonable grounds to believe that a PJM Member poses an unreasonable credit risk to the PJM Market, PJM may notify the PJM Member of such risk and issue a demand of collateral or other assurances (a "**Collateral Call**"). Failure to remit the required amount of collateral under the Collateral Call within the applicable cure period constitutes an event of default under the PJM

[10] A "**Delivery Year**" runs from June 1 in one calendar year through and including May 31 of the following calendar year.

[11] The Lincoln Power Plants also participated in the Capacity Auction for the delivery of capacity during the 2023-2024 and 2024-2025 Delivery Years, and its offers were selected in such Capacity Auctions as well. Accordingly, the Lincoln Power Plants are slated to have CSOs from June 1, 2023 through May 31, 2025.

Operating Agreement, which currently provides that the defaulting PJM Member shall be precluded from participating in the PJM Market until the default is remedied.[12]

II. PREPETITION CAPITAL STRUCTURE

A. Secured Debt

1. Prepetition First Lien Facility

27. Debtor Lincoln Power is the borrower under that certain Credit Agreement, dated as of July 5, 2017 (as amended, restated, amended and restated, supplemented, waived, or otherwise modified, the "**Prepetition First Lien Credit Agreement**," and, collectively with all agreements, documents, notes, letters of credit, mortgages, security agreements, pledges, guarantees, subordination agreements, deeds, instruments, indemnities, indemnity letters, fee letters, assignments, charges, amendments, and any other agreements delivered pursuant thereto or in connection therewith, the "**Prepetition First Lien Loan Documents**"), with Investec Bank plc ("**Investec**"), as administrative agent (the "**Administrative Agent**"), ABN AMRO Capital USA LLC, as issuing lender (the "**Issuing Lender**"), and the other lenders party thereto (collectively, and together with the Issuing Lender, the "**Prepetition First Lien Lenders**").

28. Pursuant to the Prepetition First Lien Credit Agreement, the Prepetition First Lien Lenders provided Lincoln Power 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 (the "**Prepetition First Lien Loans**") made under,

[12] While PJM has filed a proposal with FERC to amend the PJM Operating Agreement to relax this requirement so that (rather than such preclusion being obligatory) PJM can exercise discretion as to whether to preclude a defaulting member from participating in the PJM Market, such amendment has neither been approved nor taken effect. PJM filed these proposed rule changes on February 6, 2023, and has requested that FERC accept them by no later than April 7, 2023, to be effective on April 8, 2023. On March 21, 2023, FERC issued a deficiency letter requesting that PJM provide more information regarding its proposal, to which PJM responded on March 23, 2023.

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 that remain outstanding, including outstanding principal and accrued and unpaid interest, fees (including any attorneys' and financial advisors' fees), costs, expenses, charges, indemnities, and all other unpaid Obligations (as defined in the Prepetition First Lien Credit Agreement) incurred or accrued with respect to the foregoing pursuant to, and in accordance with, the Prepetition First Lien Loan Documents (collectively, the "**Prepetition First Lien Obligations**").

2. Derivative Instruments and Hedging Activities

29. As is customary in the Debtors' industry, the Debtors' revenue and operations are exposed to risks arising from, among other things, volatility in interest rates, power prices, natural gas prices and other production costs, and generation capacity. To mitigate the effects of such volatility and ensure cash flow, the Debtors have engaged, and continue to engage, in certain hedging arrangements, including (but not limited to) interest-rate swaps and heat-rate call options.

30. ***The Interest-Rate Swaps***. Debtor Lincoln Power is obligated under the Prepetition First Lien Credit Agreement to hedge between 75% and 105% of the projected outstanding principal under the Prepetition Term Loan Facility. In accordance with this requirement, Lincoln Power is party to four interest-rate contract arrangements (as amended, restated, amended and restated, supplemented, waived, or otherwise modified, the "**Prepetition Interest-Rate Swaps**") with three different investment-grade counterparties (each of which are lenders under the Prepetition First Lien Credit Agreement): 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**").[13] All of the Prepetition Interest-Rate Swaps include pay-fixed, receive-variable interest-rate contract agreements, pursuant to which Lincoln Power makes fixed interest-rate payments to, and receives variable interest-rate payments from, the Prepetition Swap Counterparties based on notional principal amounts. For three of the Prepetition Interest-Rate Swaps, the notional amounts decrease over the course of the remainder of the arrangements, which terminate on August 31, 2023. For the fourth Prepetition Interest-Rate Swap (namely, the 2020 Swap), the notional amount increases until September 29, 2023, and then decreases over the course of the remainder of the arrangement, which terminates on July 31, 2025.

31. The Prepetition Interest-Rate Swaps are a significant and, most importantly, low-risk means to reduce 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 Swaps are valued at approximately $3.2 million and, thus, represent a significant asset to the Debtors' estates. While the Debtors are current on their obligations under the Prepetition Interest-Rate Swaps (the "**Prepetition Swap Obligations**"), there may be Prepetition Swap Obligations that have not yet been calculated or settled, and the Prepetition Swap Counterparties may be entitled to calculate and settle such obligations in the ordinary course.

[13] Specifically, the Prepetition Interest-Rate Swaps consist of: (i) (a) that certain 2002 ISDA Master Agreement dated July 19, 2017, between Lincoln Power and CIT Bank, (b) that certain Accession Agreement dated July 19, 2017, between Lincoln Power and CIT Bank, in its capacity as secured party and collateral agent (the "**Collateral Agent**"), and (c) that certain Confirmation of Interest Rate Swap with Embedded Floor Transaction dated August 31, 2018, between Lincoln Power and CIT Bank; (ii) (a) that certain 2002 ISDA Master Agreement dated July 19, 2017, between Lincoln Power and Investec, (b) that certain Accession Agreement dated July 19, 2017, between Lincoln Power, Investec, and the Collateral Agent, and (c) that certain Floored Interest Rate Swap Transaction dated August 31, 2018, between Lincoln Power and Investec; (iii) (a) that certain 2002 ISDA Master Agreement dated July 19, 2017, between Lincoln Power and Truist, (b) that certain Accession Agreement dated July 19, 2017, between Lincoln Power, Truist, and the Collateral Agent, and (c) that certain Confirmation of Swap Transaction dated August 31, 2018, between Lincoln Power and Truist; and (iv) that certain Confirmation of Swap Transaction dated November 17, 2020, between Lincoln Power and Truist (the "**2020 Swap**").

32. ***The HRCO***. Debtor Lincoln Power is also party to that certain Heat Rate Option, dated March 3, 2021 (as amended, restated, amended and restated, supplemented, waived, or otherwise modified, the "**HRCO**") with Macquarie Bank Limited (the "**Secured Commodity Hedge Counterparty**" and, together with the Prepetition First Lien Lenders and the Prepetition Swap Counterparties, the "**Prepetition Secured Parties**").[14] Pursuant to the HRCO, Lincoln Power pays the Secured Commodity Hedge Counterparty, at the Secured Commodity Hedge Counterparty's option, the product of (i) the difference between the market price of power and the assumed cost of producing that power and (ii) an assumed quantity of power. In exchange, the Secured Commodity Hedge Counterparty pays Lincoln Power a monthly option premium and an additional exercise premium is netted against the option premium each time the option is exercised.

33. The HRCO is designed to normalize the Debtors' cash flows as a hedge against volatility in power prices and the costs of generating power. Specifically, when the spark spread narrows—i.e., the difference between the price received by a generator for electricity produced and the costs of producing that electricity narrows—the monthly option premium provided by the Secured Commodity Hedge Counterparty is designed to hedge against such narrowing by normalizing cash flows. By contrast, as the spark spread widens, the Secured Commodity Hedge Counterparty can exercise its option, in which case Lincoln Power owes a payment under the HRCO. In theory, when the spark spread widens, the Debtors are typically generating and selling power in a more economical manner, which can offset the payments to the Secured Commodity Hedge Counterparty under the HRCO.

[14] In connection with the HRCO, the Secured Commodity Hedge Counterparty and Debtor Lincoln Power are also party to that certain 2002 ISDA Master Agreement dated August 24, 2018 (as amended, restated, amended and restated, supplemented, waived, or otherwise modified, the "**HRCO Master Agreement**") and that certain Accession Agreement dated August 24, 2018, with the Collateral Agent and the Administrative Agent.

34. Despite having been a burden on the Debtors' cash flows and balance sheet in the past, the Debtors believe that the HRCO currently represents an asset in the immediate term and anticipate receiving approximately $200,000 from the Secured Commodity Hedge Counterparty in April 2023. While the Debtors are current on their obligations under the HRCO (the "**Prepetition HRCO Obligations**"), there may be Prepetition HRCO Obligations that have not yet been calculated or settled. Up to $27 million of the Prepetition HRCO Obligations (the "**HRCO Security Cap**") constitute secured obligations (the "**Prepetition Secured HRCO Obligations**" and, together with the Prepetition First Lien Obligations and the Prepetition Swap Obligations, the "**Prepetition Secured Obligations**") under the HRCO Master Agreement, the Security Agreement (as defined below), and the Intercreditor Agreement (as defined below).

3. The Security and Intercreditor Agreements

35. Debtors Cogentrix Lincoln Holdings II, LLC, Lincoln Power, Valley Road Holdings, Valley Road Funding, LLC, Rocky Road, Elgin Holdings, and Elgin (collectively, the "**Prepetition Loan Parties**") are also party to: (i) that certain Guarantee and Collateral Agreement, dated July 5, 2017 (as amended, restated, amended and restated, supplemented, waived, or otherwise modified, the "**Security Agreement**"), with the Collateral Agent; and (ii) that certain Collateral Agency and Intercreditor Agreement, dated July 5, 2017 (as amended, restated, amended and restated, supplemented, waived, or otherwise modified, the "**Intercreditor Agreement**"), with the Administrative Agent, the Collateral Agent, the Secured Commodity Hedge Counterparty, and the Prepetition Swap Counterparties.

36. Pursuant to the Security Agreement, the Prepetition Secured Obligations are secured by first-priority security interests in and liens (the "**Prepetition First Lien Loan Liens**") on the "Collateral" (the "**Prepetition Collateral**"), as such term is defined in the Security

Agreement, which consists of substantially all of the Debtors' assets, except as set forth in the Security Agreement.

37. Pursuant to the Intercreditor Agreement, the Prepetition Secured Obligations are *pari passu*, meaning no Prepetition Secured Party shall be entitled to any preferences or priority over any other Prepetition Secured Party with respect to the Prepetition Collateral and the Prepetition Secured Parties shall share in the Prepetition Collateral and all proceeds thereof in accordance with the terms of the Intercreditor Agreement.

B. Unsecured Debt

38. 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.

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

39. The Debtors' ordinary-course operations have historically generated sufficient cash flows, with revenues exceeding plant costs and hedged energy margins adding to profitability. This profile had enabled the Debtors to service their debt obligations and weather ordinary market fluctuations. A number of factors have, however, negatively affected the Debtors' financial condition and destabilized the Debtors' business.

40. As an initial matter, the Debtors are experiencing a liquidity crunch caused by the fact that clearing prices from recent Capacity Auctions held by PJM have decreased significantly and are currently operating at ten-year lows. As a result, the Debtors received significantly less revenues for the capacity they sold in those Capacity Auctions as compared to previous Capacity Auctions.

41. While such liquidity constraints are substantial, the Debtors could have sustained their current debt load had their business not been subjected to numerous issues caused by a severe winter storm that struck and inflicted record cold temperatures across most of the United States, from December 22, 2022, through December 27, 2022 ("**Winter Storm Elliott**"). PJM declared emergency actions on December 23, 2022, and December 24, 2022, and called upon PJM Members to provide electric energy. PJM's declaration of emergency actions resulted in Performance Assessment Intervals across December 23, 2022, and December 24, 2022 (the "**Winter Storm Elliott PAI**").

42. Although the Lincoln Power Plants were available to operate during the Winter Storm Elliott PAI and attempted to provide electric energy in response to PJM's emergency action declaration, the cold temperatures precipitated by Winter Storm Elliott prevented suppliers and transportation companies from being able to provide requisite amounts of gas to the Lincoln Power Plants. Due to, among other factors, the shortage of gas and gas transportation caused by the failures of gas suppliers and transportation companies, the Lincoln Power Plants (along with many other PJM Members) failed to meet their performance obligations during the Winter Storm Elliott PAI.

43. As a result of the Lincoln Power Plants having not complied with PJM's energy demands during the Winter Storm Elliott PAI, PJM has indicated that it will impose a series of penalties on the Debtors that are, in total, a multiple of the Lincoln Power Plants' collective annual revenue. Specifically, on February 10, 2023, PJM sent the Debtors a report in which it indicated that (i) PJM estimated that Rocky Road and Elgin, respectively, owe $14.33 million and $24.56 million (together, the "**Winter Storm Elliott Penalties**") in Non-Performance Penalties for their alleged failure to perform as required under the PJM Documents during Winter Storm Elliott; and

(ii) final invoices for such penalties will begin with the March monthly bill that is issued on April 7, 2023. Under the PJM Documents, the Winter Storm Elliott Penalties are payable over nine months with the first payment coming due on April 14, 2023.[15]

44. On February 17, 2023, PJM sent letters to Rocky Road and Elgin indicating that Rocky Road and Elgin pose a credit risk in light of the Winter Storm Elliott Penalties and, to mitigate such credit risk, must provide collateral of $7 million in either lump-sum payments or through settlement withholdings (collectively, the "**Initial Collateral Calls**"). Throughout February 2023, Rocky Road and Elgin engaged extensively with PJM, with the parties exchanging a series of letters and phone calls, regarding the Initial Collateral Calls.[16] These discussions resulted in PJM agreeing to lower the demanded collateral in the Initial Collateral Calls and determining that it would withhold a weekly amount of $150,000 and $200,000 on Rocky Road's and Elgin's PJM settlement invoices, respectively, beginning with the weekly settlement invoice of February 28, 2023.

45. In response to a February 23, 2023 letter from PJM that invited Rocky Road and Elgin to provide within five (5) business days a summary detailing any disagreements with PJM's determinations with respect to the collateral it required, Rocky Road and Elgin sent letters on March 2, 2023, to PJM (i) stating their disagreement with PJM's calculation of the Winter-Storm Elliott Penalties and (ii) disputing the collateral required by PJM, which is based on PJM's calculation of the Winter-Storm Elliott Penalties. Rocky Road and Elgin also directed PJM to the

[15] Under the currently effective PJM Tariff, Non-Performance Penalties associated with Winter Storm Elliott are payable over three months; however, PJM recently submitted a filing with FERC to amend the PJM Tariff to allow such penalties to be payable over nine months. PJM requested that its proposed changes, which are currently pending at FERC, become effective on April 4, 2023.

[16] Throughout their discussions with PJM, Rocky Road and Elgin have contested PJM's calculation of the Winter Storm Elliott Penalties and have continued to reserve in writing all rights to dispute any assessed penalty or collateral call.

March 1, 2023 submissions they each made to the portal created by PJM to enable PJM Members to set forth various defenses and excuses with respect to their inability to perform during Winter Storm Elliott. These submissions argued, among other things, that PJM had failed to adhere to the requirements of its governing documents in connection with declaring an emergency by failing to curtail certain exports of electricity outside of the PJM Market, and therefore the Winter Storm Elliott Penalties should actually be $0 or, alternatively, should be (at the very least) significantly reduced. Rocky Road and Elgin requested that PJM conduct a good-faith thorough review of the evidence and independently consider Rocky Road and Elgin's excuses before PJM requires any additional collateral from Rocky Road and Elgin, and reiterated that these letters did not constitute an admission as to the validity of the proposed penalty, a waiver of their rights to dispute any assessed penalty or collateral call, or a promise to pay any penalty or post collateral. On March 3, 2023, PJM responded via email indicating that it was in receipt of the supplemental information that Rocky Road and Elgin had timely provided, but also that its proposed penalty, which is integral to the collateral PJM required, remains unchanged "[a]t this time."

46. On March 15, 2023, PJM sent letters (the "**Additional Credit Risk Letters**") to Rocky Road and Elgin in which PJM stated that the future assessment of the Winter Storm Elliott Penalties constitutes a likely future material financial liability that increases the likelihood that Rocky Road and Elgin will default on their financial obligations and indicated that, to mitigate this credit risk, Rocky Road and Elgin must each make a lump-sum payment of, respectively, about $600,000 and $1,350,000 by March 31, 2023. In the Additional Credit Risk Letters, PJM invited Rocky Road and Elgin to provide, within five business days, a summary detailing any disagreements with the determination in the Additional Credit Risk Letters and any other additional information.

47. Accordingly, on March 20, 2023, Rocky Road and Elgin sent letters to PJM (i) again stating their disagreement with PJM's calculation of the Winter Storm Elliott Penalties and (ii) disputing the additional collateral required by PJM. Rocky Road and Elgin again directed PJM to the March 1, 2023 submissions they each made to the PJM portal and again requested that PJM conduct a good-faith thorough review of the evidence and independently consider Rocky Road and Elgin's excuses before PJM requires any additional collateral from Rocky Road and Elgin. Rocky Road and Elgin reiterated that these letters did not constitute an admission as to the validity of the proposed penalty, a waiver of their rights to dispute any assessed penalty or collateral call, or a promise to pay any penalty or post collateral.

48. To date, PJM has not meaningfully engaged with the Debtors regarding the substance of their disagreements over PJM's calculation of the Winter Storm Elliott Penalties, the merits of Rocky Road's and Elgin's defenses and excuses with respect to their inability to perform during Winter Storm Elliot, or any potential resolution of these matters. Nonetheless, PJM has continued to garnish $350,000 per week from Rocky Road and Elgin, collectively, and has issued new, increasingly burdensome collateral demands—indeed, on March 29, 2023, PJM issued formal collateral calls requiring payment of the approximately $2 million lump sum demanded in PJM's March 15 letters by 4:00 p.m. (prevailing Eastern Time) on March 31, 2023. PJM's withholdings have placed a significant strain on the Debtors' liquidity and the Debtors are unable to withstand further withholdings, let alone satisfy additional collateral demands, without impeding their ability to maximize the value of their assets for the benefit of all stakeholders. For the avoidance of doubt, the Debtors reserve all rights with respect to (i) the applicability of the automatic stay under section 362 of the Bankruptcy Code to any actions PJM may undertake to enforce remedies under the PJM Documents and/or collect the Winter Storm Elliott Penalties,

including, without limitation, by setting off, recouping or otherwise withholding amounts due to the Debtors on PJM invoices, and (ii) any rights or claims under chapter 5 of the Bankruptcy Code with respect to amounts withheld by PJM to date.

49. Against the backdrop of headwinds that were already straining the Debtors' liquidity, the significant collateral demanded by PJM, and the looming Winter Storm Elliott Penalties on which PJM has been unwilling to compromise as of yet, the Debtors' cash flow and liquidity have been severely harmed and the Debtors have been forced to operate under a cloud of uncertainty that has, in turn, further strained the Debtors' cash flows and negatively affected liquidity. As a result of these factors, the Debtors' debt load is simply no longer workable. In light of the ongoing and upcoming collateral requirements imposed by PJM, the Debtors have determined, in their business judgment, they need to file for chapter 11 protection now to obtain a needed breathing spell and thereby preserve the value of their estates for the benefit of all their creditors.

IV. OVERVIEW OF THE PROPOSED RESTRUCTURING

A. The Restructuring Support Agreement

50. In the face of the foregoing challenges, the Debtors retained FTI, Latham & Watkins LLP, and Guggenheim Securities, LLC to assist in analyzing the Debtors' financial position and to explore options to deleverage the Debtors' balance sheet. Recognizing that an effective and efficient solution to the Debtors' cash-flow and liquidity concerns would require broad-based support from their various stakeholders, the Debtors worked to develop these Chapter 11 Cases with their Prepetition First Lien Lenders and the Debtors' equity sponsor (the "**Consenting Sponsor**").

51. In February 2023, arm's-length, good-faith discussions began between the Debtors, the Administrative Agent, the Collateral Agent, certain of the Prepetition First Lien Lenders, the

Consenting Sponsor, and their respective advisors. The primary goal of those discussions, and of these Chapter 11 Cases, was to restructure the Debtors' balance sheet on a prompt timeline and in a manner that will provide certainty and finality with respect to the Winter Storm Elliott Penalties so that the Debtors' business may emerge from chapter 11 free from the cloud of uncertainty that hangs over them.

52. On March 30, 2023, the Debtors, certain of the Prepetition First Lien Lenders holding more than 66.67% of the outstanding Prepetition First Lien Loans (such lenders, the "**Consenting Prepetition First Lien Lenders**"), and the Consenting Sponsor entered into the Restructuring Support Agreement attached hereto as Exhibit B (the "**RSA**"). The RSA contemplates, in the first instance, that the Debtors will pursue a largely-consensual restructuring that would (if confirmed): (i) facilitate a comprehensive restructuring centered around a debt-to-equity swap for secured creditors and (ii) fund these Chapter 11 Cases via the consensual use of cash collateral. The RSA, however, also contemplates that the Debtors will in the first 45 days of these Chapter 11 Cases commence a marketing process to assess whether there are potential purchasers interested in acquiring some or all of the Debtors' assets and preserves the Debtors' ability to pursue such a sale in the event it is in the best interests of the Debtors' estates and stakeholders.

53. The entry into the RSA is the product of weeks of negotiation and is a significant achievement that allows for a more orderly and streamlined chapter 11 process than would otherwise be feasible. Indeed, the RSA provides, subject to this Court's approval, a clear roadmap for the Debtors to address the Winter Storm Elliott Penalties and then swiftly and responsibly emerge from bankruptcy equipped to implement their strategic plan and conduct their business

with greater flexibility and freedom to better serve their customers, contract counterparties, and other stakeholders.

B. PJM Adversary Proceeding

54. In order to (i) facilitate a potential valuation and sale of the Debtors' assets, (ii) obtain certainty and finality regarding the Winter Storm Elliott Penalties for the benefit of the Debtors, PJM, potential purchasers of the Debtors' assets, and the Debtors' stakeholders, and (iii) preserve the Debtors' assets, the Debtors may, at the outset of these Chapter 11 Cases, commence an adversary proceeding (the "**PJM Adversary Proceeding**") seeking declaratory judgments that: (a) the Winter Storm Elliott Penalties are dischargeable; (b) the Debtors can sell their assets free and clear of any interest PJM may have in such assets; (c) the Debtors, reorganized Debtors, or a purchaser of the Debtors' assets are subject to protection from certain discriminatory conduct by PJM in connection with these Chapter 11 Cases; and (d) the Debtors are able to assume certain contractual obligations without curing specific defaults. If the PJM Adversary Proceeding is commenced, the Debtors will also be filing a motion for summary judgment contemporaneously with the adversary complaint.

55. The Debtors believe that an expeditious resolution of the issues set forth in the PJM Adversary Proceeding are necessary to provide the RSA parties and potential buyers with certainty regarding go-forward obligations to PJM (if any) and, thereby, maximize the value of the Debtors' assets. To that end, the Debtors hope they can resolve these issues with PJM on a consensual basis, if possible, and are open to mediation if both sides believe that such mediation could bring an efficient resolution to these issues.

C. Cash Collateral

56. The Debtors are, via the Cash Collateral Motion (as defined below), seeking this Court's approval to, among other things, use cash collateral, as such term is defined in section

363(a) of the Bankruptcy Code. As described in further detail below, the Debtors have engaged in good-faith negotiations with the Prepetition First Lien Lenders for consensual use of cash collateral on the terms set forth in the proposed order granting interim approval of the Cash Collateral Motion.

D. Proposed Timeline for These Chapter 11 Cases

57. Under the RSA, the Debtors have agreed to satisfy the following milestones ("**Milestones**") set forth in the proposed order attached to the Cash Collateral Motion:

- General: This Court shall have entered the final order authorizing the Cash Collateral Motion no later than thirty-five calendar days following the Petition Date.

- Plan and Disclosure Statement:

  - No later than ten days after the Petition Date, the Debtors shall file a plan of reorganization (the "Approved Plan") in form and substance acceptable to the Prepetition First Lien Lenders holding more than 50% of the Prepetition First Lien Obligations (the "**Required Prepetition Lenders**"), and a disclosure statement for the Approved Plan, which shall be in form and substance acceptable to the Required Prepetition Lenders (the "**Disclosure Statement**").

  - Within thirty-five days of the date on which the Approved Plan and the 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.

  - Within seventy days of the date on which the Approved Plan and the Disclosure Statement are filed, this Court shall have entered an order confirming the Approved Plan, which order shall be in form and substance acceptable to the Required Prepetition Lenders.

  - Within ninety-five days of the Petition Date, the Approved Plan shall be effective.

- Sale Option:

  - On the Petition Date, the Debtors shall, in coordination with the 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 of reorganization (a "**Sale**"). Such process shall be conducted within forty-five days of the Petition Date.

- If the 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. This 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 this 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.

- PJM Litigation:

  - No later than two Business Days after the Petition Date, the Debtors shall initiate the PJM Adversary Proceeding.

  - A hearing concerning the PJM Adversary Proceeding shall occur no later than seventy-five days after the Petition Date.

- 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.

58. Achieving the various Milestones under the RSA is crucial to maintaining the support of the Consenting Prepetition First Lien Lenders and the Consenting Sponsor and successfully restructuring the Debtors. Moreover, an expeditious emergence from bankruptcy will minimize the adverse effects of these Chapter 11 Cases upon the Debtors' business.

V. FACTS SUPPORTING RELIEF SOUGHT IN FIRST DAY PLEADINGS[17]

59. In furtherance of the objective of preserving value for all stakeholders, the Debtors have sought approval of the First Day Pleadings and related orders (the "**Proposed Orders**"), and respectfully request that this Court consider entering the Proposed Orders granting the First Day Pleadings. For the avoidance of doubt, the Debtors seek authority, but not direction, to pay amounts or satisfy obligations with respect to the relief requested in those of the First Day Pleadings for which such authority is sought. The First Day Pleadings include:

A. Administrative and Procedural Pleadings

1. Joint Administration Motion

60. By the *Motion of Debtors for Entry of an Order Authorizing Joint Administration of Chapter 11 Cases*, the Debtors request entry of an order directing the joint administration of their eight chapter 11 cases for procedural purposes only. I believe that joint administration of these Chapter 11 Cases will enhance the value of the Debtors' estates by avoiding the unnecessary time and expense of duplicative and potentially confusing filings by permitting counsel for all parties in interest to (i) use a single caption on the numerous documents that will be served and

[17] To the extent not defined in this First Day Declaration, all capitalized terms used but not otherwise defined in this Part V shall have the meanings ascribed to them in the applicable First Day Pleading referenced in the heading of each sub-Part herein.

filed in these Chapter 11 Cases and (ii) file the papers in one case rather than in multiple cases. Moreover, this Court will be relieved of the burden of entering duplicative orders and maintaining duplicative files. Finally, joint administration will ease the burden on the office of the United States Trustee for the District of Delaware in supervising these Chapter 11 Cases.

2. Claims Agent Retention Application

61. By the *Application of Debtors for Entry of an Order Appointing Omni Agent Solutions as Claims and Noticing Agent, Effective as of The Petition Date*, the Debtors request entry of an order appointing Omni Agent Solutions, Inc. ("**Omni**") to act as the claims and noticing agent (the "**Claims and Noticing Agent**") in these Chapter 11 Cases and to assume full responsibility for the distribution of notices and the maintenance, processing, and docketing of proofs of claim filed in these Chapter 11 Cases, effective as of the Petition Date.

62. By separate application, the Debtors will seek authority to retain and employ Omni as administrative advisor in these Chapter 11 Cases pursuant to section 327(a) of the Bankruptcy Code because the administration of these Chapter 11 Cases will require Omni to perform duties outside the scope of 28 U.S.C. § 156(c).

63. I believe that the appointment of Omni as the Claims and Noticing Agent in these Chapter 11 Cases will expedite the distribution of notices and the processing of claims, facilitate other administrative aspects of these Chapter 11 Cases, and relieve the Debtors and their retained professionals, in addition to the Court clerk, of such administrative burdens. Given the nature of these Chapter 11 Cases, I believe that the appointment of Omni as the Claims and Noticing Agent will serve to maximize the value of the Debtors' estates for all stakeholders.

B. Business and Operational Motions

1. Cash Collateral Motion

64. By the *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 "**Cash Collateral Motion**"), the Debtors request entry of an interim order (the "**Cash Collateral Interim Order**") and final order:

i. authorizing the Debtors to (a) use Cash Collateral, as such term is defined in section 363(a) of the Bankruptcy Code, and all other Prepetition Collateral, and (b) grant adequate protection to the Prepetition Secured Parties to the extent of any Diminution in Value of their interests in the Prepetition Collateral (including Cash Collateral);

ii. modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the Cash Collateral Interim Order;

iii. except to the extent of the Carve Out, and subject to entry of a final order, waiving all rights to surcharge any Prepetition Collateral or Collateral under section 506(c) of the Bankruptcy Code or any other applicable principle of equity or law;

iv. subject to entry of a 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 Prepetition Collateral) under section 552(b) of the Bankruptcy Code or any other applicable principle of equity or law; and

v. waiving of any applicable stay with respect to the effectiveness and enforceability of the Cash Collateral Interim Order (including a waiver pursuant to Bankruptcy Rule 6004(h).

65. In my role as the Chief Restructuring Officer of the Debtors, I have developed a firm understanding as to the liquidity needs of the Debtors and have determined that the Debtors have an immediate need to access and use Cash Collateral.

66. As of the close of business on March 29, 2023, the Debtors had approximately $18.8 million of cash on hand. The Debtors require immediate access to cash collateral to ensure they are able to continue operating in the ordinary course throughout these Chapter 11 Cases and accomplish a smooth transition into chapter 11.

67. I understand from the Debtors' counsel that, consistent with the stipulations contained in the proposed Interim Order, substantially all of the Debtors' cash is encumbered, and substantially all of the cash to be generated during the course of these Chapter 11 Cases will also be subject to the Prepetition Secured Parties' liens. Based on my review of the Debtors' cash position and understanding of their business, it is my judgment that without access to this Cash Collateral, the Debtors will be unable to operate their business and consequently forced to cease operations and liquidate. An inability to continue operating in the ordinary course would not only diminish the value of the Debtors' assets, it would also introduce a number of safety concerns for the nearby community that could expose the Debtors to liability for failure to comply with stringent safety and reliability requirements.

68. More specifically, without immediate access to and use of Cash Collateral, the Debtors do not have sufficient unencumbered assets to maintain their business operations. In that event, the Debtors would lack cash to manage their working capital needs and pay various disbursements identified in the 13-week cash flow forecast annexed to the Cash Collateral Interim Order as Exhibit A. These disbursements include (among other critical payments): (i) payments covering the costs for natural gas, fuel transportation and storage, and other production costs, (ii) payments of the amounts owed under the Shared Services Agreements, pursuant to which certain non-Debtor affiliates provide services necessary for the Debtors' to operate, and (iii) other payments contemplated by the First Day Pleadings. These disbursements are reasonable and

consistent with what I believe is necessary to prevent irreparable harm to the Debtors while maintaining and maximizing the value of the Debtors' assets.

69. Prior to the Petition Date, the Debtors engaged in extensive, good-faith negotiations regarding the terms of the consensual use of Cash Collateral with the Prepetition Secured Parties and I am informed that the Collateral Agent, at the direction of the Required Lenders (as defined under the Prepetition First Lien Credit Agreement), has agreed to Cash Collateral usage on the terms set forth in the Cash Collateral Interim Order. While the Debtors considered whether to pursue non-consensual use of Cash Collateral, the Debtors saw value in obtaining consensus in and of itself; both because of the uncertainty and cost associated with litigating Cash Collateral usage on a non-consensual basis, as well as the fact that obtaining consensual use sends a strong and positive message to the Debtors' key stakeholders as well as the marketplace more generally as the Debtors attempt to transition smoothly into chapter 11. In contrast, a Cash Collateral dispute at the outset of these Chapter 11 Cases could create uncertainty among these critical parties concerning the Debtors' long-term access to cash even if the Debtors were to prevail. In addition, such litigation would likely set the stage for further disputes and litigation with the Prepetition Secured Parties (including, for example, requests for additional adequate protection) as these Chapter 11 Cases proceed, thereby undermining efforts to achieve consensus on a value-maximizing path forward.

70. Notwithstanding the Debtors' need for immediate access to Cash Collateral, the Debtors engaged in hard-fought negotiations with the Prepetition Secured Parties and were able to obtain important compromises. To that end, the Debtors were able to negotiate and achieve, among other key protections: (i) limited case milestones; (ii) preservation of the Debtors' ability to seek non-consensual cash collateral usage following a termination event; and (iii) adequate protection

terms that limit disbursements from the Debtors' estates on account of the Prepetition Obligations and broadly reserves all rights of parties in interest with respect to the appropriate characterization and treatment of any payments made pursuant to the Cash Collateral Interim Order. These protections ensure that the Cash Collateral Interim Order will not give the Prepetition Secured Parties unwarranted control over the course of these Chapter 11 Cases or prejudicing the rights of the Debtors or their estates.

71. The Prepetition Secured Parties will be adequately protected and such adequate protection is appropriate. Access to Cash Collateral will preserve the value of the other Prepetition Collateral. I am advised that the Prepetition Secured Parties possess liens on substantially all of the assets of the Debtors, effectively giving them liens on the value of the Debtors' business. Maximizing the value of the Debtors' business is dependent upon the Debtors' uninterrupted operations and, for the reasons set forth above, uninterrupted operations require continuous access to Cash Collateral. Without access to cash, the Debtors cannot operate and the going-concern value of the Debtors would be lost, forcing the Debtors to liquidate their assets—including the Prepetition Secured Parties' collateral—for less value than could be realized in a reorganization. For example, the Debtors' inability to operate their assets would present a host of environmental, health, and safety concerns, which could, in turn, present regulatory issues affecting the Debtors' ability to participate in the market going forward and result in imposition of fines and other liabilities. Likewise, if the Debtors are unable to pay Cogentrix under the Shared Services Agreements, there can be no assurances that Cogentrix will continue providing the management and other services without which the Debtors' business simply cannot operate. Ultimately, without access to Cash Collateral, the value of the Debtors' business would be destroyed to the detriment of all stakeholders.

72. Even in the event that the loss of Cash Collateral were temporary and did not result in a liquidation, the Debtors' business would be substantially and irreparably harmed if there were disruption to their ordinary operations. As discussed above, the Debtors would be unable to pay for fuel, fuel transportation and storage, and other production costs that are critical to the Debtors' ability to generate power and produce revenue. Further, the Debtors would be unable to meet their obligations under their Shared Services Agreements, thereby jeopardizing their access to the comprehensive power management services on which the Debtors rely to operate on a day-to-day basis. Value destruction can be avoided, and the value of the non-cash Prepetition Collateral will be preserved, if the Debtors are granted access to Cash Collateral.

73. In addition to Cash Collateral usage protecting the non-cash Prepetition Collateral, the proposed Cash Collateral Interim Order provides adequate protection to the Prepetition Secured Parties in the form of:

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 the Prepetition Collateral;

ii. payment of certain professional fees and expenses incurred by the Administrative Agent and the Collateral Agent; and

iii. various other protections, including compliance with certain covenants (including budget covenants) and the provision of reporting.

74. As described above, I was involved in the negotiation of this adequate-protection package and, based on my experience, believe its terms are reasonable under the circumstances. The replacement liens and superpriority claims are limited to the extent of diminution in value and any professional fees paid as adequate protection remain subject to recharacterization to the extent it is determined that the Prepetition Secured Parties are not entitled to accrue such amounts on their claims.

75. In light of the foregoing, the Debtors' need for access to Cash Collateral, and the benefits of the Debtors' obtaining such access on a consensual basis, I believe that the Debtors' agreement to the terms of the proposed Cash Collateral Interim Order (including the adequate-protection provisions) constitutes an exercise of sound business judgment. Absent the interim relief requested in the Cash Collateral Motion, the Debtors will suffer significant and potentially permanent impairment of their business operations and the value of their assets to the material detriment of their stakeholders. Under the circumstances, I believe that, through the use of Cash Collateral, the Debtors will achieve the best outcome reasonably available to preserve value for all stakeholders and the relief requested in the Cash Collateral Motion is in the best interest of the Debtors and their estates.

2. Cash Management Motion

76. By the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Continued Use of Existing Cash Management System, Including Maintenance of Existing Bank Accounts, Checks, and Business Forms, and (II) Authorizing Continuation of Existing Deposit Practices* (the "**Cash Management Motion**"), the Debtors request entry of interim and final orders:

i. authorizing, but not directing, the Debtors, in their sole discretion, to continue to maintain and use their existing cash management system, including maintenance of their existing bank accounts, checks, and business forms;

ii. granting the Debtors a waiver of certain bank account and related requirements of the U.S. Trustee to the extent that such requirements are inconsistent with the Debtors' practices under their existing cash management system or other actions described in the Cash Management Motion;

iii. authorizing, but not directing, the Debtors, in their sole discretion, to continue to maintain and use their existing deposit practices notwithstanding the provisions of section 345(b) of the Bankruptcy Code; and

iv. authorizing the Debtors to open and close bank accounts.

77. ***The Debtors' Cash Management System and the Bank Accounts***. In the ordinary course of their business, the Debtors maintain a cash management system (the "**Cash Management System**") that manages the Debtors' cash inflows and outflows through a number of bank accounts. The Cash Management System has been operational since July 5, 2017, and is critical to the Debtors' operations as it enables the Debtors to, among other things, (i) monitor and control all of the Debtors' cash receipts and disbursements, (ii) identify the Debtors' cash requirements, and (iii) transfer cash as needed to respond to the Debtors' cash requirements.

78. As of the Petition Date, the Debtors' Cash Management System includes a total of fourteen (14) Bank Accounts (together with any accounts opened after the Petition Date, the "**Bank Accounts**"). The Debtors hold the Bank Accounts with Wells Fargo Bank, National Association ("**Wells Fargo**") and First Citizens Bancshares, Inc. ("**First Citizens**" and, together with Wells Fargo, the "**Prepetition Banks**" and, the Prepetition Banks together with any other banking institutions with which the Debtors form a banking relationship following the Petition Date pursuant to the procedures proposed in the Cash Management Motion, the "**Banks**").

79. The Cash Management System is administered pursuant to the MSA. Under the MSA, the services provided by Cogentrix to the Debtors include overseeing the administration of the Bank Accounts to effectuate the collection, disbursement, and movement of cash. Cogentrix facilitates accurate cash forecasting and reporting, as well as the monitoring of the collection and disbursement of funds to and from the Bank Accounts.

80. The Debtors' Cash Management System facilitates three principal cash functions: (i) cash collection; (ii) cash concentration; and (iii) disbursements to fund the Debtors' operations. A summary of the Bank Accounts is included in the following chart:

Account Name	Debtor Account Holder	Account Description
Revenue Account First Citizens - 1380	Lincoln Power, L.L.C.	Cash receipts concentrate in an account bearing an account number ending in 1380 (the "**Revenue Account**"). Sources of funds which concentrate in the Revenue Account typically include revenue earned from energy sales, capacity commitments, and ancillary service revenue; draws on the Prepetition Revolving Facility; insurance claim payouts; interest-rate swap settlements; refunds from the Debt Service Reserve Account and the Major Maintenance Reserve Account (each as defined below); and any other miscellaneous receipts. By instructions provided by the Debtors to the Depositary Agent (as defined below) pursuant to a withdraw certificate, funds are transferred monthly by wire transfer to the O&M Account, Local O&M Account, Interest Payment Account, Principal Payment Account, and Unsecured Commodity Hedge Account (each as defined below) as needed. Funds are transferred quarterly by wire transfer and pursuant to withdraw certificate instructions to the Debt Service Reserve Account, Major Maintenance Reserve Account, PJM Reserve Account, Prepayment Account, Discretionary Capex Account, and Distribution Suspense Account (each as defined below) as needed.
O&M Account First Citizens - 1399	Lincoln Power, L.L.C.	The account bearing an account number ending in 1399 (the "**O&M Account**") is a zero-balance account and funds the Local O&M account. Transfers to the O&M Account and Local O&M Account (as defined in this chart) are executed by wire transfer pursuant to concurrent withdraw certificate instructions. The O&M Account is funded from the Revenue Account on an as-needed basis, consistent with the Prepetition Depositary Agreement in an amount sufficient to cover obligations and near-term cash requirements associated with the Local O&M

Account Name	Debtor Account Holder	Account Description
		Account.[18]
Local O&M Account Wells Fargo - 4880	Lincoln Power, L.L.C.	The account bearing an account number ending in 4880 (the "**Local O&M Account**") is primarily used to make disbursements for expenses associated with operations and maintenance including, but not limited to, fuel invoices, insurance premiums, and amounts owed to various vendors. Such payments to vendors are made through manual checks, ACH Transfers, and wire transfers. The Local O&M Account also pays certain fees and expenses due to non-Debtor affiliates Cogentrix and Lincoln Operating under the MSA, EMSAs, and O&M Agreement.
Interest Payment Account First Citizens - 1402	Lincoln Power, L.L.C.	The account bearing an account number ending in 1402 (the "**Interest Payment Account**") is used to make disbursements for monthly interest payments (including letters of credit fees, revolving credit facility expenses, and term loan interest owed under the Prepetition First Lien Credit Agreement). The Interest Payment Account is funded from the Revenue Account on a monthly basis by wire transfer.
Principal Payment Account First Citizens – 1410	Lincoln Power, L.L.C.	The account bearing an account number ending in 1410 (the "**Principal Payment Account**") is used to make disbursements for voluntary principal payments. The Principal Payment Account is funded on a monthly basis from the Revenue Account by wire transfer.
Unsecured Commodity Hedge Account First Citizens – 1494	Lincoln Power, L.L.C.	The account bearing with an account number ending in 1494 (the "**Unsecured Commodity Hedge Account**") is used to fund termination or liquidation payments owed by the Debtors under the Prepetition Interest-Rate Swaps.

[18] "**Prepetition Depositary Agreement**" means that certain Depositary Agreement, dated as of July 5, 2017, by and among Debtor Lincoln Power, the Administrative Agent, the Collateral Agent, CIT Bank, N.A., as depositary agent (the "**Depositary Agent**"), and certain subsidiary guarantors.

Account Name	Debtor Account Holder	Account Description
		The Unsecured Commodity Hedge Account is funded from the Revenue Account on a quarterly basis by wire transfer.
Debt Service Reserve Account First Citizens – 1429	Lincoln Power, L.L.C.	The account bearing an account number ending in 1429 (the "**Debt Service Reserve Account**") is used to satisfy the Debtors' debt service reserve requirements. The Debt Service Reserve Account is funded from the Revenue Account on a quarterly basis by wire transfer.
Major Maintenance Reserve Account First Citizens – 1445	Lincoln Power, L.L.C.	The account bearing an account number ending in 1445 (the "**Major Maintenance Reserve Account**") is used to satisfy the Debtors' major maintenance reserve requirements. The Major Maintenance Reserve Account is funded from the Revenue Account on a quarterly basis by wire transfer.
PJM Reserve Account First Citizens – 1451	Lincoln Power, L.L.C.	The account bearing an account number ending in 1451 (the "**PJM Reserve Account**") is used to satisfy reserve collateral requirements of PJM. The PJM Reserve Account is funded from the Revenue Account on a monthly basis by wire transfer.
Prepayment Account First Citizens – 1478	Lincoln Power, L.L.C.	The account bearing an account number ending in 1478 (the "**Prepayment Account**") is used to make disbursements for mandatory prepayments owed by the Debtors under the Prepetition First Lien Credit Agreement. The Prepayment Account is funded from the Revenue Account on a quarterly basis by wire transfer.
Discretionary Capex Account First Citizens – 1518	Lincoln Power, L.L.C.	The account bearing an account number ending in 1518 (the "**Discretionary Capex Account**") is used to fund discretionary capital expenditures for the Debtors' business. The Discretionary Capex Account is funded from the Revenue Account on a quarterly basis by wire

Account Name	Debtor Account Holder	Account Description
		transfer.
Recovery Event Proceeds Account First Citizens – 1437	Lincoln Power, L.L.C.	The account bearing an account number ending in 1437 (the "**Recovery Event Proceeds Account**") is funded from insurance proceeds received in the event of a Recovery Event (as defined in the Prepetition First Lien Credit Agreement). The Recovery Event Proceeds Account is funded directly as funds are received from any payor, including insurers and governmental entities, in connection with a Recovery Event.
Distribution Suspense Account First Citizens – 1486	Lincoln Power, L.L.C.	The account bearing an account number ending in 1486 (the "**Distribution Suspense Account**") funds the Distribution Account. The Distribution Suspense Account is funded quarterly by the Revenue Account by wire transfer.
Distribution Account Wells Fargo - 4864	Cogentrix Lincoln Holdings, LLC	The account bearing an account number ending in 4864 (the "**Distribution Account**") is potentially funded quarterly from the Distribution Suspense Account pursuant to withdraw certificate instructions (which provide fund flows instructions to First Citizens). Funds held in the Distribution Account may be distributed to the direct and indirect holders of Debtor Holdings' equity interests subject to the satisfaction of Distribution Conditions set forth in Section 7.6(d) of the Prepetition First Lien Credit Agreement.

81. In the ordinary course of business, the Debtors incur and pay, honor, or allow to be deducted from the appropriate Bank Accounts certain service charges and other fees, costs, and expenses charged by the Banks (collectively, the "**Bank Fees**"), and may potentially incur other payment obligations under the cash management agreements, such as overdrafts and payments for checks deposited with the Banks that have been dishonored or returned for insufficient funds (the "**Bank Account Claims**"). The Debtors spend approximately $12,000 per year on Bank Fees relating to the Bank Accounts and I believe that honoring Bank Fees is essential to the ordinary

course maintenance of the Cash Management System without disruption. As of the Petition Date, I have been informed that approximately $1,000 of accrued but unpaid Bank Fees are outstanding. I submit that the Debtors should be granted authority to pay any outstanding prepetition Bank Fees and Bank Account Claims, and to continue to pay the Bank Fees and Bank Account Claims as they become due in the ordinary course.

82. ***The Debtors Should Be Authorized to Continue to Use Their Existing Cash Management System and the Bank Accounts***. The Cash Management System has been operational for over five years and I believe it is an ordinary course, customary, and essential business practice, the continued use of which is essential to the Debtors' business operations during these Chapter 11 Cases and the Debtors' goal of maximizing value for the benefit of all parties in interest. To require the Debtors to adopt a new cash management system at this early and critical stage would be expensive, impose needless administrative burdens, and cause undue disruption. Any disruption in the collection and disbursement of funds as currently implemented would adversely (and perhaps irreparably) affect the Debtors' ability to maximize estate value and repay their creditors. Moreover, such a disruption would be wholly unnecessary because the Cash Management System provides a valuable and efficient means for the Debtors to address their cash management requirements and, to the best of my knowledge, each of the Prepetition Banks is a financially stable institution insured by the FDIC. For the aforementioned reasons, I submit that maintaining the existing Cash Management System without disruption is in the best interests of the Debtors, their estates, and their stakeholders. Accordingly, I submit that the Debtors should be allowed to maintain and continue to use the Cash Management System, including maintenance of the Bank Accounts.

83. If the relief requested in the Cash Management Motion is granted, the Debtors will implement appropriate mechanisms to ensure that no payments will be made on any debts incurred by the Debtors prior to the Petition Date, other than those authorized by this Court. To prevent the possible inadvertent payment of prepetition claims against the Debtors, except those otherwise authorized by this Court, the Debtors will work closely with the Banks to ensure appropriate procedures are in place to prevent checks issued by the Debtors prepetition from being honored absent this Court's approval and to ensure that no third party with automatic debit capabilities is able to debit amounts attributable to the Debtors' prepetition obligations.

84. The Debtors request that if any Bank honors a prepetition check or other item drawn on any account that is the subject of the Cash Management Motion (i) at the direction of the Debtors to honor such prepetition check or item, (ii) in a good faith belief that this Court has authorized such prepetition check or item to be honored, or (iii) as a result of a good faith error, that the Bank be deemed not liable to the Debtors or to their estates on account of such prepetition check or other item being honored postpetition. I believe that such flexibility accorded to the Banks is necessary to induce the Banks to continue providing cash management services to the Debtors.

85. Additionally, in each instance in which the Debtors hold one or more accounts at a bank that is a party to a Uniform Depository Agreement with the U.S. Trustee, within 15 days of the date of entry of the Interim Order granting the Cash Management Motion, the Debtors will (i) contact such Bank, (ii) provide such Bank with the applicable Debtors' employer identification numbers, and (iii) identify each of their accounts as being held by a debtor in possession in a bankruptcy case. In the event the Debtors hold one or more accounts at a bank that is not a party to a Uniform Depository Agreement with the U.S. Trustee, the Debtors will use their good-faith

efforts to cause such bank to execute a Uniform Depository Agreement in a form prescribed by the Office of the U.S. Trustee within 30 days of the Petition Date, to the extent that such Bank is a domestic bank.

86. In the interest of maintaining the continued and efficient operation of the Cash Management System during the pendency of these Chapter 11 Cases, the Debtors request that the Banks be authorized to continue to administer, service, and maintain the Bank Accounts as such accounts were administered, serviced, and maintained prior to the Petition Date, without interruption and in the ordinary course (including making deductions for Bank Fees and Bank Account Claims) and, when requested by the Debtors in their sole discretion, to honor any and all checks, drafts, wires, electronic funds transfers, or other items presented, issued, or drawn on the Bank Accounts on account of a claim against the Debtors arising on or after the Petition Date.

87. The Debtors further request that they be authorized to implement such reasonable changes to the Cash Management System as the Debtors may deem necessary or appropriate, including, without limitation, closing any Bank Account and opening any additional bank accounts following the Petition Date (the "**New Accounts**") wherever the Debtors deem that such accounts are necessary or appropriate. Notwithstanding the foregoing, any New Accounts that the Debtors open will be with the Prepetition Banks or at a bank that has executed a Uniform Depository Agreement with the U.S. Trustee, or at such bank that is willing to immediately execute such an agreement. The Debtors request that the relief sought by the Cash Management Motion extend to any New Accounts and that any order approving the Cash Management Motion provide that the New Accounts are deemed to be Bank Accounts that are similarly subject to the rights, obligations, and relief granted in such order. The Debtors will provide the U.S. Trustee and any statutory committee with notice five (5) business days prior to the closing of any Bank Accounts and the

opening of any New Accounts. In furtherance of the foregoing, the Debtors also request that the relevant banks be authorized to honor the Debtors' requests to open or close (as the case may be) such Bank Account(s) or New Account(s).

88. ***The Debtors Should Be Granted Authority to Continue to Use Existing Checks and Business Forms***. To minimize expenses to their estates, the Debtors seek authorization to continue using all checks substantially in the forms existing immediately prior to the Petition Date, without reference to the Debtors' status as debtors in possession; *provided*, *however*, that in the event the Debtors generate new checks during the pendency of these Chapter 11 Cases other than from their existing stock of checks, such checks will include a legend referring to the applicable Debtor as "Debtor-in-Possession." The Debtors also seek authority to use all correspondence and other business forms (including, without limitation, letterhead, purchase orders, and invoices) without reference to the Debtors' status as debtors in possession.

89. I believe that changing the Debtors' existing checks, correspondence, and other business forms would be expensive, unnecessary, and burdensome to the Debtors' estates. Further, such changes would disrupt the Debtors' business operations and would not confer any benefit upon parties that deal with the Debtors. For these reasons, I submit that the Debtors should be authorized to use their existing check stock, correspondence, and other business forms without being required to place the label "Debtor-in-Possession" on any of the foregoing.

90. ***The Debtors Should Be Granted a Waiver of Certain Requirements of the U.S. Trustee***. The Debtors further request, pursuant to sections 105(a) and 363 of the Bankruptcy Code, that this Court grant a waiver of certain bank account and related requirements of the U.S. Trustee to the extent that such requirements are inconsistent with (i) the Debtors' existing practices under

the Cash Management System, or (ii) any action taken by the Debtors in accordance with any order granting the Cash Collateral Motion or any other order entered in these Chapter 11 Cases.

91. As set forth above, I submit that (i) the Debtors are able to work with the Banks to ensure that this goal of separation between the prepetition and postpetition periods is observed and (ii) enforcement of certain of these UST Requirements would disrupt the Debtors' operations and impose a financial burden on the Debtors' estates.

92. I believe that it would be onerous, unnecessarily inconvenient, and would fail to produce any realizable benefits to the Debtors' estates to require the Debtors to close all of the Bank Accounts and open new debtor-in-possession accounts.

93. I further believe that it would be unnecessary and inefficient to require the Debtors to abide by the requirement of establishing specific debtor-in-possession accounts for tax payments and to deposit in such accounts sufficient funds to pay any tax liability when incurred. The Debtors can pay their tax obligations most efficiently in accordance with their existing practices. Any diversion from the Debtors' existing practices will complicate payment of the Debtors' tax obligations. Further, the U.S. Trustee will have wide latitude to monitor the flow of funds into and out of such accounts. I believe that the creation of new debtor-in-possession accounts designated solely for tax obligations would be unnecessarily burdensome.

94. ***The Debtors Should Be Authorized to Continue Their Deposit Practices***. As part of the Cash Management System, the Debtors routinely deposit funds into the Bank Accounts (the "**Deposit Practices**"). The Debtors request (i) authorization to continue to deposit funds in accordance with existing practices under the Cash Management System, subject to any reasonable changes the Debtors may implement to the Cash Management System and (ii) a waiver of the deposit requirements of section 345(b) of the Bankruptcy Code, on an interim basis, to the extent

that such requirements are inconsistent with the Deposit Practices. For the avoidance of doubt, to the extent any Bank Account may be classified as an investment account, or to the extent any of the Debtors' routine deposits into such Bank Account may be regarded as investment activity, the Debtors seek authorization to continue to deposit funds into such Bank Accounts in accordance with existing practices, notwithstanding the requirements of section 345(b) of the Bankruptcy Code.

3. Tax Motion

95. By the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Payment of Prepetition Taxes and Fees, and (II) Granting Related Relief* (the "**Tax Motion**"), the Debtors request entry of interim and final orders authorizing, but not directing, the Debtors, in their sole discretion, to pay any prepetition tax and fee obligations consisting of property taxes, sales and use taxes, and any other taxes and fees for which the Debtors' officers and managers may be liable or which may not constitute property of the Debtors' estates and any other types of taxes, fees, assessments or similar charges and any penalty, interest or similar charges in respect of such taxes and fees (collectively, the "**Taxes and Fees**") owing to federal, state and local taxing, licensing, regulatory, permitting, and other governmental entities (the "**Taxing Authorities**"). I have been informed that the estimate of the Debtors' Taxes and Fees accrued prior to the Petition Date is as follows:

Category	Approximate Amount Accrued as of Petition Date	Appropriate Amount Due Within 30 Days
Sales and Use Taxes	$1,000.00	$1,000.00
Property Taxes	$385,000.00	$0.00
Permits / Other Fees	$0.00	$0.00
Total	**$386,000.00**	**$1,000.00**

96. As of the Petition Date, the Debtors were substantially current in the payment of assessed and undisputed Taxes and Fees. Certain Taxes and Fees attributable to the prepetition period, however, may not yet have become due. Certain prepetition Taxes and Fees may not be due until the applicable monthly, quarterly, or annual payment dates. As of the Petition Date, I do not believe that there are any amounts due and owing on account of Taxes and Fees and estimate that they have accrued liabilities, which are not yet due, in the approximate amount of $386,000.00. I have been informed that approximately $1,000.00 in Taxes and Fees relating to the prepetition period are or will become due and owing to the Taxing Authorities within thirty (30) days after the Petition Date.

97. I believe that the continued payment of the Taxes and Fees on their normal due dates will ultimately preserve the resources of the Debtors' estates, thereby promoting their prospects for a successful chapter 11 process. If such obligations are not timely paid, the Debtors will be required to expend time and incur attorneys' fees and other costs to resolve a multitude of issues related to such obligations, each turning on the particular terms of each Taxing Authority's applicable laws, including whether (i) the obligations are priority, secured, or unsecured in nature, (ii) the obligations are pro-ratable or fully prepetition or postpetition, and (iii) penalties, interest,

attorneys' fees and costs can continue to accrue on a postpetition basis and, if so, whether such penalties, interest, attorneys' fees and costs are priority, secured or unsecured in nature.

98. Moreover, certain of the Taxes and Fees may be considered to be obligations as to which the Debtors' officers and managers may be held directly or personally liable pursuant to applicable federal, state, or local laws in the event of nonpayment. If any such taxes or fees remain unpaid, the Debtors' officers and managers may be subject to lawsuits or even criminal prosecution on account of such nonpayment during the pendency of these Chapter 11 Cases. In such event, I believe that collection efforts by the Taxing Authorities would distract the Debtors' officers and managers from their focus on these Chapter 11 Cases.

99. In light of the foregoing, I believe that the relief requested in the Tax Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their business during these Chapter 11 Cases without disruption. Accordingly, I submit that the Court should grant the relief requested in the Tax Motion.

4. Insurance Motion

100. By the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing The Debtors to (A) Pay Their Prepetition Insurance and (B) Maintain Their Postpetition Insurance Coverage, and (II) Granting Related Relief* (the "**Insurance Motion**"), the Debtors request entry of interim and final orders authorizing, but not directing, the Debtors, in their sole discretion, to (i) continue to administer the Insurance Policies and pay their Prepetition Insurance Obligations, to the extent the Debtors reasonably determine in their discretion that such payments are necessary or appropriate; (ii) pay their Postpetition Insurance Obligations in the ordinary course, as such payments become due; and (iii) revise, extend, supplement, change, terminate and/or replace the Debtors' insurance coverage as needed in the ordinary course of business.

101. In the ordinary course of business, the Debtors maintain certain insurance policies that are administered by multiple third-party insurance carriers (the "**Insurance Carriers**"), which provide coverage for, among other things, property, general liability, automobile liability, umbrella liability, excess liability, directors' and officers' liability, executive risk liability, cyber, and pollution liability (collectively, the "**Insurance Policies**"). A detailed list of the Insurance Policies under which the Debtors are currently covered is attached as Exhibit C to the Insurance Motion. I am informed that there are no accrued and unpaid amounts owing on account of Prepetition Insurance Obligations.

102. The Insurance Policies provide coverage that is typical in scope and amount for business within the Debtors' industry. The Insurance Policies are procured by Cogentrix, which provides management services to the Debtors as described in further detail in the discussion of the Shared Services Agreements Motion below, and the Debtors are named as an additional insured under the policies. With respect to certain Insurance Policies (e.g., casualty, environmental, and cyber security), Cogentrix is invoiced for the insurance costs and allocates the Debtors' portion of the costs to the Debtors, which then pay such costs directly. With respect to other Insurance Policies (e.g., property insurance), Cogentrix procures and maintains the policy but the insurer invoices the Debtors directly for their portion of the costs and the Debtors make payments directly to the insurer.[19] The total amount paid in annual premiums and payments paid by the Debtors with respect to the Insurance Policies is approximately $1,491,468.09. The majority of the Debtors' Insurance Policies renew at the end of each year. However, some of the Debtors' Insurance Policies renew at various times throughout each year.

[19] Still other policies (e.g., officer and director policies) are procured and maintained by Cogentrix who pays the premiums and payments associated with the policies directly.

103. The manner in which the Debtors pay premiums, the Broker's Fees, and other costs associated with the Insurance Policies depends on the particular Insurance Policy. With respect to the premiums associated with those of the Debtors' Insurance Policies that relate to property, equipment breakdown (a component of the property coverage), cybersecurity, and certain aspects of the umbrella policy (i.e., the first and second layers of excess coverage), such premiums are due and paid in full by the Debtors at the beginning of the relevant policy period or extension period, as applicable. The premiums associated with the remainder of the Debtors' Insurance Policies are paid quarterly. Quarterly payments are issued for the Debtors' Insurance Policies that relate to casualty, general liability, automobile, and the umbrella policy (excluding the excess first and second layers). The next quarterly payments with respect to the premiums for such policies are due on or about May 15, 2023 and will approximate $2,700 in the aggregate.

104. The Broker manages the Debtors' relationships with the Insurance Carriers. Among other things, the Broker assists the Debtors in selecting the appropriate carriers (subject to the Debtors' approval) and represents the Debtors in negotiations with the Insurance Carriers. The Broker allows the Debtors to obtain the insurance coverage necessary to operate their business in a reasonable and prudent manner, and to realize savings in the procurement of such policies. The Broker's Fees are not included in the premium payments the Debtors make under the Insurance Policies. The Broker's Fees are paid directly by Cogentrix and are allocated to the Debtors pursuant to the MSA with Cogentrix. In 2022, the Debtors estimate that they paid (as a part of their overall premiums) approximately $45,000 in the aggregate to Cogentrix on account of the Broker's Fees in connection with the Insurance Policies.

105. The employment of the Broker is necessary for the ordinary course maintenance of the Insurance Policies in the most efficient, cost-effective manner (and has the additional benefit

of positioning the Debtors to obtain the most competitive rates and high quality service from the Broker in connection with any renewals of the Insurance Policies). Accordingly, to the extent that any amounts accrue on account of the Broker's Fees or other amounts owed to the Broker, I believe that the Debtors should be authorized to continue to pay such amounts as they come due.

106. I believe that maintenance of insurance coverage under the various Insurance Policies on an uninterrupted basis is essential to the continued operation and preservation of the Debtors' business, property, and assets, and is required under the United States Trustee's Operating Guidelines for Chapter 11 Cases (the "**Operating Guidelines**"), the federal laws and regulations applicable to the Debtors' business, the laws of the various states in which the Debtors operate, and the Debtors' various contractual commitments. The Debtors' maintenance of their relationships with the Insurance Carriers and the Broker is critical to ensuring the continued availability of insurance coverage and reasonable pricing of such coverage for future policy periods. Thus, I submit that the Debtors should be granted all of the relief requested in the Insurance Motion, including authorization (i) to continue to pay premiums, taxes, charges, fees, and other obligations owed under or with respect to the Insurance Policies whether such obligations arose prior to or after the Petition Date and as such obligations come due in the ordinary course of the Debtors' business and (ii) to renew or replace the Insurance Policies as necessary in the ordinary course.

5. Utility Motion

107. By the *Motion of Debtors for Entry of Interim and Final Orders (I) Prohibiting Utility Companies from Altering or Discontinuing Service on Account of Prepetition Invoices, (II) Approving Deposit as Adequate Assurance of Payment, (III) Establishing Procedures for Resolving Requests by Utility Companies for Additional Assurance of Payment, and (IV) Granting Related Relief* (the "**Utility Motion**"), the Debtors request entry of interim and final orders

(i) approving the Debtors' deposit of $35,645 (which amount represents approximately fifty percent (50%) of the estimated monthly cost of the Utility Services based on historical averages over the preceding twelve months, less existing deposits on hand with the Utility Companies) into a segregated, non-interest-bearing account, as adequate assurance of the Debtors' ability to honor postpetition payment obligations to the Utility Companies pursuant to section 366(b) of the Bankruptcy Code, (ii) approving the additional adequate assurance procedures described below as the method for resolving disputes regarding adequate assurance of payment to the Utility Companies, and (iii) prohibiting the Utility Companies from altering, refusing, or discontinuing service to, or discriminating against, the Debtors except as may be permitted by the proposed procedures.

108. The success and smooth operation of the Debtors' business depend on the reliable delivery of electricity, water, and the other Utility Services. As of the Petition Date, approximately eleven (11) Utility Companies provide Utility Services to the Debtors at or near their two gas-fired power generation facilities in East Dundee, Illinois. A nonexclusive list of the Utility Providers and their affiliates that provide Utility Services to the Debtors as of the Petition Date is attached to the Utility Motion as Exhibit C.

109. I am informed that, on average, in the twelve (12) months prior to the Petition Date, the Debtors incurred expenses totaling approximately $75,000 each month for utility costs and such utility costs were generally timely paid. I am informed that there are no material defaults or arrearages with respect to invoices for Utility Services as of the Petition Date. Based on the timing of the filings of these Chapter 11 Cases in relation to the Utility Companies' billing cycles, however, there may be outstanding invoices reflecting prepetition utility costs that have been incurred by the Debtors but for which payment is not yet due, as well as prepetition utility costs

for services provided to the Debtors since the end of the last billing cycle that have not yet been invoiced.

110. The Debtors intend to pay all postpetition obligations owed to the Utility Companies in a timely manner. Nevertheless, to provide additional assurance of payment for future services to the Utility Companies, the Debtors propose to deposit $35,645, which is an amount equal to approximately fifty percent (50%) of the estimated monthly cost of the Utility Services, into a segregated, non-interest-bearing account, within twenty (20) days of the Petition Date (the "**Adequate Assurance Deposit**"). The Adequate Assurance Deposit will be maintained during these Chapter 11 Cases with a minimum balance equal to fifty percent (50%) of the Debtors' estimated monthly cost of Utility Services, calculated based on the Debtors' average expenses for such Utility Services during the twelve full months preceding the Petition Date, less existing deposits on hand with providers. The amount of the Adequate Assurance Deposit will remain $35,645 throughout these Chapter 11 Cases (i.e., the amount will not be recalculated), unless otherwise adjusted as provided for in the Utility Motion. I believe that the Adequate Assurance Deposit, in conjunction with the Debtors' ability to pay for future Utility Services in the ordinary course of business, constitutes sufficient adequate assurance to the Utility Companies.

111. In the event that any Utility Company requests additional adequate assurance of payment pursuant to section 366(c)(2) of the Bankruptcy Code, the Debtors propose that such request be addressed pursuant to the procedures outlined in the Utility Motion.

112. I believe that preserving Utility Services on an uninterrupted basis is essential to the Debtors' operations. Indeed, if the Utility Companies refuse or discontinue service, even for a brief period, the Debtors' business operations would be severely disrupted, and their business could be irreparably harmed, which would negatively impact the value of their estates and

ultimately recoveries for the Debtors' creditors. Uninterrupted Utility Services are therefore essential to the Debtors' ongoing operations and, accordingly, the success of these Chapter 11 Cases. Accordingly, I submit that the Court should grant the relief sought by the Utilities Motion.

6. Hedging Motion

113. By the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing The Debtors to Continue The Prepetition Hedging Arrangements and Honor Any Obligations Related Thereto, (II) Modifying The Automatic Stay, and (III) Granting Related Relief* (the "**Hedging Motion**"), the Debtors request entry of the interim and final orders (i) authorizing, but not directing, the Debtors, in their sole discretion, to continue the Prepetition Hedging Arrangements and honor any obligations related thereto; and (ii) modifying the automatic stay.

114. As discussed above, the Debtors entered into the Prepetition Hedging Arrangements to hedge (i) with respect to the Prepetition Interest-Rate Swaps, interest-rate volatility and (ii) with respect to the HRCO, power price and generation cost volatility. As of the Petition Date, the Debtors estimate that the Prepetition Interest-Rate Swaps are valued at approximately $3.2 million and, thus, represent a significant asset to the Debtors' estates. The HRCO currently represents an asset in the immediate term and the Debtors anticipate receiving approximately $200,000 in April 2023. While I am informed the Debtors are current on their obligations under the Prepetition Hedging Arrangements, they may have obligations under the Prepetition Hedging Arrangements that have not yet been calculated or settled, and the Prepetition Hedging Counterparties may be entitled to calculate and settle such obligations in the ordinary course. The Debtors intend to honor the obligations under the Prepetition Hedging Arrangements, regardless of whether they arise prepetition or postpetition, in the ordinary course of business. The Debtors are concerned, however, that because certain of the Prepetition Hedging Counterparties may believe they are entitled to certain safe-harbor provisions with respect to the automatic stay

(described in more detail below), these Prepetition Hedging Counterparties may seek to terminate arrangements and contracts entered into as part of the Prepetition Hedging Arrangements or take other adverse actions against the Debtors should the Debtors not obtain this Court's authority to pay the obligations thereunder and provide comfort to the Prepetition Hedging Counterparties that the Debtors will continue to honor their obligations in the ordinary course of business. I believe that allowing the Debtors the relief requested in the Hedging Motion will serve to maximize the value of the Debtors estates and will benefit all parties in interest by providing the Debtor's greater financial stability. Thus, I submit that the Debtors should be granted the authority (but not direction) to continue honoring their obligations under the Prepetition Hedging Arrangements in the ordinary course of business, and to also provide assurance to the Prepetition Hedging Counterparties that the Debtors will continue to perform under the Prepetition Hedging Arrangements notwithstanding the pendency of these Chapter 11 Cases.

7. Shared Services Agreements Motion

115. By the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Continue Performing Under Certain Shared Services Agreements and Honor Obligations Related Thereto; and (II) Granting Related Relief*, the Debtors request entry of interim and final orders authorizing, but not directing, the Debtors to perform their obligations under the Shared Services Agreements, including paying all amounts that will become due and owing under the Shared Services Agreements in the ordinary course of business during these Chapter 11 Cases.

116. The Debtors' operations completely rely upon the Shared Services and would be severely disrupted if the Debtors were forced to prematurely discontinue the Shared Services as a result of being unable to continue (i) performing under the Shared Services Agreements and (ii) satisfying the Shared Services Obligations. As described in more detail below, given that the Debtors have no employees, the Debtors rely upon the counterparties under the Shared Services

Agreements to, among other things, remotely operate the Lincoln Power Plants, provide all of the Debtors' administrative and back-office services, ensure regulatory compliance, procure natural gas in addition to facility parts and equipment, negotiate gas supply, transportation, and storage agreements, perform inspections, and maintain equipment, manage inventory Moreover, the counterparties under the Shared Services Agreements perform many of these functions remotely, which is essential to the operation of the Debtors' business. In short, absent the Shared Services Agreements, the Debtors would be incapable of operating and reliably maintaining the Lincoln Power Plants—the sole revenue source for the Debtors. Making matters worse, an inability to continue operating under the Shared Services Agreements would not only prevent the Debtors from generating meaningful revenue and diminish the value of the Debtors' assets, it would also introduce a number of safety concerns for the nearby community that could expose the Debtors to liability for failure to comply with stringent safety and reliability requirements.

117. In exchange for such services, Rocky Road and Elgin pay Lincoln Operating under each of the O&M Agreements an annual base fee, which escalates yearly, and reimbursable costs (the "**O&M Reimbursable Costs**")—such as (i) payroll costs and related expenses with respect to the services rendered by the employees of Lincoln Operating; (ii) supplies, equipment, materials, services, and other items provided by third parties; (iii) reimbursement to employees of Lincoln Operating for travel and subsistence; and (iv) costs associated with consultants, subcontractors and other third-party service providers, O&M Agreement §§ 7.1.1-7.1.2.[20]

118. While I am informed that the Debtors are current on their obligations under the O&M Agreements (the "**O&M Obligations**"), there may be O&M Obligations that have not yet

[20] Except as otherwise specifically noted herein, any citations to an O&M Agreement apply to both of the O&M Agreements.

been calculated or settled (especially given that the O&M Reimbursable Costs are paid in advance), and Lincoln Operating may be entitled to calculate and settle such obligations in the ordinary course, which may give rise to prepetition amounts owing from the Debtors to Lincoln Operating. Lincoln Operating has the right to suspend services if Elgin or Rocky Road do not timely pay any O&M Obligations within seven business days following the due date, and Lincoln Operating has the right to terminate services under the O&M Agreements if Elgin or Rocky Road do not timely pay any amounts due to Lincoln Operating within five business days of receiving written notice of failure to pay. *Id.* § 8.3. At the end of each calendar year, the O&M Agreements automatically extend for one year unless terminated upon 90 days' written notice. *Id.* § 8.1.

119. In exchange for the services rendered under the MSAs, the MSA Debtors pay Cogentrix the MSA Annual Fee, Holdings and Lincoln MSA § 8.1(c); Elgin and Rocky Road MSA § 5.1(a), and any costs incurred by Cogentrix in performing the relevant services—such as (i) payroll and related employee benefit costs and (ii) costs for supplies, equipment, materials, services and other items, including legal, consulting, accounting, engineering and technical services, Holdings and Lincoln MSA § 8.2; Elgin and Rocky Road MSA § 5.1(b-d).

120. While I am informed that the Debtors are current on their obligations under the MSAs (the "**MSA Obligations**"), there may be MSA Obligations that have not yet been calculated or settled, and Cogentrix may be entitled to calculate and settle such obligations in the ordinary course, which may give rise to prepetition amounts owing from the Debtors to Cogentrix. Cogentrix has the right to suspend services under any of the MSAs if the relevant MSA Debtors do not timely pay any amounts due to Cogentrix within seven business days following the due date, and Cogentrix has the right to terminate services under any of the MSAs if the relevant MSA Debtors not timely pay any amounts due to Cogentrix within ten business days of receiving written

notice of failure to pay. Holdings and Lincoln MSA § 10.2(a); Elgin and Rocky Road MSA § 6.3(a). At the end of each calendar year, the MSAs automatically extend for one year unless terminated upon 60 days' written notice. Holdings and Lincoln MSA § 2.3; Elgin and Rocky Road MSA § 6.1.

121. In exchange for such services, Rocky Road and Elgin pay Cogentrix on a monthly basis all payroll, indirect, and other costs that Cogentrix incurs in connection with performance of the services—including the reasonable costs of all supplies, equipment, materials, services and other items provided by third parties, including legal, consulting, accounting, engineering and technical services. EMSA § 7.1.[21] Rocky Road and Elgin are obligated to pay amounts owed to Cogentrix within 15 days of being invoiced. *Id.* § 7.2.

122. While I am informed that the Debtors are current on their obligations under the EMSAs (the "**EMSA Obligations**"), there may be EMSA Obligations that have not yet been calculated or settled, and Cogentrix may be entitled to calculate and settle such obligations in the ordinary course, which may give rise to prepetition amounts owing from the Debtors to Cogentrix. Cogentrix has the right to suspend services under the EMSAs if Elgin or Rocky Road do not timely pay any amounts due to Cogentrix within seven business days following the due date. *Id.* § 8.3. At the end of each year, the EMSAs automatically extend for one year unless terminated upon 90 days' written notice. *Id.* § 8.1.

123. Continued access to the Shared Services is, therefore, essential to the Debtors' continued operations, will enable the Debtors to maintain the stability of their business following the commencement of these Chapter 11 Cases, and will avoid the sudden need to shift their focus at this critical juncture to locate alternative service providers. Moreover, if the Debtors do not

[21] Except as otherwise specifically noted herein, any citations to EMSA apply to both of the EMSAs.

receive authorization to perform under the Shared Services Agreements, such failure could result in operational failure as the Debtors do not have a workforce capable of performing the Shared Services, all of which are critical to the Debtors' day-to-day business operations. This outcome would, among other things: (i) have a devastating impact on the Debtors' ability to continue as a going concern, (ii) prevent the Debtors from stabilizing their business operations, (iii) force the Debtors to expend significant amounts of time and estate funds to replicate the services currently provided by Cogentrix and Lincoln OS, (iv) severely impede the Debtors' restructuring goals, and (v) lead to a substantial loss of value to the Debtors' estates. Thus, for the foregoing reasons, I submit that the Debtors should be granted the relief requested in the Transition Service Agreement Motion.

C. Attestation

124. I have reviewed each of the First Day Pleadings, Proposed Orders, and exhibits thereto (or have otherwise had their contents explained to me), and the facts set forth therein are true and correct to the best of my knowledge, information, and belief. Moreover, I believe that the relief sought in each of the First Day Pleadings (i) is vital to enabling the Debtors to make the transition to, and operate in, chapter 11 with minimal interruptions and disruptions to our business or loss of productivity or value; (ii) is necessary preserve valuable relationships with customers, trade vendors and other creditors; and (iii) constitutes a critical element in the Debtors' ability to successfully maximize value for the benefit of their estates. If asked to testify as to the facts supporting each of the First Day Pleadings, I would testify to the facts as set forth in the description of the relief requested in and the acts supporting the First Day Pleadings as set forth in this Part V of this First Day Declaration.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 31, 2023

/s/ Justin D. Pugh
Justin D. Pugh
Chief Restructuring Officer

EXHIBIT A

Organizational Structure

ORGANIZATIONAL STRUCTURE

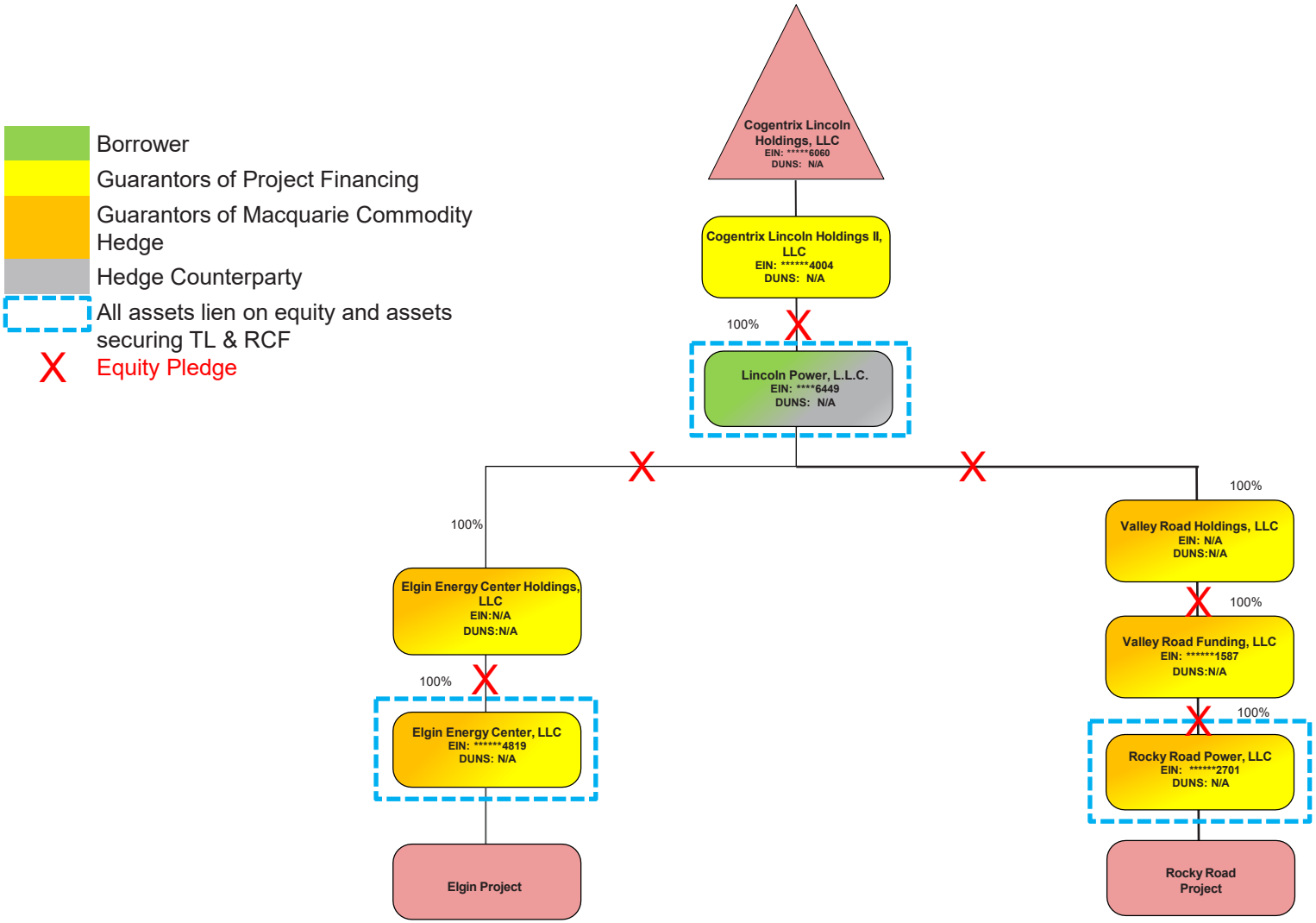

EXHIBIT B

Restructuring Support Agreement

THIS RESTRUCTURING SUPPORT AGREEMENT IS NOT AN OFFER OR ACCEPTANCE WITH RESPECT TO ANY SECURITIES OR A SOLICITATION OF ACCEPTANCES OF A CHAPTER 11 PLAN WITHIN THE MEANING OF SECTIONS 1125 AND 1126 OF THE BANKRUPTCY CODE. ANY SUCH OFFER OR SOLICITATION WILL COMPLY WITH ALL APPLICABLE SECURITIES LAWS AND/OR PROVISIONS OF THE BANKRUPTCY CODE. NOTHING CONTAINED IN THIS RESTRUCTURING SUPPORT AGREEMENT SHALL BE AN ADMISSION OF FACT OR LIABILITY OR, UNTIL THE OCCURRENCE OF THE AGREEMENT EFFECTIVE DATE ON THE TERMS DESCRIBED HEREIN, DEEMED BINDING ON ANY OF THE PARTIES HERETO.

RESTRUCTURING SUPPORT AGREEMENT

This RESTRUCTURING SUPPORT AGREEMENT (including all exhibits, annexes, and schedules thereto, and as may be amended, supplemented, or otherwise modified from time to time, this "***Agreement***")[1] is made and entered into as of March 30, 2023 (the "***Execution Date***") by and among the following parties:

a. Lincoln Power, L.L.C. ("***Lincoln***") and certain of its direct and indirect subsidiaries and Affiliates listed on **Exhibit A** to this Agreement (collectively, the "***Company Parties***");

b. the undersigned Holders of Credit Agreement Claims that have executed and delivered counterpart signature pages to this Agreement, a Joinder Agreement, or a Transfer Agreement, as applicable, to counsel to the Company Parties (the "***Consenting Lenders***"); and

c. Carlyle Power CPP II Lincoln, L.L.C., Carlyle Power Partners II-C, L.P., CPP II General Partners, L.P., and TC Group CPP II, L.L.C., in their respective capacities as direct or indirect Holders of Existing Lincoln Interests (collectively, the "***Consenting Sponsor***" and, collectively with the Company Parties and the Consenting Lenders, the "***Parties***").

RECITALS

WHEREAS, the Parties have in good faith and at arm's length negotiated or been apprised of certain restructuring and recapitalization transactions with respect to the Company Parties' capital structure (the "***Restructuring***") on the terms set forth in this Agreement and as specified in the term sheet attached as **Exhibit B** hereto (as may be amended, supplemented, or otherwise modified from time to time pursuant to this Agreement, the "***Restructuring Term Sheet***," and such transactions as described in this Agreement and the Restructuring Term Sheet, the "***Restructuring Transactions***");

[1] Capitalized terms used but not defined in the preamble and recitals to this Agreement have the meanings ascribed to them in Section 1 or the Restructuring Term Sheet (as defined herein), as applicable.

WHEREAS, the Company Parties will implement the Restructuring Transactions through the commencement by the Company Parties of voluntary cases under chapter 11 of the Bankruptcy Code in the Bankruptcy Court (such cases, the "***Chapter 11 Cases***");

WHEREAS, as of the date hereof, the Consenting Sponsor indirectly holds 100% of the aggregate issued and outstanding Existing Lincoln Interests; and

WHEREAS, the Parties have agreed to take certain actions in support of the Restructuring Transactions on the terms and conditions set forth in this Agreement and the Restructuring Term Sheet.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Party, on a several but not joint basis, intending to be legally bound hereby, agrees as follows:

AGREEMENT

Section 1. ***Definitions and Interpretation***.

1.01. Definitions. The following terms shall have the following definitions:

"***Agreement Effective Date***" means the date on which the conditions set forth in Section 2 have been satisfied or waived by the appropriate Party or Parties in accordance with this Agreement.

"***Agreement Effective Period***" means, with respect to a Party, the period from the Agreement Effective Date to the Termination Date applicable to that Party.

"***Alternative Restructuring***" means any reorganization, restructuring, new-money investment, merger, amalgamation, acquisition, consolidation, dissolution, debt investment, equity investment, liquidation, share issuance, tender offer, exchange offer, rights offering, consent solicitation, recapitalization, business combination, joint venture, partnership, sale of a material portion of assets, financing (debt or equity), plan proposal, recapitalization, restructuring of the Company, or other transaction of similar effect, other than the Restructuring.

"***Alternative Restructuring Proposal***" means any plan, inquiry, proposal, offer, bid, term sheet, discussion, or agreement with respect to any Alternative Restructuring.

"***Business Day***" means any day, other than a Saturday, Sunday, or a "legal holiday," as defined in Rule 9006(a) of the Federal Rules of Bankruptcy Procedure.

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

"***Consenting Lenders Advisors***" means, collectively, (a) Kirkland & Ellis LLP, as counsel to the Administrative Agent (as defined in the Credit Agreement), (b) RPA Advisors, LLC, as financial advisor to the Administrative Agent, (c) Stroock & Stroock & Lavan LLP, as counsel to

the Collateral Agent and Depository Agent (each as defined in the Credit Agreement), (d) Willkie Farr & Gallagher LLP, as counsel to the Issuing Lender (as defined in the Credit Agreement), and (e) one local counsel for the Consenting Lenders.

"***Consenting Sponsor Advisors***" means Akin Gump Strauss Hauer & Feld LLP.

"***Definitive Documents***" means, collectively: (a) the Plan, the Plan Supplement, and all material documents, annexes, schedules, exhibits, amendments, modifications, or supplements thereto, or other documents contained therein, including, without limitation, any schedules of assumed or rejected contracts; (b) the Disclosure Statement, its exhibits, and any pleadings filed in support of the Disclosure Statement; (c) the Solicitation Materials; (d) the order of the Bankruptcy Court approving the Disclosure Statement and the Solicitation Materials; (e) the Confirmation Order, and any pleadings filed in support of Confirmation; (f) the First Day Pleadings and the First Day Orders; (g) any Hedging Orders and any new Hedge Contracts entered into after the Agreement Effective Date and all additional documents or agreements related thereto; (h) the Cash Collateral Orders; (i) the New Corporate Governance Documents; (j) the Exit Facility Documents (if applicable); (k) the Takeback Debt Documents (if applicable); (l) any and all documents required to implement, issue, and distribute the New Common Stock; and (m) any other agreements and documentation reasonably desired or necessary to consummate and document or achieve any of Restructuring Transactions. Except as otherwise provided herein, the Definitive Documents shall be in form and substance acceptable to the Required Consenting Lenders and the Company Parties and, to the extent any provision of any Definitive Document affects the treatment, rights, obligations, Claims or Interests of the Consenting Sponsor or the releases given by or received by the Consenting Sponsor such provision shall be acceptable to the Consenting Sponsor.

"***Disclosure Statement***" means the disclosure statement in respect of the Plan, including all exhibits and schedules thereto, as approved or ratified by the Bankruptcy Court pursuant to sections 1125 and 1126 of the Bankruptcy Code.

"***Exit Credit Agreement***" means that certain credit agreement evidencing the Exit Facility in accordance with the terms, and subject in all respects to the conditions, as set forth in this Agreement and the Restructuring Term Sheet.

"***Exit Facility Documents***" means, collectively, the Exit Credit Agreement and all other agreements, documents, and instruments delivered or entered into in connection with the Exit Facility, including any guarantee agreements, pledge and collateral agreements, intercreditor agreements, subordination agreements, fee letters, and other security documents.

"***Final Cash Collateral Order***" means the final order of the Bankruptcy Court authorizing, among other things, the consensual use of cash collateral, which use shall be consistent with this Agreement and the Restructuring Term Sheet.

"***First Day Orders***" means the orders of the Bankruptcy Court granting the First Day Pleadings.

"***First Day Pleadings***" means the first day pleadings that the Company Parties file with the Bankruptcy Court upon the commencement of the Chapter 11 Cases.

"***Hedge Contract***" means any forward, swap, option, swaption, or other over-the-counter derivatives contract or other like instrument, entered into by a Company Party for hedging or risk management purposes.

"***Hedging Order***" means any order by the Bankruptcy Court granting the Company Parties relief related to any Hedge Contract.

"***Interim Cash Collateral Order***" means the interim order of the Bankruptcy Court authorizing, among other things, the consensual use of cash collateral, which use shall be consistent with this Agreement and the Restructuring Term Sheet.

"***Joinder Agreement***" means an executed joinder to this Agreement substantially in the form attached hereto as **Exhibit C**.

"***Law***" means any federal, state, local, or foreign law (including common law), statute, code, ordinance, rule, regulation, order, ruling, or judgment, in each case, that is validly adopted, promulgated, issued, or entered by a governmental authority of competent jurisdiction (including the Bankruptcy Court).

"***New Corporate Governance Documents***" means the form of certificate or articles of incorporation, bylaws, limited liability company agreement, partnership agreement, shareholders' agreement, and such other applicable formation, organizational and governance documents (if any) of the Reorganized Debtors, the material terms of each of which shall be included in the Plan Supplement, and which shall be acceptable to the Required Consenting Lenders in their sole discretion.

"***Person***" means any "person" as defined in section 101(41) of the Bankruptcy Code, including any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or other entity.

"***Plan Supplement***" means any compilation of documents and forms of documents, agreements, schedules, and exhibits to the Plan filed by the Company Parties with the Bankruptcy Court, which shall be in form and substance acceptable to the Required Consenting Lenders and the Company Parties.

"***Solicitation Materials***" means any materials used in connection with the solicitation of votes on the Plan, including the Disclosure Statement, and any procedures established by the Bankruptcy Court with respect to solicitation of votes on the Plan.

"***Takeback Debt Documents***" means, collectively, the indenture or loan agreement by and among one or more of the Reorganized Debtors and the lender parties thereto, and all other agreements, documents, and instruments delivered or entered into in connection therewith, including any guarantee statements, pledge and collateral agreements, Uniform Commercial Code financing statements or other perfection documents, intercreditor agreements, subordination agreements, fee letters, and other security documents, which will set forth the terms of the Takeback Debt.

"***Termination Date***" means, with respect to any Party, the date on which termination of this Agreement as to such Party is effective in accordance with Section 12.

"***Transfer***" has the meaning set forth in section 101(54) of the Bankruptcy Code.

"***Transfer Agreement***" means an executed form of the transfer agreement, substantially in the form attached hereto as **Exhibit D**, providing, among other things, that a transferee is bound by the terms of this Agreement.

1.02. Interpretation. For purposes of this Agreement:

(a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender;

(b) capitalized terms defined only in the plural or singular form shall nonetheless have their defined meanings when used in the opposite form;

(c) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions;

(d) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit shall mean such document, schedule, or exhibit, as it may have been or may be amended, restated, amended and restated, supplemented, or otherwise modified or replaced from time to time; *provided* that any capitalized terms herein which are defined with reference to another agreement, are defined with reference to such other agreement as of the date of this Agreement, without giving effect to any termination of such other agreement or amendments to such capitalized terms in any such other agreement following the date hereof;

(e) unless otherwise specified, all references herein to "Sections" are references to Sections of this Agreement;

(f) the words "herein," "hereof," and "hereto" refer to this Agreement in its entirety rather than to any particular portion of this Agreement;

(g) captions and headings to Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Agreement;

(h) references to "shareholders," "directors," and/or "officers" shall also include "members" and/or "managers," as applicable, as such terms are defined under the applicable limited liability company Laws;

(i) the use of "include" or "including" is without limitation, whether stated or not;

(j) the phrase "counsel to the Company Parties" refers in this Agreement to each counsel specified in Section 14.10(a);

(k) the phrase "counsel to the Consenting Lenders" refers in this Agreement to each counsel specified in Section 14.10(b); and

(l) the phrase "counsel to the Consenting Sponsor" refers in this Agreement to each counsel specified in Section 14.10(c).

Section 2. ***Effectiveness of this Agreement***. This Agreement shall become effective and binding upon each of the Parties at 12:00 a.m., prevailing Eastern Standard Time, on the Agreement Effective Date, which is the date on which all of the following conditions have been satisfied or waived by the applicable Party or Parties in accordance with this Agreement:

(a) each of the Company Parties shall have executed and delivered counterpart signature pages of this Agreement to counsel to each of the Parties;

(b) the Consenting Lenders that collectively hold at least two-thirds of the aggregate principal amount of Credit Agreement Claims shall have executed and delivered counterpart signature pages of this Agreement to counsel to each of the Parties;

(c) the Consenting Sponsor shall have executed and delivered counterpart signature pages of this Agreement to counsel to each of the Parties;

(d) counsel to the Company Parties shall have given notice to counsel to the Consenting Lenders and counsel to the Consenting Sponsor in the manner set forth in Section 14.10 (by email or otherwise) that the conditions to the Agreement Effective Date set forth in this Section 2 have occurred; and

(e) the Company Parties shall have paid, or caused to be paid, all reasonable and documented fees and out-of-pocket expenses and all agreed and unpaid professional retainer amounts of the Consenting Lender Advisors and Consenting Sponsor Advisors invoiced prior to the Execution Date, in accordance with their respective fee letters or engagement letters.

Section 3. ***Definitive Documents***.

3.01. The Restructuring Term Sheet is expressly incorporated herein and made a part of this Agreement as if fully set forth herein. The terms and conditions of the Restructuring are set forth in the Restructuring Term Sheet; *provided*, *however*, that the Restructuring Term Sheet is supplemented by the terms and conditions of this Agreement. In the event of any inconsistencies between the terms of this Agreement and the Restructuring Term Sheet, the terms of the Restructuring Term Sheet shall govern.

3.02. The Definitive Documents governing the Restructuring Transactions shall include all agreements, instruments, pleadings, orders, forms, questionnaires, and other documents (including all exhibits, schedules, supplements, appendices, annexes, instructions, and attachments thereto) that are utilized to implement or effectuate, or that otherwise relate to, the Restructuring Transactions.

3.03. Each of the Definitive Documents and related motions and orders shall (a) contain terms and conditions consistent in all material respects with this Agreement and the Restructuring

Term Sheet and (b) otherwise be in form and substance acceptable to the Required Consenting Lenders and the Company Parties and, to the extent any provision of any Definitive Document affects the treatment, rights, obligations, Claims or Interests of the Consenting Sponsor or the releases given by or received by the Consenting Sponsor such provision shall also be in form and substance acceptable to the Consenting Sponsor. The Definitive Documents not executed as of the Execution Date remain subject to negotiation and completion. Upon completion, the Definitive Documents and every other document, deed, agreement, filing, notification, letter, or instrument related to the Restructuring Transactions shall be subject to the consent rights set forth herein and shall contain terms, conditions, representations, warranties, and covenants consistent with the terms of this Agreement and the Restructuring Term Sheet, as they may be modified, amended, or supplemented in accordance with Section 13.

3.04. The Company Parties acknowledge and agree that they will provide advance initial draft copies of the Definitive Documents to the Consenting Lenders Advisors and Consenting Sponsor Advisors as soon as reasonably practicable and will provide such documents no later than two (2) Business Days prior to the date when any Company Party intends to file the applicable Definitive Documents with the Bankruptcy Court. The Company Parties further acknowledge and agree that they will provide advance initial draft copies of any substantive pleadings other than the Definitive Documents to the Consenting Lenders Advisors and Consenting Sponsor Advisors no later than two (2) Business Days prior to the date when any Company Party intends to file the applicable substantive pleadings with the Bankruptcy Court.

Section 4. ***Commitments of the Consenting Lenders***.

4.01. Affirmative Commitments. During the Agreement Effective Period, each Consenting Lender, with respect to each of its Credit Agreement Claims, hereby covenants and agrees, severally and not jointly, that it shall:

(a) subject to receipt of a Disclosure Statement and related solicitation materials approved by an order of the Bankruptcy Court, timely vote following commencement of the solicitation of the Plan all of its Claims (or Claims under its control), including, without limitation, all Claims that are impaired under the Plan, to accept the Plan and not change or withdraw (or cause to be changed or withdrawn) any such vote; *provided* that each Consenting Lender may change or withdraw its vote if the Termination Date occurs as to such Party;

(b) give any notice, order, instruction, or direction to any administrative agent or collateral agent (as applicable) necessary to give effect to the Restructuring Transactions; *provided* that in no event shall any Consenting Lender be required to provide an indemnity or bear responsibility for any out-of-pocket costs related to any such notice, order, instruction, or direction;

(c) negotiate in good faith and use commercially reasonable efforts to timely execute, deliver, and implement the Definitive Documents (as applicable);

(d) timely vote (or cause to be voted) its Claims against any Alternative Restructuring;

(e) use commercially reasonable efforts to cooperate and coordinate activities with the Company Parties and the Consenting Sponsor and use commercially reasonable efforts to support and consummate the Restructuring Transactions;

(f) timely oppose, including by way of joinder, any objections against any approval, including, without limitation, from the Bankruptcy Court, of any of the Definitive Documents; and

(g) act in good faith consistent with this Agreement.

4.02. Negative Commitments. During the Agreement Effective Period, each Consenting Lender hereby covenants and agrees, severally and not jointly, that it shall not directly or indirectly:

(a) take any action that would be materially inconsistent with this Agreement or interfere with the Restructuring (including encouraging another Person to undertake any action prohibited by this Agreement);

(b) object to, delay, impede, or take any other action to interfere with the Restructuring Transactions, the Chapter 11 Cases, Confirmation, implementation of the Plan, or approval of any Definitive Document;

(c) negotiate, propose, support, vote for, encourage, seek, solicit, pursue, initiate, assist, join in, participate in the formulation of or enter into negotiations or discussions with any Entity regarding, any Alternative Restructuring (other than in accordance with this Agreement), including, for the avoidance of doubt, making or supporting any filings with the Bankruptcy Court or any regulatory agency (including, without limitation, PJM, FERC, or any Environmental Regulator) or making or supporting any press release, press report or comparable public statement, or filing with respect to any Alternative Restructuring;

(d) otherwise take any action that would in any material respect interfere with, delay, or postpone Consummation;

(e) exercise any right or remedy, or direct any other person, including any administrative agent or collateral agent (as applicable) to exercise any right or remedy, for the enforcement, collection, or recovery of any of its Credit Agreement Claims, other than to enforce this Agreement or any Definitive Documents or as otherwise permitted under this Agreement;

(f) direct any administrative agent or collateral agent (as applicable) to take any action inconsistent with such Consenting Lender's obligations under this Agreement or the Restructuring Term Sheet;

(g) object to, delay, impede, or take any other action to interfere with the Company Parties' ownership and possession of their assets, wherever located, or interfere with the automatic stay arising under section 362 of the Bankruptcy Code; *provided, however*, that nothing in this Agreement shall limit the right of any Party to exercise any right or remedy provided under this Agreement, the Confirmation Order, or any other Definitive Document;

(h) to the extent it is permitted to elect whether to opt out of the releases set forth in the Plan, elect to opt out of the releases set forth in the Plan (it being understood that each Consenting Lender shall decline to opt out of the releases by timely delivering its duly executed and completed ballot(s) designating that it does not opt out of the releases);

(i) vote for any plan that does not contain the releases set forth in the Restructuring Term Sheet;

(j) commence, support, or join any litigation or adversary proceedings against the Company Parties and the Consenting Sponsor; or

(k) take any action that would be inconsistent with this Agreement or be likely to result in a material impediment to or detriment to the Restructuring Transactions (including encouraging another person to undertake any action prohibited by this Agreement).

Section 5. ***Additional Provisions Regarding the Consenting Lenders' Commitments***. Notwithstanding anything contained in this Agreement, nothing in this Agreement shall:

(a) affect the ability of any Consenting Lender to consult with any other Consenting Lender, the Company Parties, their related Affiliates, or any other party in interest in the Chapter 11 Cases (including, but not limited to, any committee appointed in the Chapter 11 Cases, if applicable, and the United States Trustee for the District of Delaware);

(b) constitute a waiver or amendment of any provision of the Credit Agreement or similar agreements executed in connection with the Credit Agreement;

(c) be construed to prevent any Consenting Lender from enforcing this Agreement, or any Definitive Document, or contesting whether any matter, fact, or thing is a breach of, or is materially inconsistent with, this Agreement, or any Definitive Document;

(d) be construed to prevent any Consenting Lender from exercising any consent rights provided with respect to the Required Consenting Lenders or its rights or remedies specifically reserved herein or in the Credit Agreement or the Definitive Documents;

(e) be construed to prohibit or limit any Consenting Lender from appearing as a party in interest in any matter to be adjudicated in the Chapter 11 Cases, so long as, from the Agreement Effective Date until the occurrence of a Termination Date, such appearance and the positions advocated in connection therewith are not inconsistent with this Agreement, are not prohibited by this Agreement, and are not for the purpose of hindering, delaying, or preventing the consummation of the Restructuring;

(f) subject to the terms of Section 9, limit the ability of any Consenting Lender to sell, Transfer, or enter into any transaction in connection with its Claims, or solicit, negotiate, prepare, or respond to any proposal to purchase or sell its Claims, in each case, as permitted under this Agreement;

(g) except as expressly provided in this Agreement, in any manner waive, limit, impair, or restrict the ability of any Consenting Lender to protect and preserve its rights, remedies, and interests, including its claims against any of the other Parties (or their respective Affiliates or subsidiaries), or its full participation in the Chapter 11 Cases;

(h) obligate a Consenting Lender to deliver a vote to support the Plan (or any other Restructuring Transaction) or prohibit a Consenting Lender from withdrawing such vote, in each

case, from and after the Termination Date (other than a Termination Date as a result of the occurrence of the Plan Effective Date); *provided* that upon the withdrawal of any such vote after the Termination Date (other than a Termination Date as a result of the occurrence of the Plan Effective Date), such vote shall be deemed void *ab initio* and such Consenting Lender shall have the opportunity to change its vote;

(i) prevent any Consenting Lender from taking any action which is required by applicable Law; *provided* that, if any Consenting Lender proposes to take any action that is otherwise materially inconsistent with this Agreement in order to comply with applicable Law, the applicable Consenting Lender shall, to the extent permitted by applicable Law, provide at least one (1) Business Day's advance written notice to the Company Parties and the Consenting Sponsor prior to taking any such action;

(j) require any Consenting Lender to take any action which is prohibited by applicable Law or to waive or forego the benefit of any applicable legal professional privilege; *provided* that, if any Consenting Lender proposes to take, or refrain from taking, any action that is otherwise materially inconsistent with this Agreement in order to comply with applicable Law or maintain any legal professional privilege, the applicable Consenting Lender shall, to the extent permitted by applicable Law, provide at least one (1) Business Day's advance written notice to the Company Parties and the Consenting Sponsor prior to taking, or refraining from taking, any such action;

(k) unless expressly provided for under this Agreement or any Definitive Document, require any Consenting Lender to incur any expenses, liabilities, or other obligations, or agree to any commitments, undertakings, concessions, indemnities, or other arrangements that could result in expenses, liabilities, or other obligations;

(l) require any Consenting Lender to provide any information that it determines, in its reasonable discretion, to be commercially sensitive or confidential, other than as expressly set forth in this Agreement;

(m) prevent any Consenting Lender by reason of this Agreement or the Restructuring Transactions from making, seeking, or receiving any regulatory filings, notifications, consents, determinations, authorizations, permits, approvals, licenses, or the like; or

(n) prohibit any Consenting Lender from taking any action that is not inconsistent with this Agreement.

Section 6. ***Commitments of the Company Parties***.

6.01. Affirmative Commitments. During the Agreement Effective Period, the Company Parties agree to use commercially reasonable efforts to:

(a) (i) act in good faith and use commercially reasonable efforts to support and successfully complete solicitation of the Plan, (ii) as soon as reasonably practical, commence any required federal, state, and local regulatory approval processes to enable Confirmation of the Plan, including, without limitation, processes required to obtain approvals from PJM, FERC, any Environmental Regulator, or any other regulatory body whose approval or consent is reasonably determined by the Company Parties and the Required Consenting Lenders to be necessary to

consummate the Restructuring Transactions, and (iii) do all things reasonably necessary and appropriate in furtherance of confirming the Plan and consummating the Restructuring in accordance with and within the time frames contemplated by this Agreement and the Restructuring Term Sheet;

(b) comply with Section 3.04;

(c) consult with the Consenting Lenders and their advisors as to:

(i) the status and progress of the negotiations of the Definitive Documents and discussions with the Company's other stakeholders;

(ii) communications and/or negotiations with PJM, FERC, or any Environmental Regulator and otherwise comply with the requirements related thereto set forth in the Restructuring Term Sheet; *provided* that nothing herein shall be construed to obligate the Company Parties or their professionals to provide the Consenting Lenders with information that is subject to attorney-client or similar privilege or that constitutes attorney work product or otherwise take any action that would result in the waiver of any applicable privilege or breach of any confidentiality obligation;

(iii) the status of any required federal, state, and local regulatory approval processes;

(iv) any potential rejection, termination, breach, assumption, renegotiation, or other modification with respect to any of the Company Parties' contracts or entry into any new contracts by the Company Parties;

(v) the business and financial (including liquidity and budget) performance of the Company Parties;

(vi) hedging strategies;

(vii) strategy concerning the maximization of tax efficiencies;

(viii) the allowance of any priority administrative expense claim pursuant to sections 503(b), 507(a), and/or 507(b) of the Bankruptcy Code in the amount of $100,000 or greater;

(ix) the Claims reconciliation process; and

(x) affairs concerning any necessary or desirable authorizations (including consents) from any competent judicial body, governmental authority, banking, taxation, supervisory, regulatory body, or any stock exchange (including, but not limited to, approvals from the PJM, FERC, any Environmental Regulator, or any other federal, state, or local regulatory body whose approval or consent is determined by the Company Parties or the Required Consenting Lenders to be necessary to consummate the Restructuring Transactions);

(d) without limiting any consent rights otherwise provided in this Agreement, obtain the consent of the Required Consenting Lenders prior to effecting any other action, series of actions, payment, or strategy, as applicable, with respect to any matters (i) that are not contemplated by the Approved Budget (as defined in the Cash Collateral Orders) and (ii) where the amount at issue (1) is at least $250,000 to the extent the matter arises in the ordinary course operation of the Company Parties' business, and (2) is at least $100,000 to the extent the matter arises other than in the ordinary course operation of the Company Parties' business;

(e) provide the Consenting Lenders reasonable access to the books and records of the Company Parties upon reasonable advance notice to the Company Parties and without disruption to the operation of the Company Parties' businesses;

(f) inform counsel to the Consenting Lenders as soon as reasonably practicable after becoming aware of:

(i) any notice of any commencement of any material involuntary insolvency proceeding, legal suit for payment of material debt, or enforcement of a security interest by any person in respect of material property owned by any Company Party;

(ii) any breach of this Agreement by any Company Party; and

(iii) any material operational or financial developments involving the Company Parties.

(g) use commercially reasonable efforts to seek additional support for the Restructuring Transactions from their other material stakeholders to the extent reasonably prudent;

(h) operate their businesses in the ordinary course, taking into account the Restructuring Transactions and the Chapter 11 Cases;

(i) timely file a formal objection, after consultation in good faith with the Consenting Lenders, to any motion filed with the Bankruptcy Court by a third party seeking the entry of an order:

(i) directing the appointment of a trustee or examiner (with expanded powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code);

(ii) converting the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code;

(iii) dismissing the Chapter 11 Cases

(iv) directing the appointment of an equity committee, whether pursuant to section 1102(a)(2) of the Bankruptcy Code or otherwise, in the Chapter 11 Cases; or

(v) modifying or terminating the Company Parties' exclusive right to file and/or solicit acceptances of a plan of reorganization, as applicable; and

(j) pay or reimburse the reasonable and documented fees and expenses of the Consenting Lenders Advisors in accordance with the terms of the Cash Collateral Orders.

6.02. Negative Commitments. During the Agreement Effective Period, each of the Company Parties shall not (except with the prior written consent of the Required Consenting Lenders) directly or indirectly:

(a) take any action that would be materially inconsistent with this Agreement or interfere with the Restructuring (including encouraging another Person to undertake any action prohibited by this Agreement);

(b) incur any liens or security interest, other than those existing immediately prior to the date hereof or otherwise permitted by the Cash Collateral Orders;

(c) either (i) grant to any officer, director, or insider any increase in severance or termination pay without the consent of the Required Consenting Lenders, (ii) establish, adopt, or enter into any key employee retention plan, key employee incentive plan, or other similar plan or program without the prior consent of the Required Consenting Lenders, (iii) grant any increase in compensation or benefits to any officer, director, or insider of the Company Parties without the prior consent of the Required Consenting Lenders, or (iv) pay any management fees, dividends, or other disbursement to the Consenting Sponsor;

(d) engage in any merger, consolidation, disposition, acquisition, investment, dividend, incurrence of indebtedness, or other similar transaction, in each case outside of the ordinary course of business;

(e) modify (in whole or in part) the Plan or any document requiring the Required Consenting Lenders' consent in a manner that is not consistent with this Agreement or the Restructuring Term Sheet in all respects;

(f) commence, support, or join any litigation or adversary proceedings against the Consenting Lenders;

(g) except as contemplated by this Agreement, the Plan, or pursuant to the Restructuring Transactions, issue, sell, pledge, dispose of or encumber any additional shares of, or any options, warrants, conversion privileges or rights of any kind to acquire any shares of, any of its Interests, including capital stock or limited liability company interests;

(h) object to, delay, impede, or take any other action to interfere with acceptance, implementation, or consummation of the Restructuring Transactions;

(i) take any action that is inconsistent in any material respect with, or is intended to frustrate or impede approval, implementation, and consummation of the Restructuring Transactions described in, this Agreement or the Plan;

(j) file any motion, pleading, or Definitive Documents with the Bankruptcy Court or any other court (including any modifications or amendments thereof) that, in whole or in part, is not materially consistent with the terms of this Agreement or the Plan; or

(k) subject to this Section 6.02(k) and Section 7.01, seek, solicit, or support any Alternative Restructuring or cause or allow any of their agents or representatives to solicit any Alternative Restructuring, unless such Alternative Restructuring provides for no less favorable treatment of the Credit Agreement Claims than is contemplated by the Restructuring Transactions. Prior to the earlier of (i) making a public announcement regarding their intention to accept an Alternative Restructuring or (ii) entering into a definitive agreement with respect to an Alternative Restructuring, the Company Parties shall have terminated this Agreement pursuant to Section 12.02(b). The Company Parties shall, to the extent practicable and consistent with their fiduciary duties, give the Consenting Lender Advisors not less than two (2) Business Days' prior written notice before exercising such termination right in accordance with this Agreement; *provided* that, without limiting the foregoing, the Company Parties shall notify the Consenting Lender Advisors within one (1) Business Day following any determination to exercise such termination right. At all times prior to termination of this Agreement pursuant to Section 12.02(b), the Company Parties shall, to the extent consistent with any applicable obligations of confidentiality, provide to Consenting Lender Advisors a copy of any written offer or proposal (and notice and a description of any oral offer or proposal) for any Alternative Restructuring within one (1) Business Day of the Company Parties' or their advisors' receipt of such offer or proposal (it being understood that if the Company Parties are unable to provide a copy as a result of any applicable obligations of confidentiality, the Company Parties shall still provide notice of such an offer or proposal and related description to the extent doing so does not violate such confidentiality); *provided* that any information shared with or furnished to the Consenting Lender Advisors in accordance with this Section 6.02(k), shall be provided on a "professional eyes only" basis unless otherwise agreed to by the parties in writing.

Section 7. ***Additional Provisions Regarding Company Parties' Commitments***.

7.01. Nothing in this Agreement shall require any Company Party or any directors, officers, managers, or members of any Company Party, each in its capacity as a director, officer, manager, or member of such Company Party, to take any action or to refrain from taking any action, to the extent inconsistent with its or their fiduciary duties under applicable Law (as determined by them after consultation with legal counsel); *provided*, *however*, that this Section 7.01 shall not impede any Party's right to terminate this Agreement pursuant to Section 12.

7.02. Notwithstanding anything to the contrary in this Agreement, but subject to the terms of Section 6.02(k), each Company Party and its directors, officers, employees, investment bankers, attorneys, accountants, consultants, and other advisors or representatives shall have the right to: (a) consider, respond to, and facilitate unsolicited Alternative Restructuring Proposals that may be received by the Company Parties; (b) provide access to nonpublic information concerning any Company Party to any Entity or enter into confidentiality agreements or nondisclosure agreements with any Entity; (c) maintain, or continue discussions or negotiations with respect to Alternative Restructurings; (d) otherwise cooperate with, assist, participate in, or facilitate any inquiries, proposals, discussions, or negotiation of unsolicited Alternative Restructuring Proposals that may be received by the Company Parties; and, (e) enter into or continue discussions or negotiations with Holders of any Credit Agreement Claims (including any Consenting Lender), any other party in interest, or any other Entity regarding the Restructuring Transactions or Alternative Restructurings.

7.03. Nothing in this Agreement shall: (i) impair or waive the rights of any Company Party to assert or raise any objection permitted under this Agreement in connection with the Restructuring Transactions or (ii) prevent any Company Party from enforcing this Agreement, or any Definitive Document, or contesting whether any matter, fact, or thing is a breach of, or is materially inconsistent with, this Agreement, or any Definitive Document.

Section 8. ***Commitments of the Consenting Sponsor.***

8.01. Subject to the terms and conditions of this Agreement, during the Agreement Effective Period, the Consenting Sponsor shall:

(a) act in good faith support, approve, implement, reasonably cooperate with each of the Parties, and take all commercially reasonable actions reasonably necessary, or reasonably requested by any other Party to facilitate the implementation and consummation of the Restructuring Transactions in accordance with this Agreement and the Restructuring Term Sheet, including taking all steps reasonably necessary (and within its control) to consummate the Restructuring in accordance with this Agreement and cooperating as reasonably necessary, or reasonably requested by any other Party in connection with the PJM Litigation;

(b) vote and exercise any powers or rights available to it (including in any meeting or process requiring voting or approval in which it is legally entitled to participate) in favor of any matter requiring approval to the extent necessary to implement the Restructuring;

(c) use commercially reasonable efforts to assist (and/or cause their Affiliates to assist) the Company Parties and the Consenting Lenders in implementing the tax structure as determined in accordance with this Agreement and the Restructuring Term Sheet, *provided* that any such tax structure shall also be satisfactory to the Consenting Sponsor;

(d) to the extent it is permitted to elect whether to opt out of the releases set forth in the Plan, elect to not opt out of the releases set forth in the Plan; and

(e) not directly or indirectly:

(i) object to, delay, impede, or take any other action to interfere with acceptance, implementation, or consummation of the Restructuring; or

(ii) take any action that is inconsistent in any material respect with, or is intended to frustrate or impede approval, implementation, and consummation of the Restructuring described in this Agreement or the Plan.

8.02. Additional Provisions Regarding Consenting Sponsor's Commitments. Notwithstanding the foregoing, nothing in this Agreement shall:

(a) bar the Consenting Sponsor from filing a proof of claim or taking action to establish the amount, validity, or priority of any Claim held by the Consenting Sponsor;

(b) be construed to limit the rights of the Consenting Sponsor under the Chapter 11 Cases, including appearing as a party in interest in any matter to be adjudicated in the

Chapter 11 Cases, so long as such appearance and the positions advocated in connection therewith are not inconsistent with this Agreement and are not for the purposes of hindering, delaying, or preventing the consummation of the Restructuring;

(c) impair or waive the rights of the Consenting Sponsor to assert or raise any objection permitted under this Agreement in connection with the Restructuring Transactions;

(d) prevent the Consenting Sponsor from enforcing this Agreement, or any Definitive Document, or contesting whether any matter, fact, or thing is a breach of, or is materially inconsistent with, this Agreement, or any Definitive Document;

(e) except as otherwise expressly provided in this Agreement, be construed to limit the Consenting Sponsor's rights, directly or indirectly, with respect to any Claim or Existing Lincoln Interest;

(f) affect the rights of the Consenting Sponsor to consult with the Company Parties, the Consenting Lenders or any other party in interest in the Chapter 11 Cases (including any official committee or the United States Trustee);

(g) prevent the Consenting Sponsor from taking any action that is required by applicable Law (as determined by the Consenting Sponsor in good faith after consultation with legal counsel); *provided* that, if the Consenting Sponsor proposes to take any action that is otherwise materially inconsistent with this Agreement in order to comply with applicable Law, the Consenting Sponsor shall, to the extent permitted by applicable law, provide at least one (1) Business Day's advance written notice to the other Parties prior to taking any such action;

(h) require the Consenting Sponsor to take any action that is prohibited by applicable Law or to waive or forego the benefit of any applicable legal privilege (as determined by them in good faith after consultation with legal counsel); *provided* that, if the Consenting Sponsor proposes to take any action that is otherwise inconsistent with this Agreement in order to comply with applicable Law, the Consenting Sponsor shall provide at least one (1) Business Days' advance written notice to the Company Parties and the Consenting Lenders prior to taking such action;

(i) require the Consenting Sponsor to provide any information that it determines, in its reasonable discretion, to be commercially sensitive or confidential, other than as expressly set forth in this Agreement;

(j) be construed to prevent the Consenting Sponsor from exercising any consent rights provided with respect to the Consenting Sponsor or its rights or remedies specifically reserved herein or in the Definitive Documents;

(k) unless provided for under this Agreement or any Definitive Document, require the Consenting Sponsor to incur any expenses, liabilities, or other obligations, or agree to any commitments, undertakings, concessions, indemnities or other arrangements that could result in expenses, liabilities, or other obligations; or

(l) prevent the Consenting Sponsor by reason of this Agreement or the Restructuring Transactions from making, seeking, or receiving any regulatory filings, notifications, consents, determinations, authorizations, permits, approvals, licenses, or the like.

Section 9. ***Transfer of Claims***.

9.01. During the Agreement Effective Period, no Consenting Lender shall Transfer any ownership in any Claims to any affiliated or unaffiliated party, including any party in which it may hold a direct or indirect beneficial interest, unless the transferee (a) executes and delivers to counsel to the Company Parties, at or before the time of the proposed Transfer, a Transfer Agreement or (b) is a Consenting Lender and such Consenting Lender provides notice of such Transfer (including the amount and type of Claim Transferred) to counsel to the Company Parties within five (5) Business Days of such acquisition.

9.02. Upon compliance with the requirements of Section 9.01, the transferor shall be deemed to relinquish its rights (and be released from its obligations) under this Agreement to the extent of the rights and obligations in respect of such Transferred Claims. Any Transfer in violation of Section 9.01 shall be void *ab initio*.

9.03. Subject to Section 9.01, this Agreement shall in no way be construed to preclude the Consenting Lenders from acquiring additional Claims; *provided*, *however*, that such additional Claims shall automatically and immediately upon acquisition by a Consenting Lender be deemed subject to the terms of this Agreement (regardless of when or whether notice of such acquisition is given to counsel to the Company Parties or counsel to the Consenting Lenders).

9.04. To the extent any Consenting Lender (a) acquires additional Claims entitled to vote on the Plan or (b) Transfers any Claims then, in each case, each such Consenting Lender hereby agrees that such additional Claims shall be subject to this Agreement, and that, for the duration of the Agreement Effective Period, it shall vote (or cause to be voted) any such additional Claims entitled to vote on the Plan (to the extent still held by it or on its behalf at the time of such vote), in a manner consistent with Section 4.

9.05. Notwithstanding anything to the contrary in this Section 9, the restrictions on Transfers set forth in this Section 9 shall not apply to the grant of any liens or encumbrances on any claims and interests in favor of a bank or broker-dealer holding custody of such claims and interests in the ordinary course of business and which lien or encumbrance is released upon the Transfer of such claims and interests.

9.06. Notwithstanding anything to the contrary in this Section 9, in no event shall the Consenting Sponsor directly or indirectly Transfer all or any of its Existing Lincoln Interests during the pendency of the Chapter 11 Cases.

Section 10. ***Representations and Warranties of Consenting Lenders***. Each Consenting Lender severally, and not jointly, represents and warrants that, as of the date such Consenting Lender executes and delivers this Agreement:

(a) it either (i) is the legal and beneficial owner of the Claims set forth below its name on its signature page hereof (or the Joinder Agreement), in each case, free and clear of any and all

claims, liens, and encumbrances (other than those imposed by securities laws applicable to unregistered securities), or (ii) has investment and voting discretion with respect to such Claims in respect to matters relating to the Restructuring contemplated by this Agreement and has the power and authority to bind the beneficial owner(s) of such Claims to the terms of this Agreement;

(b) it is not the legal or beneficial owner of, and does not have investment and voting discretion with respect to, any other Claims that are not identified below its name on its signature page hereof (or the Joinder Agreement); and

(c) it has power and authority to act on behalf of, vote and consent to matters concerning such Claims in respect to matters relating to the Restructuring Transactions contemplated by this Agreement and dispose of, convert, assign, and Transfer such Claims.

Section 11. ***Mutual Representations, Warranties, and Covenants***. Each of the Parties represents, warrants, and covenants to each other Party, as of the date such Party executed and delivers this Agreement, that:

(a) it is validly existing and in good standing (or equivalent) under the Laws of the jurisdiction of its organization, and this Agreement is a legal, valid, and binding obligation of such Party, enforceable against it in accordance with its terms, except as enforcement may be limited by applicable Laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability;

(b) it has all requisite corporate, partnership, limited liability company, or similar authority to execute this Agreement and carry out the transactions contemplated hereby and perform its obligations contemplated hereunder, and the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized by all necessary corporate, partnership, limited liability company, or other similar action on its part;

(c) the execution, delivery, and performance by such Party of this Agreement and each of the Definitive Documents to which such Party is a party or will be a party following the execution and delivery thereof, does not and shall not (i) violate (a) any provision of Law, rule, or regulation applicable to it or (b) its charter or bylaws (or other similar governing documents), or (ii) to the knowledge of such Party, conflict with, result in a breach of, or constitute a default under (with or without notice or lapse of time or both) any contractual obligation to which it is a party or it or its assets are bound, in each case, other than any such violation, conflict, breach, or default with respect to which a waiver has been obtained prior to the Agreement Effective Date and which waiver has not been subsequently revoked; and

(d) the execution and delivery by a Party of this Agreement does not require any authorization of, filing with, registration of or before, consent from, approval of, or other action by or notice to any federal, state, or other governmental authority or regulatory body, in each case, other than any such authorization, filing, registration, consent, approval, action, or notice which has been obtained, provided, or otherwise satisfied prior to the Agreement Effective Date and which authorization, filing, registration, consent, approval, action, or notice has not been subsequently revoked (excluding, as to performance, applicable approval of the Bankruptcy Court).

Section 12. ***Termination Events***.

12.01. Consenting Lender Termination Events. This Agreement may be terminated as to all Parties by the Required Consenting Lenders by the delivery to the Company Parties and the Consenting Sponsor of a written notice in accordance with Section 14.10 hereof upon the occurrence and continuation of any of the following events:

(a) the Company's failure to meet any of the Milestones, which Milestone remains unsatisfied for three (3) Business Days after the Consenting Lenders transmit a written notice in accordance with Section 14.10 (unless such Milestone has been waived or extended in a manner consistent with this Agreement); *provided* that, if the failure to achieve such Milestone is caused by, or results from, the breach by any Consenting Lender, as applicable, of its covenants, agreements, or other obligations under this Agreement, such Consenting Lender(s) shall not be counted in determining "Required Consenting Lenders" for purposes of, and may not assert the right to terminate this Agreement under, this Section 12.01(a);

(b) any provision of the Cash Collateral Orders is invalidated or modified without the prior written consent of the Required Consenting Lenders, or the Consenting Lenders elect to terminate the use of cash collateral pursuant to the terms of the Cash Collateral Orders based on the Company Parties' failure to comply with any of their obligations under the Cash Collateral Orders, which failure remains uncured for a period of three (3) Business Days after the Required Consenting Lenders transmit a written notice describing in detail any such failure;

(c) a material breach by the Company Parties of their undertakings, representations, warranties, or covenants set forth in this Agreement, which breach or failure to act remains uncured for a period of five (5) Business Days after the Administrative Agent, on behalf of the Required Consenting Lenders, transmits a written notice describing any such breach or failure;

(d) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any final, non-appealable ruling or order that (i) enjoins the consummation of a material portion of the Restructuring Transactions and (ii) remains in effect for fifteen (15) Business Days after such terminating Consenting Lender transmits a written notice in accordance with Section 14.10 describing any such issuance; *provided* that any Consenting Lender that sought or requested such ruling or order in contravention of any obligation set out in this Agreement shall not be counted in determining "Required Consenting Lenders" for purposes of, and may not assert the right to terminate this Agreement under, this Section 12.01(d);

(e) the Bankruptcy Court enters an order denying Confirmation of the Plan and the Milestone for Confirmation of the Plan has lapsed;

(f) the entry of an order by the Bankruptcy Court, or the filing of a motion or application by any Company Party seeking an order (without the prior written consent of the Required Consenting Lenders), (i) converting one or more of the Chapter 11 Cases of a Company Party to a case under chapter 7 of the Bankruptcy Code, (ii) appointing an examiner with expanded powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code or a trustee in one or more of the Chapter 11 Cases of a Company Party, or (iii) rejecting this Agreement;

(g) any order approving the Plan or the Disclosure Statement is reversed, stayed, dismissed, vacated, or reconsidered without the prior written consent of the Required Consenting Lenders or is modified or amended (i) in a manner that is inconsistent with this Agreement and (ii) remains uncured for five (5) Business Days after the Required Consenting Lenders transmit a written notice describing any such order;

(h) the making public, modification, amendment, or filing of any of the Definitive Documents by any Company Party that contains terms or conditions that have not received the consent of the applicable Consenting Lenders as provided for in Section 3.03 (i) in a manner that is adverse to the Required Consenting Lenders and (ii) remains uncured for three (3) Business Days after the Required Consenting Lenders transmit a written notice describing any such event;

(i) following delivery of notice by the Company Parties, in accordance with Section 14.10, of the decision to terminate this Agreement pursuant to Section 12.02(b);

(j) entry of an order that grants relief terminating, annulling, or materially modifying the automatic stay (as set forth in section 362 of the Bankruptcy Code) with regard to any material asset that, to the extent such relief were granted, would have a material adverse effect on the ability to consummate the Restructuring Transaction;

(k) any Company Party files a motion, application, or adversary proceeding (or any Company Party supports any such motion, application, or adversary proceeding filed or commenced by any third party) challenging the validity, enforceability, perfection, or priority of, or seeking avoidance or subordination of, any portion of the Credit Agreement Claims or asserting any other cause of action against any of the Consenting Lenders or with respect or relating to such Credit Agreement Claim, the Credit Agreement or any Loan Document (as such term is defined in the Credit Agreement) or the prepetition liens securing the Credit Agreement Claims;

(l) any Company Party loses the exclusive right to file a plan or plans of reorganization or to solicit acceptances thereof pursuant to section 1121 of the Bankruptcy Code;

(m) the Company Parties amend or withdraw the Plan, the Disclosure Statement, the Definitive Documents without the consent of the Required Consenting Lenders and in a manner that is not permitted by this Agreement, or enter into any amendments, modifications, exhibits, or supplements thereto without the consent of the Required Consenting Lenders and in a manner that is not permitted by this Agreement; or

(n) any Company Party files a motion, application, or adversary proceeding seeking either (i) the use of Cash Collateral (as defined in the Cash Collateral Orders) other than as set forth in the Cash Collateral Orders, or (ii) debtor-in-possession financing secured by liens senior to the Adequate Protection Liens (as defined in the Cash Collateral Orders), without the prior written consent of the Prepetition Administrative Agent (acting on behalf of the Required Consenting Lenders).

12.02. Company Party Termination Events. Any Company Party may terminate this Agreement as to all Parties, in each case, upon prior written notice to all Parties in accordance with Section 14.10 upon the occurrence and continuation of any of the following events:

(a) the breach in any material respect by one or more of the Consenting Lenders of any provision set forth in this Agreement that remains uncured for a period of five (5) Business Days after the receipt by the Consenting Lenders of notice of such breach; *provided*, *however*, that, so long as the non-breaching Consenting Lenders continue to hold or control at least 66.67% of the aggregate principal amount of Credit Agreement Claims, such termination shall be effective only with respect to such breaching Consenting Lender(s);

(b) the board of directors, board of managers, or such similar governing body of any Company Party determines, after consulting with counsel, (i) that proceeding with any of the Restructuring Transactions would be inconsistent with the exercise of its fiduciary duties or applicable Law, or (ii) to pursue an Alternative Restructuring Proposal in accordance with its fiduciary duties;

(c) the Bankruptcy Court enters an order denying Confirmation of the Plan and the Milestone for Confirmation of the Plan has lapsed;

(d) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any final, non-appealable ruling or order that (i) enjoins the consummation of a material portion of the Restructuring Transactions and (ii) remains in effect for fifteen (15) Business Days after such terminating Company Party transmits a written notice in accordance with Section 14.10 hereof detailing any such issuance; *provided* that this termination right shall not apply to or be exercised by any Company Party that sought or requested such ruling or order in contravention of any obligation or restriction set out in this Agreement; or

(e) any Consenting Lender files any motion or pleading with the Bankruptcy Court that is inconsistent in any material respect with this Agreement and such motion or pleading has not been withdrawn within five (5) Business Days of receipt by the applicable Consenting Lender of written notice from the Company Parties that such motion or pleading is inconsistent with this Agreement; *provided*, *however*, that, so long as the non-breaching Consenting Lenders continue to hold or control at least 66.67% of the aggregate principal amount of Credit Agreement Claims, such termination shall be effective only with respect to the Consenting Lender that filed the motion or pleading.

12.03. Consenting Sponsor Termination Events. The Consenting Sponsor may terminate this Agreement solely as to itself (which shall not affect the continuing effectiveness of this Agreement as between the Company Parties and the Consenting Lenders) upon prior written notice to all Parties in accordance with Section 14.10 upon the occurrence and continuation of any of the following events:

(a) the breach by the Company Parties or by the Consenting Lenders of any of the covenants or other obligations or agreements of the Company Parties or the Consenting Lenders set forth in this Agreement in a manner that materially and adversely affects the treatment of the Consenting Sponsor under this Agreement or any Definitive Document, including with respect to the releases applicable to the Consenting Sponsor, and such breach remains uncured (if susceptible to cure) for five (5) Business Days after the Consenting Sponsor transmits a written notice to the Company Parties and the Consenting Lender in accordance with Section 14.10 detailing any such breach;

(b) the making public, modification, amendment, or filing of any of the Definitive Documents by any Company Party that contains terms or conditions that have not received the consent of the Consenting Sponsor as provided for in Section 3.03 (i) in a manner that is materially adverse to the Consenting Sponsor and (ii) remains uncured for three (3) Business Days after the Consenting Sponsor transmits a written notice describing any such event;

(c) the Bankruptcy Court enters an order denying Confirmation of the Plan; *provided, however*, that if the denial of Confirmation of the Plan is (i) due to a technical infirmity (*e.g.*, classification issue) that does not require re-solicitation of the Plan and Disclosure Statement to cure such infirmity and (ii) does not impact the treatment, rights, or obligations of the Consenting Sponsor or the releases provided to the Consenting Sponsor, the Consenting Sponsor, Required Consenting Lenders, and the Company Parties shall use commercially reasonable efforts to cure the technical infirmity causing the basis for the denial and, if the Consenting Sponsor has agreed to such cure (evidenced in writing, which may be by email) within five (5) Business Days of such denial, then the Consenting Sponsor may not terminate this Agreement pursuant to this Section 12.03(c);

(d) the Company Parties amend or withdraw the Plan, the Disclosure Statement or any of the Definitive Documents in a manner that is not permitted by this Agreement, or enter into any amendments, modifications, exhibits, or supplements thereto without the consent of the Consenting Sponsor as set forth in Section 3.03 or in a manner that is not permitted by this Agreement;

(e) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any final, non-appealable ruling or order that (i) enjoins the consummation of a material portion of the Restructuring Transactions and (ii) remains in effect for thirty (30) Business Days after the Consenting Sponsor transmits a written notice in accordance with Section 14.10 describing any such issuance; *provided* that, if the Consenting Sponsor sought or requested such ruling or order in contravention of any obligation set out in this Agreement, it may not assert the right to terminate this Agreement under this Section 12.03(b); or

(f) the entry of an order by the Bankruptcy Court, or the filing of a motion or application by any Company Party seeking an order (without the prior written consent of the Consenting Sponsor), (i) converting one or more of the Chapter 11 Cases of a Company Party to a case under chapter 7 of the Bankruptcy Code, (ii) appointing an examiner with expanded powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code or a trustee in one or more of the Chapter 11 Cases of a Company Party, or (iii) rejecting this Agreement.

Notwithstanding the foregoing, if the Consenting Sponsor seeks to terminate this Agreement pursuant to any provision of this Section 12.03 on account of an act or omission of one or more Consenting Lenders, so long as the non-breaching Consenting Lenders continue to hold or control at least 66.67% of the aggregate principal amount of Credit Agreement Claims, such termination shall be effective only with respect to the Consenting Lender(s) whose acts or omissions gave rise to such termination event.

12.04. Mutual Termination. This Agreement, and the obligations of all Parties hereunder, may be terminated by mutual written agreement among all of the following: (a) the Required Consenting Lenders; and (b) each Company Party.

12.05. Automatic Termination. This Agreement shall terminate as to all Parties automatically without any further required action or notice immediately after the Plan Effective Date.

12.06. Effect of Termination. Upon the occurrence of a Termination Date as to a Party, this Agreement shall be of no further force and effect as to such Party and each Party subject to such termination shall be released from its commitments, undertakings, and agreements under or related to this Agreement, except in each case as provided in Sections 12.07, 12.08, and 14.18, and shall have the rights and remedies that it would have had, had it not entered into this Agreement, and shall be entitled to take all actions, whether with respect to the Restructuring Transactions or otherwise, that it would have been entitled to take had it not entered into this Agreement, including with respect to any and all Claims or Causes of Action, except as set forth in Sections 12.08 hereof; *provided* that in no event will any such termination relieve a Party from liability for its breach or non-performance of its obligations hereunder before the date of such termination. Upon any termination of this Agreement, each Party will be deemed to have automatically revoked and withdrawn its participation in the Restructuring, without any further action and irrespective of the expiration or availability of any "withdrawal period" or similar restriction, whereupon any such consents will be deemed, for all purposes, to be null and void *ab initio* and will not be considered or otherwise used in any manner by the Parties in connection with the Restructuring and this Agreement, and the Company Parties agree not to accept any such consents and to take all action necessary or reasonably required to allow the Consenting Lenders to arrange with their custodian and brokers, as applicable, to effectuate the withdrawal of such consents, including the reopening or extension of any withdrawal or similar periods; *provided* that the revocation and withdrawal herein will not apply (a) if this Agreement is terminated immediately after the Plan Effective Date in accordance with Section 12.05 or (b) to the Consenting Lenders if this Agreement is terminated as a result of their breach of this Agreement.

12.07. Effect of Termination on Releases. In the event this Agreement is terminated pursuant to: (a) Section 12.01(a) (solely related to Milestones 1(a), 2(a) (unless the Consenting Lenders have notified the Company Parties of the reasons why any proposed plan is not an acceptable plan and the Company Parties have failed to cure such defects within a reasonable amount of time), 2(b)–(d), 3(b)(ii)–(v), (4)(b), and 4(c)), *provided* that no court of competent jurisdiction has determined by final, non-appealable order that the actions or omissions of the Company Parties or the Consenting Sponsor, as applicable, materially contributed to the failure to meet the applicable Milestone; (b) Section 12.01(b), solely in the event that such termination arises

from one or more of the Enumerated Defaults,[2] which default remains uncured as set forth in this Agreement; (c) Section 12.01(d), *provided* that neither the Company Parties nor the Consenting Sponsor sought (or assisted in obtaining) such ruling or order; (d) Sections 12.01(e), 12.01(g), 12.01(j), and 12.01(l), *provided* that no court of competent jurisdiction has determined by final, non-appealable order that the acts or omissions of the Company Parties or the Consenting Sponsor, as applicable, materially contributed to the applicable termination event; (e) Section 12.01(f), *provided* that no Company Party or the Consenting Sponsor, as applicable, sought (or assisted in obtaining) such order without the consent of the Required Consenting Lenders; (f) Section 12.01(i), *provided* that the Company Parties are relying on a termination event set forth in this Section 12.07; (g) Sections 12.02(a) and 12.02(e); (h) Section 12.02(b), to the extent the Company Parties have determined in good faith that termination of this Agreement is necessary in the exercise of the Company Parties' fiduciary duties in order to avoid conversion of one or more of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code in the event the Consenting Lenders do not provide debtor-in-possession financing, consent to alternative debtor-in-possession financing, consent to a sale process, or otherwise consent to an alternative path forward; (i) Sections 12.02(c) and 12.02(d), *provided* that no court of competent jurisdiction has determined by final, non-appealable order that the acts or omissions of the Company Parties or the Consenting Sponsor, as applicable, materially contributed to the applicable termination event; (j) Section 12.03(a) (solely with respect to a termination related to a breach by the Consenting Lenders); and (k) Section 12.04, the Consenting Sponsor and the current and former directors and officers of the Company Parties shall immediately be deemed to have received the releases set forth in Exhibit B of the Restructuring Term Sheet from the Consenting Lenders and the Company Parties and the Consenting Lenders' commitments under Section 4.02(i) shall continue to remain in full force and effect (it being understood that, (i) if a court of competent jurisdiction subsequently makes a determination as contemplated in clauses (a), (b), (d), or (i) of this Section 12.07, any release granted pursuant to such clause shall be void *ab initio* and (ii) nothing

[2] "Enumerated Defaults" shall mean (a) any failure to meet any of Milestones 1(a), 2(a) (unless the Consenting Lenders have notified the Company Parties of the reasons why any proposed plan is not an acceptable plan and the Company Parties have failed to cure such defects within a reasonable amount of time), 2(b)–(d), 3(b)(ii)–(v), (4)(b), and 4(c), *provided* that no court of competent jurisdiction has determined by final, non-appealable order that the actions or omissions of the Company Parties or the Consenting Sponsor, as applicable, materially contributed to the failure to meet the applicable Milestone; (b) failure to meet any of the Budget Covenants (as defined in the Cash Collateral Orders) if such failure is the result of events that are outside of the control of the Company Parties and the Consenting Sponsor, including, but not limited to, unplanned outages (for the avoidance of doubt, solely to the extent resulting from events that are outside the control of the Company Parties and the Consenting Sponsor), any orders or rulings in connection with the PJM Litigation, and any increase in Total Professional Fee Disbursements (as defined in the Cash Collateral Orders) due to actions taken at the request of, or with the consent of, Consenting Lenders; (c) any action or omission giving rise to the following Events of Default (as defined in the Cash Collateral Orders) enumerated in paragraph 8 of the Cash Collateral Orders: (i) (a)–(b) and (m)–(p), *provided* that no court of competent jurisdiction has determined by final, non-appealable order that the acts or omissions of the Company Parties or the Consenting Sponsor, as applicable, materially contributed to the applicable Event of Default; (ii) (d)(ii); (iii) (f)–(g) and (i)–(j) *provided* that no Company Party or the Consenting Sponsor, as applicable, sought (or assisted in obtaining) such order, reversal, amendment, supplement, vacatur, or modification, as applicable, without the consent of the Required Consenting Lenders; and (iv) (r)–(s), *provided* that such Event of Default occurs due to events that are outside of the control of the Company Parties and the Consenting Sponsor, including, but not limited to, unplanned outages (for the avoidance of doubt, solely to the extent resulting from events that are outside the control of the Company Parties and the Consenting Sponsor), any orders or rulings in connection with the PJM Litigation, and any increase in Total Professional Fee Disbursements due to actions taken at the request of, or with the consent of, the Consenting Lenders.

contained in this Section 12.07 shall prohibit a Consenting Lender from subsequently seeking such a determination in connection with any future litigation; *provided* that the Consenting Lenders shall not be entitled to commence any litigation solely to determine whether or not the releases contemplated herein are effective). The Parties acknowledge that the agreements contained in this Section 12.07 are an integral part of the transactions contemplated by this Agreement and that, without these agreements, the Parties would not have entered into this Agreement. Upon any termination of this Agreement under the sections referenced in (a) through (k) above and acknowledgment by the Consenting Lenders (email from counsel to the Administrative Agent being sufficient) that the Consenting Lenders will not seek any determination contemplated in clauses (a), (b), (d), or (i) of this Section 12.07, and provided that no court of competent jurisdiction has determined by final, non-appealable order that the acts or omissions of the Consenting Lenders materially contributed to the applicable termination event, the Consenting Sponsor and the Company Parties shall not take any action materially adverse to the Consenting Lenders subsequent to such termination; *provided* that nothing in this Section 12.07 shall require any Company Party or any directors, officers, managers, or members of any Company Party, each in its capacity as a director, officer, manager, or member of such Company Party, to take any action or to refrain from taking any action, to the extent inconsistent with its or their fiduciary duties under applicable Law (as determined by them after consultation with legal counsel).

12.08. No purported termination of this Agreement shall be effective under this Section 12.08 or otherwise if the Party seeking to terminate this Agreement is in material breach of this Agreement. For the avoidance of doubt, the automatic stay arising pursuant to section 362 of the Bankruptcy Code shall be deemed waived or modified for purposes of providing notice or exercising rights hereunder.

Section 13. ***Amendments and Waivers***.

(a) This Agreement may not be modified, amended, or supplemented, and no condition or requirement of this Agreement may be waived, in any manner except in accordance with this Section 13.

(b) This Agreement may be modified, amended, amended and restated, or supplemented, or a condition or requirement of this Agreement may be waived, in a writing signed by (i) each Company Party and (ii) the Required Consenting Lenders; *provided*, *however*, that if the proposed modification, amendment, amendment and restatement, waiver, or supplement has a material, disproportionate, and adverse effect on any of the Claims or Interests held by a Consenting Lender, then the consent of each such affected Consenting Lender shall also be required to effectuate such modification, amendment, amendment and restatement, waiver or supplement; *provided, further, however*, that if the proposed modification, amendment, amendment and restatement, waiver, or supplement has a material adverse effect on any of the Claims or Interests of the Consenting Sponsor, or the Consenting Sponsor's rights or obligations hereunder, or the releases provided to or granted by the Consenting Sponsor as set forth in the Restructuring Term Sheet, then the consent of the Consenting Sponsor shall also be required to effectuate such modification, amendment, amendment and restatement, waiver or supplement. Notwithstanding anything herein to the contrary, for the avoidance of doubt, no amendment, modification, waiver, or supplement of (i) this Section 13, (ii) Section 9, (iii) the definition of

"Required Consenting Lenders" or "Consenting Lenders", or (iv) the conditions to effectiveness of this Agreement set forth in Section 2 shall be effective without the consent of each Party hereto.

(c) Any amendment or modification of any condition, term or provision to this Agreement must be in writing. Any amendment or modification made in compliance with this Section 13 shall be binding on all of the Parties, regardless of whether a particular Party has executed or consented to such amendment or modification. Any proposed modification, amendment, waiver, or supplement that does not comply with this Section 13 shall be ineffective and void *ab initio*.

(d) The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power, or remedy under this Agreement shall operate as a waiver of any such right, power, or remedy or any provision of this Agreement, nor shall any single or partial exercise of such right, power, or remedy by such Party preclude any other or further exercise of such right, power, or remedy or the exercise of any other right, power, or remedy. All remedies under this Agreement are cumulative and are not exclusive of any other remedies provided by Law.

Section 14. ***Miscellaneous.***

14.01. Acknowledgement. Notwithstanding any other provision herein, this Agreement is not and shall not be deemed to be an offer with respect to any securities or solicitation of votes for the acceptance of a plan of reorganization for purposes of sections 1125 and 1126 of the Bankruptcy Code or otherwise. Any such offer or solicitation will be made only in compliance with all applicable securities Laws, provisions of the Bankruptcy Code, and/or other applicable Law.

14.02. Exhibits Incorporated by Reference; Conflicts. Each of the exhibits, annexes, signature pages, and schedules attached hereto is expressly incorporated herein and made a part of this Agreement, and all references to this Agreement shall include such exhibits, annexes, and schedules. In the event of any inconsistency between this Agreement (without reference to the exhibits, annexes, and schedules hereto) and the exhibits, annexes, and schedules hereto, this Agreement (without reference to the exhibits, annexes, and schedules thereto) shall govern.

14.03. Further Assurances. The Parties shall cooperate with each other in good faith and shall coordinate their activities (to the extent practicable) in respect of all matters concerning the implementation and Consummation of the Restructuring. Further, each of the Parties shall take such action (including executing and delivering any other agreements and making and filing any required regulatory filings) as may be reasonably necessary or as may be required by order of the Bankruptcy Court, to carry out the purposes and intent of this Agreement; *provided* that nothing set forth in this Section 14.03 shall require any Party to provide any information that it determines, in its reasonable discretion, to be sensitive or confidential or, with respect to any Consenting Lender, to take any actions other than in its capacity as a Holder of Claims. Each of the Parties hereby covenants and agrees (a) to negotiate in good faith and in a timely manner (giving effect to the Milestones) the Definitive Documents and (b) subject to the satisfaction of the terms and conditions set forth herein, to execute, as applicable, the Definitive Documents.

14.04. Complete Agreement. Except as otherwise explicitly provided herein, this Agreement, and the attached exhibits, annexes, and schedules, constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, among the Parties with respect thereto, other than any confidentiality agreement.

14.05. GOVERNING LAW; SUBMISSION TO JURISDICTION; SELECTION OF FORUM. THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF. BY ITS EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH OF THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ANY LEGAL ACTION, SUIT, OR PROCEEDING AGAINST IT WITH RESPECT TO ANY MATTER UNDER OR ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT RENDERED IN ANY SUCH ACTION, SUIT, OR PROCEEDING, MAY BE BROUGHT IN ANY FEDERAL OR STATE COURT IN NEW YORK, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH OF THE PARTIES HEREBY IRREVOCABLY ACCEPTS AND SUBMITS ITSELF TO THE NONEXCLUSIVE JURISDICTION OF EACH SUCH COURT, GENERALLY AND UNCONDITIONALLY, WITH RESPECT TO ANY SUCH ACTION, SUIT, OR PROCEEDING. NOTWITHSTANDING THE FOREGOING, DURING THE PENDENCY OF THE CHAPTER 11 CASES, ALL PROCEEDINGS CONTEMPLATED BY THIS SECTION 14.05 SHALL BE BROUGHT IN THE BANKRUPTCY COURT.

14.06. TRIAL BY JURY WAIVER. EACH PARTY HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

14.07. Execution of Agreement. This Agreement may be executed and delivered in any number of counterparts and by way of electronic signature and delivery, each such counterpart, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same agreement. Except as expressly provided in this Agreement, each individual executing this Agreement on behalf of a Party has been duly authorized and empowered to execute and deliver this Agreement on behalf of said Party.

14.08. Rules of Construction. This Agreement is the product of negotiations among the Company Parties and the Consenting Lenders, and in the enforcement or interpretation hereof, is to be interpreted in a neutral manner, and any presumption with regard to interpretation for or against any Party by reason of that Party having drafted or caused to be drafted this Agreement, or any portion hereof, shall not be effective in regard to the interpretation hereof. The Company Parties and the Consenting Lenders were each represented by counsel during the negotiations and drafting of this Agreement and continue to be represented by counsel.

14.09. Successors and Assigns; Third Parties. This Agreement is intended to bind and inure to the benefit of the Parties and their respective successors and permitted assigns, as applicable. Other than with respect to the Persons referenced in Section 14.11, there are no third-

party beneficiaries under this Agreement, and the rights or obligations of any Party under this Agreement may not be assigned, delegated, or Transferred to any other person or entity except if in express accordance with Section 9.

14.10. Notices. All notices hereunder shall be deemed given if in writing and delivered, by electronic mail, courier, or registered or certified mail (return receipt requested), to the following addresses (or at such other addresses as shall be specified by like notice):

(a) if to a Company Party, to:

Lincoln Power, L.L.C.
c/o Cogentrix Energy Power Management, LLC
9405 Arrowpoint Boulevard
Charlotte, NC 28273
Attention: General Counsel
E-mail address: georgeknapp@cogentrix.com

with copies to:

Latham & Watkins LLP
330 North Wabash Avenue, Suite 2800
Chicago, IL 60611
Attention: Caroline A. Reckler
E-mail address: caroline.reckler@lw.com

- and -

Latham & Watkins LLP
1271 Avenue of the Americas
New York, NY 10020
Attention: Brett M. Neve
E-mail address: brett.neve@lw.com

(b) if to a Consenting Lender, to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Attention: Christopher Marcus, P.C.
Email address: christopher.marcus@kirkland.com

- and -

Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, IL 60654
Attention: Peter A. Candel

Email address: peter.candel@kirkland.com

(c) if to the Consenting Sponsor, to:

Akin Gump Strauss Hauer & Feld LLP
2001 K Street N.W.
Washington, DC 20006
Attention: Scott L. Alberino and Kate Doorley
Email address: salberino@akingump.com;
kdoorley@akingump.com

Any notice given by delivery, mail, or courier shall be effective when received.

14.11. Independent Due Diligence and Decision Making. Each Consenting Lender hereby confirms for the benefit of the Company Parties (including for the benefit of any Person acting on behalf of any of the Company Parties, including any financial, legal or other professional advisor of any of the foregoing) that (a) it has the requisite knowledge and experience in financial and business matters so that it is capable of evaluating the merits and risks of the securities that may be acquired by it pursuant to the Restructuring Transactions contemplated hereby and has had such opportunity as it has deemed adequate to obtain such information as is necessary to permit such Party to evaluate the merits and risks of the securities that may be acquired by it pursuant to the Restructuring Transactions contemplated hereby, and (b) that its decision to execute this Agreement and participate in any of the Restructuring Transactions contemplated hereby has been based upon its independent investigation of the operations, businesses, financial, and other conditions and prospects of the Company Parties and/or the Restructuring Transactions, and such decision is not in reliance upon any representations or warranties of any other Person (or such other Person's financial, legal, or other professional advisors) other than those contained in the Definitive Documents.

14.12. Enforceability of Agreement. Each of the Parties to the extent enforceable waives any right to assert that the exercise of termination rights under this Agreement is subject to the automatic stay provisions of the Bankruptcy Code, and expressly stipulates and consents hereunder to the prospective modification of the automatic stay provisions of the Bankruptcy Code for purposes of exercising termination rights under this Agreement, to the extent the Bankruptcy Court determines that such relief is required.

14.13. Waiver. This Agreement is part of a proposed settlement of matters that could otherwise be the subject of litigation among the Parties. If the Restructuring Transactions are not consummated, or if this Agreement is terminated for any reason, the Parties fully reserve any and all of their rights. Pursuant to Federal Rule of Evidence 408 and any other applicable rules of evidence, this Agreement and all negotiations relating hereto shall not be admissible into evidence in any proceeding other than a proceeding to enforce its terms or the payment of damages to which a Party may be entitled under this Agreement.

14.14. Specific Performance. All remedies that are available at Law or in equity, including specific performance and injunctive or other equitable relief, to any Party for a breach of this Agreement by another Party shall be available to the non-breaching Party (and for the avoidance

of doubt, it is agreed by the other Parties that money damages would not be a sufficient remedy for any breach of this Agreement by any Party and each non-breaching Party will be entitled to specific performance and injunctive or other equitable relief as a remedy of any such breach); *provided* that in connection with any remedy for specific performance, injunctive, or other equitable relief asserted in connection with this Agreement, each Party agrees to waive the requirement for the securing or posting of a bond in connection with any remedy and to waive the necessity of proving the inadequacy of money damages.

14.15. Several, Not Joint, Claims. Except where otherwise specified, the agreements, representations, warranties, and obligations of the Parties under this Agreement are, in all respects, several and not joint.

14.16. Severability and Construction. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect if essential terms and conditions of this Agreement for each Party remain valid, binding, and enforceable.

14.17. Remedies Cumulative. All rights, powers, and remedies provided under this Agreement or otherwise available in respect hereof at Law or in equity shall be cumulative and not alternative, and the exercise of any right, power, or remedy thereof by any Party shall not preclude the simultaneous or later exercise of any other such right, power, or remedy by such Party.

14.18. Survival. Notwithstanding (a) any Transfer of any Claims in accordance with this Agreement or (b) the termination of this Agreement in accordance with its terms, the agreements and obligations of the Parties in Section 4.02(i) (solely to the extent this Agreement is terminated pursuant to one of the termination rights enumerated, and as qualified, in Section 12.07 hereof), Section 12.06, Section 12.07, and this Section 14, any Joinder Agreement, and any Transfer Agreement shall survive such Transfer and/or termination and shall continue in full force and effect for the benefit of the Parties in accordance with the terms hereof and thereof.

14.19. Email Consents. Where a written consent, acceptance, approval, or waiver is required pursuant to or contemplated by this Agreement, including a written approval by the Company Parties, the Required Consenting Lenders, or the Consenting Sponsor, such written consent, acceptance, approval, or waiver shall be deemed to have occurred if, by agreement between counsel to the Parties submitting and receiving such consent, acceptance, approval, or waiver, it is conveyed in writing (including electronic mail) between each such counsel without representations or warranties of any kind on behalf of such counsel.

14.20. Relationship Among Parties. Notwithstanding anything to the contrary herein, the duties and obligations of the Consenting Lenders and the Consenting Sponsor under this Agreement shall be several and neither joint nor joint and several. None of the Consenting Lenders or the Consenting Sponsor shall have any fiduciary duty, any duty or trust or confidence in any form, or other duties or responsibilities to one another, the Company Parties, or any of the Company Parties' creditors or other stakeholders, including, without limitation, any Holders of Claims or Interests, and, other than as expressly set forth herein, there are no commitments among or between the Consenting Lenders or the Consenting Sponsor. No prior history, pattern, or practice of sharing confidences among or between any of the Consenting Lenders, the Consenting

Sponsor, and/or the Company Parties shall in any way affect or negate this understanding and agreement. All rights under this Agreement are separately granted to each Consenting Lender by the Company Parties and vice versa, and the use of a single document is for the convenience of the Company Parties. The decision to commit to enter into the transactions contemplated by this Agreement has been made independently.

14.21. Publicity. Other than as may be required by applicable Law and regulation or by any governmental or regulatory authority, the Company Parties shall not (a) use the name of any Consenting Lender or the Consenting Sponsor in any communication (including a press release, pleading or other publicly available document) (other than a communication with the legal, accounting, financial, and other advisors to the Company Parties who are under obligations of confidentiality to the Company Parties with respect to such communication, and whose compliance with such obligations the Company Parties shall be responsible for) without such Consenting Lender's or the Consenting Sponsor's prior written consent or (b) disclose to any Person, other than legal, accounting, financial, and other advisors to the Company Parties (who are under obligations of confidentiality to the Company Parties with respect to such disclosure, and whose compliance with such obligations the Company Parties shall be responsible for), the principal amount or percentage of the Claims held by any Consenting Lender or any of its respective subsidiaries; *provided*, *however*, that the Company Parties shall be permitted to disclose at any time the aggregate principal amount of, and aggregate percentage of, Claims held by the Consenting Lenders as a group. Notwithstanding the foregoing, the Parties hereby consent to the disclosure by the Company Parties in the Definitive Documents or as otherwise required by Law or regulation, of the execution, terms and contents of this Agreement; *provided*, *however*, that (i) if the Company Parties determines that it is required to attach a copy of this Agreement to any Definitive Document or any other filing or similar document relating to the transactions contemplated hereby, it will redact any reference to a specific Consenting Lender and such Consenting Lender's holdings and (ii) if disclosure is required by applicable Law, advance notice of the intent to disclose shall be given by the disclosing Party to each Consenting Lender (who shall have the right to seek a protective order prior to disclosure). Notwithstanding the foregoing, the Company Parties will provide to counsel to the Consenting Lenders all material press releases, public filings, public announcements, or other communications with any news media, in each case, to be made by the Company Parties relating to this Agreement or the transactions contemplated hereby and any amendments thereof, and will use commercially reasonable efforts to take to counsel to the Consenting Lenders' views with respect to such communications into account. Nothing contained herein shall be deemed to waive, amend, or modify the terms of any confidentiality or non-disclosure agreement between the Company Parties and any Consenting Lender, including the confidentiality and non-disclosure provisions contained in the Credit Agreement Documents.

14.22. Execution of Agreement. The Parties understand that the Consenting Lenders are engaged in a wide range of financial services and businesses, and, in furtherance of the foregoing, the Parties acknowledge and agree that the obligations set forth in this Agreement shall only apply to the trading desk(s) and/or business group(s) of the Consenting Lender that principally manage and/or supervise the Consenting Lender's investment in the Company Parties, and shall not apply to any other trading desk or business group of the Consenting Lender so long as they are not acting at the direction or for the benefit of such Consenting Lender or such Consenting Lender's investment in the Company Parties; *provided*, that the foregoing shall not diminish or otherwise

affect the obligations and liability therefor of any legal entity that (a) executes this Agreement or (b) on whose behalf this Agreement is executed by a Consenting Lender.

14.23. Reservation of Rights. Except as expressly provided in this Agreement, nothing herein is intended to, or does, in any manner waive, limit, impair, or restrict (a) the ability of any Party to protect and preserve its rights, remedies, and interests, including the Credit Agreements Claims and any other claims against the Company Parties or other parties, or its full participation in the Chapter 11 Cases or any other proceeding, including the rights of a Party under any applicable bankruptcy, insolvency, foreclosure, or similar proceeding, in each case, so long as the exercise of any such right does not breach such Party's obligations hereunder; (b) the ability of a Consenting Lender to purchase, sell, or enter into any transactions in connection with the Claims, subject to the terms hereof; (c) subject to the terms hereof and the Restructuring Term Sheet, any right of any Party (i) under the Credit Agreement Documents, or (ii) under any other applicable agreement, instrument, or document that gives rise to a Consenting Lenders' Claims; (d) the ability of a Consenting Lender to consult with its advisors (including the Consenting Lenders Advisors), other Consenting Lenders, or the Company Parties; (e) the ability of a Company Party to consult with its advisors, the Consenting Lenders, or other Company Parties; (f) the ability of a Party to enforce any right, remedy, condition, consent, or approval requirement under this Agreement or any of the Definitive Documents; or (g) in each case, the Company Parties' right to contest any and all such actions or assert that such actions in fact breach this Agreement. Without limiting the foregoing sentence in any way, after the termination of this Agreement pursuant to Section 12, the Parties fully reserve any and all of their respective rights, remedies, claims, and interests, subject to Section 12, in the case of any claim for breach of this Agreement. Further, nothing in this Agreement shall be construed to prohibit any Party from appearing as a party in interest in any matter to be adjudicated in the Chapter 11 Cases, so long as such appearance and the positions advocated in connection therewith are consistent with this Agreement and the Restructuring Documents.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

EXHIBIT A

Company Parties

Cogentrix Lincoln Holdings, LLC

Cogentrix Lincoln Holdings II, LLC

Lincoln Power, L.L.C.

Elgin Energy Center Holdings, LLC

Elgin Energy Center, LLC

Valley Road Holdings, LLC

Valley Road Funding, LLC

Rocky Road Power, LLC

EXHIBIT B

Restructuring Term Sheet

LINCOLN POWER, L.L.C., *ET AL.*

RESTRUCTURING TERM SHEET

March 30, 2023

This restructuring term sheet (this "***Term Sheet***") presents the principal terms of a proposed restructuring (the "***Restructuring***") of the existing indebtedness of, and equity interests in, Lincoln Power, L.L.C. and certain of its direct and indirect subsidiaries and affiliates (collectively, the "***Company***" or the "***Debtors***," as applicable),[1] which Restructuring will be consummated by commencing voluntary cases (the "***Chapter 11 Cases***") under chapter 11 of title 11 of the United States Code (the "***Bankruptcy Code***") to pursue a chapter 11 plan of reorganization (the "***Plan***"). This is the "Restructuring Term Sheet" referred to in, and appended to, that certain Restructuring Support Agreement, dated as of March 30, 2023, by and among the Company, the Holders of certain Credit Agreement Claims signatory thereto (the "***Consenting Lenders***"), and the Consenting Sponsor (as amended, supplemented, or otherwise modified from time to time, the "***RSA***"). Capitalized terms used but not defined herein have the meanings ascribed to such terms in **Exhibit A** attached hereto.

This Term Sheet is not legally binding, is not a complete list of all terms and conditions of the potential transactions described herein, is subject to material change, and is being distributed for discussion purposes only. The regulatory, tax, accounting, and other legal and financial matters and effects related to the Restructuring, or any related restructuring or similar transaction have not been fully evaluated and any such evaluation may affect the terms and structure of any Restructuring or related transactions.

THIS TERM SHEET DOES NOT CONSTITUTE (NOR SHALL IT BE CONSTRUED AS) AN OFFER OR A SOLICITATION WITH RESPECT TO ANY SECURITIES OR A SOLICITATION OF ACCEPTANCES OR REJECTIONS AS TO ANY PLAN, IT BEING UNDERSTOOD THAT SUCH A SOLICITATION, IF ANY, ONLY WILL BE MADE IN COMPLIANCE WITH APPLICABLE LAW. NOTHING IN THIS TERM SHEET SHALL CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, A STIPULATION OR A WAIVER, AND EACH STATEMENT CONTAINED HEREIN IS MADE WITHOUT PREJUDICE AND WITH A FULL RESERVATION OF ALL RIGHTS, REMEDIES, CLAIMS, AND DEFENSES OF EACH PARTY HERETO.

THIS TERM SHEET DOES NOT PURPORT TO SUMMARIZE ALL OF THE TERMS, CONDITIONS, REPRESENTATIONS, WARRANTIES, OR OTHER PROVISIONS WITH RESPECT TO THE TRANSACTIONS DESCRIBED HEREIN, WHICH TRANSACTIONS WILL BE SUBJECT TO THE COMPLETION OF THE DOCUMENTS GOVERNING THE RESTRUCTURING AND INCORPORATING THE TERMS SET FORTH HEREIN (OTHER THAN THE RSA) (THE "*DEFINITIVE DOCUMENTS*"). THE

[1] The proposed Debtors 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).

CLOSING OF ANY TRANSACTION WILL BE SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN SUCH DEFINITIVE DOCUMENTS.

THIS TERM SHEET HAS BEEN PRODUCED FOR DISCUSSION AND SETTLEMENT PURPOSES ONLY AND IS SUBJECT TO RULE 408 OF THE FEDERAL RULES OF EVIDENCE AND OTHER SIMILAR APPLICABLE STATE AND FEDERAL STATUTES, RULES, AND LAWS. NOTHING CONTAINED IN THIS TERM SHEET SHALL BE AN ADMISSION OF FACT OR LIABILITY OR, UNTIL THE OCCURRENCE OF THE EFFECTIVE DATE OF THE RSA ON THE TERMS DESCRIBED THEREIN, DEEMED BINDING ON ANY OF THE PARTIES. THIS TERM SHEET AND THE INFORMATION CONTAINED HEREIN ARE STRICTLY CONFIDENTIAL AND SHALL NOT BE SHARED WITH ANY OTHER PARTY, OTHER THAN THE COMPANY, THE CONSENTING LENDERS, AND THEIR RESPECTIVE ADVISORS, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COMPANY AND REQUIRED CONSENTING LENDERS.

Overview	
Restructuring Summary[2]	This Term Sheet contemplates a restructuring and recapitalization of the Debtors. The Restructuring will be implemented through the Plan in the Chapter 11 Cases in the United States Bankruptcy Court for the District of Delaware (the "***Bankruptcy Court***") to be commenced no later than March 31, 2023. The Restructuring will be subject to the Definitive Documents, the terms of the RSA (including the exhibits thereto), and the consent rights set forth therein. The Plan shall be in all material respects consistent with the RSA and this Term Sheet. The Restructuring shall be supported by the parties to the RSA, including (a) the Debtors, (b) the Consenting Lenders, which will, at minimum, be comprised of Holders of at least 66.67% of the aggregate principal amount of the Credit Agreement Claims, and (c) any other parties signatory thereto. The Plan will constitute a separate chapter 11 plan of reorganization for each Debtor. The date on which all conditions to the effectiveness of the Plan have been satisfied or waived in accordance with its terms and the RSA (including, if applicable, any requisite declarations with respect to such effectiveness, subject to any applicable consent rights with respect thereto) shall be the "***Plan Effective Date***."
Funding of the Restructuring	The Chapter 11 Cases shall be funded through the consensual use of cash collateral, which use of cash collateral shall be consistent with this Term Sheet and the RSA and authorized pursuant to an interim order and a final order entered by the Bankruptcy Court (such orders, the "***Interim Cash Collateral Order***" and the "***Final Cash Collateral Order***," respectively, and, collectively, the "***Cash Collateral Orders***").
Exit Facility	On the Plan Effective Date, the Reorganized Debtors shall, if determined by the Required Consenting Lenders as appropriate in their sole judgment and discretion, incur a new senior secured revolving credit facility (the "***Exit Facility***") on terms and conditions acceptable to the Required Consenting Lenders and reasonably acceptable to the Debtors.
Takeback Debt	On the Plan Effective Date, one or more of the Reorganized Debtors shall issue takeback debt (the "***Takeback Debt***") in a to-be-agreed principal amount, solely for the purpose of distribution to Holders of Allowed Credit Agreement Claims pursuant to the Plan, on terms and conditions

[2] Alternatively, the Debtors may, with the consent of the Required Consenting Lenders, seek to consummate a restructuring transaction through a sale process pursuant to section 363 of the Bankruptcy Code (a "***Sale***"). If a Sale is pursued, the Debtors and the Required Consenting Lenders shall mutually agree upon such a sale process. The rights of Holders of Allowed Credit Agreement Claims to credit bid such Claims pursuant to and consistent with section 363(k) of the Bankruptcy Code shall be included in the Cash Collateral Orders (as defined herein). If the Debtors pursue a Sale, the Debtors and the Required Consenting Lenders shall mutually agree on the terms and conditions of a plan of liquidation (or applicable alternative) and a wind-down budget (as applicable).

	acceptable to the Required Consenting Lenders, including that each Reorganized Debtor be an obligor on such Takeback Debt.
New Common Stock	On the Plan Effective Date, the Reorganized Debtors shall issue a single class of common equity interests (the "***New Common Stock***"). The New Common Stock shall be distributed in accordance with this Term Sheet.

Treatment of Claims and Interests

Each Holder of an Allowed Claim or Interest, as applicable, shall receive the treatment described below in full and final satisfaction, settlement, release, and discharge of and in exchange for such Holder's Allowed Claim or Interest.

Class No.	Type of Claim	Treatment	Impairment / Voting
Unclassified Non-Voting Claims			
N/A	**Administrative Claims**	In full and final satisfaction of their Claims, on or as soon as practicable after the later to occur of (a) the Plan Effective Date and (b) the date such Claim becomes Allowed (or as otherwise set forth in the Plan), each Holder of an Allowed Administrative Claim shall receive treatment in a manner consistent with section 1129(a)(9) of the Bankruptcy Code.	N/A
N/A	**Priority Tax Claims**	In full and final satisfaction of their Claims, on or as soon as practicable after the later to occur of (a) the Plan Effective Date and (b) the date such Claim becomes Allowed (or as otherwise set forth in the Plan), each Holder of an Allowed Priority Tax Claim shall receive treatment in a manner consistent with section 1129(a)(9)(C) of the Bankruptcy Code.	N/A
Classified Claims and Interests			
Class 1	**Other Secured Claims**	Except to the extent that a Holder of an Allowed Other Secured Claim agrees to a less favorable treatment, as determined by the Debtors (with the consent of the Required Consenting Lenders) or the Reorganized Debtors, in full and final satisfaction of such Allowed Other Secured Claim, at the option of the applicable Debtors (with the consent of the Required Consenting Lenders) or the Reorganized Debtors, each such Holder shall receive (a) payment in full in Cash of its Allowed Other Secured Claim, (b) the collateral securing its Allowed Other Secured Claim, (c) reinstatement of its Allowed Other Secured Claim, or (d) such other treatment so as to render such Holder's Allowed Other Secured Claim Unimpaired pursuant to section 1124 of the Bankruptcy Code.	Unimpaired / Deemed to Accept

Class 2	**Other Priority Claims**	Except to the extent that a Holder of an Allowed Other Priority Claim agrees to a less favorable treatment, as determined by the Debtors (with the consent of the Required Consenting Lenders) or the Reorganized Debtors, in full and final satisfaction of such Allowed Other Priority Claim, each Holder of an Allowed Other Priority Claim shall, at the option of the applicable Debtors (with the consent of the Required Consenting Lenders) or the Reorganized Debtors, receive (a) payment in full in Cash of its Allowed Other Priority Claim or (b) treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code.	Unimpaired / Deemed to Accept
Class 3	**Credit Agreement Claims**	In full and final satisfaction of their Claims, on the Plan Effective Date, Holders of Allowed Credit Agreement Claims shall receive (a) their *pro rata* share of 100% of the New Common Stock[3] and (b) their *pro rata* share of the Takeback Debt, if applicable. Holders of Allowed Credit Agreement Claims shall also be given the right of first refusal to participate in the Exit Facility, if the Required Consenting Lenders determine such facility should be entered into (as set forth above), on a *pro rata* basis.	Impaired / Entitled to Vote
Class 4	**General Unsecured Claims**	In full and final satisfaction of their Claims, on the Plan Effective Date, Holders of Allowed General Unsecured Claims shall receive their *pro rata* share of the GUC Cash Pool.	Impaired / Entitled to Vote
Class 5	**Section 510(b) Claims**	On the Plan Effective Date, all Section 510(b) Claims shall be cancelled, released, discharged, and extinguished and shall be of no further force or effect, and Holders of Section 510(b) Claims shall not receive any distribution on account of such Section 510(b) Claims.	Impaired / Not Entitled to Vote / Presumed to Reject
Class 6	**Intercompany Claims**	On the Plan Effective Date, all Intercompany Claims shall be, at the option of the Reorganized Debtors, either (a) reinstated, (b) adjusted, or (c) discharged without any distribution on account of such Claims.	Impaired or Unimpaired / Deemed to Accept
Class 7	**Intercompany Interests**	On the Plan Effective Date, all Intercompany Interests shall be, at the option of the Reorganized Debtors, either (a) reinstated (except that they may be modified or recharacterized as Intercompany Claims) or	Impaired or Unimpaired / Deemed to Accept

[3] The Debtors and the Consenting Lenders shall mutually agree on a mechanism to allow each Holder of an Allowed Credit Agreement Claim to elect, in its sole discretion, to not receive its *pro rata* share of the New Common Stock and instead receive economically equivalent consideration.

		(b) cancelled or otherwise eliminated and receive no distribution under the Plan.	
Class 8	**Existing Lincoln Interests**	On the Plan Effective Date, all Existing Lincoln Interests shall be cancelled, released, discharged, and extinguished and shall be of no further force or effect, and Holders of Existing Lincoln Interests shall not receive any distribution on account of such Existing Lincoln Interests.	Impaired / Not Entitled to Vote / Presumed to Reject
Other Terms			
Macquarie Agreements		The Debtors' agreements with Macquarie Bank Limited and any of its applicable affiliates (collectively, "***Macquarie***," and such agreements, the "***Macquarie Agreements***"), including that certain Confirmation for Heat Rate Option, dated as of March 3, 2021, shall be assumed or otherwise given treatment acceptable to the Required Consenting Lenders. For the avoidance of doubt, it is the intent of the Debtors and the Consenting Lenders that Claims related to the Macquarie Agreements will be Unimpaired and such agreement will remain in place upon emergence. If any Macquarie Agreement is terminated by Macquarie, any consequent Claims will, (a) to the extent secured and subject to applicable limitations in any intercreditor agreement, receive the same treatment as Class 3 (Credit Agreement Claims) and be included therein for purposes of calculating *pro rata* shares, and (b) to the extent unsecured, receive the same treatment as Class 4 (General Unsecured Claims) and be included therein for purposes of calculating *pro rata* shares.	
PJM Litigation		The Debtors shall, on the Petition Date, initiate an adversary proceeding against PJM seeking a judgment (a) declaring that the PJM Penalty is dischargeable under sections 1141 and 363 of the Bankruptcy Code, (b) that PJM shall not take any discriminatory action against the plaintiffs on account of the Chapter 11 Cases, including, but not limited to, treating the Debtors, the Reorganized Debtors, and/or any purchaser of the Debtors' assets as (i) obligated to pay the PJM Penalty or any other PJM Claim that is dischargeable, or of which the Debtors' assets are sold free and clear, (ii) required to post collateral or make other additional assurances of creditworthiness in connection with or relating to the PJM Penalty or other dischargeable PJM Claim, or (iii) ineligible for continued or future membership based on the failure to pay the PJM Penalty or any other such dischargeable PJM Claim, and (c) declaring that the Debtors, the Reorganized Debtors, and/or any purchaser of the Debtors' assets may assume the plaintiffs' membership with PJM without satisfying the PJM Penalty, which arose from purported non-performance during Winter Storm Elliott in December 2022 (such proceeding, the "***PJM Litigation***"). The Debtors shall consult with and keep the Consenting Lenders apprised of any and all material developments in the PJM Litigation, shall promptly share with the Consenting Lenders any documents or other written communication received from PJM, and shall consult with the Consenting Lenders regarding, and use reasonable best efforts to facilitate the	

	Consenting Lenders' professionals' participation in, any settlement discussions in connection therewith, which any such settlement shall be subject to the prior written consent of the Required Consenting Lenders. Nothing herein shall be construed to obligate the Debtors or their professionals to provide the Consenting Lenders with information that is subject to attorney-client or similar privilege or that constitutes attorney work product or otherwise take any action that would result in the waiver of any applicable privilege or breach of any confidentiality obligation. The Debtors shall prosecute the PJM Litigation diligently and in good faith.
Regulatory Matters	The Debtors will use commercially reasonable efforts to, as soon as reasonably practicable, (a) subject to the prior written consent of the Required Consenting Lenders, commence any required regulatory approval processes, (b) in consultation with the Consenting Lenders' professionals, evaluate the path to approval by jurisdiction, and (c) obtain any necessary federal, state, and local regulatory approvals from the applicable regulatory bodies, including, without limitation, approvals from PJM, the Federal Energy Regulatory Commission ("***FERC***"), or any Environmental Regulator, required to obtain confirmation of the Plan or consummate the Plan and the Restructuring contemplated thereby and herein by the Plan Effective Date. For the avoidance of doubt, the Debtors shall (i) consult the Consenting Lenders with respect to any communications and/or negotiations with PJM, FERC, or any Environmental Regulator and (ii) use reasonable best efforts to facilitate the participation of the Consenting Lenders' professionals in such communications and/or negotiations. For the avoidance of doubt, the Restructuring shall be satisfactory to the Required Consenting Lenders and the Debtors from a regulatory perspective.
Subordination	Except as otherwise set forth in this Term Sheet and the RSA, the classification and treatment of Claims under the Plan shall conform to the respective contractual, legal, and equitable subordination rights applicable to such Claims, and any such rights shall be settled, compromised, and released pursuant to the Plan.
Tax Matters	The terms of the Restructuring, including whether the Restructuring is structured as a taxable transaction (in whole or in part), shall be structured to preserve or otherwise maximize favorable tax attributes (including tax basis) and minimize any and all tax obligations of the Debtors to the extent practicable and commercially reasonable as determined by the Debtors, the Consenting Sponsor, and the Required Consenting Lenders. For the avoidance of doubt, the Restructuring shall be satisfactory to the Required Consenting Lenders, the Consenting Sponsor, and the Debtors from a tax perspective.
Definitive Documents	This Term Sheet is illustrative, and any definitive or binding agreement shall be subject to the Definitive Documents, which Definitive Documents shall be consistent with the terms of this Term Sheet and the RSA. The Definitive Documents shall be in form and substance acceptable to

	the Required Consenting Lenders, except as otherwise provided in this Term Sheet and/or the RSA. Any documents contemplated by this Term Sheet, including any Definitive Documents, that remain the subject of negotiation as of the effective date of the RSA shall be subject to the rights (including any applicable consent rights) and obligations set forth in the RSA. Failure to reference such rights and obligations as it relates to any document referenced in this Term Sheet shall not impair such rights and obligations.
Retained Causes of Action	The Reorganized Debtors shall retain all rights to commence and pursue any Causes of Action for which the Required Consenting Lenders have provided their prior written consent, except any Cause of Action released or exculpated in the Plan (including, without limitation, by the Debtors).
Retention of Jurisdiction	The Plan shall provide that the Bankruptcy Court shall retain jurisdiction for usual and customary matters.
Exemption from SEC Registration	The issuance and distribution of any securities under the Plan will be exempt from registration under the Securities Act and applicable law (including, to the extent applicable, section 1145 of the Bankruptcy Code) to the fullest extent permitted by law.
Executory Contracts and Unexpired Leases	The Plan will provide that the Executory Contracts and Unexpired Leases that are not rejected as of the Plan Effective Date (either pursuant to the Plan or a separate motion) will be deemed assumed pursuant to section 365 of the Bankruptcy Code. Allowed Claims arising from the rejection of any of the Debtors' Executory Contracts and Unexpired Leases shall be classified as General Unsecured Claims. The Debtors shall obtain the prior written consent of the Administrative Agent in advance of Filing any motion seeking to assume and/or reject any Unexpired Lease or Executory Contract, with such consent not to be unreasonably withheld.
Governance / New Board	The corporate governance documents of the Reorganized Debtors and the composition of the initial board of directors of the Reorganized Debtors shall be acceptable to the Required Consenting Lenders in their sole discretion.
Fees and Expenses	The Debtors shall pay all reasonable and documented fees and out-of-pocket expenses of (a) Kirkland & Ellis LLP, as counsel to the Administrative Agent, (b) RPA Advisors, LLC, as financial advisor to the Administrative Agent, (c) Stroock & Stroock & Lavan LLP, as counsel to the Collateral Agent and Depository Agent, (d) Willkie Farr & Gallagher LLP, as counsel to the Issuing Lender, (e) Akin Gump Strauss Hauer & Feld LLP, as counsel to the Consenting Sponsor, and (e) one local counsel for the Consenting Lenders. For the avoidance of doubt, the obligation to pay such fees and expenses shall be included in the Cash Collateral Orders, and the Plan shall provide that any fees and expenses of the

	foregoing advisors that are unpaid as of the Plan Effective Date shall be paid on the Plan Effective Date.
Releases	The exculpation provisions, Debtor releases, and third-party releases to be included in the Plan will be consistent with those set forth in **Exhibit B** attached hereto in all material respects, to the fullest extent permissible under applicable law.
Indemnification Provisions in Organizational Documents	The Plan shall provide that, to the fullest extent permitted by applicable law, all indemnification provisions currently in place (whether in the bylaws, certificates of incorporation or formation, limited liability company agreements, other organizational documents, board resolutions, indemnification agreements, employment contracts, as provided in and by applicable law, or otherwise) for the current and former directors, officers, managers, employees, attorneys, accountants, investment bankers, and other professionals of the Debtors, as applicable, shall be reinstated and remain intact and irrevocable and shall survive effectiveness of the Restructuring.
Transition Services Agreement	If the Required Consenting Lenders determine, in their sole discretion, that (a) an energy manager other than Cogentrix will operate and manage the Debtors' assets upon emergence from the Chapter 11 Cases and (b) a transition period is required, on the Plan Effective Date, the Reorganized Debtors and Cogentrix shall enter into a transition services agreement which shall be effective upon the occurrence of the Plan Effective Date and contain mutually agreed-upon terms and conditions. Cogentrix shall continue to operate and manage the Debtors' assets pursuant to, and the Debtors will continue to perform under, the Shared Services Agreements in the ordinary course during the Chapter 11 Cases.
Conditions Precedent to the Plan Effective Date	The following shall be included within the conditions to the Plan Effective Date: (a) the RSA shall remain in full force and effect and all conditions shall have been satisfied or waived thereunder, and there shall be no breach that would, after the expiration of any applicable notice or cure period, give rise to a right to terminate the RSA; (b) each document or agreement constituting a Definitive Document (including, if applicable, the Transition Services Agreement) shall have been executed and/or effectuated, shall be in form and substance consistent with the RSA and this Term Sheet acceptable to the Required Consenting Lenders, subject to the consent rights set forth in the RSA and this Term Sheet, and any conditions precedent related thereto or contained therein shall have been satisfied prior to or contemporaneously with the occurrence of the Plan Effective Date or otherwise waived pursuant to the terms of the RSA and the applicable Definitive Document; (c) the Debtors shall have obtained all authorizations, consents, regulatory approvals, rulings, or documents that are necessary to implement and effectuate the Plan, and all applicable regulatory or

	government-imposed waiting periods shall have expired or been terminated; (d) the governance documents for the Reorganized Debtors shall have been executed and/or effectuated, shall be in form and substance consistent with the RSA and this Term Sheet, and any conditions precedent related thereto, shall have been satisfied prior to or contemporaneously with the occurrence of the Plan Effective Date or otherwise waived; (e) all Allowed Professional Fee Claims of Professionals approved by the Bankruptcy Court shall have been paid in full and a professional fee escrow account shall have been established and funded pending approval by the Bankruptcy Court; (f) all invoiced professional fees, expenses, and other amounts required to be paid pursuant to the RSA and this Term Sheet, in any Definitive Document, or in any order of the Bankruptcy Court (as applicable) shall have been paid in full in Cash; (g) the Bankruptcy Court shall have entered the Confirmation Order, which shall be in form and substance acceptable to the Required Consenting Lenders, and shall be a Final Order; (h) all conditions precedent to the Plan Effective Date set forth in the Plan shall have been satisfied, waived in accordance with the terms of the Plan and the RSA, or satisfied contemporaneously with the occurrence of the Plan Effective Date; (i) the Required Consenting Lenders shall have consented to the Executory Contracts to be assumed; (j) there shall be a Final Order entered by the Bankruptcy Court, or other court of competent jurisdiction, with respect to the PJM Litigation that is in form and substance acceptable to the Required Consenting Lenders; (k) the Debtors shall have obtained approval to enter into the Exit Facility, if applicable, on terms and conditions acceptable to the Required Consenting Lenders; and (l) the Debtors shall have otherwise substantially consummated the Restructuring, and all transactions contemplated by the Plan, this Term Sheet, and in the Definitive Documents, in a manner consistent in all respects with the RSA, this Term Sheet, and the Plan.
Milestones	The Debtors shall obtain the entry of the Interim Cash Collateral Order within two business days of the Petition Date. The Debtors shall implement the Restructuring in accordance with the milestones set forth in the Cash Collateral Orders (each deadline, a "***Milestone***"), unless any such Milestone is extended or waived in writing (which may be by email between applicable counsel) by (a) the Debtors and (b) the Required Consenting Lenders. The Cash Collateral Orders shall include Milestones related to, among other things:

	(a) the entry of the Final Cash Collateral Order within thirty-five days of the Petition Date; (b) favorable interim steps and ultimate disposition of the PJM Litigation; (c) the Filing of the Plan and related Disclosure Statement, and approvals related thereto; (d) if applicable, the implementation of a Sale process, and any approvals related thereto; and (e) the occurrence of the Plan Effective Date.
Modification to Treatment of Claims and Interests	Any modifications to the proposed (or actual) treatment of Claims or Interests shall require the prior written consent of the Required Consenting Lenders.
Other Customary Plan Provisions	The Plan will provide for other standard and customary provisions, including in respect of the cancellation of Claims and Interests, the vesting of assets, the compromise and settlement of Claims, the retention of jurisdiction by the Bankruptcy Court, and the resolution of Disputed Claims.

EXHIBIT A

Definitions

DEFINITIONS	
Administrative Agent	means Investec Bank plc, in its capacity as (and including any successor or assign in its capacity as) administrative agent under the Credit Agreement.
Administrative Claim	means a Claim against any of the Debtors arising on or after the Petition Date and before the Plan Effective Date for a cost or expense of administration of the Chapter 11 Cases pursuant to sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses of preserving the Estates and operating the businesses of the Debtors incurred on or after the Petition Date and through the Plan Effective Date; (b) the Allowed Professional Fee Claims; and (c) all fees and charges assessed against the Estates under chapter 123 of the Judicial Code.
Affiliate	has the meaning set forth in section 101(2) of the Bankruptcy Code as if such Entity was a debtor in a case under the Bankruptcy Code.
Allowed	means, with respect to a Claim or Interest, any Claim or Interest (or portion thereof) against any Debtor that: (a) is not Disputed within the applicable period of time, if any, fixed by the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court; (b) is allowed, compromised, settled, or otherwise resolved pursuant to the terms of the Plan, in any stipulation that is approved by a Final Order of the Bankruptcy Court, or pursuant to any contract, instrument, indenture, or other agreement entered into or assumed in connection herewith; or (c) has been allowed by a Final Order of the Bankruptcy Court. For the avoidance of doubt, any Claim or Interest (or portion thereof), that has been disallowed pursuant to a Final Order shall not be an "Allowed" Claim; *provided* that no Claim of any Entity subject to section 502(d) of the Bankruptcy Code shall be deemed Allowed unless and until such Entity pays in full the amount that it owes such Debtor or Reorganized Debtor, as applicable. Any Claim or Interest that has been or is hereafter categorized as contingent, unliquidated, or Disputed, and for which no Proof of Claim or Proof of Interest, as applicable, is or has been timely Filed, is not considered Allowed, as set forth in this Plan and the Confirmation Order. For the avoidance of doubt, a Proof of Claim or Proof of Interest Filed after the Bar Date shall not be Allowed for any purposes whatsoever absent entry of a Final Order allowing such late-Filed Claim. "***Allow***," "***Allowing***," and "***Allowance***" shall have correlative meanings.
Avoidance Action	means, collectively, any and all actual or potential avoidance, recovery, subordination, or other similar Claims and Causes of Action, or remedies that may be brought by or on behalf of the Debtors or their Estates or other authorized parties in interest under the Bankruptcy Code or applicable non-bankruptcy law, including, without limitation, Claims, Causes of Action, or remedies arising under chapter 5 of the Bankruptcy Code or under similar or related local, state, federal, or foreign statutes or common law, including fraudulent transfer laws.
Bankruptcy Rules	means the Federal Rules of Bankruptcy Procedure promulgated under section 2075 of the Judicial Code and the general, local, and chambers rules of the Bankruptcy Court, each, as amended from time to time.
Bar Date	means, collectively, the dates established by the Bankruptcy Court pursuant to an order by which Proofs of Claim and Proofs of Interest must be Filed pursuant to an order of the Bankruptcy Court establishing a bar date.

Cash	means cash in legal tender of the United States of America and cash equivalents, including bank deposits, checks, and other similar items.
Causes of Action	means, collectively, any and all claims, interests, controversies, actions, proceedings, reimbursement claims, contribution claims, recoupment rights, debts, third-party claims, indemnity claims, damages, remedies, causes of action, demands, rights, suits, obligations, liabilities, accounts, judgments, defenses, offsets, powers, privileges, licenses, franchises, Liens, guaranties, Avoidance Actions, agreements, counterclaims, and cross-claims, of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, asserted or unasserted, direct or indirect, assertable directly or derivatively, choate or inchoate, reduced to judgment or otherwise, secured or unsecured, whether arising before, on, or after the Petition Date, in tort, law, equity, or otherwise pursuant to any theory of civil law (whether local, state, or federal United States law or non-United States law). Causes of Action also include, without limitation: (a) all rights of setoff, counterclaim, or recoupment and claims under contracts or for breaches of duties imposed by law or in equity; (b) any Claim (whether under local, state, federal United States law or non-United States law) based on or relating to, or in any manner arising from, in whole or in part, tort, breach of contract, breach of fiduciary duty, fraudulent transfer or fraudulent conveyance or voidable transaction law, violation of local, state, or federal non-United States civil law or breach of any duty imposed by law or in equity, including securities laws, negligence, and gross negligence; (c) the right to object to or otherwise contest Claims or Interests; (d) claims pursuant to section 362 or chapter 5 of the Bankruptcy Code; and (e) such claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code.
Claim	has the meaning set forth in section 101(5) of the Bankruptcy Code.
Class	means a class of Claims or Interests as set forth in the Plan pursuant to section 1122(a) of the Bankruptcy Code.
Cogentrix	means, collectively, Cogentrix Energy Power Management, LLC and Lincoln Operating Services, LLC.
Collateral Agent	means First Citizens Bank & Trust Company (successor by merger to CIT Bank, N.A.), together with its affiliates, in its capacity as (and including any successor or assign in its capacity as) collateral agent under the Credit Agreement.
Confirmation	means the Bankruptcy Court's entry of the Confirmation Order on the docket of the Chapter 11 Cases.
Confirmation Date	means the date upon which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.
Confirmation Hearing	means the hearing to be held by the Bankruptcy Court to consider Confirmation of the Plan, pursuant to Bankruptcy Rule 3020(b)(2) and sections 1128 and 1129 of the Bankruptcy Code, as such hearing may be continued from time to time.
Confirmation Order	means the order entered by the Bankruptcy Court confirming the Plan.

Consenting Sponsor	means, collectively, Carlyle Power CPP II Lincoln, L.L.C., Carlyle Power Partners II-C, L.P., CPP II General Partners, L.P., and TC Group CPP II, L.L.C., in their respective capacities as direct or indirect Holders of Existing Lincoln Interests.
Consummation	means the occurrence of the Plan Effective Date.
Credit Agreement	means that certain Credit Agreement, dated as of July 5, 2017, among Lincoln Power, L.L.C., a Delaware limited liability company, as borrower, the several banks and other financial institutions or entities from time to time party thereto, Investec Bank plc, as administrative agent, and ABN AMRO Capital USA LLC, as issuing lender and revolving lender, as amended, supplemented, or modified from time to time.
Credit Agreement Documents	means, collectively, the Credit Agreement and all other agreements, documents, and instruments delivered or entered into in connection therewith, including any guarantee agreements, pledge and collateral agreements, intercreditor agreements, subordination agreements, and other security documents, as amended, supplemented, or modified from time to time.
Credit Agreement Claims	means any Claim against any Debtor derived from, based upon, or arising under the Credit Agreement Facilities or the Credit Agreement Documents.
Credit Agreement Facilities	means, collectively, the term loan facility and a revolving credit facility provided for under the Credit Agreement.
Disclosure Statement	means the disclosure statement in respect of the Plan, including all exhibits and schedules thereto, as approved or ratified by the Bankruptcy Court pursuant to sections 1125 and 1126 of the Bankruptcy Code.
Depositary Agent	means First Citizens Bank & Trust Company (successor by merger to CIT Bank, N.A.), together with its affiliates, in its capacity as (and including any successor or assign in its capacity as) collateral agent under the Credit Agreement.
Disputed	means, as to a Claim or an Interest, any Claim or Interest (or portion thereof): (a) that is not Allowed; (b) that is not disallowed by the Plan, the Bankruptcy Code, or a Final Order, as applicable; and (c) with respect to which a party in interest has Filed a Proof of Claim or Proof of Interest, as applicable, or otherwise made a written request to a Debtor for payment, without any further notice to or action, order, or approval of the Bankruptcy Court.
Entity	has the meaning set forth in section 101(15) of the Bankruptcy Code.
Environmental Law	means any applicable federal, state, foreign, or local statute, law, rule, regulation, ordinance, code, and rule of common law now or hereafter in effect and in each case as amended, and any binding judicial or administrative interpretation thereof, including any binding judicial or administrative order, consent decree or judgment, relating to the protection of the environment or human health or safety (as such relates to exposure to Hazardous Substances) or Hazardous Substances.
Environmental Regulator	means any federal, state, municipal, local, governmental agency, or regulatory body responsible for regulating (a) pollution, the protection of the environment, or the protection of human health and safety as it relates to exposure to Hazardous Substances or (b) the use, treatment, storage, transport, handling, release, or disposal of any Hazardous Substances.

Estate	means, as to each Debtor, the estate created for such Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code upon the commencement of such Debtor's Chapter 11 Case.
Exculpated Parties	means collectively, and in each case in its capacity as such: (a) the Debtors; (b) the Reorganized Debtors; and (c) with respect to each of the foregoing Entities in clauses (a) and (b), each such Entities' predecessors, successors and assigns, subsidiaries, Affiliates, managed accounts or funds, current and former officers, directors, managers, principals, shareholders, members, partners, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, fund advisors, and other professionals, and such Entities' respective heirs, executors, Estate, servants, and nominees.
Executory Contract	means a contract to which one or more of the Debtors is a party and that is subject to assumption or rejection under section 365 or 1123 of the Bankruptcy Code.
Existing Lincoln Interests	means the Interests in Cogentrix Lincoln Holdings, LLC.
File, Filed, or Filing	means file, filed, or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases.
Final Order	means, as applicable, an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction with respect to the relevant subject matter, that has not been reversed, stayed, modified, or amended, and as to which the time to appeal, seek certiorari, or move for a new trial, reargument, or rehearing has expired and as to which no appeal, petition for certiorari, or other proceeding for a new trial, reargument, or rehearing has been timely taken; or as to which, any appeal that has been taken or any petition for certiorari that has been or may be filed has been withdrawn with prejudice, resolved by the highest court to which the order or judgment could be appealed or from which certiorari could be sought, or the new trial, reargument, or rehearing has been denied, resulted in no stay pending appeal or modification of such order, or has otherwise been dismissed with prejudice; *provided* that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed with respect to such order will not preclude such order from being a Final Order.
General Unsecured Claims	means any Unsecured Claim against any of the Debtors, other than: (a) an Administrative Claim; (b) a Priority Tax Claim; (c) an Other Priority Claim; (d) a Section 510(b) Claim; or (e) an Intercompany Claim. For the avoidance of doubt, General Unsecured Claims include (i) the PJM Penalty Claims, (ii) Claims resulting from the rejection of Executory Contracts and Unexpired Leases, including, if applicable, the PJM Operating Agreements, and (iii) Unsecured Claims resulting from litigation against one or more of the Debtors.
Governmental Unit	has the meaning set forth in section 101(27) of the Bankruptcy Code.
GUC Cash Pool	means Cash in an amount to be determined for distribution to Holders of Allowed General Unsecured Claims.
Hazardous Substances	means, collectively, (a) any petroleum or petroleum products, radioactive materials, or asbestos containing materials, (b) any chemicals, materials, or substances defined as or included in the definition of "hazardous substances," "hazardous waste," "hazardous

	materials," "extremely hazardous waste," "restricted hazardous waste," "toxic substances," "toxic pollutants," "contaminants," or "pollutants," or words of similar import, under any Environmental Law, and (c) any other chemical, material, or substance, which is prohibited, limited, or regulated by any Environmental Law.
Holder	means an Entity holding a Claim against or an Interest in any Debtor, as applicable.
Impaired	means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.
Intercompany Claim	means any Claim held by a Debtor or Affiliate of a Debtor against another Debtor or Affiliate of a Debtor.
Intercompany Interests	means any Interest in one Debtor held by another Debtor.
Interests	means, collectively, any equity security (as defined in section 101(16) of the Bankruptcy Code) in any Debtor and any shares (or any class thereof), common stock, preferred stock, limited liability company interests, and any other equity, ownership, or profits interests of any Debtor and American depositary shares, American depositary receipts, options, warrants, rights, restricted stock awards, performance share awards, performance share units, stock appreciation rights, phantom stock rights, stock settled restricted stock units, cash-settled restricted stock units, or other securities or agreements to acquire or subscribe for, or which are convertible into the shares (or any class thereof) of, common stock, preferred stock, limited liability company interests, or other equity, ownership, or profits interests of any Debtor (in each case whether or not arising under or in connection with any employment agreement, separation agreement, or employee incentive plan or program of a Debtor as of the Petition Date and whether or not certificated, transferable, preferred, common, voting, or denominated "stock" or similar security).
Issuing Lender	means ABN AMRO Capital USA LLC or any of its affiliates, in each case in its capacity as (and including any successor or assign in its capacity as) issuer under the Credit Agreement.
Liens	has the meaning set forth in section 101(37) of the Bankruptcy Code.
Other Priority Claim	means any Claim, other than an Administrative Claim or a Priority Tax Claim, entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.
Other Secured Claim	means any Secured Claim other than the Credit Agreement Claims.
Plan Supplement	means a supplement or supplements to the Plan containing certain documents and forms of documents, agreements, schedules, and exhibits relevant to the implementation of the Plan.
Petition Date	means the first date any of the Debtors commences a Chapter 11 Case.
PJM	means, collectively, PJM Interconnection, L.L.C. and PJM Settlement, Inc.
PJM Operating Agreements	means the Amended and Restated Operating Agreement between PJM and the applicable Debtors.

PJM Penalty	means any "Performance Assessment Interval" or "Capacity Performance" penalty charge, or any other penalty assessed by PJM pursuant to the PJM Operating Agreements, which has accrued prior to the Confirmation Date.
PJM Penalty Claims	means any and all Claims derived from, based upon, or arising under a PJM Penalty.
Priority Tax Claim	means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.
Professional	means an Entity: (a) employed in the Chapter 11 Cases pursuant to a Bankruptcy Court order in accordance with sections 327, 328, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to or as of the Confirmation Date, pursuant to sections 327, 328, 329, 330, or 331 of the Bankruptcy Code; or (b) awarded compensation and reimbursement by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.
Professional Fee Claim	means any Claim by a Professional for compensation for services rendered or reimbursement of expenses incurred by such Professionals through and including the Confirmation Date to the extent such fees and expenses have not been paid pursuant to an order of the Bankruptcy Court. To the extent the Bankruptcy Court denies or reduces by a Final Order any amount of a Professional's requested fees and expenses, then the amount by which such fees or expenses are reduced or denied shall reduce the applicable Professional Fee Claim.
Proof of Claim	means a proof of Claim Filed against any of the Debtors in the Chapter 11 Cases.
Proof of Interest	means a proof of Interest in any of the Debtors Filed in the Chapter 11 Cases.
Released Parties	means, collectively, and in each case in its capacity as such: (a) the Debtors; (b) the Reorganized Debtors; (c) the Consenting Lenders; (d) the Consenting Sponsor; and (e) with respect to each of the foregoing entities in clauses (a) through (e), each such Entities' predecessors, successors and assigns, subsidiaries, Affiliates, managed accounts or funds, current and former officers, directors, managers, principals, shareholders, members, partners, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, fund advisors, and other professionals, and such Entities' respective heirs, executors, Estate, servants, and nominees.
Releasing Parties	means, collectively, and in each case in its capacity as such: (a) the Debtors; (b) the Reorganized Debtors; (c) the Consenting Lenders; (d) the Consenting Sponsor; (e) each Holder of a Claim or Interest who votes to accept the Plan; (f) each Holder of a Claim or Interest who is Unimpaired; (g) each Holder of a Claim or Interest who abstains from voting but does not opt out of the releases provided in the Plan; (h) each Holder of a Claim or Interest who votes to reject the Plan (or is deemed to reject the Plan) but does not opt out of the releases provided in the Plan; and (i) with respect to each of the foregoing Entities in clauses (a) through (h), each such Entities' predecessors, successors and assigns, subsidiaries, Affiliates, managed accounts or funds, current and former officers, directors, managers, principals, shareholders, members, partners, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, fund advisors, and other professionals, and such Entities' respective heirs, executors, estates, servants, and nominees.

Reorganized Debtors	means the Debtors, as reorganized pursuant to and under the Plan, on and after the Plan Effective Date, or any successors or assigns thereto.
Required Consenting Lenders	means, as of the relevant date, Consenting Lenders holding at least 50.01% of the aggregate outstanding principal amount of the Credit Agreement Claims that are held by the Consenting Lenders.
Section 510(b) Claim	means any Claim subject to subordination under section 510(b) of the Bankruptcy Code.
Secured Claim	means a Claim that is: (a) secured by a Lien on property in which any of the Debtors has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor's interest in the Debtors' interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code; or (b) Allowed pursuant to the Plan, or separate order of the Bankruptcy Court, as a secured claim.
Securities Act	means the Securities Act of 1933, as amended, 15 U.S.C. §§ 77a–77aa, together with the rules and regulations promulgated thereunder, as amended from time to time, or any similar federal, state, or local law.
Shared Services Agreements	means, collectively, (a) that certain Operation and Maintenance Agreements, dated January 15, 2018, between Lincoln Operating Services, LLC and Elgin Energy Center, LLC, (b) that certain Operation and Maintenance Agreement, dated January 15, 2018, between Lincoln Operating Services, LLC and Rocky Road Power, LLC, (c) that certain Management Services Agreement, dated July 5, 2017, between Cogentrix Energy Power Management, LLC and Cogentrix Lincoln Holdings, LLC, (d) that certain Management Services Agreement, dated July 5, 2017, between Cogentrix Energy Power Management, LLC and Elgin Energy Center, LLC, (e) that certain Management Services Agreement, dated July 5, 2017, between Cogentrix Energy Power Management, LLC and Rocky Road Power, LLC, (f) that certain Energy Management Services Agreement, dated August 31, 2017, between Cogentrix Energy Power Management, LLC and Elgin Energy Center, LLC, and (g) that certain Energy Management Services Agreement, dated August 31, 2017, between Cogentrix Energy Power Management, LLC, and Rocky Road Power, LLC.
Unexpired Lease	means a lease of nonresidential real property to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.
Unimpaired	means with respect to a Class of Claims or Interests, a Class of Claims or Interests that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.
Unsecured Claim	means any Claim that is not a Secured Claim.

EXHIBIT B

Release and Exculpation Provisions to be Included in the Plan

Releases by the Debtors (the "*Debtor Release*")

Notwithstanding anything contained in the Plan to the contrary, pursuant to section 1123(b) of the Bankruptcy Code and Bankruptcy Rule 9019, for good and valuable consideration, as of the Plan Effective Date, each Released Party is deemed released and discharged by the Debtors, the Reorganized Debtors, and their Estates from any and all Claims and Causes of Action, whether known or unknown, including any derivative claims, asserted by or on behalf of the Debtors, that the Debtors, the Reorganized Debtors, or their Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership or operation thereof), Restructuring (including, without limitation, the Debtors' in- or out-of-court restructuring efforts), any Avoidance Actions (but excluding Avoidance Actions brought as counterclaims or defenses to Claims asserted against the Debtors), the formulation, preparation, dissemination, negotiation, or Filing of the RSA, or any transaction contemplated by the Restructuring, or any contract, instrument, release, or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the RSA, the Disclosure Statement, the Plan, the Plan Supplement, the Exit Facility (if applicable), the Takeback Debt (if applicable), the Chapter 11 Cases, the Filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, or the distribution of property under the Plan, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Plan Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above (a) shall only be applicable to the maximum extent permitted by law and (b) shall not be construed as (i) releasing any Released Party from Claims or Causes of Action arising from an act or omission that is judicially determined by a Final Order by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, or (ii) releasing any post-Plan Effective Date obligations of any party or Entity under the Plan, the Confirmation Order, any transaction contemplated by the Restructuring, any Definitive Document, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Debtor Release, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Bankruptcy Court's finding that the Debtor Release is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the Claims released by the Debtor Release; (3) in the best interests of the Debtors and all Holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Debtors, the Reorganized Debtors, or the Debtors' Estates asserting any Claim or Cause of Action released pursuant to the Debtor Release.

Releases by Holders of Claims and Interests

Notwithstanding anything contained in the Plan to the contrary, as of the Plan Effective Date, each Releasing Party is deemed to have released and discharged each Debtor, Reorganized Debtor, and other Released Party from any and all Claims and Causes of Action, whether known or unknown, including any

derivative claims, asserted by or on behalf of the Debtors, that the Debtors, the Reorganized Debtors, or their Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership or operation thereof), Restructuring (including, without limitation, the Debtors' in- or out-of-court restructuring efforts), any Avoidance Actions (but excluding Avoidance Actions brought as counterclaims or defenses to Claims asserted against the Debtors), the formulation, preparation, dissemination, negotiation, or Filing of the RSA, or any transaction contemplated by the Restructuring, or any contract, instrument, release, or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the RSA, the Disclosure Statement, the Plan, the Plan Supplement, the Exit Facility (f applicable), the Takeback Debt (if applicable), the Chapter 11 Cases, the Filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, or the distribution of property under the Plan, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Plan Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above (a) shall only be applicable to the maximum extent permitted by law and (b) shall not be construed as (i) releasing any Released Party from Claims or Causes of Action arising from an act or omission that is judicially determined by a Final Order by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, or (ii) releasing any post-Plan Effective Date obligations of any party or Entity under the Plan, the Confirmation Order, any transaction contemplated by the Restructuring, any Definitive Document, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of this third-party release, which includes by reference each of the related provisions and definitions contained herein, and, further, shall constitute the Bankruptcy Court's finding that this third-party release is: (1) consensual; (2) essential to the confirmation of the Plan; (3) given in exchange for the good and valuable consideration provided by the Released Parties; (4) a good-faith settlement and compromise of the Claims released by the third-party release; (5) in the best interests of the Debtors and their Estates; (6) fair, equitable, and reasonable; (7) given and made after due notice and opportunity for hearing; and (8) a bar to any of the Releasing Parties asserting any claim or Cause of Action released pursuant to this third party release.

Exculpation

Except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur liability for, and each Exculpated Party is hereby released and exculpated from, any Cause of Action for any claim related to any act or omission on or after the Petition Date and prior to the Plan Effective Date in connection with, relating to, or arising out of, the Chapter 11 Cases, including, without limitation, the formulation, preparation, dissemination, negotiation, or Filing of the RSA and related prepetition transactions, the Disclosure Statement, the Plan, the Plan Supplement, or any transaction contemplated by the Restructuring, or any contract, instrument, release, or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement

contemplated by the Plan or the reliance by any Exculpated Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Disclosure Statement, the Plan, the Plan Supplement, the Restructuring Support Agreement, the Exit Facility (if applicable), the Takeback Debt (if applicable), the Filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance of securities pursuant to the Plan, or the distribution of property under the Plan; *provided* that, in all respects, such Exculpated Parties shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities. The Exculpated Parties have, and upon completion of the Plan, shall be deemed to have, participated in good faith and in compliance with all applicable laws with regard to the solicitation and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan. Notwithstanding anything to the contrary in the foregoing, the exculpations set forth above (a) shall only be applicable to the maximum extent permitted by law and (b) shall not be construed as (ii) exculpating any Exculpated Party from Claims or Causes of Action arising from an act or omission that is judicially determined by a Final Order to have constituted actual fraud, willful misconduct, or gross negligence, or (ii) exculpating any post-Plan Effective Date obligations of any party or Entity under the Plan, any Restructuring Transaction, any Definitive Document, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

EXHIBIT C

Joinder Agreement

The undersigned ("***Joinder Party***") hereby acknowledges that it has read and understands the Restructuring Support Agreement, dated as of March 30, 2023, by and among the Company Parties and the Consenting Lenders (as amended, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof, the "***Agreement***"),[1] and agrees to be bound by the terms and conditions thereof to the extent that the other Parties are thereby bound, and shall be deemed a "Consenting Lender" under the terms of the Agreement.

The Joinder Party specifically agrees to be bound by the terms and conditions of the Agreement and makes all representations and warranties contained therein as of the date this Joinder Agreement is executed and any further date specified in the Agreement.

Date Executed:

_____

Name:
Title:
Address:
E-mail address(es):

Aggregate Credit Agreement Claims Beneficially Owned or Managed on Account of: $[●]

[1] Capitalized terms used but not otherwise defined herein shall having the meaning ascribed to such terms in the Agreement.

EXHIBIT D

Provision for Transfer Agreement

The undersigned ("***Transferee***") hereby acknowledges that it has read and understands the Restructuring Support Agreement, dated as of March 30, 2023, by and among the Company Parties and the Consenting Lenders (as amended, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof, the "***Agreement***"),[1] including the transferor to the Transferee of any Claims (each such transferor, a "***Transferor***"), and agrees to be bound by the terms and conditions thereof to the extent that the Transferor was thereby bound, and shall be deemed a "Consenting Lender" under the terms of the Agreement.

The Transferee specifically agrees to be bound by the terms and conditions of the Agreement and makes all representations and warranties contained therein as of the date of the Transfer, including the agreement to be bound by the vote of the Transferor if such vote was cast before the effectiveness of the Transfer discussed herein.

Date Executed:

_____

Name:
Title:
Address:
E-mail address(es):

Aggregate Credit Agreement Claims Beneficially Owned or Managed on Account of: $[●]

[1] Capitalized terms used but not otherwise defined herein shall having the meaning ascribed to such terms in the Agreement.