

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

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In re:	:	Chapter 11
	:	
LA PALOMA GENERATING COMPANY,	:	Case No. 16-12700 (CSS)
LLC, <i>et al.</i> , <sup>1</sup>	:	
	:	Jointly Administered
	:	
Debtors.	:	
	:	

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**JOINT CHAPTER 11 PLAN FOR LA PALOMA  
GENERATING COMPANY, LLC, ET AL.**

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are La Paloma Generating Company, LLC (9359), La Paloma Acquisition Co, LLC (2500), and CEP La Paloma Operating Company, LLC (2503). The address of the Debtors’ corporate headquarters is 1700 Pennsylvania Avenue, NW, Suite 800, Washington, DC 20006.

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## INTRODUCTION

La Paloma Generating Company, LLC, La Paloma Acquisition Co, LLC, and CEP La Paloma Operating Company, LLC, the Debtors in the above-captioned cases, propose the following joint chapter 11 plan pursuant to section 1121(a) of the Bankruptcy Code. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in Article 1.A hereof.

**Under section 1125(b) of the Bankruptcy Code, a vote to accept or reject the Plan cannot be solicited from a holder of a Claim or Interest until a disclosure statement has been approved by the Bankruptcy Court and distributed to holders of Claims and Interests. Holders of Claims and Interests should refer to the Disclosure Statement for a discussion of the Debtors' history, business, assets, financial information and events during the Chapter 11 Cases, as well as a summary and description of the Plan. Before voting to accept or reject the Plan, holders of Claims entitled to vote on the Plan are encouraged to read carefully the Plan, the Disclosure Statement, and their respective exhibits and schedules in their entirety. These are the only materials approved for use in soliciting acceptances or rejections of the Plan.**

## ARTICLE I.

### DEFINITIONS AND INTERPRETATION

#### A. Definitions.

As used in this Plan, except as expressly provided otherwise or unless the context requires otherwise, capitalized terms have the meanings set forth in this Article I (such meanings applicable to the singular and plural) and any term used in the Plan that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules:

**1.1** “*Accrued Professional Compensation*” means, at any given moment, all accrued, contingent or unpaid fees (including success fees) or expenses of Professionals incurred on or before the Effective Date that are awardable or allowable under sections 328, 330(a) or 331 of the Bankruptcy Code in the Chapter 11 Cases, or that are awardable or allowable under section 503 of the Bankruptcy Code, that have not been denied by a Final Order, all to the extent that any such fees and expenses have not been previously paid. To the extent that the Bankruptcy Court denies or reduces by a Final Order any amount of a Professional’s fees or expenses, then those denied or reduced amounts shall no longer constitute Accrued Professional Compensation. For the avoidance of doubt, Accrued Professional Compensation shall not include any accrued, contingent or unpaid fees for services and obligations for reimbursement of expenses rendered or incurred before the Effective Date by any Entity retained pursuant to the *Order Authorizing the Employment and Compensation of Certain Professionals Utilized in the Ordinary Course of Business, Nunc Pro Tunc to the Petition Date* [D.I. 163].

**1.2** “*Acquired Assets*” means the assets that shall be acquired by the Purchaser pursuant to the APA, which shall include all of the Debtors’ assets other than the Liquidating Trust Assets.

**1.3** “*Administrative Claim*” means a Claim for a cost or expense of administration of the Chapter 11 Cases under sections 503(b) (including Claims arising under section 503(b)(9)), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) any actual and necessary cost and expense of preserving the Estates or operating the Debtors’ business incurred after the Petition Date and through the Effective Date; (b) any Allowed compensation for services rendered, and Allowed reimbursement of expenses incurred, by a Professional or otherwise Allowed pursuant to section 503(b) of the Bankruptcy Code; and (c) all U.S. Trustee Fees.

**1.4** “*Administrative Claims Bar Date*” means the first Business Day that is 30 days after the Effective Date, except that Administrative Claims pursuant to section 503(b)(9) of the Bankruptcy Code shall be filed before the deadline set forth in the Bar Date Order.

**1.5** “*Allowed*” means, with respect to Claims against any Debtor, any Claim: (a) that has been listed by such Debtor in the Schedules as liquidated in amount and not listed as disputed or contingent and for which no proof of claim has been filed; (b) for which a valid proof of claim has been filed and (i) as to which the deadline for objecting or seeking estimation has passed, and no objection or request for estimation has been filed or (ii) as to which any objection or request for estimation that has been filed has been settled, withdrawn, or denied by a Final Order; or (c) that is allowed pursuant to (i) a Final Order, (ii) an agreement by the holder of such Claim and the Debtors or the Liquidating Trust, as applicable, or (iii) the Plan. If a Claim is “Allowed” only in part, references to “Allowed Claims” include and are limited to the portion of such Claim that is Allowed.

**1.6** “*APA*” means the asset purchase agreement between the Debtors and the Purchaser providing for, among other things, the transfer to the Purchaser of the Acquired Assets.

**1.7** “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time.

**1.8** “*Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware, or any other court having jurisdiction over the Chapter 11 Cases or any proceeding within, or appeal of an order entered in, the Chapter 11 Cases.

**1.9** “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure, or the local rules of the Bankruptcy Court as applicable to the Chapter 11 Cases.

**1.10** “*Bar Date Order*” means the *Order Establishing Deadlines and Procedures for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof* [D.I. 250].

**1.11** “*Books and Records*” means any of the Debtors’ books and records (or copies thereof), including all information and data on computers owned or leased by the Debtors, and all rights of access to such data of the Debtors.

**1.12** “*Business Day*” means any day other than a Saturday, Sunday, or a “legal holiday,” as defined in Bankruptcy Rule 9006(a).

**1.13** “*CARB*” means California Air Resources Board.

**1.14** “*CARB Obligations*” means any obligation to surrender compliance instruments or any other obligation arising under the California Global Warming Solutions Act of 2006, Assembly Bill (“*AB*”) 32, inclusive of any regulatory programs adopted and implemented pursuant to that authority, including (a) the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation (17 Cal. Code of Regulations (“*CCR*”) §§ 95801 *et seq.*), (b) the AB 32 Cost of Implementation Fee Regulation (17 CCR §§ 95201 *et seq.*), and (c) the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (17 CCR §§ 95100 *et seq.*).

**1.15** “*Cash*” means the legal currency of the United States of America or the equivalents thereof.

**1.16** “*Cause of Action*” means any action, claim, cause of action, controversy, demand, right, action, lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, offset, power, privilege, license, and franchise of any kind or character whatsoever, whether known or unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract or in tort, in law, or in equity or pursuant to any other theory of law, including claims, causes of action, objections, rights and remedies arising under chapter 5 of the Bankruptcy Code.

**1.17** “*CEP*” means CEP La Paloma Operating Company, LLC, one of the Debtors.

**1.18** “*CEP General Unsecured Claim*” means any General Unsecured Claim against CEP.

**1.19** “*Chapter 11 Cases*” means the chapter 11 cases commenced by the Debtors on the Petition Date, which are jointly administered under the caption *In re La Paloma Generation Company, LLC, et al.*, Case No. 16-12700 (CSS), and currently pending before the Bankruptcy Court.

**1.20** “*Claim*” means any “claim” against a Debtor as such term is defined in section 101(5) of the Bankruptcy Code.

**1.21** “*Class*” means each category of Claims or Interests established under Article IV of the Plan pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code.

**1.22** “*Collateral*” means all assets of the Debtors upon which a Lien has been granted or was intended to be granted to the Collateral Agent for the benefit of the holders of First Lien Claims pursuant to the First Lien Loan Documents, whether or not such Lien is perfected or subject to avoidance.

**1.23** “Collateral Agent” means The Bank of New York Mellon, in its capacity as collateral agent under each of: (a) the First Lien Working Capital Agreement; (b) the First Lien Term Loan Agreement; and (c) the Second Lien Term Loan Agreement.

**1.24** ~~1.23~~ “Committee” means the official committee of unsecured creditors appointed in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code.

**1.25** ~~1.24~~ “Committee Fees and Expenses” means the aggregate Allowed amount of the Committee’s Professionals’ fees and expenses incurred from September 5, 2017 through the Effective Date, plus the aggregate Allowed amount of the Committee’s Professionals’ fees and expenses after the Effective Date solely with respect to their final fee applications.

~~1.25 “Collateral Agent” means The Bank of New York Mellon, in its capacity as collateral agent under each of: (a) the First Lien Working Capital Agreement; (b) the First Lien Term Loan Agreement; and (c) the Second Lien Term Loan Agreement.~~

**1.26** “Confirmation Date” means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases.

**1.27** “Confirmation Hearing” means the hearing to be held before the Bankruptcy Court to confirm the Plan, as such hearing may be adjourned or continued from time to time.

**1.28** “Confirmation Order” means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code and, among other things, authorizing consummation of the Sale.

**1.29** “Consenting Managers” means Blocker (La Paloma), LLC and RC La Paloma Management, LLC, and (except for the purpose of the releases in Section 11.4(b) or the exculpation in Section 11.5 of the Plan) each of their respective managers, managing members, officers, directors, authorized persons, employees, advisors, principals, attorneys, professionals, accountants, investment bankers, consultants, agents, and other representatives.

**1.30** “Credit Bid Amount” means \$150,000,000 of First Lien Claims.

**1.31** “Debtor(s)” means, individually or collectively, La Paloma, LPAC and CEP.

**1.32** “Disbursing Agent” means, for purposes of making distributions under the Plan, the Debtors with respect to the distributions on the Effective Date and the Liquidating Trustee with respect to subsequent distributions.

**1.33** “Disclosure Statement” means the disclosure statement that relates to the Plan (including all exhibits and schedules annexed thereto or referred to therein), as may be amended, modified or supplemented from time to time, and as approved by order of the Bankruptcy Court.

**1.34** “Disclosure Statement Order” means that certain Order (a) *Approving the Disclosure Statement*; (b) *Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, including (i) Approving the Form and Manner of Solicitation Packages, (ii) Approving the Form and Notice of the Sale and Confirmation Hearing,*



(iii) *Establishing a Voting Record Date and Approving Procedures for Distribution of Solicitation Packages*, (iv) *Approving Forms of Ballots*, (v) *Establishing Deadline for Receipt of Ballots and* (vi) *Approving Procedures for Vote Tabulations*; (c) *Establishing Deadline and Procedures for Filing Objections to the Sale and Confirmation of the Plan*; (d) *Approving Procedures ad Form of Notice for the Assumption and Assignment of Executory Contracts and Unexpired Leases and* (e) *Granting Related Relief* [D.I. 666].

**1.35** “*Disputed Claim*” means any Claim that is not an Allowed Claim and has not yet been disallowed by Final Order. For the avoidance of doubt, any Claim, in whole or in part, that is subject to a pending objection or request for estimation shall be considered a Disputed Claim until that objection or request for estimation has been resolved by a Final Order.

**1.36** “*Distribution Date*” means any date on which distributions are made under the Plan. The initial Distribution Date will be the Effective Date. Subsequent Distribution Dates will be determined by the Liquidating Trustee in light of, inter alia, liquidation of the Liquidating Trust Assets, resolutions of Disputed Claims and administrative costs of making a distribution.

**1.37** “*Distribution Record Date*” means, with respect to all Classes, the Confirmation Date or such other date as shall be established by the Bankruptcy Court in (a) the Confirmation Order or (b) upon request of the Debtors, a separate order of the Bankruptcy Court.

**1.38** “*Effective Date*” means the first Business Day after the conditions to the effectiveness of the Plan in Section 10.2 have been satisfied or waived (in accordance with Section 10.3), and on which no stay of the Confirmation Order is in effect.

**1.39** “*Encumbered Cash*” means all First Lien Encumbered Cash and Second Lien Encumbered Cash.

**1.40** “*Entity*” means “entity” as defined in section 101(15) of the Bankruptcy Code.

**1.41** “*Estate*” means each estate created in the Chapter 11 Cases pursuant to section 541 of the Bankruptcy Code.

**1.42** “*Exculpated Claim*” means any claim related to any act or omission in connection with, relating to or arising out of the Debtors’ restructuring efforts, the Chapter 11 Cases, the Sale, formulation, preparation, dissemination, negotiation or filing of the Disclosure Statement or the Plan or any contract, instrument, release or other agreement or document created or entered into in connection with the Disclosure Statement or the Plan, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, or the distribution of property under the Plan or any other related agreement. For the avoidance of doubt, no Cause of Action, obligation or liability expressly preserved by the Plan or the Plan Supplement constitutes an Exculpated Claim.

**1.43** “*Exculpated Parties*” means each of: (a) the Debtors; (b) the managers, authorized persons, officers and members of the operating committee of the Debtors, including the Consenting Managers, serving at any time on or after the Petition Date; ~~and (c) LNV and its Affiliates and their respective professionals; and (d)~~ the Debtors’ Professionals.

**1.44** “*Facility*” means the Debtors’ natural gas-fired, combined cycle electric generating facility located on an approximately 400-acre site in McKittrick, California.

**1.45** “*Fee Reduction*” means an amount equal to the difference between (a) the aggregate amount of professional fees and expenses being sought in the *Sixth Monthly and Final Fee Application of O’Melveny and Myers LLP for Allowance of Compensation for Services Rendered and for Reimbursement of Expenses as Counsel to the Debtors for the Period from December 6, 2016 through June 30, 2017* [D.I. 548] and (b) the aggregate Allowed amount of such fees and expenses.

**1.46** “*Final Order*” means an order or judgment entered by the Bankruptcy Court or other court of competent jurisdiction: (a) that has not been reversed, stayed, modified, amended, or revoked, and as to which (i) any right to appeal or seek leave to appeal, certiorari, review, reargument, stay, or rehearing has been waived or (ii) the time to appeal or seek leave to appeal, certiorari, review, reargument, stay, or rehearing has expired and no appeal, motion for leave to appeal, or petition for certiorari, review, reargument, stay, or rehearing is pending; or (b) as to which an appeal has been taken, a motion for leave to appeal, or petition for certiorari, review, reargument, stay, or rehearing has been filed and (i) such appeal, motion for leave to appeal or petition for certiorari, review, reargument, stay, or rehearing has been resolved by the highest court to which the order or judgment was appealed or from which leave to appeal, certiorari, review, reargument, stay, or rehearing was sought and (ii) the time to appeal (in the event leave is granted), appeal further or seek leave to appeal, certiorari, further review, reargument, stay, or rehearing has expired and no such appeal, motion for leave to appeal, or petition for certiorari, further review, reargument, stay, or rehearing is pending; *provided, however*, that no order or judgment shall fail to be a “Final Order” solely because of the possibility that a motion pursuant to sections 502(j) or 1144 of the Bankruptcy Code, Rules 59 or 60 of the Federal Rules of Civil Procedure, or Bankruptcy Rules 9023 and 9024 may be filed with respect to such order or judgment.

**1.47** “*First Lien Administrative Agent*” means Bank of America, N.A., in its capacity as administrative agent under the First Lien Term Loan Agreement and First Lien Working Capital Agreement.

**1.48** “*First Lien Claims*” means any and all Claims arising under, derived from, or based on (a) the First Lien Term Loan Agreement, (b) the First Lien Working Capital Agreement or (c) the Interest Rate Protection Agreements, which shall be deemed Allowed in the aggregate amount of \$333,085,207 or such other amount as determined by the Bankruptcy Court in the Confirmation Order. The First Lien Claims shall be fully Allowed upon the entry of the Confirmation Order.

**1.49** “*First Lien Encumbered Cash*” means Cash in the amount of \$27,271,299.91, which represents the aggregate Cash that was in all of the Debtors’ bank accounts at the Collateral Agent, excluding the Second-Lien Debt Service Reserve Account (as defined in the Intercreditor Agreement), as of the Petition Date and is subject to a valid, perfected and enforceable Lien by holders of First Lien Claims (or the Collateral Agent on their behalf).

**1.50** “*First Lien Loan Documents*” means the First Lien Term Loan Agreement, First Lien Working Capital Agreement, all collateral documents executed in connection therewith, including all security agreements, deeds of trust, fixture filings and filings under the uniform commercial code and all agreements, instruments (including notes) and documents related thereto.

**1.51** “*First Lien Share*” means an amount of value equal to the Unencumbered Amount multiplied by a fraction, the numerator of which is equal to the aggregate amount of the First Lien Claims, less the Credit Bid Amount, less the amount of the First Lien Encumbered Cash received by the holders of the First Lien Claims pursuant to Section 4.3 of the Plan (the amount of such numerator, the “*First Lien Deficiency Amount*”), and the denominator of which is equal to the sum of (a) the First Lien Deficiency Amount, (b) the aggregate amount of the Second Lien Claims, less the amount of the Second Lien Encumbered Cash, (c) \$70.0 million on account of a potential General Unsecured Claim for CARB Obligations and (d) \$5.0 million; *provided, however,* that if some or all of the potential General Unsecured Claim for CARB Obligations is not actually Allowed, then the portion not Allowed shall be excluded from the denominator and the First Lien Share shall be adjusted accordingly; *provided, further,* that any increase in the First Lien Share as a result of such adjustment shall not exceed \$4.0 million.

**1.52** “*First Lien Term Loan Agreement*” means that certain First-Lien Term Loan Credit Agreement, dated February 20, 2014, by and among La Paloma, the First Lien Administrative Agent, and the lenders party thereto, together with all other agreements entered into and documents delivered in connection therewith, as any of the foregoing may be amended, modified or supplemented from time to time.

**1.53** “*First Lien Working Capital Agreement*” means that certain First-Lien Working Capital Agreement, dated February 20, 2014, by and among La Paloma, the First Lien Administrative Agent, and the lenders party thereto, together with all other agreements entered into and documents delivered in connection therewith, as any of the foregoing may have been amended, modified or supplemented from time to time.

**1.54** “*General Unsecured Claim*” means any Claim against any of the Debtors, unless such Claim is (a) an Administrative Claim, (b) a Priority Tax Claim, (c) a Priority Non-Tax Claim, (d) an Other Secured Claim, (e) a First Lien Claim or (f) a Second Lien Claim. For the avoidance of doubt, General Unsecured Claims shall include LPAC Credit Agreement Claims.

**1.55** “*Impaired*” means, with respect to a Class, a Class that is impaired within the meaning of section 1124 of the Bankruptcy Code.

**1.56** “*Intercreditor Agreement*” means that certain Collateral Agency and Intercreditor Agreement, dated August 16, 2005, by and among La Paloma, LPAC, the Collateral Agent, and certain other parties thereto, as amended, modified or supplemented from time to time.

**1.57** “*Interest*” means any “equity security” as defined in section 101(16) of the Bankruptcy Code, share of common stock, preferred stock or other instrument evidencing an ownership interest in any of the Debtors, whether or not transferable, and any option, warrant or other right, contractual or otherwise, to acquire any such interest in a Debtor that existed before

the Effective Date, and any Claim or Cause of Action related to the purchase of interests subject to subordination pursuant to section 510(b) of the Bankruptcy Code.

**1.58** “*Interest Rate Protection Agreements*” means those certain interest rate swap agreements between La Paloma and each of Bank of America, N.A. and Macquarie Bank Limited.

**1.59** “*Lien*” has the meaning set forth in section 101(37) of the Bankruptcy Code.

**1.60** “*Liquidating Trust*” means the liquidating trust to be established on the Effective Date Pursuant to Article VI of the Plan in accordance with the Liquidating Trust Agreement.

**1.61** “*Liquidating Trust Agreement*” means that certain trust agreement by and between the Debtors and the Liquidating Trustee, substantially in the form contained in the Plan Supplement, which, among other things: (a) establishes and governs the Liquidating Trust; (b) describes the powers, duties, and responsibilities of the Liquidating Trustee; and (c) provides for the liquidation of the Liquidating Trust Assets and the distribution of any proceeds thereof.

**1.62** “*Liquidating Trust Assets*” means the assets to be transferred to the Liquidating Trust on the Effective Date in accordance with the Plan, which shall be comprised of: (a) all Remaining Cash; ~~and~~ (b) the Tax Refund Claim; and (c) all of the Debtors’ insurance rights (other than insurance proceeds to the extent received or receivable in respect of the Transferred Assets or the Assumed Liabilities, as defined in section 2.1(j) of the APA).

**1.63** “*Liquidating Trust Expenses*” means all actual and necessary costs and expenses incurred on and after the Effective Date in connection with the administration of the Liquidating Trust, including the Liquidating Trust’s costs, expenses and legal fees incurred related to: (a) filing and prosecuting objections to Claims and resolving Disputed Claims; (b) effectuating distributions to holders of Allowed Claims; (c) litigating, settling, negotiating, pursuing or otherwise associated with the Tax Refund Claim, including attorneys’ fees, accounting fees, expert witness fees, and all costs relating to obtaining and distributing recoveries from the Tax Refund Claim; (d) performing the duties set forth in Section 6.3 of the Plan and the Liquidating Trust Agreement; (e) all U.S. Trustee Fees on and after the Effective Date; and (f) otherwise implementing the Plan and closing the Chapter 11 Cases.

**1.64** “*Liquidating Trust Interests*” means interests in the Liquidating Trust distributed to the holders of the Allowed Second Lien Claims and Allowed General Unsecured Claims that entitle such holders to share in distributions of the Liquidating Trust Assets in accordance with Section 6.4 of the Plan.

**1.65** “*Liquidating Trustee*” means the Person selected jointly by the Debtors and the holders of the First Lien Claims to serve as trustee of the Liquidating Trust, pursuant to the terms of the Liquidating Trust Agreement, or any successor.

**1.66** “*La Paloma*” means La Paloma Generating Company, LLC, one of the Debtors.

**1.67** “*La Paloma General Unsecured Claim*” means any General Unsecured Claim against La Paloma.

**1.68** “LNV” means LNV Corporation, in its capacity as a holder of First Lien Claims.

**1.69** “LPAC” means La Paloma Acquisition Co, LLC, one of the Debtors.

**1.70** “LPAC Credit Agreement” means that certain Credit Agreement, dated August 25, 2011, by and among LPAC, the lenders party thereto, and Nexbank, SSB as collateral agent, together with all other agreements entered into and documents delivered in connection therewith, as any of the foregoing may have been amended, modified or supplemented from time to time.

**1.71** “LPAC Credit Agreement Claims” means any and all Claims arising under, derived from, or based on the LPAC Credit Agreement, which shall be deemed Allowed in the aggregate amount of \$89,257,827 or such other amount as determined by the Bankruptcy Court in the Confirmation Order.

**1.72** “LPAC General Unsecured Claims” means all General Unsecured Claims against LPAC, including LPAC Credit Agreement Claims.

**1.73** “Other Secured Claim” means any Secured Claim against a Debtor other than: (a) a First Lien Claim; (b) a Second Lien Claim; or (c) an LPAC Credit Agreement Claim. For the avoidance of doubt, Other Secured Claims include the SunTrust L/C Agreement Claims.

**1.74** “Person” means “person,” as defined in section 101(41) of the Bankruptcy Code.

**1.75** “Petition Date” means December 6, 2016, the date on which the Debtors filed the Chapter 11 Cases.

**1.76** “Plan” means this joint chapter 11 plan proposed by the Debtors, including the exhibits and schedules hereto and the Plan Supplement, as may be amended, supplemented, or modified from time to time in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the terms hereof.

**1.77** “Plan Documents” means, collectively, all documents to be executed, delivered or performed in connection with the consummation of the Plan, including the Plan, all exhibits thereto, the Plan Supplement, the Disclosure Statement, and the Confirmation Order.

**1.78** “Plan Supplement” means the compilation of documents (or forms or summary of material terms thereof), schedules, and exhibits to the Plan (as may be amended, modified or supplemented from time to time in accordance with the terms hereof and in accordance with the Bankruptcy Code and the Bankruptcy Rules) to be filed with the Bankruptcy Court no later than 14 days before the Confirmation Hearing or such later date as the Bankruptcy Court may approve, including: (a) the Schedule of Assumed Contracts and Leases; (b) the Liquidating Trust Agreement; and (c) the APA.

**1.79** “Priority Non-Tax Claim” means any Claim, other than an Administrative Claim or a Priority Tax Claim, entitled to priority in payment under section 507(a) of the Bankruptcy Code.

**1.80** “*Priority Tax Claim*” means any Claim of a governmental unit (as defined in section 101(27) of the Bankruptcy Code) entitled to priority in payment under sections 502(i) and 507(a)(8) of the Bankruptcy Code.

**1.81** “*Professional*” means any Entity (a) employed in the Chapter 11 Cases pursuant to sections 327, 328 or 1103 of the Bankruptcy Code, or (b) seeking or awarded compensation or reimbursement of expenses in connection with the Chapter 11 Cases pursuant to section 503(b)(4) of the Bankruptcy Code.

**1.82** “*Professional Fee Escrow*” means an interest bearing escrow account to be funded on the Effective Date with Cash in an amount equal to all Accrued Professional Compensation Claims; *provided*, that the Professional Fee Escrow shall be increased to the extent fee applications are filed after the Effective Date in the amount of such post-Effective Date fee applications; *provided, further*, that the amount of Cash funded into the Professional Fee Escrow on account of Committee Fees and Expenses, and the amount of Cash that may be used from the Professional Fee Escrow to pay Committee Fees and Expenses, shall not exceed \$250,000, *less* any amounts that are paid on account of Committee Fees and Expenses prior to the Effective Date.

**1.83** “*Pro Rata Share*” means, as applicable, (i) the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in that Class, (ii) the proportion that all Allowed Claims in a particular Class bears to the aggregate amount of Allowed Claims in such Class and other Classes entitled to share in the same recovery under the Plan, (iii) the proportion that a holder’s Liquidating Trust Interests in a particular series bear to the aggregate amount of Liquidating Trust Interests in that series or (iv) the proportion that all Liquidating Trust Interests in a particular series bear to the aggregate amount of Liquidating Trust Interests in such series and other series entitled to share in the same recovery under the Plan.

**1.84** “*Purchaser*” means the Person with whom the Debtors execute the APA and whom the Bankruptcy Court approves as the purchaser of the Acquired Assets.

**1.85** “*Released Parties*” means each of: (a) the Debtors; (b) the Purchaser; (c) SunTrust; (d) the Collateral Agent; (e) the holders of First Lien Claims; (f) the Consenting Managers; ~~(g) the Liquidating Trustee;~~ and ~~(h) with~~ with respect to each of the foregoing Persons or Entities in clauses (a) through (gf), each of its or their current and former direct and indirect equityholders, members, partners, subsidiaries, affiliates, funds, managers, managing members, officers, directors, authorized persons, employees, advisors, principals, attorneys, professionals, accountants, investment bankers, consultants, agents, and other representatives (including their respective equityholders, members, partners, subsidiaries, affiliates, funds, managers, managing members, officers, directors, authorized persons employees, advisors, principals, attorneys, professionals, accountants, investment bankers, consultants, agents, and other representatives), together with their respective successors and assigns, in each case only in their capacity as such.

**1.86** “*Releasing Parties*” means all Entities who have held, hold or may hold Claims or Interests that have been released pursuant to Sections 11.4, enjoined pursuant to Section 11.6 or are subject to exculpation pursuant to Section 11.5.

**1.87** “*Remaining Cash*” means Cash in an amount equal to the Unencumbered Amount, less the First Lien Share.

**1.88** “*Remaining SunTrust Cash*” means the Debtors’ Cash in the amount of approximately \$2.5 million currently deposited with SunTrust Bank and being held there in accordance with the *Final Order (I) Authorizing Use of SunTrust Bank’s Cash Collateral and (II) Directing Immediate Release of Funds in Certificate of Deposit* [D.I. 174].

**1.89** “*Sale*” means the sale of the Acquired Assets under or in connection with the Plan and the APA.

**1.90** “*Schedule of Assumed Contracts and Leases*” means the schedule of certain executory contracts and unexpired leases to be assumed by the Debtors and either assigned to the Liquidating Trust or assigned to the Purchaser pursuant to the Plan and the APA, a copy of which shall be included in the Plan Supplement.

**1.91** “*Second Lien Administrative Agent*” means Wilmington Trust, National Association in its capacity as successor administrative agent under the Second Lien Credit Agreement.

**1.92** “*Second Lien Claims*” mean any and all Claims arising under, derived from, or based on the Second Lien Term Loan Agreement, which shall be deemed Allowed in the aggregate amount of \$111,865,416 or such other amount as determined by the Bankruptcy Court in the Confirmation Order. The Second Lien Claims shall be fully Allowed (subject to the Intercreditor Agreement) upon the entry of the Confirmation Order.

**1.93** “*Second Lien Encumbered Cash*” means all Cash held in the Second-Lien Debt Service Reserve Account (as defined in the Intercreditor Agreement).

**1.94** “*Second Lien Term Loan Agreement*” means that certain Second-Lien Term Loan Credit Agreement, dated February 20, 2014, by and among La Paloma, the predecessor administrative agent thereunder, and the lenders party thereto, together with all other agreements entered into and documents delivered in connection therewith, as any of the foregoing may be amended, modified or supplemented from time to time.

**1.95** “*Secured Claim*” means a Claim against any Debtor that is secured by a valid, perfected, and enforceable Lien on, or security interest in, property of such Debtor, or that has the benefit of rights of setoff under section 553 of the Bankruptcy Code, but only to the extent of the value of the holder’s interest in such Debtor’s interest in such property, or to the extent of the amount subject to setoff, the value of which shall be determined as provided in section 506 of the Bankruptcy Code.

**1.96** “*SunTrust*” means SunTrust Bank.

**1.97** “*SunTrust L/C Agreement*” means that certain Amended and Restated Letter of Credit Agreement, dated as of February 20, 2014, by and between La Paloma and SunTrust, together with all other agreements entered into and documents delivered in connection therewith, as any of the foregoing may be amended, modified or supplemented from time to time.

**1.98** “*SunTrust L/C Agreement Claims*” mean any and all Claims of SunTrust arising under, derived from, or based on the SunTrust L/C Agreement.

**1.99** “*Tax Distribution Liquidating Trust Interests*” means the interests in the Liquidating Trust distributed to the holders of First Lien Claims that entitle such holders to share in distributions of the Liquidating Trust Assets in accordance with Section 6.4 of the Plan.

**1.100** “*Tax Refund Claim*” means any Claim or entitlement of the Debtors for property tax refunds in connection with the dispute referenced in that certain *Order, Pursuant to 11 U.S.C. § 505, Determining the Taxable Value of the Facility and Debtors’ Entitlement to Related Property Tax Refunds* [D.I. 285].

**1.101** “*Unencumbered Amount*” means \$63.3 million, as the amount agreed upon by the Debtors and LNV as of September 6, 2017 as a settlement of the projected value of the Debtors’ personal property that is either unencumbered by any Liens or which is or may be subject to avoidable Liens (other than the Tax Refund Claim) as of the Effective Date, assuming an October 31, 2017 Effective Date; *provided*, that such amount shall be adjusted based upon changes in postpetition revenue and working capital as of the actual Effective Date as compared to the projections used as of September 6, 2017, *less* the amount of Allowed Administrative Claims that are not paid from First Lien Encumbered Cash pursuant to Section 2.1(c)(ii), *less* amounts sufficient to pay the Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims and Allowed Other Secured Claims.

**1.102** “*Unimpaired*” means, with respect to any Claim or Interest, or a Class of Claims or Interests, “unimpaired” within the meaning of section 1124 of the Bankruptcy Code.

**1.103** “*U.S. Trustee*” means the United States Trustee for the District of Delaware.

**1.104** “*U.S. Trustee Fees*” means fees arising under 28 U.S.C. § 1930(a)(6) and, to the extent applicable, accrued interest thereon arising under 31 U.S.C. § 3717.

**1.105** “*Voting Deadline*” means October 23, 2017, at 4:00 p.m. (Eastern Daylight Time), or such later date and time as may be determined by the Debtors or as otherwise determined by Bankruptcy Court.

**B. Interpretation; Application of Definitions and Rules of Construction.**

For purposes of the Plan and unless otherwise specified herein: (i) 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; (ii) 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 the referenced document shall be substantially in



that form or substantially on those terms and conditions; (iii) any reference herein to an existing document or exhibit having been filed or to be filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented; (iv) unless otherwise specified, all references herein to “Articles” or “Sections” are references to Articles or Sections, as applicable, hereof or hereto; (v) unless otherwise stated, the words “herein,” “hereof” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan; (vi) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (vii) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (viii) any immaterial effectuating provisions may be interpreted by the Debtor in a manner that is consistent with the overall purpose and intent of the Plan all without further Bankruptcy Court order; (ix) any reference to an Entity as a holder of a Claim includes that Entity’s permitted successors and assigns; (x) to the extent that any schedule, exhibit or supplement to the Plan is inconsistent with the terms of the Plan, and unless otherwise provided herein or in the Confirmation Order, the terms of the schedule, exhibit or supplement shall govern; (xi) to the extent that the Confirmation Order is inconsistent with the Plan or any schedule, exhibit or supplement to the Plan, the provisions of the Confirmation Order shall govern; (xii) to the extent that the Disclosure Statement is inconsistent with the terms of the Plan, the terms of the Plan shall govern; (xiii) in computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply; (xiv) if the date on which a transaction may occur pursuant to the Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day; (xv) the references in the Plan to monetary figures shall refer to currency of the United States of America; and (xvi) all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, as applicable to the Chapter 11 Cases, unless otherwise stated.

## ARTICLE II.

### UNCLASSIFIED CLAIMS

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Priority Tax Claims and U.S. Trustee Fees have not been classified for purposes of voting or receiving distributions. Rather, all such Claims are treated separately as unclassified Claims as set forth in this Article II, and the holders thereof are not entitled to vote on the Plan.

#### **2.1 *Administrative Claims.***

(a) Filing Administrative Claims. The holder of an Administrative Claim, other than (i) an Administrative Claim for Professional fees and expenses covered by Section 2.2, (ii) an Administrative Claim of a governmental unit under section 503(b)(1)(D) of the Bankruptcy Code, (iii) timely filed and Allowed Claims arising under section 503(b)(9) of the Bankruptcy Code, or (iv) an Administrative Claim that has been Allowed as such on or before the Administrative Claim Bar Date, must file and serve on the Liquidating Trust a request for payment of such Administrative Claim so that it is received no later than the Administrative Claim Bar Date pursuant to the procedures specified in the Confirmation Order and the notice of the Effective Date. **Holders required to file and serve, who fail to file and serve, a request for payment of Administrative Claims by the Administrative Claim Bar Date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against**

**the Debtors or the Liquidating Trust and their property.** All such Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Section 11.6 hereof. Nothing in the Plan alters, extends, or modifies the bar date for filing Claims arising under section 503(b)(9) of the Bankruptcy Code, as established pursuant to the Bar Date Order.

(b) Allowance of Administrative Claims. An Administrative Claim, with respect to which a request for payment has been properly and timely filed pursuant to Section 2.1(a), shall become an Allowed Administrative Claim if no objection to such request is filed with the Bankruptcy Court and served on the Liquidating Trust and the requesting party on or before the 120th day after the Effective Date, as the same may be modified or extended by order of the Bankruptcy Court. If an objection is timely filed, the Administrative Claim shall become an Allowed Administrative Claim only to the extent allowed by Final Order or as such Claim is settled, compromised, or otherwise resolved pursuant to Article VIII of the Plan.

(c) Treatment of Administrative Claims.

(i) Except to the extent that the holder of an Allowed Administrative Claim agrees to a less favorable treatment, and except as provided in Section 2.2, each holder of an Allowed Administrative Claim against the Debtors shall receive, in full and complete settlement and release of such Claim, Cash equal to the unpaid amount of such Allowed Administrative Claim on the latest of: (i) the Effective Date; (ii) 30 days after the date on which such Administrative Claim becomes Allowed; (iii) the date on which such Administrative Claim becomes due and payable in the ordinary course of the Debtors' business in accordance with the terms and conditions of any transaction or agreement relating to such Allowed Administrative Claim; and (iv) such other date as may be agreed to by such holder of an Allowed Administrative Claim and the Debtors or the Liquidating Trustee, as applicable; *provided, however,* that notwithstanding anything herein to the contrary, the Liquidating Trustee shall be authorized to pay Allowed Administrative Claims that arise in the ordinary course of the Debtors' business, in full, in the ordinary course of business in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to, such transactions, post-confirmation.

(ii) Allowed Administrative Claims shall be payable (A) up to \$3.0 million, *less* the Fee Reduction, from the First Lien Encumbered Cash, and (B) thereafter, 100% from the Debtors' Cash that would otherwise be included within the Unencumbered Amount.

## **2.2 Professional Fees.**

(a) Final Fee Applications. Each Professional asserting an Administrative Claim for compensation for services rendered and expenses incurred in connection with the Chapter 11 Cases before the Effective Date shall: (i) file with the Bankruptcy Court, and serve on the Liquidating Trust, an application for allowance of such Administrative Claim on or before

the forty-fifth (45th) day following the Effective Date, and (ii) after notice and a hearing in accordance with the procedures established by the Bankruptcy Code and Bankruptcy Rules and any prior orders of the Bankruptcy Court in the Chapter 11 Cases, be paid in full, in Cash, in such amounts as are Allowed by a Final Order.

(b) *Ordinary Course Professional Fees and Expenses.* The immediately preceding paragraph shall not affect any Entity that has been retained pursuant to, and is owed compensation established within the limits of, the *Order Authorizing the Employment and Compensation of Certain Professionals Utilized in the Ordinary Course of Business, Nunc Pro Tunc to the Petition Date* [D.I. 163].

(c) *Termination of Professionals.* On the Effective Date, the engagement of each Professional retained by the Debtors shall be terminated without further order of the Bankruptcy Court or act of the parties; provided, however, such Professionals shall be entitled to prosecute their respective claims for professional fees and represent their respective constituents with respect to applications for payment of such claims and the Liquidating Trust shall be responsible for the fees, costs and expenses associated with the prosecution of such claims.

(d) *Post-Effective Date Fees and Expenses.* From and after the Effective Date, the Liquidating Trust shall, upon receipt of appropriate documentation and in the ordinary course of business, pay the post-Effective Date charges incurred by the Debtors or the Liquidating Trust for any Professional's fees, disbursements, expenses, or related support services without application to or approval from the Bankruptcy Court.

(e) *Professional Fee Escrow.* On the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow. Funds held in the Professional Fee Escrow shall not be considered property of the Debtors' Estates or property of the Liquidating Trust, but shall transfer to the Liquidating Trust after all Allowed Accrued Professional Compensation Claims have been paid in full. The Professional Fee Escrow shall be held in trust for the Professionals and for no other parties until all Allowed Accrued Professional Compensation Claims have been paid in full, in Cash.

Any Committee Fees and Expenses in these Chapter 11 Cases in excess of \$250,000 shall be paid, *first*, from recoveries by the holders of the First Lien Claims, if any, pursuant to enforcement of the Intercreditor Agreement as set forth in Section 5.7(b) of the Plan and, *second*, from distributions of Remaining Cash to holders of Liquidating Trust Interests as set forth in Section 6.4(a) of the Plan.

### **2.3 *Priority Tax Claims.***

Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, each holder of an Allowed Priority Tax Claim shall receive, in full and complete settlement and release of such Claim, Cash equal to the unpaid amount of such Allowed Priority Tax Claim on the latest of (a) the Effective Date; (b) 30 days after the date on which such Priority Tax Claim becomes Allowed; (c) the date on which such Priority Tax Claim becomes due and payable; and (d) such other date as may be mutually agreed to by and among such holder and the Debtors or the Liquidating Trustee.

#### **2.4 U.S. Trustee Fees.**

On the Effective Date, the Debtors shall pay all U.S. Trustee Fees that are due and owing as of the Effective Date. Nothing in the Plan shall release the Liquidating Trust from its obligation to pay all U.S. Trustee Fees arising from and after the Effective Date before a Final Order is entered by the Bankruptcy Court closing the Chapter 11 Cases.

#### **2.5 Payment of Fees and Expenses of First Lien Administrative Agent and Collateral Agent**

Notwithstanding any provision in the Plan to the contrary, on the Effective Date, the Debtors shall pay the accrued and unpaid reasonable, documented fees and expenses of the First Lien Administrative Agent and the Collateral Agent incurred during the Chapter 11 Cases through the Effective Date in Cash solely from the First Lien Encumbered Cash consistent with the *Consensual Order Authorizing Use of Purported Cash Collateral* [D.I. 336], as amended, modified, extended or supplemented from time to time; *provided that* each party and its counsel shall provide to counsel to the Debtors with an invoice (or such other documentation as may reasonably be requested) of the fees and expenses for which it seeks payment within one Business Day after the Confirmation Date; *provided further* that if the Debtors dispute the amount of such fees and expenses in writing prior to the Effective Date, then the disputed amount shall be held in reserve pending a resolution of such dispute by the applicable party and the Liquidating Trustee or further order of the Bankruptcy Court. For the avoidance of doubt, payments of the fees and expenses of the First Lien Administrative Agent and Collateral Agent pursuant to this Section shall be made prior to any distribution of the First Lien Encumbered Cash to the holders of the First Lien Claims in accordance with the Plan.

### **ARTICLE III.**

#### **CLASSIFICATION OF CLAIMS AND INTERESTS**

##### **3.1 Classification in General.**

Pursuant to sections 1122 and 1123 of the Bankruptcy Code, a Claim or Interest is placed in a particular Class for all purposes, including voting, confirmation, and distribution; *provided, however*, that a Claim is placed in a particular Class for the purpose of receiving distributions only to the extent that such Claim is Allowed. Voting rights of Claims will be determined by a separate order of the Bankruptcy Court approving solicitation and voting procedures in relation to the Plan.

##### **3.2 Separate Plans.**

The Plan constitutes a separate chapter 11 plan for each Debtor. For purposes of voting on the Plan and receiving distributions, votes will be tabulated separately for each Debtor's Plan, and distributions will be made to each Class as provided in that Debtor's Plan. Notwithstanding the foregoing, the Debtors reserve the right to seek to substantively consolidate any two or more Debtors, *provided, however*, that such substantive consolidation does not materially and adversely impact the distributions to any Entity.

### 3.3 *Classification of Claims and Interests.*

The Plan groups the Debtors together solely for the purpose of describing treatment of Claims and Interests under the Plan. Therefore, the classifications set forth below apply separately to each applicable Debtor. Except as otherwise provided herein, to the extent a holder has a Claim that may be asserted against more than one Debtor, the holder of such Claim shall be treated as having a separate Claim against each such Debtor for all purposes, including voting and distributions.

The following table designates the Classes of Claims and Interests in each Debtor and specifies which Classes are: (a) Impaired and Unimpaired; (b) entitled to vote to accept or reject the Plan; and (c) deemed to accept or reject the Plan:

<b>Class</b>	<b>Description</b>	<b>Impairment</b>	<b>Entitled to Vote</b>
1	Priority Non-Tax Claims	Unimpaired	No (deemed to accept)
2	Other Secured Claims	Unimpaired	No (deemed to accept)
3	First Lien Claims	Impaired	Yes
4	Second Lien Claims	Impaired	Yes
5A	La Paloma General Unsecured Claims	Impaired	Yes
5B	LPAC General Unsecured Claims	Impaired	Yes
5C	CEP General Unsecured Claims	Impaired	Yes
6	Interests	Impaired	No (deemed to reject)

### 3.4 *Elimination of Vacant Classes.*

Any Class that does not have at least one holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed as of the date of the Confirmation Hearing for a specific Debtor shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan pursuant to section 1129(a)(8) of the Bankruptcy Code with respect to that particular Debtor.

### 3.5 *Deemed Acceptance by Non-Voting Classes.*

With respect to each Debtor, if a Class contains Claims eligible to vote and no holder of a Claim eligible to vote in such Class votes to accept or reject the Plan, the Plan shall be deemed accepted by such Class.

### 3.6 *Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code.*

Because certain Classes are deemed to have rejected the Plan, the Debtors seek confirmation of the Plan under section 1129(b) of the Bankruptcy Code with respect to such Classes and any other Class that votes to reject the Plan. Subject to Sections 13.3 and 13.4 of the

Plan, the Debtors reserve the right to alter, amend, modify, revoke, or withdraw the Plan in order to satisfy the requirements of section 1129(b) of the Bankruptcy Code.

### **3.7 Severability of Plans.**

A failure to confirm any one or more of the Debtors' Plans shall not affect other Plans confirmed by the Bankruptcy Court, but the Debtors reserve the right to withdraw any and all Plans if any one or more Plan(s) is not confirmed.

## **ARTICLE IV.**

### **TREATMENT OF CLAIMS AND INTERESTS**

#### **4.1 Priority Non-Tax Claims (Class 1).**

(a) Classification. Class 1 consists of all Priority Non-Tax Claims.

(b) Treatment. Except to the extent that a holder of an Allowed Priority Non-Tax Claim agrees to less favorable treatment, each holder of an Allowed Priority Non-Tax Claim shall receive, at the option of the applicable Debtor(s) and in full and complete settlement and release of, and in exchange for, such Claim: (i) payment in full in Cash; or (ii) other treatment rendering such Claim Unimpaired.

(c) Impairment and Voting. Class 1 is Unimpaired. Holders of Claims in Class 1 are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code, and accordingly, are not entitled to vote to accept or reject the Plan.

#### **4.2 Other Secured Claims (Class 2).**

(a) Classification. Class 2 consists of all Other Secured Claims.

(b) Treatment. Except to the extent that a holder of an Allowed Other Secured Claim agrees to less favorable treatment, each holder of an Allowed Other Secured Claim shall receive, at the option of the applicable Debtor(s) (or the Liquidating Trust, as applicable) and in full and complete settlement and release of, and in exchange for, such Claim: (i) Cash equal to the amount of such Allowed Other Secured Claim on or as soon as practicable after the latest of the (x) the Effective Date, (y) the date that such Other Secured Claim becomes Allowed, and (z) a date agreed to by the Debtors (or the Liquidating Trust, as applicable) and the holder of such Allowed Other Secured Claim; (ii) reinstatement of such Allowed Other Secured Claim pursuant to section 1124 of the Bankruptcy Code; (iii) delivery of collateral securing such Allowed Other Secured Claim; or (iv) other treatment rendering such Claim Unimpaired.

(c) Impairment and Voting. Class 2 is Unimpaired. Holders of Claims in Class 2 will be conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code and, therefore, will not be entitled to vote to accept or reject the Plan.

**4.3 *First Lien Claims (Class 3).***

(a) Classification. Class 3 consists of all First Lien Claims.

(b) Treatment. Each holder of an Allowed First Lien Claim shall receive, in full and complete settlement and release of, and in exchange for, such Claim, its Pro Rata Share of: (i) either (A) if a holder of the First Lien Claims is the Purchaser, the Acquired Assets in exchange for its Pro Rata Share of the Credit Bid Amount, or (B) if the Purchaser is not a holder of First Lien Claims, the net proceeds of any Sale of the Acquired Assets; (ii) the First Lien Encumbered Cash remaining after payment of Allowed Administrative Claims pursuant to Section 2.1(c)(ii); (iii) the First Lien Share, payable in Cash or in kind; (iv) subject to Section 5.7, the right to receive Collateral or proceeds of Collateral (other than the Second Lien Encumbered Cash) from distributions otherwise payable to holders of the Second Lien Claims pursuant to the Intercreditor Agreement; and (v) to the extent the value of items (i) through (iv) do not satisfy its Allowed First Lien Claim in full, the Tax Distribution Liquidating Trust Interests.

(c) Impairment and Voting. Class 3 is Impaired. Holders of Claims in Class 3 are entitled to vote to accept or reject the Plan.

**4.4 *Second Lien Claims (Class 4).***

(a) Classification. Class 4 consists of all Second Lien Claims.

(b) Treatment. Each holder of an Allowed Second Lien Claim shall receive, in full and complete settlement and release of, and in exchange for, such Claim, its Pro Rata Share of: (i) the Second Lien Encumbered Cash, and (ii) to the extent the value of item (i) does not satisfy its Allowed Second Lien Claim in full, the Liquidating Trust Interests.

(c) Intercreditor Agreement. All distributions to holders of Allowed Second Lien Claims shall be subject to the Intercreditor Agreement and, other than the distributions of the Second Lien Encumbered Cash pursuant to Section 4.4(b)(i), shall constitute Collateral or proceeds of Collateral and shall be paid to the Collateral Agent and, notwithstanding anything to the contrary in the Intercreditor Agreement, be held in a reserve pending distribution pursuant to Section 5.7 of the Plan.

(d) Impairment and Voting. Class 4 is Impaired. Holders of Claims in Class 4 are entitled to vote to accept or reject the Plan.

**4.5 *General Unsecured Claims (Class 5).***

**4.5.1 *La Paloma General Unsecured Claim (Class 5A).***

(a) Classification. Class 5A consists of all La Paloma General Unsecured Claims.

(b) Treatment. Each holder of an Allowed La Paloma General Unsecured Claim shall receive, in full and complete settlement and release of, and in exchange for, such Claim, its Pro Rata Share of the Liquidating Trust Interests.

(c) Impairment and Voting. Class 5A is Impaired. Holders of Claims in Class 5A are entitled to vote to accept or reject the Plan.

**4.5.1 LPAC General Unsecured Claim (Class 5B).**

(a) Classification. Class 5B consists of all LPAC General Unsecured Claims.

(b) Treatment. Each holder of an LPAC General Unsecured Claim shall receive, in full and complete settlement and release of, and in exchange for, such Claim, Cash in the amount of its Pro Rata Share of the portion of the Sale proceeds (if any) allocable to assets of LPAC and the liquidation value of any other assets of LPAC.

(c) Impairment and Voting. Class 5B is Impaired. Holders of Claims in Class 5B are entitled to vote to accept or reject the Plan.

**4.5.1 CEP General Unsecured Claim (Class 5C).**

(a) Classification: Class 5C consists of all CEP General Unsecured Claims.

(b) Treatment. Each holder of a CEP General Unsecured Claim shall receive, in full and complete settlement and release of, and in exchange for, such Claim, Cash in the amount of its Pro Rata Share of the portion of the Sale proceeds (if any) allocable to assets of CEP and the liquidation value of any other assets of CEP.

(c) Impairment and Voting. Class 5C is Impaired. Holders of Claims in Class 5C are entitled to vote to accept or reject the Plan.

**4.6 Interests (Class 6).**

(a) Classification. Class 6 consists of all Interests in the Debtors.

(b) Treatment. On the Effective Date, all Interests in the Debtors shall be cancelled and extinguished without further notice, approval, or action.

(c) Impairment and Voting. Class 6 is Impaired. Holders of Interests in Class 6 are conclusively presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code, and accordingly, are not entitled to vote to accept or reject the Plan.



## ARTICLE V.

### MEANS FOR IMPLEMENTATION

#### **5.1 *Sale of the Acquired Assets.***

(a) The Plan contemplates the sale of the Acquired Assets to the Purchaser pursuant to sections 363 and 1123 of the Bankruptcy Code, and provides for the orderly distribution of the Sale proceeds, as well as the proceeds or rights in any of the Debtors' remaining assets.

(b) The Confirmation Order shall authorize the sale of the Acquired Assets to the Purchaser free and clear of all Claims and interests, including Liens, under sections 105(a), 363, 365, 1123(b)(4), 1129(b)(2)(A), 1145 and 1146(a) of the Bankruptcy Code under the terms and conditions of the APA, except to the extent the Bankruptcy Court determines that the Purchaser is responsible for CARB Obligations in accordance with Section 5.14 of the Plan.

(c) The Debtors and LNV, or one or more of its affiliates, shall negotiate in good faith the terms of the APA, which shall be subject to higher or better offers that may be considered at the Confirmation Hearing. LNV reserves the right to increase its credit bid to top any such higher and better offers.

#### **5.2 *The Liquidating Trust.***

The Liquidating Trust shall be established, on or before the Effective Date, pursuant to the terms and conditions of the Liquidating Trust Agreement and Article VI hereof.

#### **5.3 *Plan Funding.***

(a) The Debtors' obligations under the Plan to pay Allowed Administrative Claims shall be paid from the First Lien Encumbered Cash, but only to the extent set forth in Section 2.1(c)(ii), and otherwise from other Cash in the Debtors' bank accounts that is not First Lien Encumbered Cash or Second Lien Encumbered Cash. The Debtors' obligations under the Plan to pay Allowed Priority Tax Claims and Allowed Priority Non-Tax Claims shall be paid from Cash in the Debtors' bank accounts that is not First Lien Encumbered Cash or Second Lien Encumbered Cash.

(b) On the Effective Date, SunTrust shall transfer and turn over to the Debtors the Remaining SunTrust Cash, after payment of the Allowed Other Secured Claims of SunTrust, for further distribution in accordance with the Plan.

#### **5.4 *General Settlement of Claims and Controversies.***

In consideration for the classification, distributions, releases, and other benefits provided under the Plan, the provisions of the Plan upon the Effective Date shall constitute a good faith compromise and settlement of all Claims, Interests and controversies relating to all Claims, Interests and controversies resolved pursuant to the Plan. The Plan shall be deemed a motion to approve the good faith compromise and settlement of all such Claims, Interests, and

controversies pursuant to Bankruptcy Rule 9019, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's (a) approval of such compromise and settlement under section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 and (b) finding that such compromise and settlement is (i) in the best interest of the Debtors, the Estates and their respective stakeholders; and (ii) fair, equitable and within the range of reasonableness.

### **5.5 *First Lien Settlement***

As discussed in detail in the Disclosure Statement, as set forth in the Confirmation Order and as otherwise provided herein, as one element of, and in consideration for, a negotiated settlement of numerous disputed claims and issues embodied in the Plan, pursuant to Bankruptcy Rule 9019 and section 1123 of the Bankruptcy Code, the provisions of the Plan shall constitute a good faith compromise and settlement of all Causes of Action among the Debtors and the holders of the First Lien Claims arising from or related to the scope and extent of perfected Liens in favor of the holders of the First Lien Claims (or the Collateral Agent on their behalf), LNV's right to credit bid for the Acquired Assets and the amount of such credit bid. Without limiting the generality of the foregoing, and as part of the compromise and settlement described in this Section, on the Effective Date, all avoidance actions of the Debtors against the Collateral Agent and the holders of First Lien Claims shall be deemed released in their entirety and the Liens of the Collateral Agent for the benefit of the holders of First Lien Claims and upon the Collateral shall be deemed valid, binding and unavoidable, subject to their treatment pursuant to the Plan.

### **5.6 *Cancellation of Credit Agreements, Existing Securities and Agreements.***

Except for the purpose of evidencing a right to distribution under the Plan, and except as otherwise set forth herein, including with respect to the continued enforceability of the Intercreditor Agreement as set forth in Section 5.7, and the assumption and assignment of executory contracts and unexpired leases as set forth on the Schedule of Assumed Contracts and Leases, on the Effective Date all agreements, instruments, securities and other documents evidencing, related to or connected with any Claim against or Interest in a Debtor and any rights of any holder in respect thereof, shall be deemed cancelled and of no force or effect. Holders of or parties to such cancelled agreements, instruments, securities, and other documents will have no rights arising from or relating to such agreements, instruments, securities, and other documents, or the cancellation thereof, except the rights provided for pursuant to the Plan.

### **5.7 *Intercreditor Agreement.***

(a) The Intercreditor Agreement shall remain in full force and effect notwithstanding the confirmation of the Plan or the occurrence of the Effective Date and shall be fully enforceable according to its terms. The Bankruptcy Court or other court of competent jurisdiction shall determine by Final Order whether the holders of Second Lien Claims may receive distributions of Collateral or proceeds of Collateral (other than distributions of Second Lien Encumbered Cash) without violating the priority scheme provided for in the Intercreditor Agreement notwithstanding any lapses of perfection or the potential avoidability of the Liens upon the Collateral. No distribution to holders of Second Lien Claims (including on account of the Liquidating Trust Interests), other than distribution of the Second Lien Encumbered Cash, shall be made absent a Final Order of the Bankruptcy Court or other court of competent

jurisdiction finding that the holders of Second Lien Claims may receive such distributions without violating the priority scheme set forth in the Intercreditor Agreement.

(b) Any distributions to holders of Second Lien Claims constituting Collateral or proceeds of Collateral (including all distributions on account of Liquidating Trust Interests), other than distributions of Second Lien Encumbered Cash, shall be made by the Disbursing Agent to the Collateral Agent, and, notwithstanding anything to the contrary in the Intercreditor Agreement, the Collateral Agent shall hold such distributions in reserve pending the determination set forth in Section 5.7(a) above. The Collateral Agent shall distribute such funds as provided by agreement of the holders of the First Lien Claims and the holders of Second Lien Claims, or as directed by Final Order. The Collateral Agent shall be deemed a Disbursing Agent under the Plan when making any such distributions. The Liquidating Trust shall pay the reasonable, documented fees and expenses of the Collateral Agent, if any, incurred after the Effective Date ~~in connection with this Section 5.7(b), and the Collateral Agent shall have the right to satisfy any unpaid fees, expenses, compensation and any other claims from any funds it holds pursuant to this Plan.~~

(c) As part of the settlement described in Section 5.5 of the Plan, the holders of the First Lien Claims have agreed to, and shall, turn over 15% of the recoveries that they receive, if any, on account of the Intercreditor Agreement to the Liquidating Trustee, up to a maximum amount of \$2.0 million, *first*, for payment of Committee Fees and Expenses in excess of \$250,000, if any, and, *second* for distribution to holders of Allowed La Paloma General Unsecured Claims in accordance with their Pro Rata Shares.

## **5.8 Corporate Governance.**

(a) Except as otherwise provided in the Plan, the corporate or related actions to be taken by or required of the Debtors in connection with each matter provided for by the Plan shall, as of the Effective Date, be deemed to have occurred and be effective as provided in the Plan, and shall be authorized, approved, and, to the extent taken prior to the Effective Date, ratified in all respects without any requirement of further action by holders of Claims or Interests, authorized persons, managers, or directors of the Debtors, or any other Entity. On or prior to the Effective Date, the appropriate authorized persons, managers or officers of the Debtors shall be authorized and directed to issue, execute, and deliver the agreements, securities, instruments, or other documents contemplated by the Plan, or necessary or desirable to effect the transactions contemplated by the Plan, in the name of and on behalf of the Debtors. Notwithstanding any requirements under non-bankruptcy law, the authorizations and approvals contemplated by this provision shall be effective.

(b) On the Effective Date, upon the appointment of the Liquidating Trustee, the Persons and Entities acting as authorized persons, managers, directors and officers of the Debtors prior to the Effective Date, as the case may be, shall have no further authority, duties, responsibilities, and obligations relating to or arising from (i) operating the Debtors or (ii) the Chapter 11 Cases, and shall be deemed to have resigned from all of their respective positions with the Debtors.

**5.9 *Dissolution of the Debtors.***

On and after the Effective Date, the Liquidating Trustee shall promptly take all actions necessary to effectuate the liquidation and dissolution of the Debtors under applicable laws, including the laws of the jurisdictions in which they may be organized or registered, notwithstanding any applicable consent requirements or other restrictions contained in any financing agreements or other debt documents to which any Debtor is a party, and to pay all reasonable costs and expenses in connection with the liquidation and dissolutions, including the costs of preparing or filing any necessary paperwork or documentation.

Upon entry of a final decree in each Chapter 11 Case, if not previously dissolved, the applicable Debtor shall be deemed dissolved and wound up without any further action required by such Debtor.

**5.10 *Assumed Liabilities.***

In accordance with the terms of the APA, on the Effective Date, the Purchaser shall be responsible for payment and satisfaction of all liabilities assumed in the APA. Notwithstanding any other provision of the Plan, all Entities holding Claims and Interests arising out of or concerning an assumed liability shall be forever barred, estopped and permanently enjoined from asserting against the Debtors or the Liquidating Trust and, in each case, any of their property, such Entities' Claims or Interests (as applicable) arising out of or concerning such assumed liabilities. For the avoidance of doubt, the Debtors and the Liquidating Trust shall have no obligation to make any distributions or payment on account of an assumed liability, including any cure costs, which shall solely be the responsibility of the Purchaser.

**5.11 *Effectuating Documents; Further Transactions.***

Entry of the Confirmation Order shall establish conclusive corporate and other authority (and evidence of such corporate and other authority) required for each of the Debtors to undertake any and all acts and actions required to implement or contemplated by the Plan (including the execution and delivery of the APA), and such acts and actions shall be deemed to have occurred and shall be in effect pursuant to applicable non-bankruptcy law and the Bankruptcy Code, without the need for member vote and without any requirement of further action by the members or managers of the Debtors.

On and after the Effective Date, the Liquidating Trustee shall be authorized to (a) take any actions or effect transactions, including conversions, dissolutions, transfers, liquidations, or other corporate transactions, as may be determined by the Liquidating Trustee to be necessary or appropriate to implement the terms of the Plan without any further notice to or action, order or approval of the Bankruptcy Court, and (b) issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan in the name of and on behalf of the Debtors, without the need for any approvals, authorizations, or consents, except for those expressly required by the Plan.

### **5.12 Access to Debtors' Books and Records after the Effective Date.**

On the Effective Date, the Debtors shall be deemed to have transferred, assigned and conveyed to the Liquidating Trust, and the Liquidating Trust shall be authorized to take possession of, the Books and Records. The Liquidating Trust shall have the responsibility of storing and maintaining the Books and Records. The Debtors shall cooperate with the Liquidating Trustee to facilitate the delivery and storage of the Books and Records in accordance herewith. For the purpose of this section, Books and Records include computer generated or computer maintained Books and Records and computerized data, as well as electronically generated or maintained Books and Records or data, along with Books and Records of the Debtors maintained by or in possession of third parties, and all of the claims and rights of the Debtors in and to Books and Records, wherever located.

### **5.13 Cancellation and Release of Liens.**

On the Effective Date, except as set forth in the Plan, all Liens securing any Secured Claim shall be fully released, settled, and compromised and all rights, titles, and interests of any holder of such mortgages, deeds of trust, Liens, pledges or other security interests against any property of the Estates shall revert to the Debtors, to be assigned to the Liquidating Trust, and the holder of such Secured Claim (and the applicable agents for such holder) shall be directed to release any collateral or other property of any Debtor held by such holder (and the applicable agents for such holder), and to take such actions as may be reasonably requested by the Debtors or the Liquidating Trust to evidence the release of such Lien, including the execution, delivery, and filing or recording of such releases. The filing of the Confirmation Order with any federal, state, provincial, or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens. In the interest of clarity, nothing in the Plan shall release any Liens of the Collateral Agent for the benefit of the holders of the First Lien Claims and the Second Lien Claims to the extent that such Liens are necessary to enforce the Intercreditor Agreement, and all such Liens shall remain in full force and effect for such purpose.

### **5.14 CARB Obligations.**

Absent an agreement among the Debtors, the Purchaser and CARB, in connection with the approval of the Sale, the Bankruptcy Court shall determine on ~~the Confirmation Date (or at a hearing prior to such date if the parties so agree)~~ or before November 10, 2017 the extent, if any, to which the Purchaser will be responsible for CARB Obligations relating to the Acquired Assets under applicable law (including section 363 of the Bankruptcy Code), including CARB Obligations relating to emissions of the Facility occurring before the Sale.

### **5.15 Closing the Chapter 11 Cases.**

The Liquidating Trustee shall seek authority from the Bankruptcy Court to close the Chapter 11 Cases in accordance with the Bankruptcy Code and the Bankruptcy Rules; *provided, however*, that the Liquidating Trustee may keep one or more of the Chapter 11 Cases open in order to resolve any Disputed Claims or to pursue Causes of Action or until the Liquidating Trust has been terminated and all remaining Liquidating Trust Assets have been

distributed. For the avoidance of doubt, the Chapter 11 Cases may be closed prior to termination of the Liquidating Trust.

## ARTICLE VI.

### **LIQUIDATING TRUST AND LIQUIDATING TRUSTEE**

#### **6.1 *The Liquidating Trust.***

(a) On or prior to the Effective Date, the Liquidating Trust Agreement shall be executed by the Debtors and the Liquidating Trustee, and all other necessary steps shall be taken to establish the Liquidating Trust.

(b) The Liquidating Trust Agreement shall provide that: (i) the Liquidating Trustee shall be a fiduciary acting for the benefit of the holders of the Liquidating Trust Interests; (ii) neither the Debtors nor their respective affiliates, shareholders, managers, members, managing members, employees, agents, authorized persons and professionals shall have any liability for any action taken or omitted to be taken by the Liquidating Trustee and all Entities are enjoined from pursuing any Claims against the foregoing pursuant to the Plan on account of any such action taken or omitted to be taken; (iii) any determinations made by the Liquidating Trustee with respect to the establishment of reserves under the Plan shall not be binding on any party if the Effective Date fails to occur; and (iv) if the Plan is withdrawn or otherwise abandoned prior to the occurrence of the Effective Date, the Liquidating Trustee position shall thereafter be dissolved automatically.

(c) The Liquidating Trust shall be governed and administered by the Liquidating Trustee, as provided under the Plan and the Liquidating Trust Agreement.

#### **6.2 *The Liquidating Trust Assets.***

On the Effective Date, pursuant to section 1123(b)(3) of the Bankruptcy Code, the Liquidating Trust Assets shall be transferred by the Debtors (and deemed transferred) to the Liquidating Trust free and clear of all Claims, Liens, charges, encumbrances, rights, and Interests, other than the Liens of the Collateral Agent for the benefit of the holders of the First Lien Claims and the Second Lien Claims to the extent necessary to enforce the Intercreditor Agreement, without the need for any Entity to take any further action or obtain any approval. Notwithstanding the preservation of such Liens for such purpose, all Liquidating Trust Assets shall be distributed to holders of Liquidating Trust Interests (subject to the Intercreditor Agreement) and Tax Distribution Liquidating Trust Interests as set forth in Section 6.4 of the Plan and in no other manner.

#### **6.3 *The Liquidating Trustee.***

(a) *Appointment; Duties.* Not less than 14 days before the commencement of the Confirmation Hearing, the Debtors shall file a notice of the Person designated as the Liquidating Trustee. On the Effective Date, the Liquidating Trustee shall assume all of its obligations, powers and authority under the Plan and the Liquidating Trust Agreement and shall be empowered to: (i) make all applicable distributions or payments contemplated by the Plan and

otherwise hold all property of the Liquidating Trust for the benefit of the holders of the Liquidating Trust Interests in accordance with the Plan and the Liquidating Trust Agreement; (ii) object to Claims as provided in the Plan and prosecute such objections; (iii) if necessary, employ, retain, or replace professionals to represent it with respect to its responsibilities; (iv) establish, replenish or release reserves as provided in the Plan, as applicable; (v) take all actions necessary or appropriate to enforce the Debtors' rights under the APA and any related document; (vi) liquidate the Liquidating Trust Assets; (vii) seek entry of a final decree in any of the Chapter 11 Cases at the appropriate time; (viii) prosecute, resolve, compromise and/or settle the Tax Refund Claim; (ix) prepare and file applicable tax returns for any of the Debtors; (x) liquidate and dissolve the Debtors; and (xi) take all actions and execute all agreements, instruments, and other documents as the Liquidating Trustee may determine to be necessary or desirable to carry out the purpose of the Plan and the Liquidating Trust Agreement.

(b) *Qualifications; Liquidating Trustee as Fiduciary.* The Liquidating Trustee shall be a fiduciary acting for the benefit of the holders of the Liquidating Trust Interests, shall have such qualifications and experience as are sufficient to enable the Liquidating Trustee to perform its obligations under the Plan and under the Liquidating Trust Agreement, and shall be compensated and reimbursed for expenses as set forth in, and in accordance with, the Liquidating Trust Agreement. To the extent necessary, following the Effective Date, the Liquidating Trustee shall be deemed to be a judicial substitute for the Debtors as the party in interest in the Chapter 11 Cases, under the Plan or in any judicial proceeding or appeal to which the Debtors are a party, consistent with section 1123(b)(3)(B) of the Bankruptcy Code. The Liquidating Trustee shall not be liable for any action it takes or omits to take that it believes in good faith to be authorized or within its rights or powers unless it is ultimately and finally determined by a court of competent jurisdiction that such action or inaction was the result of fraud, gross negligence or willful misconduct.

(c) *Disputed Reserves.* The Liquidating Trust shall establish such reserves, holdbacks and funds as may be required by the Plan and the Confirmation Order.

(d) *Resignation, Death or Removal.* The Liquidating Trustee may be removed by the Bankruptcy Court upon application for good cause shown. In the event of the resignation or removal, liquidation, dissolution, death or incapacity of the Liquidating Trustee, the Bankruptcy Court shall designate another Person to become the successor Liquidating Trustee.

(e) *Compensation.* The Liquidating Trustee shall be compensated from the Liquidating Trust Assets on terms agreed to with the Debtors and reimbursed for his or her out-of-pocket expenses incidental to the performance of his or her duties under the Plan and the Liquidating Trust Agreement.

#### **6.4 *Liquidating Trust Waterfall.***

(a) The Remaining Cash shall be distributed in accordance with the following priority of payments, subject to the Intercreditor Agreement:

*first*, to payment of any unpaid Liquidating Trust Expenses (including compensation for the Liquidating Trustee); and

*second*, to the holders of the Liquidating Trust Interests in accordance with their Pro Rata Shares; *provided* that prior to the distribution of any amounts under this clause *second*, such amounts shall be used to pay any Committee Fees and Expenses that remain unpaid after application of funds in the Professional Fee Escrow and payments made by the holders of the First Lien Claims as set forth in Section 5.7(b) of the Plan.

(b) All Cash proceeds from the liquidation of the Tax Refund Claim shall be distributed in accordance with the following priority of payments, subject to the Intercreditor Agreement:

*first*, to payment of any unpaid Liquidating Trust Expenses (including compensation for the Liquidating Trustee);

*second*, up to \$3.0 million, to the holders of the Liquidating Trust Interests in accordance with their Pro Rata Shares; and

*third*, to the holders of all Liquidating Trust Interests and Tax Distribution Liquidating Trust Interests in accordance with their Pro Rata Shares.

#### **6.5 Duration.**

The Liquidating Trust shall be dissolved as soon as practicable after the date that is the earlier to occur of: (a) the distribution of all Liquidating Trust Assets available for distribution pursuant to the Plan, (b) the determination of the Liquidating Trustee that the administration of the Liquidating Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit, or (c) five years from the Effective Date.

#### **6.6 The Liquidating Trust Agreement shall provide for the following with respect to exculpation, indemnification, and insurance:**

(a) The Liquidating Trustee, and its advisors or professionals, shall not be liable for any damages arising out of the creation, operation or termination of the Liquidating Trust, including actions taken or omitted in fulfillment of his or her duties with respect to the Liquidating Trust, except in the case of such party's gross negligence, bad faith or willful misconduct; *provided*, that in no event will any such party be liable for punitive, exemplary, consequential or special damages under any circumstances.

(b) The Liquidating Trustee shall not be subject to any personal liability whatsoever, whether in tort, contract or otherwise, to any person in connection with the affairs of the Liquidating Trust to the fullest extent provided under section 3803 of the Delaware Statutory Trust Act, and all persons claiming against the Liquidating Trustee, or otherwise asserting claims of any nature in connection with affairs of the Liquidating Trust, shall look solely to the Liquidating Trust Assets for satisfaction of any such claims.

(c) The Liquidating Trustee shall be indemnified to the fullest extent permitted by law by the Liquidating Trust against all liabilities arising out of the creation, operation or termination of the Liquidating Trust, including actions taken or omitted in



fulfillment of its duties with respect to the Liquidating Trust, except for those acts that are determined by Final Order to have arisen out of their own willful misconduct, gross negligence, or bad faith.

(d) The Liquidating Trust will maintain customary insurance coverage for the protection of the Liquidating Trustee from and after the Effective Date.

## **ARTICLE VII.**

### **DISTRIBUTIONS**

#### **7.1 *Distributions.***

The Disbursing Agent (including the Collateral Agent pursuant to Section 5.7), shall make all Plan distributions to the appropriate holders of Allowed Claims in accordance with the terms of the Plan. The Debtors shall use commercially reasonable efforts to provide the Liquidating Trustee with the Allowed amount of Claims entitled to receive a Plan distribution and the identity and addresses of record holders of such Claims, in each case, as set forth in the Debtors' Books and Records as of the Distribution Record Date. The First Lien Administrative Agent and Second Lien Administrative Agent, as applicable, shall use commercially reasonable efforts to provide the Liquidating Trustee and the Collateral Agent with the amount of First Lien Claims and Second Lien Claims and the identity and address of record holders of such Claims, to the extent needed to effectuate distributions hereunder, in each case, as set forth in their books and records.

#### **7.2 *Allocation of Plan Distributions Between Principal and Interest.***

The aggregate consideration to be distributed to the holders of Allowed Claims under the Plan shall be treated as first satisfying an amount equal to the stated principal amount of the Allowed Claims of such holders, as determined for federal income tax purposes, and any remaining consideration as satisfying accrued, but unpaid, interest, if any.

#### **7.3 *No Postpetition Interest on Claims.***

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

#### **7.4 *Date of Distributions.***

Unless otherwise provided herein, any distributions and deliveries to be made hereunder shall be made on the Effective Date or as soon thereafter as is reasonably practicable. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on or as soon as reasonably practicable after the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

### **7.5 *Distribution Record Date.***

As of the close of business on the Distribution Record Date, the various lists of holders of Claims and Interests in each of the Classes, as maintained by the Debtors, or (as applicable) the First Lien Administrative Agent and Second Lien Administrative Agent, shall be deemed closed and there shall be no further changes in the record holders of any of the Claims and Interests. Neither the Debtors nor the Liquidating Trust shall have any obligation to recognize any transfer of Claims or Interests occurring after the close of business on the Distribution Record Date. Additionally, with respect to payment of any cure costs or any cure disputes in connection with the assumption and/or assignment of the Debtors' executory contracts and leases, the Debtors and the Liquidating Trustee shall have no obligation to recognize any party other than the non-Debtor party to the underlying executory contract or lease, even if such non-Debtor party has sold, assigned or otherwise transferred its Claim for a cure cost.

### **7.6 *Delivery of Distributions.***

Except as otherwise provided in the Plan, distributions to holders of Allowed Claims shall be made to holders of record as of the Distribution Record Date by the Disbursing Agent: (a) to the signatory set forth on the proof of claim filed by such holder or other representative identified therein (or at the last known addresses of such holder if no proof of claim is filed or if the Debtors have been notified in writing of a change of address); (b) at the addresses set forth in any written notices of address changes delivered to the Disbursing Agent after the date of any related proof of claim; (c) at the addresses reflected in the Debtors' schedules if no proof of claim has been filed and the Disbursing Agent has not received a written notice of a change of address; or (d) on any counsel that has appeared in the Chapter 11 Cases on the holder's behalf. In the event that any distribution to any holder is returned as undeliverable, no distribution or payment to such holder shall be made unless and until the Liquidating Trust has been notified of the then current address of such holder, at which time or as soon as reasonably practicable thereafter such distribution shall be made to such holder without interest; *provided, however*, such distributions or payments shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of 90 days after the applicable Distribution Date. Any such undeliverable distribution shall be made available for distribution to the holders of the remaining Allowed Claims in accordance with the Plan, and no further payments shall be made to the holder of an Allowed Claim on account of such undeliverable distribution.

### **7.7 *Manner of Payment Under Plan.***

Except as specifically provided herein, at the option of the Disbursing Agent, any Cash payment to be made hereunder may be made by a check or wire transfer or as otherwise required or provided in applicable agreements or customary practices of the Debtors.

### **7.8 *Unclaimed Property.***

Holders of Allowed Claims shall have 90 days from the date of any distribution to negotiate checks issued to such holders. To the extent such checks are not negotiated within

such time period, the payment on such applicable checks shall be stopped and the corresponding funds shall be made available for distribution to the remaining holders of Allowed Claims in accordance with the Plan and no further payments shall be made to the holder of an Allowed Claim on account of such unclaimed property. The Debtors and the Liquidating Trust shall have no obligation to attempt to locate any holder of an Allowed Claim other than by reviewing the Debtors' Books and Records, proofs of Claim filed against the Debtors or transfers of Claim filed pursuant to Bankruptcy Rule 3001.

**7.9 *De Minimis Distributions.***

Notwithstanding anything herein to the contrary, (i) no payment of fractions of cents will be made; and (ii) the Disbursing Agent shall have no obligation to make a distribution that is less than \$50.00 in Cash to any Claim holder. Whenever any payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding down of such fraction to the nearest whole cent.

**7.10 *No Distribution in Excess of Amount of Allowed Claim.***

Notwithstanding anything herein to the contrary, no holder of an Allowed Claim shall, on account of such Allowed Claim, receive a distribution (of a value set forth herein) in the aggregate from the Debtors that is in excess of the Allowed amount of such Claim.

**7.11 *Setoffs and Recoupments.***

The Disbursing Agent, may, pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy law, set off and/or recoup against any Allowed Claim, and the distributions to be made pursuant to the Plan on account of such Allowed Claim, any and all claims, rights and Causes of Action that a Debtor or its successors may hold against the holder of such Allowed Claim after the Effective Date; *provided, however*, that neither the failure to effect a setoff or recoupment nor the allowance of any Claim hereunder will constitute a waiver or release of any Causes of Action of a Debtor against such holder.

**7.12 *Withholding and Reporting Requirements.***

In connection with the Plan and all distributions hereunder, the Disbursing Agent shall comply with all withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority, and all distributions hereunder shall be subject to any such withholding and reporting requirements. The Disbursing Agent shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements, including, requiring a holder of a Claim or Interest to submit appropriate tax and withholding certifications. Notwithstanding any other provision of the Plan: (i) each holder of an Allowed Claim that is to receive a distribution under the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding and other tax obligations on account of such distribution; and (ii) no Plan distributions shall be required to be made to or on behalf of such holder pursuant to the Plan if, after 90 days from the date of transmission of a written request to the holder of an Allowed Claim, the Disbursing Agent does not receive a valid, completed IRS form from such holder of an Allowed Claim.

### **7.13 *Claims Paid or Payable by Third Parties.***

(a) *Claims Paid by Third Parties.* The Disbursing Agent, as applicable, shall be entitled to reduce in full a Claim, and such Claim shall be Disallowed without an objection being filed, upon 30 days' notice to the Creditor, to the extent that the holder of such Claim receives payment (before or after the Effective Date) on account of such Claim from a party that is not a Debtor. To the extent a holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor on account of such Claim, such holder shall, within 10 days of receipt thereof, repay or return the distribution to the Disbursing Agent, to the extent the holder's total recovery on account of such Claim from the third party and under the Plan exceeds the Allowed amount of such Claim as of the date of any such distribution under the Plan. In the event such holder fails to timely repay or return such distribution, the Disbursing Agent may pursue any rights and remedies against such holder under applicable law.

(b) *Claims Payable by Third Parties.* No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy.

(c) *Applicability of Insurance Policies.* Except as otherwise provided in the Plan, distributions to holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Pursuant to section 524(e) of the Bankruptcy Code, nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors or any Entity may hold against any other Entity under any insurance policies, including against insurers, nor shall anything contained in the Plan constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

## **ARTICLE VIII.**

### **PROCEDURES FOR RESOLVING CLAIMS**

#### **8.1 *Objections to Claims and Settlements.***

(a) Only the Liquidating Trustee shall be entitled to object to Claims after the Effective Date; *provided, however*, that in the event that any Debtor filed an objection to, or motion to subordinate, a Claim prior to the Effective Date, such objection or motion shall automatically be assigned to the Liquidating Trustee on the Effective Date; *provided, further, however*, that the holders of First Lien Claims shall be entitled to object to any Claims filed by CARB and to any Claims of the holders of Second Lien Claims to the extent required to determine rights in respect of the Intercreditor Agreement. Any objections to those Claims shall be served and filed on or before: (i) the later of 120 days after (x) the Effective Date or (y) the date that a proof of Claim is filed or amended or a Claim is otherwise asserted or amended in writing by or on behalf of a holder of such Claim; and (ii) such later date as may be fixed by the Bankruptcy Court on motion of the Liquidating Trustee, whether fixed before or after the date specified in clause (i) hereof. Any Claims filed after the Bar Date or Administrative Claims Bar Date, as applicable, shall be deemed disallowed and expunged in their entirety without further

order of the Bankruptcy Court or any action being required on the part of the Debtors unless the Person wishing to file such untimely Claim has received Bankruptcy Court authority to do so.

(b) From and after the Effective Date, the Liquidating Trustee may settle or compromise any Disputed Claim without need for notice or approval of the Bankruptcy Court.

## **8.2 *Disputed Claims.***

(a) Disputed Claims shall not be entitled to any Plan distributions unless and until such Claims become Allowed Claims.

(b) Notwithstanding anything herein to the contrary, there shall be no distribution to Classes 5A, 5B and 5C, until the resolution of all Disputed Claims in such Classes, and any distribution to such Classes shall be held in segregated accounts for the benefit of such creditors until distributions are made. There also shall be no distribution of beneficial interests in the Liquidating Trust to Classes 3 and 4, if applicable, until all Disputed Claims in Classes 3, 4 and 5A are resolved.

## **8.3 *Estimation of Claims; Certain Reserves.***

For purposes of calculating and making distributions under the Plan, the Disbursing Agent shall be entitled to estimate, in good faith and with due regard to litigation risks associated with Disputed Claims, the maximum dollar amount of Allowed and Disputed Claims, inclusive of contingent and/or unliquidated Claims in a particular Class.

The Disbursing Agent may request that the Bankruptcy Court estimate any Claim pursuant to section 502(c) of the Bankruptcy Code for purposes of determining the Allowed amount of such Claim regardless of whether any Person has previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. If the Bankruptcy Court estimates any contingent or unliquidated Claim for allowance purposes, that estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the objecting party may elect to pursue any supplemental proceedings to object to any ultimate payment on such Claim. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any holder of a Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such holder has filed a motion requesting the right to seek such reconsideration on or before 21 days after the date on which such Claim is estimated. All of the objection, estimation, settlement, and resolution procedures set forth in the Plan are cumulative and not necessarily exclusive of one another. Claims may be estimated and subsequently compromised, settled, resolved or withdrawn by any mechanism approved by the Bankruptcy Court.

## **8.4 *Preservation of Causes of Action.***

In accordance with section 1123(b) of the Bankruptcy Code, the Debtors shall retain and the Liquidating Trustee may enforce, sue on, settle, compromise, otherwise resolve, discontinue, abandon or dismiss the Tax Refund Claim without further approval of the Bankruptcy Court. Upon the Effective Date, (a) in accordance with the Liquidating Trust

Agreement, the Tax Refund Claim shall vest in the Liquidating Trust and (b) pursuant to the APA, all of the Debtors' other Causes of Action (except for any Cause of Action that is released pursuant to Section 11.4 of the Plan) shall be sold, assigned and vested in the Purchaser. The Liquidating Trust, in its sole and absolute discretion, may pursue the Tax Refund Claim in accordance with the best interests of the holders of the Liquidating Trust Interests.

*No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Debtors, the Liquidating Trust or the Purchaser will not, or may not, pursue any and all available Cause of Action against it. The Debtors, the Liquidating Trust and the Purchaser expressly reserve all rights to prosecute any and all Causes of Actions against any Entity (except any Cause of Action that is released pursuant to Section 11.4 of the Plan).* Unless any Cause of Action against an Entity is expressly waived, relinquished, exculpated, released, compromised or settled in the Plan or a Final Order (including, for the avoidance of doubt, any Cause of Action that is released pursuant to Section 11.4 of the Plan), all Causes of Action are reserved for later adjudication by the Liquidating Trust or the Purchaser, as applicable, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise) or laches shall apply to such Cause of Action upon, after, or as consequence of, confirmation or consummation of the Plan.

#### **8.5 No Recourse.**

Notwithstanding that the Allowed amount of any Disputed Claim is reconsidered under the applicable provisions of the Bankruptcy Code and Bankruptcy Rules or is Allowed in an amount for which after application of the payment priorities established by the Plan there is insufficient value to provide a recovery equal to that received by other holders of Allowed Claims in the respective Class, no Claim holder shall have recourse against the Debtors, the Liquidating Trust, the Purchaser or any of their respective professionals, consultants, officers, directors, employees, authorized persons, managers, affiliates, or members or their successors or assigns, or any of their respective property. Nothing in the Plan shall modify any right of a holder of a Claim under section 502(j) of the Bankruptcy Code, nor shall it modify or limit the ability of claimants (if any) to seek disgorgement to remedy any unequal distribution from parties other than those released under this section. THE ESTIMATION OF CLAIMS AND THE ESTABLISHMENT OF RESERVES UNDER THE PLAN MAY LIMIT THE DISTRIBUTION TO BE MADE ON INDIVIDUAL DISPUTED CLAIMS, REGARDLESS OF THE AMOUNT FINALLY ALLOWED ON ACCOUNT OF SUCH DISPUTED CLAIMS.

### **ARTICLE IX.**

#### **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

##### **9.1 General Treatment.**

(a) Except as otherwise provided herein, all executory contracts and unexpired leases of the Debtors shall be deemed to be rejected as of the Effective Date pursuant to sections 365 and 1123 of the Bankruptcy Code, except for any executory contract or unexpired

lease that: (i) previously has been assumed or rejected pursuant to a Final Order of the Bankruptcy Court; (ii) is designated specifically or by category as a contract or lease to be assumed on the Schedule of Assumed Contracts and Leases; or (iii) is subject to a separate motion to assume and assign or to reject under section 365 of the Bankruptcy Code filed before the Effective Date; *provided, however*, that the Debtors shall have the right to amend the Schedule of Assumed Contracts to add or remove any executory contract or unexpired lease at any time prior to the Effective Date.

(b) Subject to the occurrence of the Effective Date and Section 9.3, entry of the Confirmation Order by the Bankruptcy Court shall constitute an order approving the assumption and assignment of executory contracts and unexpired leases on the Schedule of Assumed Contracts and Leases and rejection of executory contracts and unexpired leases as set forth in Section 9.1(a) pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Each executory contract and unexpired lease assumed by the Debtors and assigned to the Purchaser pursuant to this Section 9.1 shall be assigned to and be fully enforceable by the Purchaser in accordance with its terms.

### **9.2 *Claims Based on Rejection of Executory Contracts or Unexpired Leases.***

In the event that the rejection of an executory contract or unexpired lease hereunder results in damages to the other party or parties to such contract or lease, such parties must file with the Bankruptcy Court and serve on the Liquidating Trust, not later than 30 days after the effective date of such rejection (which may be the Effective Date, or such date as may be established by order of the Bankruptcy Court, including the Bar Date Order and the Disclosure Statement Order), a proof of claim for damages alleged to arise from the rejection of the applicable contract or lease or be forever barred from filing a Claim, or sharing in distributions under the Plan, related to such alleged rejection damages.

### **9.3 *Cure of Defaults for Assumed Executory Contracts and Unexpired Leases.***

The cure of all defaults under executory contracts and unexpired leases to be assumed and assigned under the Plan and the APA, including the resolution of all objections to the adequacy of assurance of future performance under such executory contracts and unexpired leases and as to the adequacy of amounts proposed to cure defaults under such executory contracts and unexpired leases, shall be governed by the terms and conditions of the Disclosure Statement Order. All cure amounts shall be satisfied by the Purchaser.

### **9.4 *Reservation of Rights.***

Neither the exclusion nor inclusion of any contract or lease on the Schedule of Assumed Contracts and Leases, nor anything contained in the Plan, shall constitute an admission by the Debtors that any agreement, contract, or lease is an executory contract or unexpired lease subject to Article IX of the Plan, or that the Debtors, the Liquidating Trustee or the Purchaser have any liability thereunder.

**9.5 *Postpetition Contracts and Leases.***

All contracts, agreements and leases that were entered into or assumed by the Debtors after the Petition Date (other than the APA) shall be deemed assigned by the Debtors to the Purchaser on the Effective Date. The Debtors shall include a list of such contracts, agreements and leases in the Schedule of Assumed Contracts and Leases.

**ARTICLE X.**

**CONDITIONS PRECEDENT TO  
CONSUMMATION OF THE PLAN**

**10.1 *Conditions Precedent to Confirmation.***

It shall be a condition to Confirmation of the Plan that the following provisions, terms and conditions shall have been satisfied or waived pursuant to the provisions of Section 10.3:

(a) the Bankruptcy Court shall have entered the Disclosure Statement Order in form and substance acceptable to the Debtors and LNV;

(b) the Bankruptcy Court shall have determined, approved a settlement under Bankruptcy Rule 9019 with respect to, or the affected parties shall have consensually agreed concerning, what portion, if any, of the Acquired Assets are assets of CEP or LPAC;

(c) the Purchaser shall have entered into, and shall be bound to consummate the Sale in accordance with, the APA;

(d) the Bankruptcy Court shall have determined, or the Debtors, the Purchaser and CARB shall have otherwise consensually agreed concerning, the extent, if any, to which the Purchaser will be responsible for CARB Obligations relating to the Acquired Assets, including CARB Obligations relating to emissions of the Facility before the Sale, and the Purchaser shall be bound to close the Sale regardless of such determination by the Bankruptcy Court;

(e) the Bankruptcy Court shall have determined the validity of (i) the releases set forth in Section 11.4(b) of the Plan, to the extent such releases are non-consensual releases, and (ii) the exculpation set forth in Section 11.5 of the Plan, to the extent such exculpation relates to Entities other than Estate fiduciaries, except in each case that the Debtors shall be obligated to continue pursuing confirmation of the Plan and the Purchaser shall be obligated to close the Sale regardless of the determinations of the Bankruptcy Court;

(f) the Bankruptcy Court shall have determined that CARB has no Allowed Administrative Claims against the Debtors on account of CARB Obligations;

(g) the Plan Supplement and all of the schedules, documents, and exhibits contained therein shall have been filed not less than 14 days prior to the Confirmation Hearing and shall be in form and substance reasonably satisfactory to LNV; and



(h) entry of the Confirmation Order by the Bankruptcy Court in form and substance reasonably acceptable to the Debtors, the Purchaser and LNV.

**10.2 Conditions Precedent to the Effective Date.**

It shall be a condition to the occurrence of the Effective Date that the following provisions, terms and conditions shall have been satisfied or waived pursuant to the provisions of Section 10.3

(a) the Confirmation Order shall have become a Final Order;

(b) the Plan Documents shall have been executed and delivered, and any conditions (other than the occurrence of the Effective Date or certification by a Debtor that the Effective Date has occurred) contained therein having been satisfied or waived in accordance therewith;

(c) all material governmental, regulatory and third party approvals, authorizations, certifications, rulings, no-action letters, opinions, waivers and/or consents in connection with the Plan and the APA, if any, having been obtained (unless failure to do so will not have a material adverse effect on the Debtors) and remaining in full force and effect, and there existing no claim, action, suit, investigation, litigation or proceeding, pending or threatened in any court or before any arbitrator or governmental instrumentality, which would prohibit the consummation of the Plan;

(d) the Debtors shall have sufficient Cash from the sources provided for in the Plan, in the Debtors' good faith determination, to pay in full on the Effective Date all Allowed Administrative Claims, Allowed Priority Tax Claims and Allowed Priority Non-Tax Claims;

(e) the Debtors shall have paid all reasonable fees and expenses of the Consenting Managers in connection with the Chapter 11 Cases incurred before the Effective Date;

(f) all conditions to closing under the APA shall have been satisfied or waived in accordance with the terms thereof;

(g) the Sale shall have been consummated; and

(h) all conditions to the Effective Date in this Section 10.2 shall have been satisfied on or before ~~October 31~~November 13, 2017.

**10.3 Waiver of Conditions Precedent and Bankruptcy Rule 3020(e) Automatic Stay.**

The Debtors, with the consent of the Purchaser solely to the extent such conditions involve the APA or the transactions contemplated thereby, shall have the right to waive any condition precedent set forth in ~~Section~~Sections 10.1 and 10.2 of the Plan at any time without leave of or notice to the Bankruptcy Court and without formal action other than proceeding with confirmation of the Plan. Further, the stay of the Confirmation Order, pursuant to Bankruptcy Rule 3020(e), shall be deemed waived by the Confirmation Order.

#### **10.4 *Effect of Failure of Conditions.***

If the Consummation of the Plan does not occur, the Plan and Confirmation Order shall be null and void in all respects, no distributions under the Plan shall be made, and nothing contained in the Plan or the Disclosure Statement shall: (a) constitute a waiver or release of any claims by or Claims against or Interests in the Debtors; (b) prejudice in any manner the rights of the Debtors, any holders of Claims or Interests or any other Entity; or (c) constitute an admission, acknowledgment, offer or undertaking by the Debtors, any holders or any other Entity in any respect.

### **ARTICLE XI.**

#### **EFFECT OF CONFIRMATION**

##### **11.1 *Binding Effect.***

Subject to the occurrence of the Effective Date and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062, on and after the Confirmation Date, the provisions of the Plan shall be immediately effective and enforceable and deemed binding upon any holder of a Claim against, or Interest in, the Debtors, and such holder's respective successors and assigns, (whether or not the Claim or Interest of such holder is Impaired under the Plan, whether or not such holder has accepted the Plan, and whether or not such holder is entitled to a distribution under the Plan), all Entities that are party, or subject, to the settlements, compromises, releases, and injunctions described in the Plan, each Entity acquiring property under the Plan, and any and all non-Debtor counterparties to executory contracts, unexpired leases, and any other prepetition agreements. All Claims and Interests shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any holder of a Claim, debt or Interest has voted on the Plan.

##### **11.2 *Vesting of Assets.***

On the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, and except as otherwise provided in the Plan or in the Confirmation Order, the Liquidating Trust Assets shall vest in the Liquidating Trust, free and clear of all Claims, Liens, encumbrances, charges, and other Interests, other than the Liens of the Collateral Agent for the benefit of the holders of the First Lien Claims and the Second Lien Claims to the extent necessary to enforce the Intercreditor Agreement. Notwithstanding the preservation of such Liens for such purpose, all Liquidating Trust Assets shall be distributed to holders of Liquidating Trust Interests (subject to the Intercreditor Agreement) and Tax Distribution Liquidating Trust Interests as set forth in Section 6.4 of the Plan and in no other manner.

##### **11.3 *Term of Pre-Confirmation Injunctions or Stays.***

Unless otherwise provided herein, all injunctions or stays arising prior to the Confirmation Date in accordance with sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

#### 11.4 Releases.

(a) Releases by the Debtors. Pursuant to section 1123(b) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or the Plan Supplement, for good and valuable consideration, including the service of the Released Parties to facilitate the Sale and the implementation of the transactions contemplated by the Plan, on and after the Effective Date, the Released Parties are deemed released by the Debtors, ~~the Liquidating Trust~~, and the Estates from any and all claims, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative claims, asserted or assertable on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that the Debtors, the Liquidating Trust, the Estates or their affiliates 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 or other Entity, based on, attributable to or relating to, or in any manner arising from, in whole or in part, the Debtors, the Chapter 11 Cases, the purchase, sale or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests before or during the Chapter 11 Cases, the Sale, the negotiation, formulation or preparation of the Plan and Disclosure Statement, or related agreements, instruments or other Plan Documents, the direct or indirect operation or management of the Facility, or any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date, all to the extent related to the Debtors, the Chapter 11 Cases and the restructuring effectuated therein, except to the extent of claims against, or liabilities of, any Entity resulting from any act or omission of that Entity constituting willful misconduct or gross negligence by that Entity as determined by a Final Order. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any post-Effective Date obligations of any Released Party expressly preserved or created under the Plan, the Plan Documents, the APA or the Confirmation Order, nor does it release any Cause of Action, obligation or liability expressly preserved by the Intercreditor Agreement, the Plan, the Plan Supplement or the Liquidating Trust Agreement. For the avoidance of doubt, the foregoing release includes a release of the Debtors' Causes of Action against the holders of the First Lien Claims as contemplated by the settlement set forth in Section 5.5 of the Plan.

(b) Releases by Holders of Claims and Interests. For good and valuable consideration, the adequacy of which is hereby confirmed, on the Effective Date, to the fullest extent permitted by applicable law based on the facts, circumstances and structure of the Plan, each holder of a Claim or an Interest is deemed to have conclusively, absolutely, unconditionally, irrevocably and forever, released the ~~Debtors, the Liquidating Trust and the Released Parties~~ Exculpated Parties (other than the Debtors), SunTrust, the Collateral Agent and holders of First Lien Claims from any and all claims, interests, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative claims asserted on behalf of a Debtor, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that such Entity would have been legally entitled to assert (whether individually or collectively), based on, attributable to or relating to, or in any manner arising from, in whole or in part, the Debtors, the Chapter 11 Cases, the Sale, the purchase, sale or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the

Plan, the business or contractual arrangements between any Debtor and any ~~R~~released ~~Party~~Entity, the restructuring of Claims and Interests before or during the Chapter 11 Cases, the negotiation, formulation or preparation of the Plan, the Disclosure Statement, the Plan Supplement or related agreements, instruments or other Plan Documents, the direct or indirect operation or management of the Facility, or any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date, all to the extent related to the Debtors, the Chapter 11 Cases and the restructuring effectuated therein, except to the extent of claims against, or liabilities of, any Entity resulting from any act or omission of that Entity constituting willful misconduct or gross negligence by that Entity as determined by a Final Order. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any post-Effective Date obligations of any party expressly preserved or created under the Plan, the Plan Documents, the APA or the Confirmation Order, nor does it release any Cause of Action, obligation or liability expressly preserved by the Intercreditor Agreement, the Plan, the Plan Supplement or the Liquidating Trust Agreement.

### **11.5 Exculpation and Limitation of Liability.**

Except as otherwise specifically provided in the Plan or Plan Supplement, no Exculpated Party shall have or incur, and each Exculpated Party is hereby exculpated from, any obligation, Cause of Action or liability for any Exculpated Claim, except ~~for~~ to the extent of any obligation, Cause of Action or liability that is determined by a Final Order to have constituted gross negligence or willful misconduct (including fraud) on the part of such Exculpated Party, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation of the Plan and the distributions pursuant to the Plan, and, therefore, are not, and on account of such solicitation and 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.

### **11.6 Injunction.**

FROM AND AFTER THE EFFECTIVE DATE, ALL ENTITIES ARE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER, ANY CAUSE OF ACTION RELEASED OR TO BE RELEASED PURSUANT TO THE PLAN OR THE CONFIRMATION ORDER.

FROM AND AFTER THE EFFECTIVE DATE, TO THE EXTENT OF THE RELEASES AND EXCULPATION GRANTED IN ARTICLE XI HEREOF, THE RELEASING PARTIES SHALL BE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER AGAINST THE ENTITIES RELEASED PARTIES ~~AND THE OR~~ EXCULPATED ~~PARTIES~~ UNDER SECTIONS 11.4 OR 11.5 OF THE PLAN AND THEIR ASSETS AND PROPERTIES, AS THE CASE MAY BE, ANY SUIT, ACTION OR OTHER PROCEEDING, ON ACCOUNT OF OR RESPECTING ANY CLAIM, DEMAND, LIABILITY, OBLIGATION, DEBT, RIGHT, CAUSE OF ACTION, INTEREST OR REMEDY RELEASED OR TO BE RELEASED PURSUANT TO ARTICLE XI HEREOF.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE PLAN, THE PLAN SUPPLEMENT OR RELATED DOCUMENTS, OR FOR OBLIGATIONS ISSUED PURSUANT TO THE PLAN, ALL ENTITIES WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS OR INTERESTS THAT HAVE BEEN RELEASED PURSUANT TO SECTION 11.4 OR ARE SUBJECT TO EXCULPATION PURSUANT TO SECTION 11.5, ARE PERMANENTLY ENJOINED, FROM AND AFTER THE EFFECTIVE DATE, FROM TAKING ANY OF THE FOLLOWING ACTIONS: (1) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (2) ENFORCING, ATTACHING, COLLECTING OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE OR ORDER AGAINST SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (3) CREATING, PERFECTING OR ENFORCING ANY ENCUMBRANCE OF ANY KIND AGAINST SUCH ENTITIES OR THE PROPERTY OR ESTATE OF SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; AND (4) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS RELEASED OR SETTLED PURSUANT TO THE PLAN. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IF THE BANKRUPTCY COURT DETERMINES THAT THE PURCHASER IS NOT RESPONSIBLE FOR ANY CARB OBLIGATIONS ARISING FROM EMISSIONS MADE BY THE DEBTORS, CARB SHALL BE AND HEREBY IS PERMANENTLY ENJOINED FROM ATTEMPTING TO ENFORCE SUCH CARB OBLIGATIONS AGAINST THE PURCHASER, AND/OR ITS SUCCESSORS, ASSIGNS, AGENTS, MANAGERS, OFFICERS, DIRECTORS, ATTORNEYS OR SHAREHOLDERS AND FROM ASSERTING ANY CLAIMS OR PENALTIES AGAINST ANY SUCH ENTITY ON ACCOUNT OF SUCH CARB OBLIGATIONS.

THE RIGHTS AFFORDED IN THE PLAN AND THE TREATMENT OF ALL CLAIMS AND INTERESTS HEREIN SHALL BE IN EXCHANGE FOR AND IN COMPLETE SATISFACTION OF ALL CLAIMS AND INTERESTS OF ANY NATURE WHATSOEVER, INCLUDING ANY INTEREST ACCRUED ON CLAIMS FROM AND AFTER THE PETITION DATE, AGAINST THE DEBTORS OR ANY OF THEIR ASSETS, PROPERTY OR ESTATES. ON THE EFFECTIVE DATE, ALL SUCH CLAIMS AGAINST THE DEBTORS SHALL BE FULLY RELEASED AND THE INTERESTS SHALL BE CANCELLED.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR HEREIN OR IN OBLIGATIONS ISSUED PURSUANT HERETO FROM AND AFTER THE EFFECTIVE DATE, ALL CLAIMS AGAINST THE DEBTORS SHALL BE FULLY RELEASED AND ALL INTERESTS SHALL BE CANCELLED, AND THE DEBTORS' LIABILITY WITH RESPECT THERETO SHALL BE EXTINGUISHED COMPLETELY, INCLUDING ANY LIABILITY OF THE KIND SPECIFIED UNDER SECTION 502(G) OF THE BANKRUPTCY CODE.

ALL ENTITIES SHALL BE PRECLUDED FROM ASSERTING AGAINST THE DEBTORS, THE DEBTORS' ESTATES, THE LIQUIDATING TRUST, EACH OF THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, AND EACH OF THEIR ASSETS AND PROPERTIES, ANY OTHER CLAIMS OR INTERESTS BASED UPON ANY DOCUMENTS, INSTRUMENTS OR ANY ACT OR OMISSION, TRANSACTION OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED BEFORE THE EFFECTIVE DATE.

**11.7 *Termination of Subordination Rights and Settlement of Related Claims; Preservation of Rights Under Intercreditor Agreement.***

(a) Except as provided herein (including in Section 11.8(c) below), the classification and manner of satisfying all Claims and Interests and the respective distributions and treatments under the Plan take into account or conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code or otherwise, and any and all such rights are settled, compromised and released pursuant to the Plan. The Confirmation Order shall permanently enjoin, effective as of the Effective Date, all Persons and entities from enforcing or attempting to enforce any such contractual, legal and equitable rights satisfied, compromised and settled pursuant to this Article XI.

(b) Pursuant to Bankruptcy Rule 9019 and in consideration of the distributions and other benefits provided under the Plan, the provisions of the Plan will constitute a good faith compromise and settlement of all claims or controversies relating to the subordination rights that a holder of a Claim or Interest may have or any distribution to be made pursuant to the Plan on account of such Claim or Interest. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all such claims or controversies and the Bankruptcy Court's finding that such compromise or settlement is in the best interests of the Debtors, their respective properties, and holders of Claims and Interests, and is fair, equitable and reasonable.

(c) Notwithstanding anything herein to the contrary, nothing in the Plan shall impair, prejudice, release, compromise or waive any rights, Claims, Causes of Action, defenses or remedies of any holder of First Lien Claims against any holder of Second Lien Claims, or any rights, Claims, Causes of Action, defenses or remedies of any holder of Second Lien Claims against any holder of First Lien Claims, in each case arising under the Intercreditor Agreement.

**11.8 *Reservation of Rights.***

The Plan shall have no force or effect unless and until the Effective Date. Prior to the Effective Date, none of the filing of the Plan, any statement or provision contained in the Plan, or action taken by the Debtors with respect to the Plan, the Disclosure Statement, or the Plan Supplement shall be, or shall be deemed to be, an admission or waiver of any rights of any Debtor or any other party, ~~including the Released Parties,~~ with respect to any Claims or Interests or any other matter.

**ARTICLE XII.**

**RETENTION OF JURISDICTION**

Pursuant to sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction (unless otherwise explicitly noted below), pursuant to 28 U.S.C. §§ 1334 and 157, over all matters arising in, arising under, or related to the Chapter 11 Cases, the Plan, the APA or the Confirmation Order, including jurisdiction to:

(a) Allow, disallow, determine, liquidate, classify, estimate, or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of Claims or Interests;

(b) Resolve any matters related to the assumption, assumption and assignment, or rejection of any executory contract or unexpired lease to which the Debtors are party to or with respect to which any Debtor may be liable, and hear, determine, and, if necessary, liquidate, any Claims arising therefrom;

(c) Determine any and all motions, adversary proceedings, applications, contested matters, or other litigated matters pending on the Effective Date;

(d) Ensure that distributions to holders of Allowed Claims are accomplished pursuant to the terms of the Plan and the Liquidating Trust Agreement;

(e) Adjudicate any and all disputes arising from or relating to distributions, including any disputes arising under the Intercreditor Agreement, *provided*, that unless and to the extent that the Bankruptcy Court declines to accept exclusive jurisdiction over disputes arising under the Intercreditor Agreement, the Bankruptcy Court's jurisdiction over such disputes shall be exclusive to the fullest extent permitted by law;

(f) Enter, implement, or enforce such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan, the APA and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan, the APA or the Confirmation Order;

(g) Enter, implement, or enforce such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked, modified, or vacated, or distributions pursuant to the Plan are enjoined or stayed;

(h) Issue injunctions, enter and implement other orders, and take such other actions as may be necessary or appropriate to restrain interference by any Entity with the consummation, implementation, or enforcement of the Plan, the Confirmation Order, or any other order of the Bankruptcy Court;

(i) Modify the Plan before or after the Effective Date under section 1127 of the Bankruptcy Code or modify the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with the Plan, the APA, or the Confirmation Order, or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the APA, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with the Plan, the APA, or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan;

(j) Hear and determine any rights, Claims, or Causes of Action held or reserved by, or accruing to, the Debtors pursuant to the Bankruptcy Code, the Confirmation Order, or any other applicable law;

(k) Enforce all orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Cases, and to hear and determine any disputes in connection therewith;

(l) Hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, the APA, the Confirmation Order, any transactions contemplated thereby, or any agreement, instrument, or other document governing or relating to any of the foregoing, or the effect of the Plan under any agreement to which the Debtors or any affiliate thereof are party;

(m) Issue such orders as may be necessary or appropriate to aid in execution of the Plan or to maintain the integrity of the Plan following consummation, to the extent authorized by section 1142 of the Bankruptcy Code;

(n) Determine such other matters and for such other purposes as may be provided in the Confirmation Order;

(o) Hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code, including the Tax Refund Claim;

(p) Enter and enforce any order for the sale or transfer of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code, including the Confirmation Order;

(q) Hear and determine all disputes involving the existence, scope, and nature of the releases or injunctions granted under the Plan and the Bankruptcy Code;

(r) Hear and determine any matters arising under or related to sections 1141 and 1145 of the Bankruptcy Code;

(s) Recover all assets of the Debtors and property of the Debtors' Estates that are not Acquired Assets, wherever located;

(t) Enter a final decree closing the Chapter 11 Cases; and



(u) Hear and determine any other matter not inconsistent with the Bankruptcy Code and title 28 of the United States Code.

### **ARTICLE XIII.**

#### **MISCELLANEOUS PROVISIONS**

##### **13.1 *Exemption from Certain Transfer Taxes.***

To the fullest extent permitted by applicable law, all sale transactions consummated by the Debtors and approved by the Bankruptcy Court on and after the Confirmation Date through and including the Effective Date, including the Sale and the other transfers effectuated under the Plan, the sale by the Debtors of any owned property pursuant to section 363(b) of the Bankruptcy Code, and any assumption, assignment, and/or sale by the Debtors of their interests in unexpired leases of non-residential real property or executory contracts pursuant to section 365(a) of the Bankruptcy Code, shall constitute a “transfer under a plan” within the purview of section 1146 of the Bankruptcy Code, and shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax.

##### **13.2 *Substantial Consummation.***

On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

##### **13.3 *Amendments.***

(a) *Plan Modifications.* The Plan may be amended, modified or supplemented by the Debtors in the manner provided for by section 1127 of the Bankruptcy Code or as otherwise permitted by law, without additional disclosure pursuant to section 1125 of the Bankruptcy Code, except as otherwise ordered by the Bankruptcy Court. In addition, after the Confirmation Date, so long as such action does not materially and adversely affect the treatment of holders of Allowed Claims and Allowed Interests pursuant to the Plan, the Debtors may remedy any defect or omission or reconcile any inconsistencies in the Plan, the Plan Documents and/or the Confirmation Order, with respect to such matters as may be necessary to carry out the purposes and effects of the Plan, and any holder of a Claim or Interest that has accepted the Plan shall be deemed to have accepted the Plan as amended, modified or supplemented.

(b) *Other Amendments.* Prior to the Effective Date, the Debtors may make appropriate technical adjustments and modifications to the Plan without further order or approval of the Bankruptcy Court; *provided, however*, that such technical adjustments and modifications do not adversely affect in a material way the treatment of holders of Claims or Interests under the Plan.

##### **13.4 *Revocation or Withdrawal of the Plan.***

The Debtors reserve the right to revoke or withdraw the Plan prior to the Effective Date. If the Debtors revoke or withdraw the Plan prior to the Effective Date as to any or all of

the Debtors, or if confirmation or consummation as to any or all of the Debtors does not occur, then, with respect to such Debtors: (a) the Plan shall be null and void in all respects; (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Interest or Class of Claims or Interests), assumption or rejection of executory contracts or leases affected by the Plan, and any document or agreement executed pursuant to the Plan shall be deemed null and void; and (c) nothing contained in the Plan shall (i) constitute a waiver or release of any Claims by or against, or any Interests in, such Debtors or any other Person, (ii) prejudice in any manner the rights of such Debtors or any other Person or (iii) constitute an admission of any sort by the Debtors or any other Person.

### **13.5 Severability.**

If, prior to the entry of the Confirmation Order, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtors, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

### **13.6 Additional Documents.**

On or before the Effective Date, the Debtors may enter into any agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors and all holders of Claims or Interests receiving Plan distributions and all other parties in interest may, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

### **13.7 Dissolution of Committee**

On the Effective Date, the Committee shall dissolve and the retention and employment of the Committee's Professionals shall terminate, except the Committee will remain intact with respect to any pending litigation or contested matter to which the Committee is a party, any appeals of the Confirmation Order, the resolution of any substantial contribution applications and the resolution of applications for Accrued Professional Compensation. On the Effective Date, subject to the prior sentence, the members of the Committee shall be released and discharged from all rights and duties from or related to the Chapter 11 Cases.

### **13.8 Governing Law.**

Except to the extent the Bankruptcy Code or Bankruptcy Rules apply, and subject to the provisions of any contract, lease instrument, release, indenture, or other agreement or document entered into expressly in connection herewith, the rights and obligations arising

hereunder shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to conflict of laws principles; *provided, however*, that governance matters relating to the Debtors and the Liquidating Trust, as applicable, shall be governed by the laws of the State of incorporation or formation thereof.

**13.9 *Successors and Assigns.***

The rights, benefits, and obligations of any Person named or referred to in the Plan shall be binding upon, and shall inure to the benefit of, the heirs, executors, administrators, successors and/or assigns of such Person.

**13.10 *Notices.***

After the Effective Date, any pleading, notice, or other document required by the Plan to be served on or delivered to:

The Debtors, shall be served on:

LA PALOMA GENERATING COMPANY, LLC  
1700 Pennsylvania Avenue, NW, Suite 800  
Washington, D.C. 20006  
Attn: Andrew Ellenbogen

-and-

DEBEVOISE & PLIMPTON LLP  
919 Third Avenue  
New York, New York 10022  
Attn: M. Natasha Labovitz  
Craig A. Bruens  
Email: nlabovitz@debevoise.com  
cabruens@debevosie.com

The Purchaser, shall be served on:

CXA La Paloma, LLC  
c/o Roberto Kampfner  
White & Case LLP  
555 South Flower Street, Suite 2700  
Los Angeles, CA 90071

The Liquidating Trust, shall be served on:

Peter Kravitz, Liquidating Trustee for the La Paloma Liquidating Trust  
c/o Province, Inc.  
2360 Corporate Circle, Suite 330  
Henderson, NV 89074

**13.11 *Reservation of Rights.***

Except as expressly set forth herein, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of the filing of the Plan, any statement or provision contained herein, or the taking of any action by the Debtors with respect to the Plan shall be or shall be deemed to be, an admission or waiver of any rights of the Debtors with respect to any Claims or Interests prior to the Effective Date.

**13.12 *Waiver or Estoppel.***

Each holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, secured, or not subordinated by virtue of an agreement made with the Debtors or their counsel or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers filed with the Bankruptcy Court prior to the Confirmation Date.

**13.13 *Entire Agreement***

Except as otherwise indicated, the Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings and representations on such subjects, all of which have become merged and integrated into the Plan.

[\[Remainder of page intentionally left blank.\]](#)

| Dated: ~~October 26~~November 3, 2017  
Washington, D.C.

Respectfully submitted,

LA PALOMA GENERATING COMPANY, LLC  
LA PALOMA ACQUISITION CO, LLC  
CEP LA PALOMA OPERATING COMPANY,  
LLC

By: /s/ Andrew Ellenbogen  
Andrew Ellenbogen  
Authorized Person

Comparison Details	
Title	<b>pdfDocs compareDocs Comparison Results</b>
Date & Time	11/3/2017 12:38:24 PM
Comparison Time	2.39 seconds
compareDocs version	v4.1.500.10

Sources	
Original Document	C:\Users\JMM\AppData\Local\Temp\DocsCorp\pdfDocs compareDocs\Document\La Paloma - Chapter 11 Plan With Pre-Hearing Technical Amendments.DOCX
Modified Document	[#18416168] [v1] La Paloma - Final Confirmed Chapter 11 Plan With Post-Hearing Technical Amendments.docx

Comparison Statistics	
Insertions	22
Deletions	5
Changes	53
Moves	2
<b>TOTAL CHANGES</b>	<b>82</b>

Word Rendering Set Markup Options	
Name	Standard
<u>Insertions</u>	
<del>Deletions</del>	
<u>Moves / Moves</u>	
Inserted cells	
Deleted cells	
Merged cells	
Formatting	Color only.
Changed lines	Mark left border.
Comments color	By Author.
Balloons	False

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after Saving	General	Always
Report Type	Word	Track Changes
Character Level	Word	True
Include Headers / Footers	Word	True
Include Footnotes / Endnotes	Word	True
Include List Numbers	Word	True
Include Tables	Word	True
Include Field Codes	Word	True
Include Moves	Word	True
Show Track Changes Toolbar	Word	True
Show Reviewing Pane	Word	False
Update Automatic Links at Open	Word	False
Summary Report	Word	End
Include Change Detail Report	Word	Separate
Document View	Word	Print
Remove Personal Information	Word	False
Flatten Field Codes	Word	False