**UNITED STATES OF AMERICA**
**BEFORE THE**
**FEDERAL ENERGY REGULATORY COMMISSION**

| | | |
|---|---|---|
| **Longview Power, LLC** | **)** | **Docket No. EC20-__-000** |

# APPLICATION FOR AUTHORIZATION OF TRANSACTION UNDER SECTION 203 OF THE FEDERAL POWER ACT, AND REQUESTS FOR EXPEDITED ACTION AND WAIVERS OF CERTAIN FILING REQUIREMENTS

Pursuant to Section 203 of the Federal Power Act ("FPA"),[1] and Part 33 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules and Regulations,[2] Longview Power, LLC ("Longview" or "Applicant") hereby submits this application ("Application") requesting such FPA Section 203 approvals as may be deemed to be required in connection with a restructuring transaction (as described and defined in Part III, below, the "Transaction"), whereby (1) the existing equity interests in Longview Intermediate Holdings C, LLC ("Longview C") will be cancelled, (2) the debt held by Applicant's existing lenders under a revolving and term loan credit facility will be converted into common shares representing 10% of the equity in reorganized Longview C ("Reorganized Longview C"), and (3) the remaining 90% equity interest in Reorganized Longview C will be allocated to the Applicant's existing lenders that commit to fund a new $40 million credit facility.

As a result of the Transaction, which shall be effectuated (subject to, *inter alia*, Commission approval) pursuant to the terms of Applicant's chapter 11 plan of reorganization, Applicant will remain a wholly-owned subsidiary of Reorganized Longview C, the equity of

---

1 16 U.S.C. § 824b (2018).

2 18 C.F.R. Pt. 33 (2019).

which will be almost wholly-owned by the lenders under the prepetition credit facility ("Lender-Owners"). Applicant anticipates that four Lender-Owners will have a 10% or greater equity interest in Reorganized Longview C as a result of the Transaction: Cetus Capital, LLC and certain of its managed funds and investment accounts ("Cetus Capital"); Eaton Vance and certain of its managed funds, investment accounts, and affiliates ("Eaton Vance"); R&F Market, LLC ("R&F Market"); and Trilogy Portfolio Company, LLC ("Trilogy Portfolio") (collectively, "10% Lender-Owners").

On April 14, 2020, Applicant, Longview C, and certain of their subsidiaries (collectively, the "Debtors") commenced proceedings under chapter 11 of title 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").[3] Concurrently therewith, Applicant and Longview C filed a the *Debtors' Joint Prepackaged Chapter 11 Plan of Reorganization* for the resolution of certain prepetition claims against, and interests in, the Debtors (the "Reorganization Plan" or "Plan"), along with Debtors' disclosure statement ("Disclosure Statement") seeking the existing lenders' approval of the Plan.[4] On May 1, 2020, the existing voting lenders unanimously voted to approve the Plan. On May 22, 2020, the Bankruptcy Court held a hearing, and confirmed the Plan, which shall become effective upon obtaining the Commission's approval.

As demonstrated herein, the Transaction satisfies the requirements of FPA Section 203(a)(4) and the Commission's Part 33 regulations and is consistent with the public interest because it will have no adverse impact on competition, rates, or regulation, and will not

[3] Case No. 20-10951 (BLS).

[4] The Plan and Debtors' Disclosure Statement are provided in Exhibit I, attached hereto.

result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company.[5]

## I. REQUEST FOR A SHORTENED COMMENT PERIOD AND APPROVAL BY JULY 17, 2020

Consistent with Order No. 669,[6] Longview respectfully requests that the Commission issue an order approving this Application no later than July 17, 2020, the date 44 days following the date of filing, and requests expedited action and a comment period of 21 days in order to allow for approval by that date. Approval by that date will allow Longview to consummate the Reorganization Plan and to meet the milestones Longview and its supporting lenders agreed to as conditions to the Restructuring Support Agreement underlying the prepackaged Reorganization Plan. Failure to meet those milestones could have significant adverse commercial consequences for Applicants and the Lender-Owners.

Pursuant to Sections 33.11(b) and (c) of the Commission's regulations,[7] expedited consideration is appropriate provided this Application is not contested,[8] because it is consistent with Commission precedent and does not require a competitive analysis under Appendix A of the *Merger Policy Statement*.[9] A 21-day comment period is likewise consistent with Commission

---

5 *See* 18 C.F.R. § 2.26 (2019).

6 *See* Transactions Subject to FPA Section 203, Order No. 669, FERC Stats. & Regs. ¶ 31,200 at P 194 (2005), on reh'g, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, on reh'g, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006) (collectively, "Order No. 669").

7 18 C.F.R. §§ 33.11(b), (c) (2019).

8 Longview does not expect that this Application will be contested.

9 *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996) ("*Merger Policy Statement*"), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997).

policy, because this Application does not require an Appendix A analysis and does not present cross-subsidization concerns.[10]

## II. BACKGROUND

### A. Description of Applicant and Other Relevant Entities

#### 1. Longview and Longview C

Longview is an exempt wholesale generator ("EWG") that owns and operates an approximately 700 MW (summer rating) supercritical cycle pulverized coal-fired generation facility (the "Longview Facility") in Maidsville, West Virginia.[11] The Longview Facility is interconnected with the transmission grid controlled by PJM Interconnection, L.L.C. ("PJM"). Longview has a market-based rate tariff (the "MBR Tariff") on file with the Commission.[12] It also has a rate schedule on file establishing a revenue requirement for reactive supply and voltage control (the "Reactive Rate Schedule") provided from the Longview Facility pursuant to Schedule 2 to PJM's Open Access Transmission Tariff (the "PJM Tariff").[13]

Longview is a privately held company that is not listed on any public exchange. All of the membership interests in Longview are wholly-owned by Longview C. Currently, four entities own 10% or more of Longview C's membership interests: (1) Ascribe Capital LLC and certain of its managed funds and investment accounts, (2) KKR Credit Advisors (US) LLC and

---

[10] *See* Order No. 669 at P 194.

[11] *See* Notice of Self-Certification of Exempt Wholesale Generator Status, Docket No. EG10-42-000 (filed June 7, 2010); *Taloga Wind, LLC*, Notice of Effectiveness of Exempt Wholesale Generator Status, Docket Nos. EG10-40-000, *et al.* (Sept. 9, 2010) (unreported). Longview-affiliated companies currently are developing two expansion projects at the site of the Longview Facility: an approximately 1,210 MW gas-fired combined cycle gas turbine facility and an approximately 70 MW utility-scale solar facility.

[12] *See Longview Power, LLC*, Docket No. ER08-770-000 (June 6, 2008) (unreported) (accepting the MBR Tariff for filing).

[13] *See Longview Power, LLC*, Docket No. ER12-524-000 (Jan. 26, 2012) (unreported) (accepting the Reactive Rate Schedule for filing).

certain of its managed funds and investment accounts, (3) Seaport Global Securities, and (4) Tennenbaum Capital Partners, LLC.[14] The remaining membership interests in Longview C are owned by various other entities, none of which currently owns 10% or more of the membership interests.[15] Longview's current ownership structure is depicted in Exhibit C.

### B. The 10% Lender-Owners and Their Relevant Affiliates

It is anticipated that four Lender-Owners will be 10% Lender-Owners. The Commission's regulations create a rebuttable presumption that a person or entity that owns less than 10% of the outstanding voting securities of a public utility lacks control of that public utility and, therefore, is not an affiliate of the public utility.[16] As a result, Applicant is not providing information with respect to any individual Lender-Owner that, together with its affiliates, will hold less than 10% of the equity in Reorganized Longview as a result of the Transaction. Each of the 10% Lender-Owners and their affiliates: (1) are not primarily engaged in energy-related business activities; (2) do not own or control any facilities used for the generation, sale, transmission or distribution of electric energy, except as described below; and (3) do not own or control any facilities for the production, gathering, storage, liquefaction, sale, transportation or distribution of natural gas or other fuel inputs to electric generation, except as described below.

---

[14] While this this list of current holders of 10% or more interest differs from the list of holders in the most recent FERC 203 application related to Longview, those investors not the subject of a previous 203 filing have complied with the voting restriction described in Part IV and footnote 23, *infra*, and have not exercised voting rights in excess of 9.99%. *Cf. Longview Power, LLC*, 163 FERC ¶ 62,022 (2018).

[15] *See* Part IV and footnotes 21 and 23, *infra*, for additional discussion of relevant voting rights and management of Longview.

[16] *See, e.g.*, 18 C.F.R. § 35.36(a)(9)(v) (rebuttable presumption under definition of "affiliate" in context of market-based rate seller regulations).

### 1. Cetus Capital

Cetus Capital is an investment manager that invests in a number and variety of businesses and markets. Cetus Capital is not primarily engaged in ownership or operation of public utilities or their energy affiliates. Cetus Capital does not own or control any facilities used for the generation, sale, transmission or distribution of electric energy or for the production, gathering, storage, liquefaction, sale, transportation or distribution of natural gas or other fuel inputs to electric generation.[17]

### 2. Eaton Vance

Eaton Vance Corp. owns Eaton Vance Management Inc. Eaton Vance Corp. is an investment manager for a variety of mutual fund products as well as other asset management vehicles, and provides advanced investment strategies and wealth management solutions to forward-thinking investors around the world. Eaton Vance invests in various funds that may hold residual interests and other interests in public utility companies, all of which interests are passive in nature and do not convey management or operations control and only convey limited consent rights comparable to those held by passive tax equity investors in *AES Creative Resources, Inc*.[18] None of Eaton Vance's interests provide sufficient veto rights over management actions so as to convey control. Eaton Vance is not primarily engaged in ownership or operation of public utilities or their energy affiliates. Eaton Vance does not control any facilities used for the generation, sale, transmission or distribution of electric energy or for the

[17] Affiliates of Cetus Capital own a 10% or more interest in Castex Energy 2005 Holdco, LLC, a natural gas and oil exploration and production company which is not located within the PJM balancing authority area and does not own or operate intrastate natural gas pipelines or gas storage facilities, and thus is not an essential input to electricity products or electric power production, as defined in Sections 33.4 and 35.36 of the Commission's regulations.

[18] 129 FERC ¶ 61,239 at P 26 (2009) ("*AES Creative*").

production, gathering, storage, liquefaction, sale, transportation or distribution of natural gas or other fuel inputs to electric generation.

### 3. R&F Market

R&F Market is a special purpose investment vehicle established to hold strategic investments. R&F Market is not primarily engaged in ownership or operation of public utilities or their energy affiliates. R&F Market does not own or control any facilities used for the generation, sale, transmission or distribution of electric energy or for the production, gathering, storage, liquefaction, sale, transportation or distribution of natural gas or other fuel inputs to electric generation.

### 4. Trilogy Portfolio

Trilogy Portfolio is an investment fund that invests in a number and variety of businesses and markets. Trilogy Portfolio is not primarily engaged in ownership or operation of public utilities or their energy affiliates. Neither Trilogy Portfolio nor any of its affiliated investment funds directly or indirectly owns, operates or controls electric transmission facilities other than limited interconnection facilities associated with generation facilities, natural gas transportation or storage facilities, natural gas distribution facilities, physical coal sources or facilities used for the transportation of coal, or other inputs to electric power production. Trilogy Portfolio indirectly owns a 20.7% interest in Dogwood Energy, LLC, which in turn owns a 33.9% interest in the 620 MW natural gas-fired Dogwood generation facility ("Dogwood Facility"), located near Pleasant Hill, Missouri. The Dogwood Facility is an EWG with market-based rate authority, it is interconnected with transmission facilities owned by KCP&L Greater Missouri Operations Company and operated by the Southwest Power Pool. The Dogwood Facility's

output is sold to certain municipalities that own the remaining 66.1% interest in the Dogwood Facility.

Other than the Dogwood Facility, Trilogy Portfolio does not own or control any facilities used for the generation, sale, transmission or distribution of electric energy. Trilogy Portfolio does not own or control any facilities used for the production, gathering, storage, liquefaction, sale, transportation or distribution of natural gas or other fuel inputs to electric generation.

## III. THE TRANSACTION

As of the petition date of the bankruptcy proceeding initiated by Applicant and Longview C, Longview has approximately $355.8 million in total funded debt obligations, comprised of approximately $25 million outstanding under a senior secured asset-based revolving credit facility ("Revolving Credit Facility"), approximately $286.5 million in aggregate principal outstanding under a term loan credit facility ("Term Loan Credit Facility"), and approximately $44.3 million in aggregate principal amount outstanding under a senior subordinated notes purchase agreement ("Subordinated Notes Purchase Agreement").

Pursuant to the Reorganization Plan, the Transaction will cancel the current equity in Longview C and distribute, on a *pro rata* basis, new common shares representing 10% of the equity interest in Reorganized Longview C to the existing lenders under the Revolving Credit Facility and the Term Loan Credit Facility, provided such distribution will be subject to dilution from the management incentive plan and new warrants.[19] Additionally, under the Reorganization Plan, each lender will receive a subscription right to fund a $40 million exit facility ("Exit Facility") and new warrants. The new warrants will be exercisable for the remaining 90% of common shares in Reorganized Longview C, if such lender exercises its

[19] The Plan is provided in Exhibit I, attached hereto.

subscription right and contributes at least its *pro rata* portion of the Exit Facility to help fund Longview's operations after it emerges from bankruptcy. The 90% of common shares in Reorganized Longview C will be distributed to the contributing lenders *pro rata* based on their contribution to the Exit Facility and will be subject to dilution on account of the management incentive plan and new warrants. Each lender that opts to participate in the conversion through the Reorganization Plan will be a Lender-Owner of Reorganized Longview C, regardless of whether the Lender-Owner also contributes to the Exit Facility. In exchange, the lender parties will agree to release certain obligations, interests, and claims against the Debtors and other third parties, including the non-Debtor entities that are party to the Revolving Credit Facility, the Term Loan Credit Facility, and the Subordinated Notes Purchase Agreement.

Further, the Transaction will provide for a management incentive plan (the "Management Incentive Plan"). The Management Incentive Plan will grant options for up to 5% of the membership interest in Restructured Longview C, which options may be exercised when the equity value of Reorganized Longview C equals or exceeds $150 million. As a result, the new membership interest that is distributed to the existing lenders may be diluted by the future exercise of these options.

On May 1, 2020, the voting lenders unanimously voted to approve the Reorganization Plan, and nearly all of the voting lenders committed to fund at least their *pro rata* share of the Exit Facility. As a result, Longview anticipates that the 10% Lender-Owners (*i.e.* Cetus Capital, Eaton Vance, R&F Market, and Trilogy Portfolio) are the only entities that will own 10% or more of Reorganized Longview C's common shares. Regulatory approval, however, is a condition precedent to the effectiveness of the Reorganization Plan, and, as a result, the Plan

cannot be consummated unless and until Commission approval under FPA Section 203 is obtained.

## IV. REQUESTED AUTHORIZATION

Longview respectfully requests Commission approval under Section 203(a)(1)(A) of the FPA[20] for any upstream change in control over Longview and its Commission-jurisdictional Facilities deemed to occur as a result of the Transaction. Longview requests such authorization in light of the Commission's longstanding interpretation of the "or otherwise dispose" clause as covering not only direct transfers of a public utility's Commission-jurisdictional facilities but also indirect dispositions resulting from an upstream change in control over the public utility itself. Although the Commission has made clear that "transactions that do not transfer control of a public utility do not fall within the 'or otherwise dispose' language of Section 203(a)(1)(A) (assuming there is no sale or lease of the [Commission-jurisdictional] facilities)," Longview is submitting this Application in an abundance of caution because the change in ownership could be deemed to constitute a disposition of jurisdictional facilities.[21]

---

[20] No approval under Section 203(a)(2) of the FPA, 16 U.S.C. § 824b(a)(2) (2018), should be required in connection with the Transaction. The only 10% Lender-Owner to which 203(a)(2) may apply is Trilogy Portfolio, as a result of its approximately 20.7% indirect ownership interest in Dogwood Energy, LLC, which owns 33.9%, leases and operates the Dogwood Facility, a 620 MW generating facility located in SPP. Dogwood Energy, LLC is an EWG. Therefore, if and to the extent Trilogy Portfolio were considered a holding company, it would be a holding company solely with respect to an EWG and would be eligible for the blanket authorization under Section 33.1(c)(8) of the Commission's regulations, 18 C.F.R. § 33.1(c)(8) (2019), for acquisitions of additional interests in EWGs, such as Longview. *See* Transactions Subject to FPA Section 203, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225, at P 44 (2006) (explaining that the blanket FPA Section 203(a)(2) authorization for companies that are holding companies solely with respect to EWGs, qualifying facilities ("QF"), and foreign utility companies ("FUCO") extends to the acquisition of "securities of a holding company that holds only EWGs, QFs, or FUCOs").

[21] Under the LLC Agreement, the "management, operation, and control of the business and affairs" of Reorganized Longview C are "vested exclusively in [its] Board of Managers," LLC Agreement § 5.1, and "[t]he Members, other than as they may act by and through the Board of Managers, . . . take no part in the management of the business and affairs of [Longview C]," *id.* § 5.2. Members, including the 10% Lender-Owners, hold only limited consent rights substantially similar to those of the passive tax equity investors in *AES Creative*, 129 FERC ¶ 61,239, at P 26 (2009). Accordingly, it is not clear whether the Transaction will trigger Section 203(a)(1(A). Nonetheless, Longview respectfully requests that the Commission grant the requested approval without reaching the threshold question of whether the members' voting rights are sufficiently limited

As noted, as a result of the Transaction, the 10% Lender-Owners ownership percentages in Reorganized Longview C will be as follows: Cetus Capital will hold approximately 13%, Eaton Vance will hold approximately 11%, R&F Market will hold approximately 13%, and Trilogy Portfolio will hold approximately 22%.

While the post-emergence ownership interests in Reorganized Longview C remains subject to change in light of parties' ability to trade the Applicant's existing debt prior to the effective date of the Plan, Applicant does not anticipate that any Lender-Owner, other than the 10% Lender-Owners identified above, will receive an ownership interest of more than 10% in Reorganized Longview C as a result of the Transaction[22] If a Lender-Owner, other than the 10% Lender-Owners identified above, does receive more than a 10% ownership interest in Reorganized Longview C as a result of the Transaction, the Fifth Amended and Restated Limited Liability Company Agreement of Reorganized Longview C, which shall be effective prior to distribution of the new common shares, will prohibit such Lender-Owner from voting its common shares in excess of the common shares representing 9.99% of the outstanding ownership interest in Reorganized Longview C, unless or until such Lender-Owner's ownership interest is approved by the Commission under FPA Section 203 by separate application. Specifically, the LLC Agreement prohibits any entity that may acquire or hold more than 10% of Reorganized Longview C's common shares after consummation of the Transaction from voting

as to make Section 203(a)(1)(A) approval unnecessary. *See, e.g.*, *Longview*, 163 FERC ¶ 62,022 (approving Longview's most recent FPA Section 203 application without reaching the question of whether Section 203(a)(1)(A) approval is unnecessary based on the substantially similar voting rights set forth in the Fourth Amended and Restated Limited Liability Company Agreement of Longview C, effective as of April 13, 2015); *see also Ocean State Power*, 47 FERC ¶ 61,231, at 62,130 (1989).

[22] Any slight changes in the 10% Lender-Owners' equity positions resulting from debt trading following the submission of this Application will be identified in the notice to the Commission following the consummation of the Transaction and the Plan becoming effective.

more than 9.99% of Reorganized Longview C's common shares until and unless such entity obtains Commission approval under FPA Section 203.[23] Specifically, Section 9.1(d) of the LLC Agreement provides that:

> Notwithstanding anything to the contrary in this Agreement, if, at any time after the Effective Date, any Transfer otherwise permitted by this Article IX shall result in the Transferee (together with its Affiliates) owning or controlling ten percent (10%) or more of the then outstanding Common Shares, the Transferee shall not be entitled to vote any Common Shares representing nine and ninety-nine one-hundredths percent (9.99%) of the then outstanding Common Shares unless and until such Transfer has been authorized by the Federal Energy Regulatory Commission pursuant to Section 203 of the [FPA], as amended.

This restriction in the LLC Agreement ensures that an entity will not receive, absent Commission approval, even the sort of "limited rights (*e.g.*, veto and/or consent rights necessary to protect its economic investment interests . . .)" found not to convey control in past cases.[24]

## V. THE TRANSACTION IS CONSISTENT WITH THE PUBLIC INTEREST

FPA Section 203(a)(4) provides that the Commission "shall approve" a proposed transaction "if it finds that the proposed transaction will be consistent with the public interest, and will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associated company . . ."[25] In determining

---

[23] The currently effective Fourth Amended and Restated Limited Liability Company Agreement of Longview C, effective as of April 13, 2015, contains this same voting restriction. *See* Longview Power LLC, Application for Approval Under Section 203 of the Federal Power Act, Docket No. EC18-18-000, at 7 (filed Nov. 13, 2017). In Longview's most recent FPA Section 203 application, Longview sought, and the Commission granted, approval to lift the voting restriction for one of Longview C's current equity owners that obtained more than 10% of Longview C's then-outstanding common shares. *See Longview*, 163 FERC ¶ 62,022.

[24] *See FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253, at P 54 (2007); *AES Creative*, 129 FERC ¶ 61,239 at P 26. The Voting Restriction is not a "voluntary, contractual undertaking" by the Lender-Owners of the sort the Commission has found to be insufficient, "by itself, [to] break the upstream chain of affiliation for purposes of section 203." *See MACH Gen, LLC*, 148 FERC ¶ 61,045 (2014). It is instead a preexisting requirement imposed on all acquirors of 10% of more of Reorganized Longview C's common shares by the LLC Agreement.

[25] 16 U.S.C. § 824b(a)(4) (2018).

whether a proposed transaction is in the public interest, the Commission considers whether the proposed transaction will have an adverse impact on (1) competition, (2) rates or (3) regulation.[26] The Transaction satisfies the requirements of FPA Section 203, because it will not have an adverse impact on competition, rates, or regulation and will not result in cross-subsidization or the pledge or encumbrance of utility assets for the benefit of any associate company.

### A. The Transaction Will Not Have an Adverse Effect on Competition

#### 1. The Transaction Presents No Horizontal Market Power Concerns

The Transaction presents no horizontal market power concerns. Under Section 33.3(a)(1) of the Commission's regulations, FPA Section 203 applicants must file a horizontal competitive analysis screen if, as a result of the proposed transaction, a single corporate entity obtains ownership or control over the generating facilities of previously unaffiliated merging entities.[27] Conversely, Section 33.3(a)(2)(i) of the Commission's regulations provides that a horizontal competitive screen analysis is not required if the applicant "[a]ffirmatively demonstrates that the merging entities do not currently conduct business in the same geographic markets or that the extent of the business transactions in the same geographic markets is *de minimis*."[28] None of the 10% Lender-Owners and their affiliates owns or controls generation facilities within the balancing area authority of PJM, where the Longview Facility is located.[29] Because none of the 10% Lender-Owners or their affiliates currently conducts business in the same geographic

---

[26] *See Generally Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, 93 FERC ¶ 61,164 (2000) ("Order No. 642"), *on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001).

[27] 18 C.F.R. § 33.3(a)(1) (2019).

[28] *Id.* at 33.3(a)(2)(i).

[29] As explained in Part II.B, the only other generation facility with which any 10% Lender-Owner is affiliated is the facility leased and operated by Dogwood Energy, LLC, which is an EWG located in the SPP market.

market as the Longview Facility, the Transaction presents no horizontal market power concerns, and no Appendix A analysis is required.[30]

### 2. The Transaction Presents No Vertical Power Market Concerns

The Transaction presents no vertical market power concerns. The Transaction does not involve any electric transmission facilities, other than those limited facilities used to interconnect the Longview Facility with the transmission grid, or any other upstream inputs to electricity products that would allow entities deemed to be combining to erect barriers to entry and thus presents no vertical market power concerns. None of the 10% Lender-Owners or their affiliates owns or controls any electric transmission facilities in, or into, the PJM market, or any inputs to electricity products in the PJM market that would allow them to erect barriers to entry. Accordingly, the Transaction presents no vertical market power concerns, and no vertical market power analysis is required.

## B. The Transaction Will Not Have an Adverse Effect on Rates

The Transaction will not adversely affect rates. Neither Longview nor any of the 10% Lender-Owners or their affiliates currently provides third-party jurisdictional transmission service or has any captive wholesale requirements customers in the United States. All wholesale sales of electric energy, capacity, and ancillary services by Longview are made at market-based rates pursuant to the MBR Tariff or at cost-based rates pursuant to the Reactive Rate Schedule and Schedule 2 to the PJM Tariff. Following the consummation of the Transaction, Longview will continue making wholesale sales of electric energy, capacity, and ancillary services at market based rates pursuant to the MBR Tariff or at cost-based rates pursuant to the Reactive Rate Schedule and Schedule 2 to the PJM tariff. Neither the Reactive Rate Schedule nor the

[30] *See* 18 C.F.R. § 33.3(a)(2) (2019).

PJM Tariff allows for the pass-through of costs associated with the Transaction without Commission authorization under FPA Section 205. Accordingly, the Transaction will not have any adverse effect on wholesale rates.

### C. The Transaction Will Not Impair the Effectiveness of Regulation

The Transaction will not have any adverse effect on the effectiveness of federal or state regulation. Wholesale sales by Longview and from the Longview Facility will continue to be subject to the Commission's ratemaking jurisdiction, just as they are today. Similarly, the Transaction will not affect the ability of any state authority to regulate retail rates.

### D. The Transaction Will Not Result in Cross-Subsidization or the Pledge or Encumbrance of Utility Assets as to Any Associate Company

Pursuant to Section 203(a)(4) of the FPA[31] and Section 2.26(f) of the Commission's regulations,[32] the Commission evaluates whether a proposed transaction will result in the cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. The Commission has recognized three classes of transactions that are unlikely to present cross-subsidization concerns and, accordingly, has adopted three "'safe harbors' for satisfying the FPA Section 203 cross-subsidization demonstration, absent concerns identified by the Commission or evidence from interveners that there is a cross-subsidy problem based on the particular circumstances presented."[33] The Transaction falls squarely within the safe harbor for transactions that do not involve a franchised

[31] 16 U.S.C. § 824b(a)(4) (2018).

[32] 18 C.F.R. § 2.26(f) (2019).

[33] *See FPA Section 203 Supplemental Policy Statement*, 120 FERC 61,060 at P 16.

public utility with captive customers.[34] Under such circumstances, the Commission has recognized that "there is no potential for harm to customers."[35]

## VI. INFORMATION REQUIRED OF APPLICANT BY SECTION 33.2 OF THE COMMISSION'S REGULATIONS AND REQUESTS FOR WAIVERS

### A. Section 33.2(a) - The Exact Name of the Applicant and Its Principal Business Address

Longview Power, LLC
1375 Fort Martin Road
Maidsville, WV 26541

### B. Section 33.2(b) – Names and Addresses of Persons Authorized to Receive Notices and Communications Regarding the Application

Applicant requests that the names of the following persons should be placed on the official service list compiled by the Secretary in this proceeding:

Brooksany Barrowes*
Nicholas Gladd
Ammaar Joya
KIRKLAND & ELLIS LLP
1301 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 389-5025
brooksany.barrowes@kirkland.com
nicholas.gladd@kirkland.com
ammaar.joya@kirkland.com

Jeffery L. Keffer*
President & Chief Executive Officer
Longview Power, LLC
1375 Fort Martin Road
Maidsville, WV 26541
(304) 599-0930
jkeffer@longviewpower.net

*Attorneys for Longview Power, LLC*

* Longview requests that the Commission include each of the listed persons on the official service list. However, if, pursuant to 18 C.F.R. § 385.203(b)(3), the Commission limits service to two persons, Longview designates the persons denoted with an asterisk (*) for service.

[34] *See id*. at P 17.

[35] *Id.*

### C. Section 33.2(c) – Description of Applicant

#### 1. Exhibit A - Description of Applicant's Business Activities

Descriptions of the business activities of Longview and other relevant entities are provided above in Part I.A. Longview respectfully requests waiver of Section 33.2(c)(1) of the Commission's regulations[36] to the extent it would require the submission of additional information in Exhibit A.

#### 2. Exhibit B - List of Energy Subsidiaries and Affiliates

Other than Longview, the only energy subsidiary or affiliate of the 10% Lender-Owners is Dogwood Energy, LLC, in which Trilogy Portfolio indirectly owns a 20.7% interest. Dogwood Energy, LLC owns a 33.9% interest in the 620 MW natural gas-fired Dogwood Facility, located near Pleasant Hill, Missouri. The Dogwood Facility is an EWG with market-based rate authority and its output is sold to certain municipalities that own the remaining 45% interest in the Dogwood Facility. Longview respectfully requests waiver of Section 33.2(c)(2) of the Commission's regulations[37] to the extent it would require the submission of additional information on Exhibit B.[38]

#### 3. Exhibit C - Organizational Charts

Organizational charts depicting Longview's pre- and post-Transaction corporate structures are provided in Exhibit C. Longview respectfully requests partial waiver of Section 33.2(c)(3) of the Commission's regulations[39] to the extent necessary to permit it to

---

[36] 18 C.F.R. § 33.2(c)(1) (2019).

[37] *Id*. at 33.2(c)(2).

[38] *See, e.g.*, *Sunoco Power Generation LLC*, 138 FERC ¶ 62,255 (2012); *Cottonwood Energy Co. LP*, 118 FERC ¶ 62,151 (2007); *Nat. Power of Am., Inc.*, 109 FERC ¶ 62,214 (2004).

[39] 18 C.F.R. § 33.2(c)(3) (2019).

include on those organizational charts only those parent companies, energy subsidiaries, and energy affiliates that are relevant to the Transaction. Specifically, Longview requests partial waiver to exclude from those charts intermediate holding companies, service companies, and similar subsidiaries and affiliates not involved in, or relevant to, the Transaction.

### 4. Exhibit D - Description of Joint Ventures, Strategic Alliances, Tolling Arrangements or Other Business Arrangements

The Transaction will have no effect on any joint ventures, strategic alliances, tolling arrangements, or other business arrangements of Longview separate from the Transaction. Longview, therefore, requests waiver of the requirement of Section 33.2(c)(4) of the Commission's regulations[40] to file Exhibit D.

### 5. Exhibit E - Identity of Common Officers

There are currently no common officers or directors shared between Longview and Longview C, on the one hand, and the 10% Lender-Owners and their affiliates, on the other hand. Following consummation of the Transaction, there will continue to be no common officers or directors shared between Longview and Reorganized Longview C, on the one hand, and the 10% Lender-Owners, on the other hand. Longview respectfully requests waiver of the requirement of Section 33.2(c)(5) of the Commission's regulations[41] to the extent it would require the submission of additional information in Exhibit E.

### 6. Exhibit F - Wholesale Power Sales and Transmission Customers

Longview respectfully requests waiver of the requirement of Section 33.2(c)(6) of the Commission's regulations[42] to submit Exhibit F As discussed above, the Transaction does not

---

[40] *Id.* § 33.2(c)(4) (2019).

[41] 18 C.F.R. § 33.2(c)(5) (2019).

[42] *Id.* § 33.2(c)(6) (2019).

have any detrimental impact on competition, rates, or regulation and will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. Moreover, Applicant sells wholesale energy, capacity, and ancillary services pursuant to its market-based rate authorization. Information regarding these wholesale sales is available in Applicant's electric quarterly reports, submitted in accordance with the Commission's regulations. The only other wholesale sales made by Applicant are the sales of reactive power under Applicant's fixed-rate Reactive Service Rate Schedule. These sales are made pursuant to the PJM Tariff, and the Transaction will have no adverse effect on customers for reactive power services in PJM.

### D. Section 33.2(d) - Description of Jurisdictional Facilities

The only jurisdictional facilities involved in the Transaction are (1) the generator interconnection facilities associated with the Longview Facility, (2) the MBR Tariff and contracts and books and records relating to sales thereunder, and (3) the Reactive Rate Schedule. Longview respectfully requests waiver of the requirement of Section 33.2(d) of the Commission's regulations[43] to provide additional information in Exhibit G.

### E. Section 33.2(e) - Description of Transaction

A description of the Transaction is provided above in Part III. Applicant requests waiver of Section 33.2(e)(2) of the Commission's regulations[44] to the extent it would require submission of additional information in Exhibit H.

---

[43] 18 C.F.R. § 33.2(d) (2019).

[44] *Id.* at 33.2(e)(2).

### F. Section 33.2(f) - All Contracts Related to Transaction

Copies of the Reorganization Plan; the Disclosure Statement; and the Fifth Amended and Restated Limited Liability Company Agreement of Longview Intermediate Holdings C, LLC, which will become effective on the effective date of the Reorganization Plan, are provided in Exhibit I.

### G. Section 33.2(g) - Facts Relied Upon to Show that the Transaction is Consistent with the Public Interest

The facts upon which Longview relies to show that the Transaction is consistent with the public interest are set forth above in Part V. In accordance with Section 33.2(g) of the Commission's regulations,[45] Longview will supplement this Application promptly to reflect in its analysis any material changes that may occur after the date this filing is made with the Commission, but before final Commission action, if there are any such changes. Because such information is provided in the body of this Application, Longview requests waiver of the requirement of Section 33.2(g) of the Commission's regulations[46] to provide such information in Exhibit J.

### H. Section 33.2(h) - Map of Physical Property

Longview respectfully requests waiver of the requirement of Section 33.2(h) of the Commission's regulations[47] to provide maps identifying the physical property owned by Longview in Exhibit K, because the Transaction does not involve the combination of utilities with franchised service territories.

---

45 18 C.F.R. § 33.2(g) (2019).

46 *Id.*

47 *Id.* § 33.2(h).

### I. Section 33.2(i) - Licenses, Orders, or Other Approvals Required from Other Regulatory Bodies in Connection with the Proposed Transaction and the Status of Other Regulatory Actions

No other regulatory approvals are required in connection with the Transaction. Accordingly, Longview requests waiver of Section 33.2(i) of the Commission's regulations[48] to the extent it would require the submission of Exhibit L.

### J. Section 33.2(j) - Explanation that the Transaction Will Not Result in Cross-Subsidization or the Pledge or Encumbrance of Utility Assets as to any Associate Company

Applicant provides the required explanation in Exhibit M.

## VII. PROPOSED ACCOUNTING ENTRIES

Longview has not included proposed accounting entries showing the effect of the Transaction, because it is not required to maintain its books and records in accordance with the Commission's Uniform System of Accounts.

## VIII. VERIFICATION

Pursuant to Section 33.7 of the Commission's regulations,[49] signed verification of Applicant's authorized representative is provided in Attachment 2 hereto.

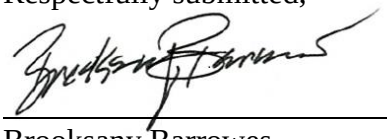
[48] *Id.* § 33.2(i).

[49] 18 C.F.R. § 33.7 (2019).

## IX. CONCLUSION

For the reasons set forth in this Application, Longview respectfully requests that the Commission issue an order no later than July 17, 2020, granting all FPA Section 203 approvals required in connection with the Transaction.

Respectfully submitted,



Brooksany Barrowes
Nicholas Gladd
Ammaar Joya
KIRKLAND & ELLIS LLP
1301 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 389-5025
brooksany.barrowes@kirkland.com
nicholas.gladd@kirkland.com
ammaar.joya@kirkland.com

*Attorneys for Longview Power, LLC*

June 3, 2020

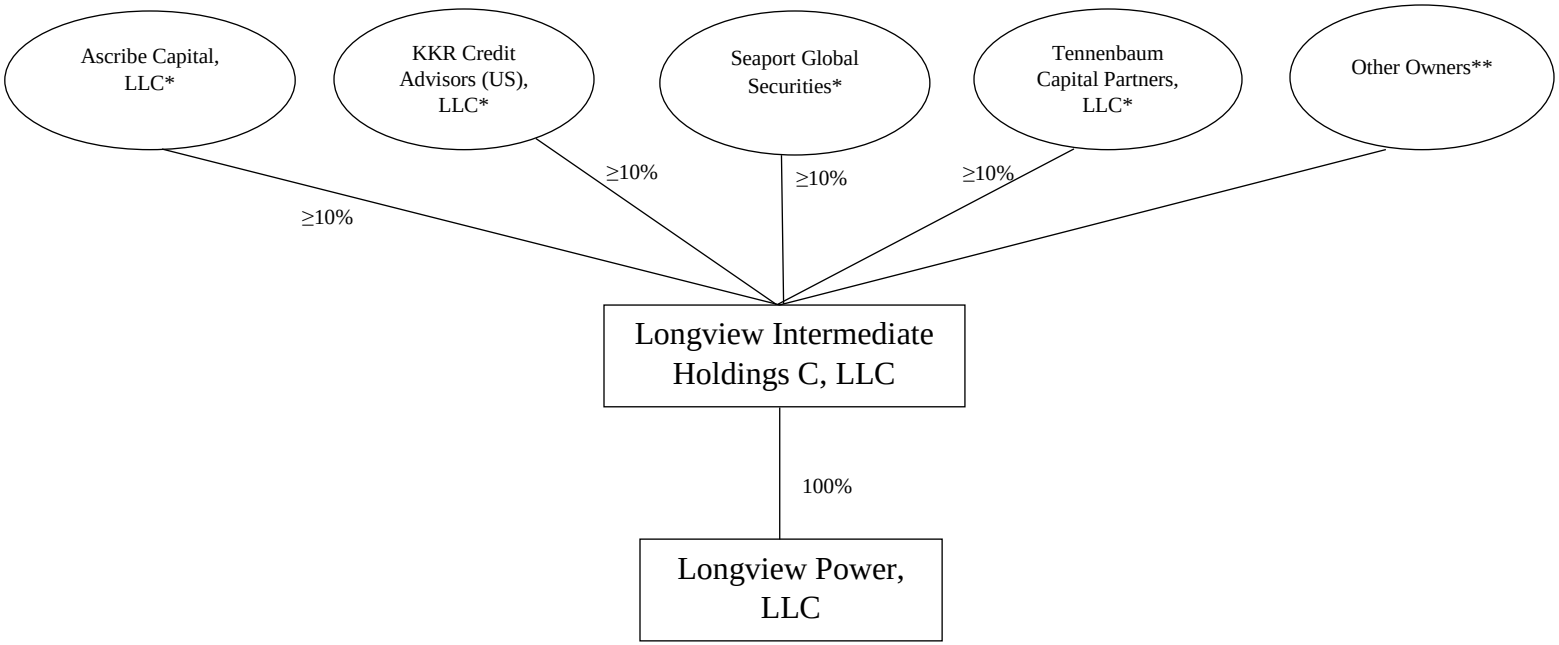
# Attachment 1

# Exhibits

**Exhibit C – Organizational Charts**

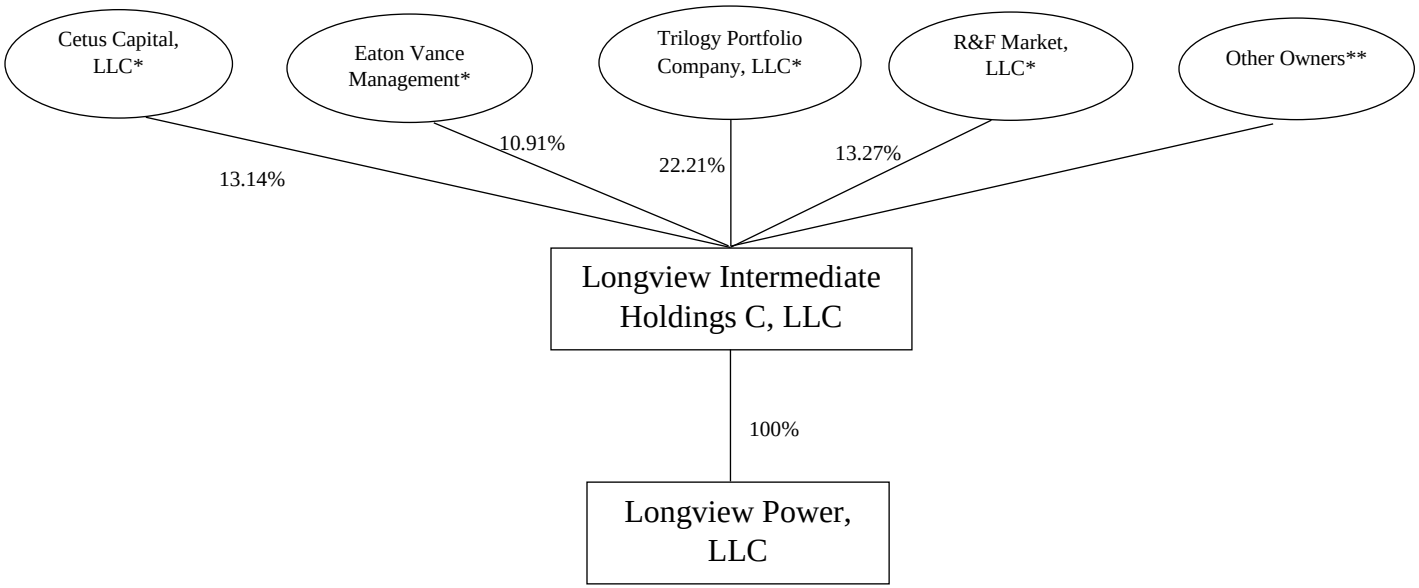
**(Pre- and Post-Transaction)**

**Pre-Transaction Organizational Chart**




* Includes shares owned by managed funds and investment accounts
** None of the other owners owns 10% or more of the equity

**Post-Transaction Organizational Chart**




* Includes shares owned by managed funds and investment accounts
** None of the other owners owns 10% or more of the equity

# Exhibit I

## Agreements Related to the Proposed Transaction

***SOLICITATION VERSION***

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

| | | |
|---|---|---|
| In re: | ) | Chapter 11 |
| LONGVIEW POWER, LLC, *et al.*,[1] | ) | Case No. 20-_____ (___) |
| Debtors. | ) | (Joint Administration Requested) |

**DEBTORS' JOINT PREPACKAGED CHAPTER 11 PLAN OF REORGANIZATION**

**THIS CHAPTER 11 PLAN IS BEING SOLICITED FOR ACCEPTANCE OR REJECTION IN ACCORDANCE WITH BANKRUPTCY CODE SECTION 1125 AND WITHIN THE MEANING OF BANKRUPTCY CODE SECTION 1126. THIS CHAPTER 11 PLAN WILL BE SUBMITTED TO THE BANKRUPTCY COURT FOR APPROVAL FOLLOWING SOLICITATION AND THE DEBTORS' FILING FOR CHAPTER 11 BANKRUPTCY.**

David R. Seligman, P.C. (*pro hac vice* pending)
Joseph M. Graham (*pro hac vice* pending)
**KIRKLAND & ELLIS LLP**
**KIRKLAND & ELLIS INTERNATIONAL LLP**
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

*Proposed Co-Counsel to the Debtors and Debtors in Possession*

Daniel J. DeFranceschi (No. 2732)
Zachary I. Shapiro (No. 5103)
**RICHARDS, LAYTON & FINGER, P.A.**
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
Telephone: (302) 651-7700
Facsimile: (302) 651-7701
Email: defranceschi@rlf.com
shapiro@rlf.com

Dated: April 13, 2020

[1] The Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: Longview Power, LLC (1860) and Longview Intermediate Holdings C, LLC (1008). The Debtors' principal offices are located at 1375 Fort Martin Road, Maidsville, West Virginia 26541.

**TABLE OF CONTENTS**

**Page**

## INTRODUCTION

Longview Intermediate Holdings C, LLC and Longview Power, LLC, as debtors and debtors in possession in the above-captioned chapter 11 cases (each a "Debtor" and, together, the "Debtors") propose this joint plan of reorganization (the "Plan") for the resolution of the outstanding Claims against and Interests in the Debtors pursuant to chapter 11 of the Bankruptcy Code. Capitalized terms used in the Plan and not otherwise defined shall have the meanings set forth in Article I.A of the Plan. Although proposed jointly for administrative purposes, the Plan constitutes a separate Plan for each Debtor for the resolution of outstanding Claims and Interests pursuant to the Bankruptcy Code. Each Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code. The classifications of Claims and Interests set forth in Article III of the Plan shall be deemed to apply separately with respect to each Plan proposed by each Debtor, as applicable. The Plan does not contemplate substantive consolidation of any of the Debtors. Reference is made to the Disclosure Statement for a discussion of the Debtors' history, business, properties and operations, projections, risk factors, a summary and analysis of this Plan, and certain related matters.

**ALL HOLDERS OF CLAIMS AND INTERESTS ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY, PARTICULARLY HOLDERS OF CLAIMS AND INTERESTS ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN**.

## ARTICLE I.
## DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW, AND OTHER REFERENCES

*A. Defined Terms*

1. "*Ad Hoc Lender Group*" means the group of certain Prepetition Lenders represented by Faegre Drinker Biddle & Reath LLP and Energy Venture Analysis.

2. "*Administrative Claim*" means a Claim for costs and expenses of administration of the Chapter 11 Cases pursuant to sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred on or after the Petition Date until and including the Effective Date of preserving the Estates and operating the Debtors' businesses; (b) any superpriority Claim granted pursuant to the Cash Collateral Orders; and (c) Allowed Professional Fee Claims.

3. "*Affiliate*" has the meaning set forth in section 101(2) of the Bankruptcy Code as if such Entity was a debtor in a case under the Bankruptcy Code.

4. "*Allowed*" means with respect to any Claim or Interest, except as otherwise provided in the Plan: (a) a Claim that either (i) is not Disputed or (ii) has been allowed by a Final Order; (b) a Claim that is allowed, compromised, settled, or otherwise resolved (i) pursuant to the terms of the Plan, (ii) in any stipulation that is approved by the Bankruptcy Court by a Final Order, or (iii) pursuant to any contract, instrument, indenture, or other agreement entered into or assumed in connection herewith; (c) a Claim relating to a rejected Executory Contract or Unexpired Lease that either (i) is not a Disputed Claim or (ii) has been allowed by a Final Order; or (d) a Claim or Interest as to which a Proof of Claim or Proof of Interest, as applicable, has been timely filed and as to which no objection has been filed.

5. "*Assumed Executory Contract and Unexpired Lease List*" means the list, as determined by the Debtors or the Reorganized Debtors, as applicable, of Executory Contracts and Unexpired Leases (with proposed cure amounts) that will be assumed by the Reorganized Debtors, which list shall be included in the Plan Supplement.

6. "*Assumed Executory Contracts and Unexpired Leases*" means those Executory Contracts and Unexpired Leases to be assumed by the applicable Reorganized Debtors, as set forth on the Assumed Executory Contract and Unexpired Lease List.

7. "*Bankruptcy Code*" means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as now in effect or hereafter amended, and the rules and regulations promulgated thereunder.

8. "*Bankruptcy Court*" means the United States Bankruptcy Court for the District of Delaware or such other court having jurisdiction over the Chapter 11 Cases, including, to the extent of the withdrawal of the reference under 28 U.S.C. § 157, the United States District Court for the District of Delaware.

9. "*Bankruptcy Rules*" means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, 28 U.S.C. § 2075, as applicable to the Chapter 11 Cases and the general, local, and chambers rules of the Bankruptcy Court, as now in effect or hereafter amended.

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

11. "*Cash*" or "*$*" means the legal tender of the United States of America or the equivalent thereof, including bank deposits, checks, and cash equivalents, as applicable.

12. "*Cash Collateral Orders*" means, collectively, the interim order and the final order authorizing the use of cash collateral during the Chapter 11 Cases.

13. "*Causes of Action*" means any claims, interests, damages, remedies, causes of action, demands, rights, actions, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, Liens, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, secured or unsecured, assertable, directly or derivatively, matured or unmatured, suspected or unsuspected, in contract, tort, law, equity, or otherwise. Causes of Action also include: (a) all rights of setoff, counterclaim, or recoupment and claims under contracts or for breaches of duties imposed by law; (b) the right to object to or otherwise contest Claims or Interests; (c) claims pursuant to sections 362, 510, 542, 543, 544 through 550, or 553 of the Bankruptcy Code; (d) such claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; and (e) any state or foreign law fraudulent transfer or similar claim.

14. "*Chapter 11 Cases*" means the procedurally consolidated cases filed or to be filed (as applicable) for the Debtors in the Bankruptcy Court under chapter 11 of the Bankruptcy Code.

15. "*Claim*" means any claim, as defined in section 101(5) of the Bankruptcy Code, against any of the Debtors, whether or not assessed or Allowed.

16. "*Claims Register*" means the official register of Claims against and Interests in the Debtors maintained by the Solicitation Agent.

17. "*Class*" means a category of Holders of Claims or Interests under section 1122(a) of the Bankruptcy Code.

18. "*Confirmation*" means entry of the Confirmation Order by the Bankruptcy Court on the docket of the Chapter 11 Cases.

19. "*Confirmation Date*" means the date on which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.

20. "*Confirmation Hearing*" means the hearing held by the Bankruptcy Court pursuant to Bankruptcy Rule 3020(b)(2) and section 1128 of the Bankruptcy Code, including any adjournments thereof, at which the Bankruptcy Court will consider confirmation of the Plan.

21. "*Confirmation Objection Deadline*" means the date that is at least five (5) Business Days prior to the date first set by the Bankruptcy Court for the Confirmation Hearing.

22. "*Confirmation Order*" means, collectively, any orders of the Bankruptcy Court confirming the Plan under section 1129 of the Bankruptcy Code and approving the Disclosure Statement as having adequate information pursuant to sections 1125 and 1126 of the Bankruptcy Code.

23. "*Consenting Lenders*" means, collectively, the Consenting Lenders as defined in the RSA.

24. "*Consummation*" means the occurrence of the Effective Date.

25. "*Cure Claim*" means a Claim (unless waived or modified by the applicable counterparty) based upon a Debtor's defaults under an Executory Contract or an Unexpired Lease assumed by such Debtor under section 365 of the Bankruptcy Code, other than a default that is not required to be cured pursuant to section 365(b)(2) of the Bankruptcy Code.

26. "*D&O Liability Insurance Policies*" means all insurance policies (including any "tail policy") maintained by the Debtors as of the Petition Date for liabilities against any of the Debtors' current or former directors, managers, and officers.

27. "*Debtor Release*" means the release given on behalf of the Debtors and their Estates to the Released Parties as set forth in Article VIII.D of the Plan.

28. "*Debtor*" and "*Debtors*" have the meanings given to them in the Introduction.

29. "*Disclosure Statement*" means the *Disclosure Statement for the Debtors' Joint Prepackaged Chapter 11 Plan of Reorganization*, as may be amended, supplemented, or modified from time to time, including all exhibits and schedules thereto.

30. "*Disputed*" means, with respect to any Claim or Interest, any Claim or Interest, or any portion thereof, (a) to the extent neither Allowed nor disallowed under the Plan or a Final Order nor deemed Allowed under sections 502, 503, or 1111 of the Bankruptcy Code, or (b) for which a Proof of Claim or Proof of Interest or a motion for payment has been timely Filed with the Bankruptcy Court, to the extent the Debtors or any other party in interest has interposed a timely objection or request for estimation in accordance with the Plan, the Bankruptcy Code, or the Bankruptcy Rules, which objection or request for estimation has not been withdrawn or determined by a Final Order; *provided, however*, that in no event shall a Claim that is deemed Allowed pursuant to this Plan be a Disputed Claim.

31. "*Distribution Agent*" means, as applicable, the Reorganized Debtors or any Entity the Reorganized Debtors select to make or to facilitate distributions in accordance with the Plan.

32. "*Distribution Record Date*" means the date for determining which Holders of Allowed Claims and Interests are eligible to receive distributions pursuant to the Plan, which date shall be the Effective Date.

33. "*Effective Date*" means the date that is the first Business Day after the Confirmation Date on which all conditions precedent to the occurrence of the Effective Date set forth in Article IX.A of the Plan have been satisfied or waived in accordance with Article IX.B of the Plan.

34. "*Entity*" has the meaning set forth in section 101(15) of the Bankruptcy Code.

35. "*Estate*" means the estate of any Debtor created under sections 301 and 541 of the Bankruptcy Code upon the commencement of the applicable Debtor's Chapter 11 Case.

36. "*Exculpated Party*" means, collectively, and in each case in its capacity as such: (a) each of the Debtors; (b) each of the Reorganized Debtors; (c) any statutory committees appointed in the Chapter 11 Cases and each of their respective members; and (d) with respect to each of the foregoing in clauses (a) through (c), such Entity

and its current and former Affiliates, and such Entity's and its current and former Affiliates' current and former subsidiaries, officers, directors, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such.

37. "*Executory Contract*" means a contract or lease to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

38. "*Exit Facility*" means that certain senior secured term loan facility in an aggregate principal amount of $40,000,000 issued pursuant to the Exit Facility Documents.

39. "*Exit Facility Agent*" means the administrative agent under the Exit Facility Documents, together with its successors, assigns, or any replacement administrative agent appointed pursuant to the terms of the Exit Facility Documents.

40. "*Exit Facility Agreement*" means that certain credit agreement, dated as of the Effective Date, by and among the Reorganized Debtors, the Non-Debtor Loan Parties (other than Longview Power II, LLC and Longview Renewable Power, LLC), the Exit Facility Agent, and the lenders party thereto, which shall be included in the Plan Supplement.

41. "*Exit Facility Backstop Notification Date*" means a date that is not later than two Business Days after the Voting Deadline.

42. "*Exit Facility Commitment Parties*" means, collectively, the Consenting Lenders that have agreed to backstop the Exit Facility pursuant to the RSA, up to the amount identified on Exhibit C to the RSA.

43. "*Exit Facility Documents*" means, collectively, the Exit Facility Agreement and any related agreements, documents, and instruments delivered or entered into in connection with the Exit Facility, including any guarantee agreements, pledge and collateral agreements, intercreditor agreements, and other security documents related to or executed in connection therewith, which shall be in form and substance consistent with the RSA and the Restructuring Term Sheet.

44. "*Exit Facility Subscription Agent*" means the Solicitation Agent or any entity designated as such by the Plan or the Debtors.

45. "*Exit Facility Subscription Parties*" means, collectively, all Holders (including investment managers, advisors, or sub-advisors with discretionary authority) of Allowed Prepetition Credit Agreement Claims (other than the Exit Facility Commitment Parties) that exercise their Exit Facility Subscription Rights by electing to do so on their applicable ballot to vote on the Plan and executing a joinder to the RSA to the extent of the commitments thereunder to fund the Exit Facility, *provided* that such joinder will not cause such Holder to be a Consenting Lender and will only bind such Holder to fund their Pro Rata portion of the Exit Facility.

46. "*Exit Facility Subscription Rights*" means the non-transferable, non-certificated subscription rights to participate in the Exit Facility on the term and conditions set forth in the Plan.

47. "*Exit Lenders*" means, collectively, the Exit Facility Commitment Parties and the Exit Facility Subscription Parties.

48. "*File*" or "*Filed*" means file or filed with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases, or, with respect to the filing of a Proof of Claim or Proof of Interest, the Solicitation Agent.

49. "*Final Decree*" means the decree contemplated under Bankruptcy Rule 3022.

50. "*Final Order*" means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter that has not been reversed, stayed, modified, or

amended, and as to which the time to appeal, petition for certiorari, or move for reargument, reconsideration, or rehearing has expired and no appeal, petition for certiorari, or motion for reargument, reconsideration, or rehearing has been timely taken or filed, or as to which any appeal, petition for certiorari, or motion for reargument, reconsideration, or rehearing that has been taken or any petition for certiorari that has been or may be filed has been resolved by the highest court to which the order or judgment could be appealed or from which certiorari could be sought or the new trial, reargument, reconsideration, or rehearing shall have been denied, resulted in no modification of such order, or has otherwise been dismissed with prejudice; *provided*, *however* that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure or any comparable rule of the Bankruptcy Rules may be filed relating to such order or judgment shall not cause such order or judgment to not be a Final Order.

51. "*General Unsecured Claim*" means any Claim that is not a Secured Claim and is not an Administrative Claim (including, for the avoidance of doubt, a Professional Fee Claim), an Other Secured Claim, a Priority Tax Claim, an Other Priority Claim, a Prepetition Revolver Claim, a Prepetition Term Loan Claim, an Intercompany Claim, or a Section 510(b) Claim.

52. "*Governmental Unit*" has the meaning set forth in section 101(27) of the Bankruptcy Code.

53. "*Holder*" means an Entity holding a Claim or an Interest, as applicable, or an Entity receiving or retaining Interests in Longview, the Exit Facility, the New Common Equity, or the New Warrants, as applicable.

54. "*Impaired*" means, with respect to any Class of Claims or Interests, a Claim or an Interest that is not Unimpaired.

55. "*Indemnification Provisions*" means each of the Debtors' indemnification provisions in place immediately prior to the Effective Date whether in the Debtors' bylaws, certificates of incorporation, other formation documents, board resolutions, or contracts for the current and former directors, officers, managers, employees, attorneys, other professionals, and agents and such current and former directors, officers, and managers' respective Affiliates.

56. "*Intercompany Claim*" means any Claim held by a Debtor or an Affiliate of a Debtor against another Debtor.

57. "*Intercompany Interest*" means Longview's Interest in Longview Power.

58. "*Interest*" means any common stock, limited liability company interest, equity security (as defined in section 101(16) of the Bankruptcy Code), equity, ownership, profit interests, unit, or share in a Debtor, including all issued, unissued, authorized, or outstanding shares of capital stock of the Debtors and any other rights, options, warrants, stock appreciation rights, phantom stock rights, restricted stock units, redemption rights, repurchase rights, convertible, exercisable, or exchangeable securities or other agreements, arrangements, or commitments of any character relating to, or whose value is related to, any such interest or other ownership interest in any Debtor.

59. "*Judicial Code*" means title 28 of the United States Code, 28 U.S.C. §§ 1–4001, as now in effect or hereafter amended, and the rules and regulations promulgated thereunder.

60. "*Lien*" has the meaning set forth in section 101(37) of the Bankruptcy Code.

61. "*Longview*" means Debtor Longview Intermediate Holdings C, LLC.

62. "*Longview Power*" means Debtor Longview Power, LLC.

63. "*Management Incentive Plan*" means the management incentive plan to be implemented with respect to Reorganized Longview on the Effective Date, which shall be consistent with the Restructuring Term Sheet. The Management Incentive Plan shall grant (a) the Management Incentive Plan Equity and (b) options for up to five percent of the membership interests in Longview Power II, LLC, which options may be exercised on terms and conditions to be determined by the new board of Restructured Holdings.

64. "*Management Incentive Plan Equity*" means options to be issued pursuant to the Management Incentive Plan, which shall economically represent up to five percent of the value of the New Common Equity as of the Effective Date, on a fully-diluted basis, and which may be exercised when the equity value of Reorganized Holdings equals or exceeds $150,000,000.

65. "*New Common Equity*" means the common stock, limited liability company membership units, or functional equivalent thereof of Reorganized Longview to be issued on the Effective Date.

66. "*New Organizational Documents*" means the documents providing for corporate organization and governance of the Reorganized Debtors, including charters, bylaws, operating agreements or such other applicable organizational documents, which shall be in form and substance consistent with the Restructuring Term Sheet attached as Exhibit A to the RSA, which shall be included in the Plan Supplement.

67. "*New Warrant Agreement*" means that certain agreement providing for, among other things, the issuance of the New Warrants.

68. "*New Warrants*" means the warrants issued pursuant to the Plan and the New Warrant Agreement, which shall be immediately exercisable for 90% of the New Common Equity at a strike price of $0.01 per unit of New Common Equity, subject to customary adjustments and anti-dilution provisions, before dilution from the Management Incentive Plan, *provided* that a New Warrant shall be exercisable only to the extent the Holder thereof participates in the Exit Facility.

69. "*Non-Debtor Loan Party*" means each of Alternate Energy, LLC, Border Energy, LLC, Coresco, LLC, Dana Mining Company of Pennsylvania, LLC, Dana Mining Company, LLC, DCTWS Holdings, LLC, Dunkard Creek Water Treatment System, LLC, Longview Power II, LLC, Longview Renewable Power, LLC, Mepco Conveyor, LLC, Mepco Holdings, LLC, Mepco Intermediate Holdings A, LLC, Mepco Intermediate Holdings LLC, Mepco, LLC, and Shannopin Materials, LLC, each of which is a guarantor under the Prepetition Credit Agreement and/or the Subordinated Notes Purchase Agreement but is not a Debtor in the Chapter 11 Cases.

70. "*Other Priority Claim*" means any Claim other than an Administrative Claim or a Priority Tax Claim entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

71. "*Other Secured Claim*" means any Secured Claim, other than a Prepetition Credit Agreement Claim.

72. "*Person*" has the meaning set forth in section 101(41) of the Bankruptcy Code.

73. "*Petition Date*" means the date on which each of the Debtors commence the Chapter 11 Cases.

74. "*Plan Supplement*" means the compilation of documents and forms of documents, agreements, schedules, and exhibits to the Plan to be filed by the Debtors as may be amended, supplemented, altered, or modified from time to time on the terms set forth herein, and which includes: (a) the New Organizational Documents; (b) the Exit Facility Agreement; (c) the identity of the members of the Reorganized Longview Board and the officers of Reorganized Longview; (d) the Rejected Executory Contract and Unexpired Lease List; (e) the Assumed Executory Contract and Unexpired Lease List; (f) the schedule of retained Causes of Action; (g) the New Warrant Agreement; and (h) any other necessary documentation related to the Restructuring Transactions, each of which shall be in form and substance consistent with the RSA.

75. "*Prepetition Administrative Agent*" means Morgan Stanley Senior Funding, Inc., solely in its capacity as administrative agent under the Prepetition Credit Agreement.

76. "*Prepetition Agents*" means, collectively, the Prepetition Administrative Agent and the Prepetition Collateral Agent.

77. "*Prepetition Collateral Agent*" means Deutsche Bank Trust Company Americas, solely in its capacity as collateral agent under the Prepetition Credit Agreement.

78. "*Prepetition Credit Agreement*" means that certain credit agreement, dated as of April 13, 2015, as amended, supplemented, or modified from time to time, by and among Longview Power, as borrower, each of the guarantors party thereto, the issuing banks from time to time party thereto, the Prepetition Administrative Agent, and the Prepetition Lenders.

79. "*Prepetition Credit Agreement Claim*" means a Prepetition Revolver Claim or a Prepetition Term Loan Claim.

80. "*Prepetition Lenders*" means, collectively, the Prepetition Term Loan Lenders and the Prepetition Revolving Lenders.

81. "*Prepetition Revolver Claim*" means all Claims against any Debtor arising under, derived from, or based upon the Prepetition Revolving Facility.

82. "*Prepetition Revolving Facility*" means that certain prepetition revolving credit facility with aggregate commitments of $25,000,000 under the Prepetition Credit Agreement.

83. "*Prepetition Revolving Lenders*" means the lenders with commitments under the Prepetition Revolving Facility.

84. "*Prepetition Term Loan Claim*" means all Claims against any Debtor arising under, derived from, or based upon the Prepetition Term Loan Facility.

85. "*Prepetition Term Loan Facility*" means that certain prepetition secured term loan credit facility provided for under the Prepetition Credit Agreement in the original aggregate principal amount of $300,000,000.

86. "*Prepetition Term Loan Lenders*" means the lenders with commitments or outstanding loans under the Prepetition Term Loan Facility.

87. "*Priority Tax Claim*" means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

88. "*Pro Rata*" means the proportion that an Allowed Claim or an Allowed Interest in a particular Class bears to the aggregate amount of Allowed Claims or Allowed Interests in that Class.

89. "*Professional*" means an Entity retained in the Chapter 11 Cases pursuant to a Final Order in accordance with sections 327, 363, and 1103 of the Bankruptcy Code and to be compensated for services rendered prior to or on the Effective Date pursuant to sections 327, 328, 329, 330, 331, or 363 of the Bankruptcy Code.

90. "*Professional Fee Claims*" means all Claims for accrued, contingent, and/or unpaid fees and expenses (including transaction and success fees) incurred by a Professional in the Chapter 11 Cases on or after the Petition Date and through and including the Confirmation Date that the Bankruptcy Court has not denied by Final Order. To the extent that the Bankruptcy Court or any higher court of competent jurisdiction denies or reduces by a Final Order any amount of a Professional's fees or expenses, then those reduced or denied amounts shall no longer constitute Professional Fee Claims.

91. "*Professional Fee Escrow Account*" means an interest-bearing account funded by the Debtors with Cash on or before the Effective Date in an amount equal to the Professional Fee Escrow Amount, *provided* that the Cash funds in the Professional Fee Escrow Account shall be increased from Cash on hand at the Reorganized Debtors to the extent applications are filed after the Effective Date in excess of the amount of Cash funded into the escrow as of the Effective Date.

92. "*Professional Fee Escrow Amount*" means the aggregate amount of Professional Fee Claims and other unpaid fees and expenses Professionals estimate they have incurred or will incur in rendering services to the

Debtors prior to and as of the Confirmation Date, which estimates Professionals shall deliver to the Debtors as set forth in Article II.C of the Plan.

93. "*Proof of Claim*" means a proof of Claim Filed against any of the Debtors in the Chapter 11 Cases.

94. "*Proof of Interest*" means a proof of Interest Filed in any of the Debtors in the Chapter 11 Cases.

95. "*Reinstate*," "*Reinstated*," or "*Reinstatement*" means, with respect to Claims and Interests, that the Claim or Interest shall be rendered unimpaired in accordance with section 1124 of the Bankruptcy Code.

96. "*Rejected Executory Contract and Unexpired Lease List*" means the list, as determined by the Debtors or the Reorganized Debtors, as applicable, of Executory Contracts and Unexpired Leases that will be rejected by the Reorganized Debtors pursuant to the Plan, which list shall be included in the Plan Supplement.

97. "*Released Party*" means collectively, and in each case in its capacity as such: (a) each of the Debtors; (b) the Reorganized Debtors; (c) each of the Prepetition Lenders; (d) the Prepetition Agents; (e) the Exit Lenders; (f) the Exit Facility Agent; (g) all Holders of Subordinated Notes Claims; (h) all Holders of Interests in Longview; (i) with respect to each of the foregoing, where any of the foregoing is an investment manager, advisor, or sub-advisor for a beneficial holder, such beneficial holder; and (j) with respect to each of the foregoing entities in clauses (a) through (i), such Entity and its current and former Affiliates, and such Entities' and their current and former Affiliates' current and former directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, and assigns, subsidiaries, affiliated investment funds or investment vehicles, managed accounts or funds, investment managers, advisors, and sub-advisors with discretionary authority, participants, and each of their respective current and former equity holders, officers, directors, managers, principals, members, management companies, fund advisors, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals; *provided*, *however*, that any Entity identified in the foregoing clauses (a) through (j) that opts out of the releases shall not be a "Released Party."

98. "*Releasing Parties*" means, collectively, and in each case in its capacity as such: (a) each of the Debtors; (b) the Reorganized Debtors; (c) each of the Prepetition Lenders; (d) the Prepetition Agents; (e) each of the Exit Lenders; (f) the Exit Facility Agent; (g) all Holders of Claims or Interests that vote to accept or are deemed to accept the Plan; (h) all Holders of Claims that vote to reject the Plan or do not vote to accept or reject the Plan but, in either case, do not affirmatively elect to "opt out" of being a releasing party by timely objecting to the Plan's third-party release provisions; (i) all Holders of Claims or Interests that are deemed to reject the Plan that do not affirmatively elect to "opt out" of being a releasing party by timely objecting to the Plan's third-party release provisions; (j) with respect to each of the Debtors, the Reorganized Debtors, and each of the foregoing entities in clauses (a) through (i), such Entity and its current and former Affiliates, and such Entities' and their current and former Affiliates' current and former directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, and assigns, subsidiaries, managed accounts or funds, participants, and each of their respective current and former equity holders, officers, directors, managers, principals, members, management companies, fund advisors, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such collectively.

99. "*Reorganized Debtor*" means a Debtor, or any successor or assign thereto, by merger, consolidation, reorganization, or otherwise, in the form of a corporation, limited liability company, partnership, or other form, as the case may be, on and after the Effective Date, including Reorganized Longview.

100. "*Reorganized Longview*" means Longview, or any successor or assign thereto, on and after the Effective Date.

101. "*Reorganized Longview Board*" means the board of directors (or other applicable governing body) of Reorganized Longview.

102. "*Reorganized Longview Power*" means Longview Power, or any successor or assign thereto, on and after the Effective Date.

103. "*Required Consenting Lenders*" means the Consenting Lenders who hold, in the aggregate, at least 50.1 percent in principal amount outstanding of all Prepetition Credit Agreement Claims held by the Consenting Lenders.

104. "*Restructuring Term Sheet*" means the term sheet attached as Exhibit A to the RSA.

105. "*Restructuring Transactions*" means the transactions described in Article IV.B of the Plan.

106. "*RSA*" means that certain Restructuring Support Agreement, dated as of April 13, 2020, by and among the Debtors and the Consenting Lenders, including all exhibits and attachments thereto, and as may be amended, restated, and supplemented from time to time in accordance with its terms.

107. "*SEC*" means the Securities and Exchange Commission.

108. "*Section 510(b) Claim*" means any Claim arising from: (a) rescission of a purchase or sale of a security of the Debtors or an Affiliate of the Debtors; (b) purchase or sale of such a security; or (c) reimbursement or contribution allowed under section 502 of the Bankruptcy Code on account of such a Claim.

109. "*Secured Claim*" means a Claim: (a) secured by a valid, perfected, and enforceable Lien on collateral to the extent of the value of such collateral, as determined in accordance with section 506(a) of the Bankruptcy Code or (b) subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code.

110. "*Securities Act*" means the Securities Act of 1933, 15 U.S.C. §§ 77a–77aa, or any similar federal, state, or local law, as now in effect or hereafter amended, and the rules and regulations promulgated thereunder.

111. "*Security*" has the meaning set forth in section 2(a)(1) of the Securities Act.

112. "*Solicitation Agent*" means Donlin, Recano & Company, Inc., the notice, claims, and solicitation agent retained by the Debtors for the Chapter 11 Cases.

113. "*Subordinated Notes*" means the 12% senior notes due October 12, 2021, issued pursuant to the Subordinated Notes Purchase Agreement.

114. "*Subordinated Notes Claim*" means any Claim against any Debtor arising under, in connection with, or relating to the Subordinated Notes or the Subordinated Notes Purchase Agreement.

115. "*Subordinated Notes Purchase Agreement*" means that certain Note Purchase Agreement dated December 15, 2016 (as the same may have been amended, modified, supplemented, or amended and restated from time to time), by and among Longview, the guarantors party thereto, and the initial purchasers party thereto, pursuant to which the Subordinated Notes were issued.

116. "*Third-Party Release*" means the release given by each of the Releasing Parties to the Released Parties as set forth in Article VIII.E of the Plan.

117. "*Unexpired Lease*" means a lease of nonresidential real property to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

118. "*Unimpaired*" means a Class of Claims or Interests that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

119. "*U.S. Trustee*" means the Office of the United States Trustee for the District of Delaware.

120. "*Voting Deadline*" means the deadline to submit votes to accept or reject the Plan.

*B. Rules of Interpretation*

For purposes of the Plan, except as otherwise provided in this Plan: (1) 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; (2) unless otherwise specified, any reference in the Plan to an existing document, schedule, or exhibit, shall mean such document, schedule, or exhibit, as it may have been or may be amended, modified, or supplemented; (3) unless otherwise specified, all references in the Plan to "Articles" and "Sections" are references to Articles and Sections, respectively, hereof or hereto; (4) the words "herein," "hereof," and "hereto" refer to the Plan in its entirety rather than to any particular portion of the Plan; (5) any effectuating provisions may be interpreted by the Debtors or the Reorganized Debtors in such a manner that is consistent with the overall purpose and intent of the Plan all without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity; (6) 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 of the Plan; (7) unless otherwise specified in the Plan, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (8) any term used in capitalized form in the Plan that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as applicable; (9) references to docket numbers of documents filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court's CM/ECF system; (10) references to "Proofs of Claim," "Holders of Claims," "Disputed Claims," and the like shall include "Proofs of Interest," "Holders of Interests," "Disputed Interests," and the like as applicable; (11) references to "shareholders," "directors," and/or "officers" shall also include "members" and/or "managers," as applicable, as such terms are defined under the applicable state limited liability company laws; (12) the terms "include" and "including," and variations thereof, shall not be deemed to be terms of limitation, and shall be deemed to be followed by the words "without limitation"; and (13) except as otherwise provided in the Plan, any reference to the Effective Date shall mean the Effective Date or as soon as reasonably practicable thereafter.

*C. Computation of Time*

Unless otherwise specifically stated in the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed in the Plan. 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.

*D. Governing Law*

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of New York, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control); *provided*, *however*, that corporate governance matters relating to the Debtors or the Reorganized Debtors, as applicable, shall be governed by the laws of the state of incorporation or formation of the relevant Debtor or Reorganized Debtor, as applicable.

*E. Reference to Monetary Figures*

All references in the Plan to monetary figures refer to currency of the United States of America, unless otherwise expressly provided herein.

*F. Reference to the Debtors or the Reorganized Debtors*

Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors or to the Reorganized Debtors mean the Debtors and the Reorganized Debtors, as applicable, to the extent the context requires.

*G. Controlling Document*

In the event of an inconsistency between the Plan, the RSA, and the Disclosure Statement, the terms of the Plan shall control in all respects. In the event of an inconsistency between the Plan and the Plan Supplement, the Plan Supplement shall control. In the event of any inconsistency between the Plan Supplement and the Confirmation Order, the Confirmation Order shall control.

## ARTICLE II.
## ADMINISTRATIVE AND PRIORITY CLAIMS

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified and thus are excluded from the Classes of Claims set forth in Article III of the Plan.

*A. Administrative Claims*

Unless otherwise agreed to by the Holders of an Allowed Administrative Claim and the Debtors or the Reorganized Debtors, as applicable, each Holder of an Allowed Administrative Claim (other than Holders of Professional Fee Claims and Claims for fees and expenses pursuant to section 1930 of chapter 123 of title 28 of the United States Code) will receive in full and final satisfaction of its Administrative Claim an amount of Cash equal to the amount of such Allowed Administrative Claim in accordance with the following: (1) if an Administrative Claim is Allowed as of the Effective Date, on the Effective Date (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (2) if such Administrative Claim is not Allowed as of the Effective Date, no later than sixty days after the date on which an order Allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; (3) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date in accordance with the terms and conditions of the particular transaction giving rise to such Allowed Administrative Claim without any further action by the Holders of such Allowed Administrative Claim; or (4) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court.

*B. Professional Fee Claims*

1. Professional Fee Escrow Account

As soon as reasonably practicable after the Confirmation Date, and no later than one Business Day prior to the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Escrow Amount. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals and for no other Entities until all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the Professionals pursuant to one or more Final Orders of the Bankruptcy Court. No Liens, claims, or interests shall encumber the Professional Fee Escrow Account or Cash held in the Professional Fee Escrow Account in any way. Such funds shall not be considered property of the Estates, the Debtors, or the Reorganized Debtors.

The amount of Professional Fee Claims owing to the Professionals shall be paid in Cash to such Professionals by the Debtors or the Reorganized Debtors, as applicable, from the funds held in the Professional Fee Escrow Account as soon as reasonably practicable after such Professional Fee Claims are Allowed by an order of the Bankruptcy Court; *provided* that the Debtors' and the Reorganized Debtors' obligations to pay Allowed Professional Fee Claims shall not be limited nor be deemed limited to funds held in the Professional Fee Escrow Account. When all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the Professionals pursuant to one or more Final Orders of the Bankruptcy Court, any remaining funds held in the Professional Fee Escrow Account shall promptly be paid to the Reorganized Debtors without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

2. Final Fee Applications and Payment of Professional Fee Claims

All final requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Confirmation Date must be filed no later than 45 days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code, Bankruptcy Rules, and prior Bankruptcy Court orders. The Reorganized Debtors shall pay the amount of the Allowed Professional Fee Claims owing to the Professionals in Cash to such Professionals, including from funds held in the Professional Fee Escrow Account when such Professional Fee Claims are Allowed by entry of an order of the Bankruptcy Court.

3. Professional Fee Escrow Amount

The Professionals shall provide a reasonable and good-faith estimate of their fees and expenses incurred in rendering services to the Debtors before and as of the Effective Date projected to be outstanding as of the Effective Date, and shall deliver such estimate to the Debtors no later than five days before the anticipated Effective Date; *provided*, *however*, that such estimate shall not be considered an admission or limitation with respect to the fees and expenses of such Professional and such Professionals are not bound to any extent by the estimates. If a Professional does not provide an estimate, the Debtors may estimate a reasonable amount of unbilled fees and expenses of such Professional, taking into account any prior payments; *provided*, *however*, that such estimate shall not be binding or considered an admission with respect to the fees and expenses of such Professional. The total aggregate amount so estimated as of the Effective Date shall be utilized by the Debtors to determine the amount to be funded to the Professional Fee Escrow Account, *provided* that the Reorganized Debtors shall use Cash on hand to increase the amount of the Professional Fee Escrow Account to the extent fee applications are Filed after the Effective Date in excess of the amount held in the Professional Fee Escrow Account based on such estimates.

4. Post-Confirmation Date Fees and Expenses.

From and after the Confirmation Date, the Debtors or Reorganized Debtors, as applicable, shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred by the Debtors or the Reorganized Debtors, as applicable. Upon the Confirmation Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Debtors may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

The Debtors and Reorganized Debtors, as applicable, shall pay, within ten business days after submission of a detailed invoice to the Debtors or Reorganized Debtors, as applicable, such reasonable claims for compensation or reimbursement of expenses incurred by the retained Professionals of the Debtors or the Reorganized Debtors, as applicable. If the Debtors or Reorganized Debtors, as applicable, dispute the reasonableness of any such invoice, the Debtors or Reorganized Debtors, as applicable, or the affected professional may submit such dispute to the Bankruptcy Court for a determination of the reasonableness of any such invoice, and the disputed portion of such invoice shall not be paid until the dispute is resolved.

*C. Priority Tax Claims*

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code.

## ARTICLE III.
## CLASSIFICATION, TREATMENT, AND VOTING OF CLAIMS AND INTERESTS

*A. Classification of Claims and Interests*

This Plan constitutes a separate Plan proposed by each Debtor. Except for the Claims addressed in Article II of the Plan, all Claims and Interests are classified in the Classes set forth below in accordance with section 1122 of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or an Interest also is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

The classification of Claims and Interests against each Debtor (as applicable) pursuant to the Plan is as set forth below. The Plan shall apply as a separate Plan for each of the Debtors, and the classification of Claims and Interests set forth herein shall apply separately to each of the Debtors (except for Class 7 Intercompany Interests, which shall only apply to Debtor Longview Power, and Class 8 Interests in Longview, which shall only apply to Debtor Longview). All of the potential Classes for the Debtors are set forth herein. Voting tabulations for recording acceptances or rejections of the Plan shall be conducted on a Debtor-by-Debtor basis as set forth above.

| Class | Claim or Interest | Status | Voting Rights |
|---|---|---|---|
| 1 | Other Secured Claims | Unimpaired | Not Entitled to Vote (Deemed to Accept) |
| 2 | Other Priority Claims | Unimpaired | Not Entitled to Vote (Deemed to Accept) |
| 3 | Prepetition Credit Agreement Claims | Impaired | Entitled to Vote |
| 4 | Subordinated Notes Claims | Impaired | Not Entitled to Vote (Deemed to Reject) |
| 5 | General Unsecured Claims | Unimpaired | Not Entitled to Vote (Deemed to Accept) |
| 6 | Intercompany Claims | Unimpaired / Impaired | Not Entitled to Vote (Deemed to Accept or Reject) |
| 7 | Intercompany Interests | Unimpaired / Impaired | Not Entitled to Vote (Deemed to Accept or Reject) |
| 8 | Interests in Longview | Impaired | Not Entitled to Vote (Deemed to Reject) |
| 9 | Section 510(b) Claims | Impaired | Not Entitled to Vote (Deemed to Reject) |

*B. Treatment of Classes of Claims and Interests*

To the extent a Class contains Allowed Claims or Allowed Interests with respect to any Debtor, the classification of Allowed Claims and Allowed Interests is specified below.

1. Class 1 — Other Secured Claims

(a) *Classification*: Class 1 consists of any Other Secured Claims.

(b) *Treatment*: Except to the extent that a Holder of an Allowed Other Secured Claim agrees to a less favorable treatment of its Allowed Claim, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Other Secured Claim, each such Holder shall receive, at the option of the applicable Debtor(s), either:

(i) payment in full in Cash;

(ii) delivery of collateral securing any such Claim and payment of any interest required under section 506(b) of the Bankruptcy Code;

(iii) Reinstatement of such Allowed Other Secured Claim; or

(iv) such other treatment rendering its Allowed Other Secured Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code.

(c) *Voting*: Class 1 is Unimpaired under the Plan. Holders of Allowed Other Secured Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Other Secured Claims are not entitled to vote to accept or reject the Plan.

2. Class 2 — Other Priority Claims

(a) *Classification*: Class 2 consists of any Other Priority Claims.

(b) *Treatment*: Except to the extent that a Holder of an Allowed Other Priority Claim agrees to a less favorable treatment of its Allowed Claim, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Other Priority Claim, each such Holder shall receive, at the option of the applicable Debtor(s), either:

(i) payment in full in Cash; or

(ii) such other treatment rendering its Allowed Other Priority Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code.

(c) *Voting*: Class 2 is Unimpaired under the Plan. Holders of Allowed Other Priority Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Other Priority Claims are not entitled to vote to accept or reject the Plan.

3. Class 3 — Prepetition Credit Agreement Claims

(a) *Classification*: Class 3 consists of any Prepetition Credit Agreement Claims against any Debtor.

(b) *Allowance:* On the Effective Date, Prepetition Credit Agreement Claims shall be Allowed in the aggregate amount of $316,481,577.

(c) *Treatment*: Except to the extent that a Holder of an Allowed Prepetition Credit Agreement Claim agrees to a less favorable treatment of its Allowed Claim, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Prepetition Credit Agreement Claim, each Holder of an Allowed Prepetition Credit Agreement Claim shall receive its Pro Rata share of:

(i) 10% of the New Common Equity;

(ii) the Exit Facility Subscription Rights; and

(iii) the New Warrants.

(d) *Voting*: Class 3 is Impaired under the Plan. Holders of Allowed Prepetition Credit Agreement Claims are entitled to vote to accept or reject the Plan.

4. Class 4 — Subordinated Notes Claims

(a) *Classification*: Class 4 consists of any Subordinated Notes Claims against any Debtor.

(b) *Allowance*: On the Effective Date, the Subordinated Notes Claims shall be Allowed in the aggregate amount of $44,291,907.01.

(c) *Treatment*: On the Effective Date, all Subordinated Notes Claims shall be discharged, cancelled, released, and extinguished as of the Effective Date, and shall be of no further force or effect, and Holders of Subordinated Notes Claims will not receive any distribution on account of such Claims.

(d) *Voting*: Class 4 is Impaired under the Plan. Holders of Allowed Subordinated Notes Claims are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Holders of Allowed Subordinated Notes Claims are not entitled to vote to accept or reject the Plan.

5. Class 5 — General Unsecured Claims

(a) *Classification*: Class 5 consists of any General Unsecured Claims against any Debtor.

(b) *Treatment*: Except to the extent that a Holder of an Allowed General Unsecured Claim agrees to a less favorable treatment of its Allowed Claim, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Claim, each Holder of an Allowed General Unsecured Claim shall receive either:

(i) payment in Cash in an amount equal to such Allowed General Unsecured Claim in the ordinary course of business in accordance with the terms and conditions of the particular transaction giving rise to such Allowed General Unsecured Claim;

(ii) Reinstatement of such Allowed General Unsecured Claim; or

(iii) such other treatment rendering its Allowed General Unsecured Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code.

(c) *Voting*: Class 5 is Unimpaired under the Plan. Holders of Allowed General Unsecured Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed General Unsecured Claims are not entitled to vote to accept or reject the Plan.

6. Class 6 —Intercompany Claims

(a) *Classification*: Class 6 consists of any Intercompany Claims.

(b) *Treatment*: Each Allowed Intercompany Claim shall, at the option of the applicable Debtors, be:

(i) Reinstated; or

(ii) converted to equity; or

(iii) extinguished, compromised, addressed, cancelled, or settled without any distribution on account of such Claims.

(c) *Voting*: Holders of Allowed Intercompany Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) or deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Holders of Allowed Intercompany Claims are not entitled to vote to accept or reject the Plan.

7. Class 7 — Intercompany Interests

(a) *Classification*: Class 7 consists of all Interests in Longview Power.

(b) *Treatment*: On the Effective Date, Intercompany Interests shall be, at the option of Longview, either:

(i) Reinstated in exchange for the Debtors' and the Reorganized Debtors' agreement under the Plan to make certain distributions to the Holders of Allowed Claims; or

(ii) discharged, cancelled, released, and extinguished and of no further force or effect without any distribution on account of such Interests.

For the avoidance of doubt, any Interest in non-Debtor subsidiaries owned by a Debtor shall continue to be owned by the applicable Reorganized Debtor. It is Longview's current expectation that it will exercise option (i) with respect to its Interests in Longview Power.

(c) *Voting*: Holders of Intercompany Interests are conclusively presumed to have accepted the Plan pursuant to section 1126(f) or deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Holders of Intercompany Interests are not entitled to vote to accept or reject the Plan.

8. Class 8 —Interests in Longview

(a) *Classification*: Class 8 consists of all Interests in Longview.

(b) *Treatment*: On the Effective Date, all Interests in Longview shall be discharged, cancelled, released, and extinguished as of the Effective Date, and shall be of no further force or effect, and Holders of Allowed Interests in Longview shall not receive any distribution on account of such Allowed Interests in Longview.

(c) *Voting*: Class 8 is Impaired under the Plan. Holders of Interests in Longview are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Holders of Interests in Longview are not entitled to vote to accept or reject the Plan.

9. Class 9 — Section 510(b) Claims

(a) *Classification*: Class 9 consists of any Section 510(b) Claims.

(b) *Allowance*: Notwithstanding anything to the contrary in the Plan, a Section 510(b) Claim, if any such Claim exists, may only become Allowed by Final Order of the Bankruptcy Court. The Debtors are not aware of any asserted Class 9 Claim and believe that no Section 510(b) Claims exist.

(c) *Treatment*: Allowed Section 510(b) Claims, if any, shall be discharged, cancelled, released, and extinguished as of the Effective Date, and shall be of no further force or effect, and Holders of Allowed Section 510(b) Claims shall not receive any distribution on account of such Allowed Section 510(b) Claims.

(d) *Voting*: Class 9 is Impaired under the Plan. Holders, if any, of Allowed Section 510(b) Claims are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Holders, if any, of Allowed Section 510(b) Claims are not entitled to vote to accept or reject the Plan.

*C. Special Provision Governing Unimpaired Claims*

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtors' or the Reorganized Debtors' rights regarding any Unimpaired Claim, including all rights regarding legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claim.

*D. Elimination of Vacant Classes*

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing 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 by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

*E. Voting Classes; Presumed Acceptance by Non-Voting Classes*

If a Class contains Claims or Interests eligible to vote and no Holders of Claims or Interests eligible to vote in such Class vote to accept or reject the Plan, the Debtors shall request the Bankruptcy Court to deem the Plan accepted by the Holders of such Claims or Interests in such Class.

*F. Subordinated Claims*

The allowance, classification, and treatment of all Allowed Claims and Allowed Interests and the respective distributions and treatments under the Plan take into account and 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. Pursuant to section 510 of the Bankruptcy Code, the Reorganized Debtors reserve the right to reclassify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

*G. Intercompany Interests*

To the extent Reinstated under the Plan, distributions on account of Intercompany Interests are not being received by Holders of such Intercompany Interests on account of their Intercompany Interests, but for the purposes of administrative convenience and in exchange for the Debtors' and Reorganized Debtors' agreement under the Plan to provide management services to Longview Power and the Non-Debtor Loan Parties and to use certain funds and assets as set forth in the Plan to make certain distributions and satisfy certain obligations of certain other Debtors and Reorganized Debtors to the Holders of certain Allowed Claims. For the avoidance of doubt, any Interest in non-Debtor subsidiaries owned by a Debtor shall continue to be owned by the applicable Reorganized Debtor.

*H. Controversy Concerning Impairment*

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

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

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by one or more of the Classes entitled to vote pursuant to Article III.B of the Plan. The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtors reserve the right to modify the Plan in accordance with Article X of the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims to render such Class of Claims Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules or to withdraw the Plan as to such Debtor.

## ARTICLE IV.
## MEANS FOR IMPLEMENTATION OF THE PLAN

*A. General Settlement of Claims and Interests*

Unless otherwise set forth in the Plan, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims and Interests and controversies resolved pursuant to the Plan.

*B. Restructuring Transactions*

On and after the Confirmation Date, the Debtors or Reorganized Debtors, as applicable, may take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan that are consistent with and pursuant to the terms and conditions of the Plan and the RSA, which transactions may include, as applicable: (a) the execution and delivery of appropriate agreements or other documents of merger, amalgamation, consolidation, restructuring, reorganization, conversion, disposition, transfer, arrangement, continuance, dissolution, sale, purchase, or liquidation containing terms that are consistent with the terms of the Plan; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and having other terms to which the applicable parties agree; (c) the filing of appropriate certificates or articles of incorporation, reincorporation, formation, merger, consolidation, conversion, amalgamation, arrangement, continuance, or dissolution or other certificates or documentation for other transactions as described in clause (a), pursuant to applicable state law; (d) the execution and delivery of any certificates or articles of incorporation, bylaws, or such other applicable formation documents (if any) of each Reorganized Debtor; (e) the execution and delivery of the New Organizational Documents (including all actions to be taken, undertakings to be made, and obligations to be incurred and fees and expenses to be paid by the Debtors and/or the Reorganized Debtors, as applicable), and the issuance, distribution, reservation, or dilution, as applicable, of the New Common Equity, as set forth herein; (f) the execution and delivery of the Exit Facility Documents (including all actions to be taken, undertakings to be made, and obligations to be incurred and fees and expenses to be paid by the Debtors and/or the Reorganized Debtors, as applicable); (g) the adoption of the Management Incentive Plan and the issuance and reservation of the Management Incentive Plan Equity to the participants in the Management Incentive Plan on the terms and conditions set by the Reorganized Longview Board after the Effective Date; (h) the execution and delivery of the New Warrant Agreement and the issuance of the New Warrants; and (i) all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law in connection with the Restructuring Transactions.

*C. Sources of Consideration for Plan Distributions*

The Debtors shall fund distributions under the Plan, as applicable, with: (1) Cash proceeds of the Exit Facility; (2) the New Warrants; (3) the New Common Equity; (4) the Exit Facility Subscription Rights; and (5) the Debtors' encumbered Cash on hand. Each distribution and issuance referred to in Article VI of the Plan shall be governed by the terms and conditions set forth in the Plan applicable to such distribution or issuance and by the terms and conditions of the instruments or other documents evidencing or relating to such distribution or issuance, which terms and conditions shall bind each Entity receiving such distribution or issuance. The issuance, distribution, or

authorization, as applicable, of certain securities in connection with the Plan, including the Exit Facility, the New Warrants, and the New Common Equity, will be exempt from SEC registration, as described more fully in Article IV.G below.

1. The Exit Facility

On the Effective Date, the Reorganized Debtors shall execute and deliver the Exit Facility Documents and such documents shall become effective in accordance with their terms. On and after the Effective Date, the Exit Facility Documents shall constitute legal, valid, and binding obligations of the Reorganized Debtors and be enforceable in accordance with their respective terms. The terms and conditions of the Exit Facility Documents shall bind Reorganized Longview Power, Reorganized Longview (as guarantor), and each other Entity that enters into such Exit Facility Documents as a guarantor. Any Entity's entry into the Exit Facility Agreement shall be deemed as its agreement to the terms of such Exit Facility Documents, as amended or modified from time to time following the Effective Date in accordance with their terms.

Confirmation shall be deemed approval of the Exit Facility Documents (including the transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations and guarantees to be incurred and fees and expenses paid in connection therewith), and, to the extent not approved by the Bankruptcy Court previously, the Reorganized Debtors will be authorized to execute and deliver those documents necessary or appropriate to obtain the Exit Facility, including the Exit Facility Documents, without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order or rule or vote, consent, authorization, or approval of any Person, subject to such modifications as the Debtors or Reorganized Debtors may deem to be necessary to consummate the Exit Facility.

On the Effective Date, immediately upon receipt of the payments required in Article II.A hereof, all of the claims, liens, and security interests to be granted in accordance with the terms of the Exit Facility Documents (a) shall be legal, binding, and enforceable liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the Exit Facility Documents, (b) shall be deemed automatically attached and perfected on the Effective Date, subject only to such other liens and security interests as may be permitted under the Exit Facility Documents, and (c) shall not be subject to avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever and shall not constitute preferential transfers, fraudulent conveyances, or other voidable transfers under the Bankruptcy Code or any applicable non-bankruptcy law.

2. The New Warrants

On the Effective Date, Reorganized Longview will enter into the New Warrant Agreement, which shall be substantially in the form included in the Plan Supplement, and issue the New Warrants to Holders of Prepetition Credit Agreement Claims, the Exit Facility Subscription Parties, and the Exit Facility Commitment Parties in accordance herewith. The issuance of the New Warrants shall be authorized without the need for any further corporate action and without any further action by the Holders of Claims or Interests. Each Person that receives New Warrants shall be deemed to have executed, without any further action by any party, the New Warrant Agreement. The New Common Equity issued upon exercise of the New Warrants shall be issued to the Holders of Prepetition Credit Agreement Claims, the Exit Facility Subscription Parties, and the Exit Facility Commitment Parties in the same proportion as such Person has agreed to participate in the Exit Facility. **For the avoidance of doubt, the New Warrants are exercisable only to the extent the Holder thereof participates in the Exit Facility.**

3. The Exit Facility Subscription Rights

The Debtors shall distribute the Exit Facility Subscription Rights to Holders of Allowed Prepetition Credit Agreement Claims in accordance herewith. Each Holder of an Allowed Prepetition Credit Agreement Claim that (a) in the case of an Exit Facility Commitment Party, exercises its Exit Facility Subscription Rights by executing the RSA, shall and shall be deemed to commit at least its Pro Rata portion of the Exit Facility and (b) in all other cases, exercises its Exit Facility Subscription Rights by electing to subscribe to the Exit Facility on its applicable ballot to vote on the Plan and executing a joinder to the RSA (to the extent of the commitments thereunder to fund the Exit

Facility) shall and shall be deemed to (i) be an Exit Facility Subscription Party and (ii) commit to provide its Pro Rata portion of the Exit Facility.

On the Exit Facility Backstop Notification Date, the Exit Facility Subscription Agent will, pursuant to the RSA, notify each Exit Facility Commitment Party of its portion of the unsubscribed commitments under the Exit Facility and its revised Exit Facility Commitments under and as defined in the RSA. Each Exit Facility Commitment Party shall provide such amount in accordance with Section 7 of the RSA, the terms of which are incorporated herein by reference.

Reorganized Longview shall be deemed to accept, as consideration for the exercise of the New Warrants, the exercise of the Exit Facility Subscription Rights of each participating Exit Facility Subscription Party and Exit Facility Commitment Party.

(a) No Transfer; Detachment Restrictions; No Revocation

The Exit Facility Subscription Rights are not transferable or detachable (other than, for the avoidance of doubt, a transfer to an investment vehicle, managed account or fund controlled by the Holder thereof). Any transfer or detachment, or attempted transfer or detachment, in violation of this restriction will be null and void. Once a Holder of an Allowed Prepetition Credit Agreement Claim has exercised any of its Exit Facility Subscription Rights, such exercise may only be revoked, rescinded, or annulled in the sole discretion of the Debtors or the Reorganized Debtors.

(b) Validity of Exercise of Subscription Rights

All questions concerning the timeliness, validity, form, and eligibility of any exercise, or purported exercise, of Exit Facility Subscription Rights shall be determined by the Debtors or the Reorganized Debtors, as applicable. The Debtors or the Reorganized Debtors, as applicable, in their reasonable discretion, may waive any defect or irregularity, or permit a defect or irregularity to be corrected within such times as they may determine, or reject the purported exercise of any Exit Facility Subscription Rights. The Debtors or the Reorganized Debtors, as applicable, will use commercially reasonable efforts to give written notice to any Person regarding any defect or irregularity in connection with any purported exercise of Exit Facility Subscription Rights by such Person and may permit such defect or irregularity to be cured within such time as they determine in good faith to be appropriate, *provided*, *however*, that neither the Debtors, the Reorganized Debtors, nor any of their related Persons shall have or incur any liability for giving, or failing to give, such notification and opportunity to cure.

4. Issuance and Distribution of the New Common Equity

On the Effective Date, the New Common Equity shall be issued and distributed to the Entities entitled to receive the New Common Equity pursuant to the Plan. The issuance of New Common Equity shall be authorized without the need for any further corporate action and without any action by the Holders of Claims or other parties in interest. All of the New Common Equity issued under the Plan shall be duly authorized, validly issued, fully paid, and non-assessable.

Other than any New Common Equity issued pursuant to the Management Incentive Plan, all of the New Common Equity issued pursuant to the Plan as of the Effective Date shall be subject to dilution by the New Warrants.

Each distribution and issuance of the New Common Equity under the Plan shall be governed by the terms and conditions set forth in the Plan applicable to such distribution, issuance, and/or dilution, as applicable, and by the terms and conditions of the instruments evidencing or relating to such distribution, issuance, and/or dilution, as applicable, including the New Organizational Documents, which terms and conditions shall bind each Entity receiving such distribution of the New Common Equity. Any Entity's acceptance of New Common Equity (including, for the avoidance of doubt, via exercise of the New Warrants) shall be deemed as its agreement to the New Organizational Documents, as the same may be amended or modified from time to time following the Effective Date in accordance with their terms. The New Common Equity will not be registered on any exchange as of the Effective Date.

5. Cash on Hand

The Debtors or Reorganized Debtors, as applicable, shall use Cash on hand to fund distributions to certain Holders of Claims, including the payment of Allowed General Unsecured Claims as set forth in Article III of the Plan.

*D. Exemption from Registration Requirements*

Pursuant to section 1145 of the Bankruptcy Code, the offering, issuance, and distribution of the New Common Equity and the New Warrants issued to Holders of Allowed Prepetition Credit Agreement Claims and the Exit Facility Subscription Parties pursuant to the Plan is exempt from, among other things, the registration requirements of Section 5 of the Securities Act and any other applicable U.S. state or local law requiring registration prior to the offering, issuance, distribution, or sale of Securities. The shares of New Common Equity, including the shares of New Common Equity underlying the New Warrants issued to Holders of Prepetition Credit Agreement Claims and the Exit Facility Commitment Parties, to be issued under the Plan (a) are not "restricted securities" as defined in Rule 144(a)(3) under the Securities Act, and (b) are freely tradable and transferable by any initial recipient thereof that (i) is not an "affiliate" of the Debtors as defined in Rule 144(a)(1) under the Securities Act, (ii) has not been such an "affiliate" within 90 days of such transfer, and (iii) is not an entity that is an "underwriter" as defined in Section 2(a)(11) of the Securities Act and in Section 1145 of the Bankruptcy Code.

Pursuant to section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder, the offering, issuance, and distribution of the New Warrants issued to the Exit Facility Commitment Parties pursuant to the Plan and the RSA is exempt from, among other things, the registration requirements of Section 5 of the Securities Act and any other applicable U.S. state or local law requiring registration prior to the offering, issuance, distribution, or sale of Securities. The shares of New Common Equity underlying the New Warrants issued to the Exit Facility Commitment Parties pursuant to the Plan and the RSA will be "restricted securities." Resales of such restricted securities would not be exempted by section 1145 of the Bankruptcy Code from registration under the Securities Act or other applicable law. Holders of restricted securities would, however, be permitted to resell New Warrants without registration if they are able to comply with the applicable provisions of Rule 144 or Rule 144A or any other registration exemption under the Securities Act, or if such securities are registered with the SEC.

*E. Corporate Existence*

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

*F. Corporate Action*

On or before the Effective Date, as applicable, all actions contemplated under the Plan or the Plan Supplement shall be deemed authorized and approved in all respects, including: (1) adoption or assumption, as applicable, of the agreements with existing management; (2) selection of the directors, managers, and officers for the Reorganized Debtors; (3) implementation of the Restructuring Transactions; (4) the applicable Reorganized Debtors' entry into the Exit Facility Documents; (5) the distribution of the Exit Facility Subscription Rights; (6) the entry into the New Warrant Agreement and issuance of the New Warrants; and (7) all other actions contemplated under the Plan (whether to occur before, on, or after the Effective Date). All matters provided for in the Plan involving the corporate structure of the Debtors or the Reorganized Debtors, as applicable, and any corporate action required by the Debtors or the Reorganized Debtors in connection with the Plan shall be deemed to have occurred and shall be in effect, without any requirement of further action by the security holders, directors, managers, or officers of the Debtors or the Reorganized Debtors, as applicable. On or (as applicable) prior to the Effective Date, the appropriate officers of the Debtors or the

Reorganized Debtors, as applicable, shall be authorized to issue, execute, and deliver the agreements, documents, securities, and instruments contemplated under the Plan (or necessary or desirable to effect the transactions contemplated under the Plan) in the name of and on behalf of the Reorganized Debtors, including the Exit Facility Documents and any and all other agreements, documents, securities, and instruments relating to the foregoing. The authorizations and approvals contemplated by this Article IV.I shall be effective notwithstanding any requirements under non-bankruptcy law.

*G. Vesting of Assets in the Reorganized Debtors*

Except as otherwise provided in the Plan or the Plan Supplement, or in any agreement, instrument, or other document incorporated in the Plan, on the Effective Date, all property in each Debtor's Estate, all Causes of Action, and any property acquired by any of the Debtors under the Plan shall vest in each respective Reorganized Debtor, free and clear of all Liens, Claims, charges, or other encumbrances (except for Liens securing obligations under the Exit Facility Documents and the Liens securing obligations on account of Other Secured Claims that are Reinstated pursuant to the Plan, if any). On and after the Effective Date, except as otherwise provided in the Plan, each Reorganized Debtor may operate its business and may use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

*H. Cancellation of Notes, Instruments, Certificates, and Other Documents*

On the Effective Date, except to the extent otherwise provided in the Plan, all notes, instruments, certificates, and other documents evidencing Claims shall be cancelled, and the obligations of the Debtors or the Reorganized Debtors and any non-Debtor Affiliates thereunder or in any way related thereto shall be discharged and deemed satisfied in full, and the Prepetition Agents shall be released from all duties thereunder; *provided*, *however*, that notwithstanding Confirmation or the occurrence of the Effective Date, any credit document or agreement that governs the rights of the Holder of a Claim or Interest shall continue in effect solely for purposes of (1) allowing Holders of Allowed Claims to receive distributions under the Plan, (2) allowing and preserving the rights of the Prepetition Administrative Agent to make distributions pursuant to the Plan, (3) preserving the Prepetition Agents' rights to compensation and indemnification as against any money or property distributable to Holders of Prepetition Credit Agreement Claims, including permitting each of the Prepetition Agents to maintain, enforce, and exercise its charging liens against such distributions, (4) preserving all rights, including rights of enforcement, of the Prepetition Agents against any person other than a Released Party (including the Debtors), including with respect to indemnification or contribution from the Prepetition Lenders pursuant and subject to the terms of the Prepetition Credit Agreement as in effect on the Effective Date, (5) permitting the Prepetition Agents to enforce any obligation (if any) owed to the Prepetition Agents under the Plan, respectively, (6) permitting the Prepetition Agents to appear in the Chapter 11 Cases or in any proceeding in the Bankruptcy Court or any other court, and (7) permitting the Prepetition Agents to perform any functions that are necessary to effectuate the foregoing; *provided, further, however*, that the preceding proviso shall not affect the discharge of Claims or Interests pursuant to the Bankruptcy Code, the Confirmation Order, or the Plan, or result in any expense or liability to the Debtors or Reorganized Debtors, as applicable, except as expressly provided for in the Plan.

The Prepetition Agents shall be discharged and shall have no further obligation or liability except as provided in the Plan and Confirmation Order, and after the performance by the Prepetition Agents and their representatives and professionals of any obligations and duties required under or related to the Plan or Confirmation Order, the Prepetition Agents shall be relieved of and released from any obligations and duties arising thereunder. The fees, expenses, and costs of the Prepetition Agents, including the fees, expenses, and costs of its professionals incurred after the Effective Date in connection with the Prepetition Credit Agreement and reasonable and documented costs and expenses associated with effectuating distributions pursuant to the Plan will be paid by the Reorganized Debtors in the ordinary course.

*I. Release of Non-Debtor Loan Parties*

On the Effective Date, the Prepetition Lenders shall be deemed, and, to the extent applicable, shall be deemed to have directed the Prepetition Agents (solely in their capacities as such) to, release any and all obligations of, security

interests in, and claims against each Non-Debtor Loan Party (including any indebtedness, guaranty, or other obligations under the Prepetition Credit Agreement or any other Loan Document (as defined therein)). In addition, on the Effective Date, the Prepetition Lenders shall be deemed to release any and all obligations of, security interests in, and claims against each Non-Debtor Loan Party on behalf of the Holders of Subordinated Notes Claims in accordance with the Subordinated Notes Purchase Agreement and the subordination provisions thereunder.

*J. Effectuating Documents; Further Transactions*

On and after the Effective Date, the Reorganized Debtors, and the officers and members of the boards of directors and managers thereof, are authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan, the Exit Facility Documents, the New Organizational Documents, and the Securities issued pursuant to the Plan in the name of and on behalf of the Reorganized Debtors, without the need for any approvals, authorizations, or consents except for those expressly required under the Plan.

*K. Exemptions from Certain Taxes and Fees*

To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfers (whether from a Debtor to a Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors or the Reorganized Debtors, including the Exit Facility and the New Common Equity; (b) the Restructuring Transactions; (c) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (d) the making, assignment, or recording of any lease or sublease; (e) the grant of collateral as security for any or all of the Exit Facility; or (f) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(c) of the Bankruptcy Code, shall forego the collection of any such tax or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

*L. New Organizational Documents*

On or immediately before the Effective Date, Longview or Reorganized Longview, as applicable, will file its New Organizational Documents with the applicable Secretary of State and/or other applicable authorities in its state of incorporation or formation in accordance with the applicable laws of their respective state of incorporation or formation, to the extent required for such New Organizational Documents to become effective. Pursuant to section 1123(a)(6) of the Bankruptcy Code, the New Organizational Documents will prohibit the issuance of non-voting equity securities. After the Effective Date, Reorganized Longview may amend and restate its formation, organizational, and constituent documents as permitted by the laws of its respective jurisdiction of formation and the terms of such documents.

*M. Directors and Officers*

As of the Effective Date, the terms of the current members of the board of directors or managers of Longview shall expire, such directors or managers shall cease to hold office or have any authority from or after such time to the extent not expressly included in the roster of the Reorganized Longview Board, and all of the directors or managers

for the initial term of the Reorganized Longview Board shall be appointed in accordance with the New Organizational Documents and each other constituent document of each Reorganized Debtor. To the extent known, the identities of the members of the Reorganized Longview Board will be disclosed in the Plan Supplement or prior to the Confirmation Hearing consistent with section 1129(a)(5) of the Bankruptcy Code.

*N. Management Incentive Plan*

On the Effective Date, the Reorganized Longview Board and the Reorganized Debtors shall adopt and implement the Management Incentive Plan and distribute the Management Incentive Plan Equity to participants in the Management Incentive Plan. The Reorganized Longview Board shall be authorized to institute such Management Incentive Plan and enact and enter into related policies and agreements based on the terms and conditions determined by the Reorganized Longview Board.

*O. Preservation of Causes of Action*

In accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors shall retain and may enforce all rights to commence and pursue any and all Causes of Action, whether arising before or after the Petition Date, including any actions specifically enumerated in the Plan Supplement, and the Reorganized Debtors' rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date, other than the Causes of Action released by the Debtors pursuant to the releases and exculpations contained in the Plan, including in Article VIII of the Plan, which shall be deemed released and waived by the Debtors and Reorganized Debtors as of the Effective Date.

The Reorganized Debtors may pursue such Causes of Action, as appropriate, in accordance with the best interests of the Reorganized Debtors. **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 or the Reorganized Debtors will not pursue any and all available Causes of Action against it. The Debtors and the Reorganized Debtors expressly reserve all rights to prosecute any and all Causes of Action against any Entity.** Unless any Cause of Action against an Entity is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Final Order of the Bankruptcy Court, the Reorganized Debtors expressly reserve all Causes of Action, for later adjudication, 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 Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

## ARTICLE V.
## TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

*A. Assumption of Executory Contracts and Unexpired Leases*

On the Effective Date, except as otherwise provided in the Plan or in any contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan, all Executory Contracts and Unexpired Leases shall be deemed assumed, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, as of the Effective Date under section 365 of the Bankruptcy Code, and regardless of whether such Executory Contract or Unexpired Lease is identified on the Assumed Executory Contract and Unexpired Lease List, unless such Executory Contract and Unexpired Lease: (1) was assumed or rejected previously by the Debtors; (2) previously expired or terminated pursuant to its own terms; (3) is the subject of a motion to reject filed on or before the Effective Date; or (4) is identified on the Rejected Executory Contract and Unexpired Lease List.

Entry of the Confirmation Order shall constitute a Bankruptcy Court order approving the assumptions, assumption and assignment, or rejections, as applicable, of such Executory Contracts or Unexpired Leases as set forth in the Plan, the Assumed Executory Contract and Unexpired Lease List, and the Rejected Executory Contract and Unexpired Leases List, as applicable, pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Unless otherwise indicated, assumptions, assumptions and assignments, or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date. Each Executory Contract or Unexpired Lease assumed

pursuant to the Plan or by Bankruptcy Court order but not assigned to a third party before the Effective Date shall re-vest in and be fully enforceable by the applicable contracting Reorganized Debtor in accordance with its terms, except as such terms may have been modified by the provisions of the Plan or any order of the Bankruptcy Court authorizing and providing for its assumption under applicable federal law. Any motions to assume Executory Contracts or Unexpired Leases pending on the Effective Date shall be subject to approval by the Bankruptcy Court on or after the Effective Date by a Final Order. Notwithstanding anything to the contrary in the Plan, the Debtors, or the Reorganized Debtors, as applicable, reserve the right to alter, amend, modify, or supplement the Rejected Executory Contract and Unexpired Lease List and the Assumed Executory Contract and Unexpired Lease List at any time through and including thirty days after the Effective Date.

To the maximum extent permitted by law, to the extent that any provision in any Executory Contract or Unexpired Lease assumed or assumed and assigned pursuant to the Plan restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by, the assumption or assumption and assignment of such Executory Contract or Unexpired Lease (including any "change of control" provision), then such provision shall be deemed modified such that the transactions contemplated by the Plan shall not entitle the non-Debtor party thereto to terminate such Executory Contract or Unexpired Lease or to exercise any other default-related rights with respect thereto.

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

Unless otherwise provided by a Final Order of the Bankruptcy Court, all Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, pursuant to the Plan or the Confirmation Order, if any, must be filed with the Solicitation Agent and served on the Reorganized Debtors no later than thirty days after the effective date of such rejection.

**Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not filed with the Solicitation Agent within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtors, the Reorganized Debtors, the Estates, or their property, without the need for any objection by the Debtors or Reorganized Debtors, or further notice to, action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied, released, and discharged, and be subject to the permanent injunction set forth in Article VIII.G of the Plan, notwithstanding anything in a Proof of Claim to the contrary.**

All Claims arising from the rejection by any Debtor of any Executory Contract or Unexpired Lease pursuant to section 365 of the Bankruptcy Code shall be treated as a General Unsecured Claim pursuant to Article III.B of the Plan and may be objected to in accordance with the provisions of Article VII of the Plan and the applicable provisions of the Bankruptcy Code and Bankruptcy Rules.

*C. Cure of Defaults and Objections to Cure and Assumption*

Any monetary defaults under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the default amount in Cash on the Effective Date or in the ordinary course of business, subject to the limitation described below, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree.

Within seven calendar days before the Confirmation Objection Deadline, the Debtors shall provide notices of proposed cure amounts to counterparties to Executory Contracts and Unexpired Leases, which shall include a description of the procedures for objecting to assumption thereof based on the proposed cure amounts or the Reorganized Debtors' ability to provide "adequate assurance of future performance thereunder" (within the meaning of section 365 of the Bankruptcy Code). Any objection by a counterparty to an Executory Contract or Unexpired Lease to a proposed assumption or related cure amount must be filed, served, and actually received by the counsel to the Debtors no later than 5:00 p.m., prevailing Eastern Time, on May 15, 2020. Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption or cure amount will be deemed to have assented to such assumption or cure amount.

In the event of a dispute regarding: (1) the amount of any payments to cure such a default; (2) the ability of the Reorganized Debtors or any assignee to provide adequate assurance of future performance under the Executory Contract or Unexpired Lease to be assumed; or (3) any other matter pertaining to assumption, the cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following either (a) the entry of a Final Order or orders resolving the dispute and approving the assumption or (b) the settlement of the dispute between the parties which may be entered into without further order of the Bankruptcy Court.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. For the avoidance of doubt, assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not override or otherwise release any indemnification obligations in such Executory Contract or Unexpired Lease. **Any Proof of Claim filed with respect to an Executory Contract or Unexpired Lease that has been assumed shall be deemed disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court.**

*D. Insurance Policies*

Each of the Debtors' insurance policies and any agreements, documents, or instruments relating thereto are treated as Executory Contracts under the Plan. Unless otherwise provided in the Plan, on the Effective Date, the Debtors shall be deemed to have assumed all insurance policies, as well as any agreements, documents, and instruments relating to such insurance policies or coverage of all insured claims. Except as set forth in Article V.F of the Plan, nothing in the Plan, the Plan Supplement, the Confirmation Order, or any other order of the Bankruptcy Court (including any provision that purports to be preemptory or supervening), (1) alters, modifies, or otherwise amends the terms and conditions of (or the coverage provided by) any of such insurance policies or (2) alters or modifies the duty, if any, that the insurers or third-party administrators pay claims covered by such insurance policies and their right to seek payment or reimbursement from the Debtors (or after the Effective Date, the Reorganized Debtors) or draw on any collateral or security therefor. For the avoidance of doubt, insurers and third-party administrators shall not need to nor be required to file or serve a cure objection or a request, application, claim, Proof of Claim, or motion for payment and shall not be subject to any claims bar date or similar deadline governing cure amounts or Claims.

The automatic stay pursuant to section 362(a) of the Bankruptcy Code and the permanent injunction set forth in Article VIII.G, if and to the extent applicable, shall be deemed lifted without further order of the Bankruptcy Court, solely to permit: (1) claimants with valid direct action claims under applicable non-bankruptcy law to proceed with their claims; (2) any insurer of the Debtors to administer, handle, defend, settle, and/or pay, in the ordinary course of business and without further order of the Bankruptcy Court, (i) all claims (x) where a claimant asserts a direct claim against any insurer of the Debtors under applicable law or (y) that are subject to an order of the Bankruptcy Court granting the applicable claimant relief from the automatic stay or the injunction set forth in Article VIII.G to proceed with such claim and (ii) all costs in relation to the foregoing; and (3) subject to the terms of the Debtors' agreement with any insurer of the Debtors and/or applicable non-bankruptcy law, any insurer of the Debtors to (i) cancel any policies under the Debtors' agreement with such insurer and (ii) take other actions relating thereto.

*E. Indemnification Provisions*

On and as of the Effective Date, the Indemnification Provisions will be assumed and irrevocable and will survive the effectiveness of the Plan, and the Reorganized Debtors' governance documents will provide for the indemnification, defense, reimbursement, exculpation, and/or limitation of liability of, and advancement of fees and expenses to the Debtors' and the Reorganized Debtors' current and former directors, officers, employees, and agents to the fullest extent permitted by law and at least to the same extent as the organizational documents of each of the respective Debtors on the Petition Date, against any claims or Causes of Action whether direct or derivative, liquidated or unliquidated, fixed or contingent, disputed or undisputed, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted. None of the Reorganized Debtors will amend and/or restate their respective governance documents before or after the Effective Date to terminate or adversely affect any of the Reorganized

Debtors' obligations to provide such indemnification rights or such directors', officers', employees', or agents' indemnification rights.

On and as of the Effective Date, any of the Debtors' indemnification obligations with respect to any contract or agreement that is the subject of or related to any litigation against the Debtors or Reorganized Debtors, as applicable, shall be assumed by the Reorganized Debtors and otherwise remain unaffected by the Chapter 11 Cases.

*F. Director, Officer, Manager, and Employee Liability Insurance*

On or before the Effective Date, the Debtors, on behalf of the Reorganized Debtors, shall be authorized to and shall purchase and maintain directors, officers, managers, and employee liability tail coverage for the six-year period following the Effective Date for the benefit of the Debtors' current and former directors, managers, officers, and employees on terms no less favorable to such persons than their existing coverage under the D&O Liability Insurance Policies with available aggregate limits of liability upon the Effective Date of no less than the aggregate limit of liability under the existing D&O Liability Insurance Policies.

After the Effective Date, none of the Debtors or the Reorganized Debtors shall terminate or otherwise reduce the coverage under any such policies (including, if applicable, any "tail policy") with respect to conduct occurring as of the Effective Date, and all officers, directors, managers, and employees of the Debtors who served in such capacity at any time before the Effective Date shall be entitled to the full benefits of any such policy for the full six-year term of such policy regardless of whether such officers, directors, managers, or employees remain in such positions after the Effective Date.

On and after the Effective Date, each of the Reorganized Debtors shall be authorized to purchase a directors' and officers' liability insurance policy for the benefit of their respective directors, members, trustees, officers, and managers in the ordinary course of business.

*G. Employee and Retiree Benefits*

Except as otherwise provided in the Plan, on and after the Effective Date, subject to any Final Order and, without limiting any authority provided to the Reorganized Longview Board under the Debtors' respective formation and constituent documents, the Reorganized Debtors shall: (1) amend, adopt, assume, and/or honor in the ordinary course of business any contracts, agreements, policies, programs, and plans, in accordance with their respective terms, for, among other things, compensation, including any incentive plans, retention plans, health care benefits, disability benefits, deferred compensation benefits, savings, severance benefits, retirement benefits, welfare benefits, workers' compensation insurance, and accidental death and dismemberment insurance for the directors, officers, and employees of any of the Debtors who served in such capacity from and after the Petition Date; and (2) honor, in the ordinary course of business, Claims of employees employed as of the Effective Date for accrued vacation time arising prior to the Petition Date and not otherwise paid pursuant to a Bankruptcy Court order; *provided* that the consummation of the transactions contemplated in the Plan shall not constitute a "change in control" with respect to any of the foregoing arrangements. Notwithstanding the foregoing, pursuant to section 1129(a)(13) of the Bankruptcy Code, from and after the Effective Date, all retiree benefits (as such term is defined in section 1114 of the Bankruptcy Code), if any, shall continue to be paid in accordance with applicable law.

*H. Modifications, Amendments, Supplements, Restatements, or Other Agreements*

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

Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter

the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

*I. Reservation of Rights*

Nothing contained in the Plan or the Plan Supplement shall constitute an admission by the Debtors or any other party that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any Reorganized Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption, the Debtors or the Reorganized Debtors, as applicable, shall have thirty calendar days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease, including by rejecting such contract or lease *nunc pro tunc* to the Confirmation Date.

*J. Non-Occurrence of Effective Date.*

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

*K. Contracts and Leases Entered Into After the Petition Date*

Contracts and leases entered into after the Petition Date by any Debtor and any Executory Contracts and Unexpired Leases assumed by any Debtor may be performed by the applicable Reorganized Debtor in the ordinary course of business.

## ARTICLE VI.
## PROVISIONS GOVERNING DISTRIBUTIONS

*A. Timing and Calculation of Amounts to Be Distributed*

Unless otherwise provided in the Plan, on the Effective Date (or if a Claim or Interest is not an Allowed Claim or Interest on the Effective Date, on the date that such Claim becomes an Allowed Claim or Interest) each Holder of an Allowed Claim or Interest shall receive the full amount of the distributions that the Plan provides for Allowed Claims and Interests in each applicable Class and in the manner provided in the Plan. If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent that there are Disputed Claims or Interests, distributions on account of any such Disputed Claims or Interests shall be made pursuant to the provisions set forth in Article VII of the Plan. Except as otherwise provided in the Plan, Holders of Claims and Interests shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date. The Debtors shall have no obligation to recognize any transfer of Claims or Interests occurring on or after the Distribution Record Date.

*B. Distributions on Account of Obligations of Multiple Debtors*

For all purposes associated with distributions under the Plan, all guarantees by any Debtor of the obligations of any other Debtor, as well as any joint and several liability of any Debtor with respect to any other Debtor, shall be deemed eliminated so that any obligation that could otherwise be asserted against more than one Debtor shall result in a single distribution under the Plan; *provided* that Claims held by a single Entity at different Debtors that are not based on guarantees or joint and several liability shall be entitled to the applicable distribution for such Claim at each applicable Debtor. Any such Claims shall be released and discharged pursuant to Article VIII of the Plan and shall be subject to all potential objections, defenses, and counterclaims, and to estimation pursuant to section 502(c) of the Bankruptcy Code. For the avoidance of doubt, this shall not affect the obligation of each and every Debtor to pay U.S. Trustee fees until such time as a particular case is closed, dismissed, or converted.

*C. Distribution Agent*

Except as otherwise provided in the Plan, all distributions under the Plan shall be made by the Distribution Agent on the Effective Date. The Distribution Agent shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court.

*D. Rights and Powers of Distribution Agent*

1. Powers of the Distribution Agent

The Distribution Agent shall be empowered to: (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

2. Expenses Incurred On or After the Effective Date

Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and out-of-pocket expenses incurred by the Distribution Agent on or after the Effective Date (including taxes) and any reasonable compensation and out-of-pocket expense reimbursement claims (including reasonable, actual, and documented attorney and/or other professional fees and expenses) made by the Distribution Agent shall be paid in Cash by the Reorganized Debtors.

*E. Delivery of Distributions*

1. Delivery of Distributions in General

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 Reorganized Debtors or the Distribution Agent, as appropriate: (a) to the signatory set forth on any Proof of Claim or Proof of Interest filed by such Holder or other representative identified therein (or at the last known addresses of such Holder if no Proof of Claim or Proof of Interest is filed or if the Debtors have not 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 Reorganized Debtors or the applicable Distribution Agent, as appropriate, after the date of any related Proof of Claim or Proof of Interest; or (c) on any counsel that has appeared in the Chapter 11 Cases on the Holder's behalf. Subject to this Article VI of the Plan, distributions under the Plan on account of Allowed Claims shall not be subject to levy, garnishment, attachment, or like legal process, so that each Holder of an Allowed Claim shall have and receive the benefit of the distributions in the manner set forth in the Plan. The Debtors, the Reorganized Debtors, and the Distribution Agent, as applicable, shall not incur any liability whatsoever on account of any distributions under the Plan except for fraud, gross negligence, or willful misconduct.

2. Undeliverable Distributions and Unclaimed Property

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

3. No Fractional Distributions

No fractional shares of the New Common Equity or New Warrants shall be distributed, and no Cash shall be distributed in lieu of such fractional amounts. When any distribution pursuant to the Plan on account of an applicable Allowed Claim would otherwise result in the issuance of a number of shares of the New Common Equity or New Warrants that is not a whole number, the actual distribution of shares of the New Common Equity or New Warrants shall be rounded as follows: (a) fractions of one-half (½) or greater shall be rounded to the next higher whole number and (b) fractions of less than one-half (½) shall be rounded to the next lower whole number with no further payment therefor. The total number of authorized shares of the New Common Equity and New Warrants shall be adjusted as necessary to account for the foregoing rounding.

*F. Manner of Payment*

At the option of the Distribution Agent, any Cash payment to be made under the Plan may be made by check or wire transfer or as otherwise required or provided in applicable agreements.

*G. Compliance Matters*

In connection with the Plan, to the extent applicable, the Reorganized Debtors and the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Reorganized Debtors and the Distribution Agent shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Reorganized Debtors reserve the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances.

*H. No Postpetition or Default Interest on Claims*

Unless otherwise specifically provided for in the Plan or the Confirmation Order, and notwithstanding any documents that govern the Debtors' prepetition indebtedness to the contrary, (1) postpetition and/or default interest shall not accrue or be paid on any Claims and (2) no Holder of a Claim shall be entitled to: (a) interest accruing on or after the Petition Date on any such Claim; or (b) interest at the contract default rate, as applicable.

*I. Allocation Between Principal and Accrued Interest*

Except as otherwise provided in the Plan, the aggregate consideration paid to Holders with respect to their Allowed Claims shall be treated pursuant to the Plan as allocated first to the principal amount of such Allowed Claims (to the extent thereof) and, thereafter, to the interest, if any, on such Allowed Claim accrued through the Petition Date.

*J. Setoffs and Recoupment*

Unless otherwise provided in the Plan or the Confirmation Order, each Debtor and each Reorganized Debtor, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable non-bankruptcy law, or as may be agreed to by the Holder of a Claim, may set off against or recoup any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Allowed Claim (before any distribution is made on account of such Allowed Claim), any claims, rights, and Causes of Action of any nature that such Debtor or Reorganized Debtor, as applicable, may hold against the Holder of such Allowed Claim, to the extent such claims, rights, or Causes of Action against such Holder have not been otherwise compromised or settled as of the Effective Date (whether pursuant to the Plan or otherwise); *provided*, *however*, that neither the failure to effect such a setoff or recoupment nor the allowance of any Claim pursuant to the Plan shall constitute a waiver or release by such Debtor or Reorganized Debtor of any such claims, rights, and Causes of Action that such Reorganized Debtor may possess against such Holder. In no event shall any Holder of Claims be entitled to set off or recoup any such Claim against any claim, right, or Cause

of Action of the Debtor or Reorganized Debtor (as applicable), unless such Holder has filed a motion with the Bankruptcy Court requesting the authority to perform such setoff or recoupment on or before the Confirmation Date, and notwithstanding any indication in any Proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of setoff or recoupment pursuant to section 553 of the Bankruptcy Code or otherwise.

*K. Claims Paid or Payable by Third Parties*

1. Claims Paid by Third Parties

A Claim shall be reduced in full, and such Claim shall be disallowed without an objection to such Claim having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not a Debtor or Reorganized Debtor. To the extent that a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor or a Reorganized Debtor on account of such Claim, such Holder shall repay, return, or deliver any distribution held by or transferred to the Holder to the applicable Reorganized Debtor to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan.

2. Claims Payable by Third Parties

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

3. 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 an applicable insurance policy. 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, including insurers under any policies of insurance, 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 VII.
## PROCEDURES FOR RESOLVING DISPUTED CLAIMS AND INTERESTS

*A. Disputed Claims Process*

Holders of Claims and Interests need not file a Proof of Claim or Proof of Interest, as applicable, with the Bankruptcy Court and shall be subject to the Bankruptcy Court process only to the extent provided in the Plan, except to the extent a Claim arises on account of rejection of an Executory Contract or Unexpired Lease in accordance with Article V.B of the Plan. On and after the Effective Date, except as otherwise provided in the Plan, all Allowed Claims shall be paid pursuant to the Plan in the ordinary course of business of the Reorganized Debtors and shall survive the Effective Date as if the Chapter 11 Cases had not been commenced. Other than Claims arising from the rejection of an Executory Contract or Unexpired Lease, if the Debtors or the Reorganized Debtors dispute any Claim or Interest, such dispute shall be determined, resolved, or adjudicated, as the case may be, in a manner as if the Chapter 11 Cases had not been commenced and shall survive the Effective Date as if the Chapter 11 Cases had not been commenced, and all parties shall retain any and all rights, claims, causes of action, defenses, and remedies that such parties had immediately prior to or arising after the Petition Date. Solely to the extent that an Entity is required to file a Proof of Claim and the Debtors or the Reorganized Debtors, as applicable, do not determine, and without the need for notice to or action, order, or approval of the Bankruptcy Court, that the Claim subject to such Proof of Claim is Allowed, such Claim shall be Disputed unless Allowed or disallowed by a Final Order or as otherwise set forth in this Article VII of the Plan. For the avoidance of doubt, there is no requirement to file a Proof of Claim or Proof of Interest (or move

the Court for allowance) to be an Allowed Claim or Allowed Interest, as applicable, under the Plan. Notwithstanding the foregoing, Entities must file cure objections as set forth in Article V.C of the Plan to the extent such Entity disputes the amount of the cure set forth in the Assumed Executory Contract and Unexpired Lease List**. All Proofs of Claim required to be filed by the Plan that are filed after the date that they are required to be filed pursuant to the Plan shall be disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Reorganized Debtor, without the need for any objection by the Reorganized Debtors or any further notice to or action, order, or approval of the Bankruptcy Court.**

*B. Claims Administration Responsibilities.*

Except as otherwise specifically provided in the Plan, after the Effective Date, the Reorganized Debtors shall have the sole authority to: (1) file, withdraw, or litigate to judgment, objections to Claims or Interests; (2) settle or compromise any Disputed Claim or Interest without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court. For the avoidance of doubt, except as otherwise provided in the Plan, from and after the Effective Date, each Reorganized Debtor shall have and retain any and all rights and defenses such Debtor had immediately prior to the Effective Date with respect to any Disputed Claim or Interest, including the Causes of Action retained pursuant to Article IV.Q of the Plan.

*C. Estimation of Claims and Interests*

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

*D. Adjustment to Claims Without Objection*

Any duplicate Claim or Interest or any Claim or Interest that has been paid, satisfied, amended, or superseded may be adjusted or expunged on the Claims Register by the Reorganized Debtors without the Reorganized Debtors having to file an application, motion, complaint, objection, or any other legal proceeding seeking to object to such Claim or Interest and without any further notice to or action, order, or approval of the Bankruptcy Court.

*E. No Distributions Pending Allowance*

Notwithstanding any other provision hereof, if any portion of a Claim or Interest is a Disputed Claim or Interest, as applicable, no payment or distribution provided hereunder shall be made on account of such Claim or Interest unless and until such Disputed Claim or Interest becomes an Allowed Claim or Interest.

*F. Distributions After Allowance*

To the extent that a Disputed Claim or Interest ultimately becomes an Allowed Claim or Interest, distributions (if any) shall be made to the Holder of such Allowed Claim or Interest in accordance with the provisions of the Plan. As soon as reasonably practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim or Interest becomes a Final Order, the Distribution Agent shall provide to the Holder of such Claim or Interest the distribution (if any) to which such Holder is entitled under the Plan as of the Effective Date, without any interest to be paid on account of such Claim or Interest.

*G. No Interest*

Interest shall not accrue or be paid on any Disputed Claim with respect to the period from the Effective Date to the date a final distribution is made on account of such Disputed Claim, if and when such Disputed Claim becomes an Allowed Claim.

## ARTICLE VIII.
## SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS

*A. Compromise and Settlement of Claims, Interests, and Controversies*

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a Holder of a Claim or Interest may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their Estates, and Holders of Claims and Interests and is fair, equitable, and reasonable. In accordance with the provisions of the Plan, pursuant to Bankruptcy Rule 9019, without any further notice to or action, order, or approval of the Bankruptcy Court, after the Effective Date, the Reorganized Debtors may compromise and settle Claims against, and Interests in, the Debtors and their Estates and Causes of Action against other Entities.

*B. Discharge of Claims*

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims (including any Intercompany Claims resolved or compromised after the Effective Date by the Reorganized Debtors), Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability (including withdrawal liability) to the extent such Claims or Interests relate to services performed by employees of the Debtors prior to the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a Proof of Claim based upon such debt or right is filed or deemed filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the Holder of such a Claim or Interest has accepted the Plan or voted to reject the Plan. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the occurrence of the Effective Date, except as otherwise specifically provided in the Plan.

*C. Release of Liens*

**Except (1) with respect to the Liens securing (a) the Exit Facility, (b) Other Secured Claims that are Reinstated pursuant to the Plan, or (c) obligations pursuant to Executory Contracts and Unexpired Leases assumed pursuant to the Plan or (2) as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates and, subject to the consummation of the applicable distributions contemplated in the Plan, shall be fully released and discharged, at the sole cost of and expense of the Reorganized Debtors, and the Holders of such mortgages, deeds of trust, Liens, pledges, or other security interests shall execute such documents as may be reasonably requested by the Debtors or the Reorganized Debtors, as applicable, to reflect or effectuate such releases, and all of the right,**

**title, and interest of any Holders of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtor and its successors and assigns.**

*D. Debtor Release*

**Effective as of the Effective Date, pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, the adequacy of which is hereby confirmed, on and after the Effective Date, each Released Party is deemed released and discharged by each and all of the Debtors, the Reorganized Debtors, and their Estates, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other entities who may purport to assert any Cause of Action, directly or derivatively, by, through, for, or because of the foregoing entities, from any and all Causes of Action, whether known or unknown, including any derivative claims, asserted or assertable on behalf of any of the Debtors, that the Debtors, the Reorganized Debtors, or their Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in, a Debtor or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), the purchase, sale, or rescission of any security of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions, the Prepetition Credit Agreement (including the Prepetition Revolving Facility and the Prepetition Term Loan Facility), the Subordinated Notes Purchase Agreement, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, entry into, or filing of, as applicable, the RSA, the Disclosure Statement, the Exit Facility Documents, the New Organizational Documents, the New Warrant Agreement, the Plan, or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the RSA, the Disclosure Statement, the Exit Facility Documents, the New Organizational Documents, the New Warrant Agreement, 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, including the issuance or distribution of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other related act, or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (1) any post-Effective Date obligations of any party or Entity under the Plan, any Restructuring Transaction, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan or (2) any retained Causes of Action.**

*E. Third-Party Release*

**Effective as of the Effective Date, each Releasing Party, in each case on behalf of itself and its respective successors, assigns, and representatives, and any and all other entities who may purport to assert any Cause of Action, directly or derivatively, by, through, for, or because of the foregoing entities, is deemed to have released and discharged each Debtor, Reorganized Debtor, and Released Party from any and all Causes of Action, whether known or unknown, including any derivative claims, asserted or assertable on behalf of any of the Debtors, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership or operation thereof), the purchase, sale, or rescission of any security of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions, the Prepetition Credit Agreement (including the Prepetition Revolving Facility and the Prepetition Term Loan Facility), the Subordinated Notes Purchase Agreement, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, entry into, or filing of, as applicable, the RSA, the Disclosure Statement, the Exit Facility Documents, the New Organizational Documents, the New Warrant Agreement, the Plan, or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the RSA, the Disclosure Statement, the Exit Facility Documents, the New Organizational Documents, the New Warrant Agreement, 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, including the**

**issuance or distribution of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other related act, or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any post-Effective Date obligations of any party or Entity under the Plan, any Restructuring Transaction, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.**

*F. Exculpation*

**Effective as of the Effective Date, to the fullest extent permissible under applicable law and without affecting or limiting either the Debtor Release or the Third-Party Release, and except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur, and each Exculpated Party is released and exculpated from any Cause of Action for any claim based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership or operation thereof), the purchase, sale, or rescission of any security of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions, the Prepetition Credit Agreement (including the Prepetition Revolving Facility and the Prepetition Term Loan Facility), the Subordinated Notes Purchase Agreement, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, entry into, or filing of, as applicable, the RSA and related prepetition transactions, the Disclosure Statement, the Exit Facility Documents, the New Organizational Documents, the New Warrant Agreement, the Plan, or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Disclosure Statement, the Exit Facility Documents, the New Organizational Documents, the New Warrant Agreement, 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, including the issuance or distribution of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other related act, or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date (including, for the avoidance of doubt, providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Exculpated Party on the Plan or the Confirmation Order in lieu of such legal opinion), except for claims related to any act or omission that is determined in a Final Order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, 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, and upon completion of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.**

*G. Injunction*

**Effective as of the Effective Date, pursuant to section 524(a) of the Bankruptcy Code, to the fullest extent permissible under applicable law, and except as otherwise expressly provided in the Plan or for obligations issued or required to be paid pursuant to the Plan or the Confirmation Order, all Entities that have held, hold, or may hold claims or interests that have been released, discharged, or are subject to exculpation are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, the Exculpated Parties, or the Released Parties: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with 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 the estates of such Entities on account of or in connection with or with respect to any such claims or interests; (4) asserting any right of setoff, subrogation,**

**or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such claims or interests unless such Holder has filed a motion requesting the right to perform such setoff on or before the Effective Date, and notwithstanding an indication of a claim or interest or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and (5) 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.**

*H. Protection Against Discriminatory Treatment*

In accordance with section 525 of the Bankruptcy Code, and consistent with paragraph 2 of Article VI of the United States Constitution, no Governmental Unit shall discriminate against any Reorganized Debtor, or any Entity with which a Reorganized Debtor has been or is associated, or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Reorganized Debtors, or another Entity with whom the Reorganized Debtors have been associated, solely because such Reorganized Debtor was a Debtor under chapter 11, may have been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before such Debtor was granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

*I. Recoupment*

In no event shall any Holder of Claims or Interests be entitled to recoup any Claim or Interest against any claim, right, or Cause of Action of the Debtors or the Reorganized Debtors, as applicable, unless such Holder actually has performed such recoupment and provided notice thereof in writing to the Debtors on or before the Confirmation Date, notwithstanding any indication in any Proof of Claim or Interest or otherwise that such Holder asserts, has, or intends to preserve any right of recoupment.

*J. Reimbursement or Contribution*

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the Effective Date, such Claim shall be forever disallowed notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Effective Date (1) such Claim has been adjudicated as non-contingent or (2) the relevant Holder of a Claim has filed a non-contingent Proof of Claim on account of such Claim and a Final Order has been entered determining such Claim as no longer contingent.

*K. Term of Injunctions or Stays*

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

*L. Document Retention*

On and after the Effective Date, the Reorganized Debtors may maintain documents in accordance with their standard document retention policy, as may be altered, amended, modified, or supplemented by the Reorganized Debtors.

## ARTICLE IX.
## CONDITIONS PRECEDENT TO THE EFFECTIVE DATE

*A. Conditions Precedent to the Effective Date.*

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

1. the RSA shall not have been terminated and shall remain in full force and effect in accordance with its terms;

2. the Bankruptcy Court shall have entered the Confirmation Order;

3. the Debtors shall have obtained all authorizations, consents, regulatory approvals, rulings, or documents that are necessary to implement and effectuate the Plan;

4. the final version of the Plan Supplement and all of the schedules, documents, and exhibits contained therein, and all other schedules, documents, supplements and exhibits to the Plan, shall have been filed;

5. the Exit Facility Documents shall be in full force and effect (with all conditions precedent thereto having been satisfied or waived), subject to any applicable post-closing execution and delivery requirements;

6. the New Organizational Documents shall be in full force and effect (with all conditions precedent thereto having been satisfied or waived), subject to any applicable post-closing execution and delivery requirements;

7. the New Warrant Agreement shall be in full force and effect and (with all conditions precedent thereto having been satisfied or waived), subject to any applicable post-closing execution and delivery requirements; and

8. all Professional Fee Claims and expenses of retained professionals required to be approved by the Bankruptcy Court shall have been paid in full or amounts sufficient to pay such fees and expenses after the Effective Date have been placed in the Professional Fee Escrow Account pending approval by the Bankruptcy Court.

*B. Waiver of Conditions Precedent*

The Debtors, with the reasonable consent of the Required Consenting Lenders, may waive any of the conditions to the Effective Date set forth in Article IX.A of the Plan at any time without any notice to any other parties in interest and without any further notice to or action, order, or approval of the Bankruptcy Court, and without any formal action other than proceeding to confirm and consummate the Plan.

*C. Substantial Consummation*

"Substantial Consummation" of the Plan, as defined in section 1101(2) of the Bankruptcy Code, with respect to any of the Debtors, shall be deemed to occur on the Effective Date with respect to such Debtor.

*D. Effect of Non-Occurrence of Conditions to Consummation*

If the Effective Date does not occur with respect to any of the Debtors, the Plan shall be null and void in all respects with respect to such Debtor, and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any Claims by or Claims against or Interests in such Debtors; (2) prejudice in any

manner the rights of such Debtors, any Holders of a Claim or Interest, or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking by such Debtors, any Holders, or any other Entity in any respect.

## ARTICLE X.
## MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN

*A. Modification of Plan*

Subject to the limitations contained in the Plan, the Debtors reserve the right to modify the Plan prior to Confirmation and seek Confirmation consistent with the Bankruptcy Code and, as appropriate, not resolicit votes on such modified Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, the Debtors expressly reserve their rights to alter, amend, or modify materially the Plan, one or more times, before or after Confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan, so long as such modifications are consistent with the RSA.

*B. Effect of Confirmation on Modifications*

Entry of the Confirmation Order shall constitute approval of all modifications to the Plan occurring after the solicitation thereof pursuant to section 1127(a) of the Bankruptcy Code and a finding that such modifications to the Plan do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

*C. Revocation or Withdrawal of Plan*

The Debtors reserve the right to revoke or withdraw the Plan before the Confirmation Date and to file subsequent chapter 11 plans. If the Debtors revoke or withdraw the Plan, or if the Confirmation Date or the Effective Date does not occur, then: (1) the Plan will be null and void in all respects; (2) any settlement or compromise embodied in the Plan, assumption of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant hereto will be null and void in all respects; and (3) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims, Interests, or Causes of Action, (b) prejudice in any manner the rights of any Debtor or any other Entity, or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by any Debtor or any other Entity.

## ARTICLE XI.
## RETENTION OF JURISDICTION

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

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

2. decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

3. resolve any matters related to Executory Contracts or Unexpired Leases, including: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Cure Claims arising therefrom, including pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual

obligation under any Executory Contract or Unexpired Lease that is assumed; and (c) any dispute regarding whether a contract or lease is or was executory or expired;

4. ensure that distributions to Holders of Allowed Claims and Interests (as applicable) are accomplished pursuant to the provisions of the Plan and adjudicate any and all disputes arising from or relating to distributions under the Plan;

5. adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

6. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of (a) contracts, instruments, releases, indentures, and other agreements or documents approved by Final Order in the Chapter 11 Cases and (b) the Plan, the Confirmation Order, and contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan;

7. enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

8. grant any consensual request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code;

9. adjudicate, decide, or resolve any and all matters related to the Restructuring Transactions;

10. adjudicate, decide, or resolve any and all matters related to enforcement of the RSA;

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

12. resolve any cases, controversies, suits, disputes, Causes of Action, or any other matters that may arise in connection with the Consummation, interpretation, or enforcement of the Plan, the Disclosure Statement, the Confirmation Order, or the Restructuring Transactions, or any Entity's obligations incurred in connection with the foregoing, including disputes arising under agreements, documents, or instruments executed in connection with the Plan, the Disclosure Statement, the Confirmation Order, or the Restructuring Transactions;

13. hear, determine, and resolve any cases, matters, controversies, suits, disputes, or Causes of Action in connection with or in any way related to the Chapter 11 Cases, including: (a) with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or an Interest for amounts not timely repaid pursuant to Article VI.K.1 of the Plan; (b) with respect to the releases, injunctions, and other provisions contained in Article VIII of the Plan, including entry of such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions; (c) that may arise in connection with the Consummation, interpretation, implementation, or enforcement of the Plan, the Confirmation Order, and, subject to any applicable forum selection clauses, contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan; or (d) related to section 1141 of the Bankruptcy Code;

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

15. consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

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

17. enter an order or Final Decree concluding or closing the Chapter 11 Cases;

18. enforce all orders previously entered by the Bankruptcy Court; and

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

*provided, however*, that the Bankruptcy Court shall not retain jurisdiction over disputes concerning documents contained in the Plan Supplement that have a jurisdictional, forum selection or dispute resolution clause that refers disputes to a different court, and any disputes concerning documents contained in the Plan Supplement that contain such clauses shall be governed in accordance with the provisions of such documents.

## ARTICLE XII.
## MISCELLANEOUS PROVISIONS

*A. Immediate Binding Effect*

Subject to Article IX.A of the Plan and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan and the Plan Supplement shall be immediately effective and enforceable and deemed binding upon the Debtors, the Reorganized Debtors, and any and all Holders of Claims or Interests (irrespective of whether such Claims or Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges, and injunctions described in the Plan, each Entity acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors.

*B. Additional Documents*

On or before the Effective Date, the Debtors may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors or the Reorganized Debtors, as applicable, and all Holders of Claims and Interests receiving distributions pursuant to the Plan and all other parties in interest shall, 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.

*C. Statutory Fees*

All fees payable pursuant to section 1930(a) of the Judicial Code, including fees and expenses payable to the U.S. Trustee, as determined by the Bankruptcy Court at a hearing pursuant to section 1128 of the Bankruptcy Code, will be paid by each of the applicable Reorganized Debtors for each quarter (including any fraction thereof) until the applicable Chapter 11 Case of such Reorganized Debtor is converted, dismissed, or closed, whichever occurs first.

*D. Payment of Certain Fees and Expenses*

Without any further notice to or action, order, or approval of the Bankruptcy Court, the Debtors or Reorganized Debtors, as applicable, shall pay on the Effective Date all then-outstanding reasonable and documented unpaid fees and expenses incurred on or before the Effective Date by all of the attorneys, advisors, and other professionals payable under the RSA or the Cash Collateral Orders.

*E. Reservation of Rights*

Except as expressly set forth in the Plan, the Plan shall have no force or effect unless the Bankruptcy Court has entered the Confirmation Order. None of the filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by any Debtor 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 with respect to the Holders of Claims or Interests prior to the Effective Date.

*F. Successors and Assigns*

The rights, benefits, and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, affiliated investment funds or investment vehicles, managed accounts or funds, investment managers, advisors, and sub-advisors with discretionary authority, officer, director, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

*G. Service of Documents*

All notices, requests, and demands to or upon the Debtors to be effective shall be in writing (including by facsimile transmission) and, unless otherwise expressly provided in the Plan, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

**If to the Debtors:**

Longview Power, LLC
1375 Fort Martin Road
Maidsville, West Virginia 26541
Attention: Jeffery Keffer, President and Chief Executive Officer
E-mail: jkeffer@longviewpower.net

With copies to:

Kirkland & Ellis LLP
300 North LaSalle
Chicago, Illinois 60654
Facsimile: (312) 862-2200
Attention: David R. Seligman, P.C.; Joseph M. Graham, Esq.; and Laura E. Krucks
E-mail: david.seligman@kirkland.com, joe.graham@kirkland.com; laura.krucks@kirkland.com

Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
Facsimile: (302) 651-7701
Attention: Daniel J. DeFranceschi and Zachary I. Shapiro
Email: defranceschi@rlf.com, shapiro@rlf.com

**If to the Ad Hoc Lender Group:**

Faegre Drinker Biddle & Reath LLP
1177 Avenue of the Americas, 41st Floor
New York, New York 10036
Attn: James H. Millar and Laura E. Appleby
Email: james.millar@faegredrinker.com, laura.appleby@faegredrinker.com

After the Effective Date, the Reorganized Debtors shall have the authority to send a notice to Entities that continue to receive documents pursuant to Bankruptcy Rule 2002 requiring such Entity to file a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Reorganized Debtors are authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities who have filed such renewed requests.

*H. Entire Agreement*

Except as otherwise indicated, the Plan (including, for the avoidance of doubt, the Plan Supplement) 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.

*I. Plan Supplement Exhibits*

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are filed, copies of such exhibits and documents shall be made available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from www.donlinrecano.com/longviewpower or the Bankruptcy Court's website at www.del.uscourts.gov/bankruptcy. Unless otherwise ordered by the Bankruptcy Court, to the extent any exhibit or document in the Plan Supplement is inconsistent with the terms of any part of the Plan that does not constitute the Plan Supplement, the Plan shall control. The documents considered in the Plan Supplement are an integral part of the Plan and shall be deemed approved by the Bankruptcy Court pursuant to the Confirmation Order.

*J. Non-Severability*

Except as set forth in Article VIII of the Plan, the provisions of the Plan, including its release, injunction, exculpation and compromise provisions, are mutually dependent and non-severable. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the consent of the Debtors; and (3) non-severable and mutually dependent.

*K. Votes Solicited in Good Faith*

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code, and, pursuant to section 1125(e) of the Bankruptcy Code, the Debtors and each of their respective Affiliates, agents, representatives, members, principals, shareholders, officers, directors, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code in the offer, issuance, sale, and purchase of Securities offered and sold under the Plan and any previous plan, and, therefore, no such parties, individuals, or the Reorganized Debtors will have any liability for the violation of any applicable law, rule, or regulation governing the solicitation of votes on the Plan or the offer, issuance, sale, or purchase of the Securities offered and sold under the Plan and any previous plan.

*L. 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, the RSA, or papers filed with the Bankruptcy Court prior to the Confirmation Date.

*M. Closing of Chapter 11 Cases*

The Reorganized Debtors shall, promptly after the full administration of the Chapter 11 Cases, file with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Cases.

[*Remainder of Page Intentionally Left Blank*]

Dated: April 13, 2020

Respectfully submitted,

By: */s/ Jeffery L. Keffer*
Name: Jeffery L. Keffer
Title: Chief Executive Officer

Wilmington, Delaware

/s/ *Daniel J. DeFranceschi*

Daniel J. DeFranceschi (No. 2732)
Zachary I. Shapiro (No. 5103)
**RICHARDS, LAYTON & FINGER, P.A.**
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
Telephone: (302) 651-7700
Facsimile: (302) 651-7701
Email: defranceschi@rlf.com
shapiro@rlf.com

*Proposed Counsel to the Debtors and Debtors in Possession*

David R. Seligman, P.C. (*pro hac vice* pending)
Joseph M. Graham (*pro hac vice* pending)
**KIRKLAND & ELLIS LLP**
**KIRKLAND & ELLIS INTERNATIONAL LLP**
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
Email: david.seligman@kirkland.com
joe.graham@kirkland.com

*Proposed Counsel to the Debtors and Debtors in Possession*

**THIS SOLICITATION IS BEING CONDUCTED TO OBTAIN SUFFICIENT ACCEPTANCES OF THE DEBTORS' JOINT PREPACKAGED CHAPTER 11 PLAN OF REORGANIZATION *BEFORE AND AFTER* THE FILING OF VOLUNTARY REORGANIZATION CASES UNDER CHAPTER 11 OF TITLE 11 OF THE UNITED STATES CODE, 11 U.S.C. §§ 101–1532 (THE "BANKRUPTCY CODE"). BECAUSE THE CHAPTER 11 CASES HAVE NOT YET BEEN COMMENCED, THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED BY A BANKRUPTCY COURT AS CONTAINING ADEQUATE INFORMATION WITHIN THE MEANING OF SECTION 1125(a) OF THE BANKRUPTCY CODE OR AS BEING IN COMPLIANCE WITH SECTION 1126(b) OF THE BANKRUPTCY CODE. FOLLOWING COMMENCEMENT OF THE CHAPTER 11 CASES, THE DEBTORS EXPECT TO PROMPTLY SEEK ENTRY OF AN ORDER OF THE BANKRUPTCY COURT (I) APPROVING THIS DISCLOSURE STATEMENT AS CONTAINING ADEQUATE INFORMATION UNDER SECTION 1125(a) OF THE BANKRUPTCY CODE, (II) APPROVING THE SOLICITATION OF VOTES ON THE PLAN AS HAVING BEEN IN COMPLIANCE WITH SECTION 1126(b) OF THE BANKRUPTCY CODE, AND (III) CONFIRMING THE PLAN.**

# DISCLOSURE STATEMENT, DATED APRIL 13, 2020

**SOLICITATION OF VOTES TO ACCEPT OR REJECT**
**THE DEBTORS' JOINT PREPACKAGED CHAPTER 11 PLAN OF REORGANIZATION**

**YOU ARE RECEIVING THIS DOCUMENT AND THE ACCOMPANYING MATERIALS BECAUSE YOU ARE ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN.**

**RECOMMENDATION BY THE DEBTORS**

**THE BOARD OF MANAGERS OR THE SOLE MEMBER OF EACH OF THE DEBTORS, AS APPLICABLE, HAVE UNANIMOUSLY APPROVED THE TRANSACTIONS CONTEMPLATED BY THE PLAN AND DESCRIBED IN THIS DISCLOSURE STATEMENT AND RECOMMEND THAT ALL HOLDERS OF CLAIMS WHOSE VOTES ARE BEING SOLICITED SUBMIT BALLOTS TO ACCEPT THE PLAN.**

| DELIVERY OF BALLOTS | |
|---|---|
| 1. | Ballots must be actually received by the Solicitation Agent before the Voting Deadline. |
| 2. | Ballots may be returned by the following methods: (a) in the enclosed pre-paid, pre-addressed return envelope; (b) via first class mail, overnight courier, or hand delivery to the address set forth below; or (c) via electronic mail to LongviewVote@DonlinRecano.com with "Longview Vote" in the Subject Line.<br><br>If by first class mail:<br>LONGVIEW POWER BALLOT PROCESSING<br>C/O DONLIN, RECANO & COMPANY, INC.<br>P.O. BOX 199043<br>Blythebourne Station<br>Brooklyn, New York 11219<br><br>If by hand delivery or overnight mail:<br>LONGVIEW POWER BALLOT PROCESSING<br>C/O DONLIN, RECANO & COMPANY, INC.<br>6201 15th Avenue<br>Brooklyn, New York 11219 |
| If you have any questions on the procedures for voting on the Plan, please contact the Solicitation Agent by emailing DRCVote@DonlinRecano.com and reference "Longview Power" in the subject line, or by calling (800) 761-6523 (domestic toll free) or 212-771-1128 (international toll), and ask for the solicitation group. | |

**PLEASE NOTE THAT THE DESCRIPTION OF THE PLAN PROVIDED THROUGHOUT THIS DISCLOSURE STATEMENT IS ONLY A SUMMARY PROVIDED FOR CONVENIENCE.**

**THE TERMS OF THE PLAN GOVERN IN THE EVENT OF ANY INCONSISTENCY WITH THE SUMMARIES CONTAINED IN THIS DISCLOSURE STATEMENT AND THE PLAN.**

**A COPY OF THE PLAN TO WHICH THIS DISCLOSURE STATEMENT RELATES IS ATTACHED HERETO AS EXHIBIT A.**

**READERS SHOULD NOT CONSTRUE THE CONTENTS OF THIS DISCLOSURE STATEMENT AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL, OR TAX ADVICE AND SHOULD CONSULT WITH THEIR OWN ADVISORS BEFORE CASTING A VOTE WITH RESPECT TO THE PLAN.**

**THE DEBTORS HAVE NOT AUTHORIZED ANY PERSON TO GIVE ANY INFORMATION OR ADVICE OR TO MAKE ANY REPRESENTATION IN CONNECTION WITH THE PLAN AND THIS DISCLOSURE STATEMENT.**

**THE DEBTORS HAVE NOT AUTHORIZED ANY PERSON TO GIVE ANY INFORMATION OR ADVICE OR TO MAKE ANY REPRESENTATION IN CONNECTION WITH THE PLAN AND THIS DISCLOSURE STATEMENT.**

**THE INFORMATION IN THIS DISCLOSURE STATEMENT IS BEING PROVIDED SOLELY FOR THE PURPOSES OF VOTING TO ACCEPT OR REJECT THE PLAN OR OBJECTING TO CONFIRMATION.**

**NOTHING IN THIS DISCLOSURE STATEMENT MAY BE USED BY ANY PARTY FOR ANY OTHER PURPOSE.**

**ALL EXHIBITS TO THE DISCLOSURE STATEMENT ARE INCORPORATED INTO AND ARE A PART OF THIS DISCLOSURE STATEMENT AS IF SET FORTH IN FULL IN THIS DISCLOSURE STATEMENT.**

**ANY DISCUSSION OF FEDERAL, STATE, LOCAL, OR NON-U.S. TAX ISSUES CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES PERTAINING TO THE READER OR A HOLDER OF A CLAIM OR INTEREST. READERS AND ALL HOLDERS OF CLAIMS OR INTERESTS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS FOR THE FEDERAL, STATE, LOCAL, AND NON-U.S. TAX CONSEQUENCES OF THE PLAN.**

## SPECIAL NOTICE REGARDING FEDERAL AND STATE SECURITIES LAWS

**Neither this Disclosure Statement nor the Plan has been filed with the United States Securities and Exchange Commission (the "SEC") or any similar federal, state, local, or foreign regulatory authority. The Plan has not been approved or disapproved by the SEC or any state securities commission, and neither the SEC nor any state securities commission has passed upon the accuracy or adequacy of this Disclosure Statement or the merits of the Plan. Any representation to the contrary is a criminal offense.**

**This Disclosure Statement has been prepared pursuant to sections 1125 and 1126 of the Bankruptcy Code and Bankruptcy Rule 3016(b). The Bankruptcy Court has not yet reviewed this Disclosure Statement or the Plan, and the securities to be issued on or after the Effective Date will not have been the subject of a registration statement filed with the SEC under the Securities Act of 1933, as amended (the "Securities Act"), or any securities regulatory authority of any state under any state securities law (collectively, the "Blue Sky Laws"). The Plan has not been approved or disapproved by the SEC or any state regulatory authority and neither the SEC nor any state regulatory authority has passed upon the accuracy or adequacy of the information contained in this Disclosure Statement or the Plan. Any representation to the contrary is a criminal offense. The Debtors are relying on section 4(a)(2) of the Securities Act and/or Regulation D promulgated thereunder, and similar Blue Sky Laws provisions, to exempt from registration under the Securities Act and Blue Sky Laws the offering of the New Common Equity and New Warrants prior to the Petition Date, including in connection with the solicitation of votes to accept or reject the Plan (the "Solicitation"). The securities may not be offered or sold within the United States or to, or for the account or benefit of, United States persons (as defined in Regulation S under the Securities Act), except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and applicable laws of other jurisdictions.**

**After the Petition Date, the Debtors intend to rely on section 1145(a) of the Bankruptcy Code or section 4(a)(2) of the Securities Act and/or Regulation D promulgated thereunder to exempt from registration under the Securities Act and Blue Sky Laws the offer, issuance, and distribution, if applicable, of the New Common Equity and New Warrants under the Plan. Neither the Solicitation nor this Disclosure Statement constitutes an offer to sell or the solicitation of an offer to buy securities in any state or jurisdiction in which such offer or solicitation is not authorized.**

**This Disclosure Statement contains "forward-looking statements." Readers are cautioned that any forward-looking statements in this Disclosure Statement are based on assumptions that are believed to be reasonable, but are subject to a wide range of risks, including risks associated with the following: (a) future financial results and liquidity, including the ability to finance operations in the ordinary course of business; (b) the relationships with and payment terms provided by trade creditors; (c) additional post-restructuring financing requirements; (d) future dispositions and acquisitions; (e) the effect of competitive products, services, or procuring by competitors; (f) changes to the costs of commodities and raw materials; (g) the proposed restructuring and costs associated therewith; (h) the effect of conditions in the local, national, and global economy on the Debtors; (i) the ability to obtain relief from the bankruptcy court to facilitate the smooth operation of the Debtors' businesses under chapter 11; (j) the confirmation and consummation of the Plan; (k) the terms and conditions**

**of the Exit Facility, the New Common Equity, and the New Warrants to be entered into, or issued, as the case may be, pursuant to the Plan; and (l) each of the other risks identified in this Disclosure Statement. Due to these uncertainties, readers cannot be assured that any forward-looking statements will prove to be correct. The Debtors are under no obligation to (and expressly disclaim any obligation to) update or alter any forward-looking statements whether as a result of new information, future events, or otherwise, unless instructed to do so by the Bankruptcy Court.**

**THIS DISCLOSURE STATEMENT AND THE PLAN ARE CONFIDENTIAL AND CONTAIN MATERIAL NON-PUBLIC INFORMATION CONCERNING THE DEBTORS, THEIR SUBSIDIARIES, AND THEIR RESPECTIVE DEBT AND OTHER SECURITIES. EACH RECIPIENT HEREBY ACKNOWLEDGES THAT IT IS AWARE THAT THE FEDERAL SECURITIES LAWS OF THE UNITED STATES PROHIBIT ANY PERSON WHO IS IN POSSESSION OF MATERIAL NON-PUBLIC INFORMATION ABOUT A COMPANY FROM PURCHASING OR SELLING ANY SECURITIES OF SUCH COMPANY OR FROM COMMUNICATING THE INFORMATION TO ANY OTHER PERSON UNDER CIRCUMSTANCES IN WHICH IT IS REASONABLY FORESEEABLE THAT SUCH PERSON IS LIKELY TO PURCHASE OR SELL ANY SUCH SECURITIES.**

**You are cautioned that all forward-looking statements are necessarily speculative, and there are certain risks and uncertainties that could cause actual events or results to differ materially from those referred to in such forward-looking statements. The liquidation analysis, financial projections, and other projections and forward-looking information contained herein and attached hereto are only estimates, and the timing and amount of actual distributions to Holders of Allowed Claims, among other things, may be affected by many factors that cannot be predicted. Any analyses, estimates, or recovery projections may or may not turn out to be accurate.**

**TABLE OF CONTENTS**

**EXHIBITS**

| | |
|---|---|
| Exhibit A | Plan of Reorganization |
| Exhibit B | Corporate Structure of the Debtors |
| Exhibit C | Restructuring Support Agreement |
| Exhibit D | Financial Projections |
| Exhibit E | Valuation Analysis |
| Exhibit F | Liquidation Analysis |

# I. Executive Summary

## A. Purpose of this Disclosure Statement and the Plan.

Longview Intermediate Holdings C, LLC ("Holdings") and Longview Power, LLC ("Longview Power"), as debtors and debtors in possession (each, a "Debtor," collectively, the "Debtors," and, together with their direct and indirect non-debtor affiliates and subsidiaries, the "Company" or "Longview"), submit this disclosure statement (including all exhibits hereto, the "Disclosure Statement") pursuant to sections 1125 and 1126 of the Bankruptcy Code to Holders of Class 3 Prepetition Credit Agreement Claims against the Debtors in connection with the solicitation of acceptances with respect to the *Debtors' Joint Prepackaged Chapter 11 Plan of Reorganization* (as may be amended or modified from time to time and including all exhibits and supplements thereto, the "Plan"). A copy of the Plan is attached hereto as **Exhibit A** and incorporated herein by reference.[1] The Plan constitutes a separate chapter 11 plan for each of the Debtors.

**THE DEBTORS BELIEVE THAT THE COMPROMISES AND SETTLEMENTS CONTEMPLATED BY THE PLAN ARE FAIR AND EQUITABLE, MAXIMIZE THE VALUE OF THE DEBTORS' ESTATES, AND MAXIMIZE RECOVERIES TO HOLDERS OF CLAIMS. THE DEBTORS BELIEVE THE PLAN IS THE BEST AVAILABLE ALTERNATIVE FOR IMPLEMENTING A RESTRUCTURING OF THE DEBTORS' BALANCE SHEET. THE DEBTORS STRONGLY RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN.**

## B. Overview of the Transactions Contemplated by the Plan.

The Company owns and operates a 710 net megawatt super critical coal-fired power generation facility based in Maidsville, West Virginia (the "Longview Plant"). The Longview Plant is the most efficient coal-fired power plant in the Pennsylvania-Jersey-Maryland Regional Transmission Organization ("PJM") and one of the most environmentally compliant and cleanest coal plants globally. Longview's operations generated approximately $34.6 million of adjusted EBITDA in 2019.

The Company employs more than 140 employees, most of whom work at the Longview Plant. As of April 3, 2020, the Debtors have approximately $355.8 million in total funded debt obligations, comprised of approximately $25 million outstanding under a senior secured asset-based revolving credit facility (the "Revolving Facility"), approximately $286.5 million in aggregate principal amount outstanding under a term loan credit facility (the "Term Loan Facility"), and approximately $44.3 million in aggregate principal amount outstanding under a senior subordinated notes purchase agreement (the "Subordinated Notes"). Approximately $25 million of obligations under the Revolving Facility will mature on April 13, 2020, necessitating the chapter 11 filing.

To implement a comprehensive financial restructuring of their funded debt, the Debtors will commence chapter 11 cases (the "Chapter 11 Cases") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") after commencement of the solicitation process. The Debtors will seek joint administration of the Chapter 11 Cases for procedural purposes, and, upon commencement of the Chapter 11 Cases, will file the Plan, this Disclosure Statement, and a motion seeking to approve the Disclosure Statement and proposed solicitation process. On April 13, 2020, certain Holders of Prepetition Credit Agreement Claims (collectively, the "Consenting Lenders") and the Company entered into a restructuring support agreement (together with all exhibits thereto, and as amended, restated, and supplemented from time to time, the "RSA") that sets forth the principal terms of the Restructuring Transactions and requires the Consenting Lenders to support the Plan. Among other things, the Plan and RSA contemplate the following:

---

[1] Capitalized terms used but not defined in this Disclosure Statement have the meaning ascribed to such terms in the Plan. Additionally, this Disclosure Statement incorporates the rules of interpretation located in Article I of the Plan. **Any summary provided in this Disclosure Statement of any documents attached to this Disclosure Statement, including the Plan, is qualified in its entirety by reference to the Plan, the exhibits, and other materials referenced in the Plan, the Plan Supplement, and the documents being summarized. In the event of any inconsistencies between the terms of this Disclosure Statement and the Plan, the Plan shall govern.**

- the Company's operations will be funded with a new $40 million exit term loan facility (the "Exit Facility"), backstopped (for no fee) by certain prepetition term lenders, that is open to all Holders of Prepetition Credit Agreement Claims through the exercise of such parties Exit Facility Subscription Rights;

- each Holder of an Allowed Prepetition Credit Agreement Claim will receive its pro rata share of 10% of (a) the New Common Equity, (b) the Exit Facility Subscription Rights, and (c) the New Warrants;

- all outstanding and undisputed General Unsecured Claims against the Debtors will be unimpaired and unaffected by the restructuring and will be paid in full in Cash, unless otherwise agreed to by Holders of General Unsecured Claims;

- all Subordinated Notes Claims and all Interests in Longview will be discharged, cancelled, released, and extinguished as of the Effective Date in exchange for receiving the benefit of the releases under the Plan;

- all Administrative Claims, Priority Tax Claims, Other Secured Claims, and Other Priority Claims will be paid in full in Cash or receive such other treatment that renders such Claims unimpaired under the Bankruptcy Code; and

- all non-debtor loan parties will be released under the Plan for any and all potential claims arising under the Prepetition Credit Agreement and the Subordinated Notes Purchase Agreement.

The Restructuring Transactions contemplated by the Plan provide for a comprehensive restructuring of Claims against and Interests in the Debtors, de-lever the Company's capital structure, preserve the going-concern value of the Debtors' businesses, and protect the jobs of the Company's more than 140 employees.

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

### C. Summary of Treatment of Claims and Interests and Description of Recoveries under the Plan.

The Plan organizes the Debtors' creditor and equity constituencies into groups called "Classes." For each Class, the Plan describes: (1) the underlying Claim or Interest; (2) the recovery available to the Holders of Claims or Interests in that Class under the Plan; (3) whether the Class is Impaired or Unimpaired under the Plan; (4) the form of consideration, if any, that Holders in such Class will receive on account of their respective Claims or Interests; and (5) whether the Holders of Claims and Interests in such Class are entitled to vote to accept or reject the Plan.

The proposed distributions and classifications under the Plan are based upon a number of factors, including the Debtors' valuation and liquidation analyses. The valuation of the Reorganized Debtors as a going concern is based upon the value of the Debtors' assets and liabilities as of an assumed Effective Date of June 30, 2020, and incorporates various assumptions and estimates, as discussed in detail in the Valuation Analysis prepared by the Debtors, together with their proposed financial advisor and investment banker Houlihan Lokey, Inc. ("Houlihan").

The table below provides a summary of the classification, description, and treatment of Claims and Interests under the Plan. This information is provided in summary form below for illustrative purposes only and is qualified in its entirety by reference to the provisions of the Plan. For a more detailed description of the treatment of Claims and Interests under the Plan and the sources of satisfaction for Claims and Interests, see Section V of this Disclosure Statement, entitled "Summary of the Plan."

| *Class* | *Claim or Interest* | *Status* | *Voting Rights* |
|---|---|---|---|
| 1 | Other Secured Claims | Unimpaired | Not Entitled to Vote (Deemed to Accept) |
| 2 | Other Priority Claims | Unimpaired | Not Entitled to Vote (Deemed to Accept) |
| 3 | Prepetition Credit Agreement Claims | Impaired | Entitled to Vote |
| 4 | Subordinated Notes Claims | Impaired | Not Entitled to Vote (Deemed to Reject) |
| 5 | General Unsecured Claims | Unimpaired | Not Entitled to Vote (Deemed to Accept) |
| 6 | Intercompany Claims | Unimpaired / Impaired | Not Entitled to Vote (Deemed to Accept or Reject) |
| 7 | Intercompany Interests | Unimpaired / Impaired | Not Entitled to Vote (Deemed to Accept or Reject) |
| 8 | Interests in Longview | Impaired | Not Entitled to Vote (Deemed to Reject) |
| 9 | Section 510(b) Claims | Impaired | Not Entitled to Vote (Deemed to Reject) |

**D. Voting on the Plan.**

Certain procedures will be used to collect and tabulate votes on the Plan, as summarized in Section VII of this Disclosure Statement, entitled "Voting Instructions." Readers should carefully read the voting instructions in Section VII herein.

Only Holders of Class 3 Prepetition Credit Agreement Claims are entitled to vote on the Plan (the "Voting Class"). Holders of Claims in Classes 1, 2, and 5 are conclusively presumed to accept the Plan because they are Unimpaired by the Plan. Holders of Claims and Interests in Classes 4, 8, and 9 (if any) are deemed to reject the Plan because they are Impaired by the Plan and entitled to no recovery under the Plan. Holders of Claims in Classes 6, and 7 are deemed to reject or presumed to accept the Plan because they are (1) Unimpaired under the Plan and presumed to accept the Plan, or (2) Impaired and entitled to no recovery under the Plan and deemed to reject the Plan.

**The Voting Deadline is 5:00 p.m., prevailing Eastern Time, on May 1, 2020.** To be counted as votes to accept or reject the Plan, each ballot (a "Ballot") must be properly executed, completed, and delivered (either by using the return envelope provided, by first class mail, overnight courier, personal delivery, or electronic submission) such that it is **actually received** before the Voting Deadline by Donlin, Recano & Company, Inc. (the "Solicitation Agent") as follows:

| **DELIVERY OF BALLOTS** | |
|---|---|
| 1. | Ballots must be actually received by the Solicitation Agent before the Voting Deadline. |
| 2. | Ballots may be returned by the following methods: (a) in the enclosed pre-paid, pre-addressed return envelope; (b) via first class mail, overnight courier, or hand delivery to the address set forth below; or (c) via electronic mail to LongviewVote@DonlinRecano.com with "Longview Vote" in the Subject Line.<br><br>If by first class mail:<br>LONGVIEW POWER BALLOT PROCESSING<br>C/O DONLIN, RECANO & COMPANY, INC.<br>P.O. BOX 199043<br>Blythebourne Station<br>Brooklyn, New York 11219<br><br>If by hand delivery or overnight mail:<br>LONGVIEW POWER BALLOT PROCESSING<br>C/O DONLIN, RECANO & COMPANY, INC.<br>6201 15th Avenue<br>Brooklyn, New York 11219 |
| If you have any questions on the procedures for voting on the Plan, please contact the Solicitation Agent by emailing DRCVote@DonlinRecano.com and reference "Longview Power" in the subject line, or by calling (800) 761-6523 (domestic toll free) or 212-771-1128 (international toll), and ask for the solicitation group. | |

**IF YOU HAVE ANY QUESTIONS ABOUT THE SOLICITATION OR VOTING PROCESS, PLEASE CONTACT THE SOLICITATION AGENT. ANY BALLOT RECEIVED AFTER THE VOTING DEADLINE OR OTHERWISE NOT IN COMPLIANCE WITH THE VOTING INSTRUCTIONS WILL NOT BE COUNTED EXCEPT AS DETERMINED BY THE DEBTORS.**

**E. Confirmation and Consummation of the Plan.**

Under section 1128(a) of the Bankruptcy Code, the Bankruptcy Court, after notice, may hold a hearing to confirm a plan of reorganization. If the Debtors file the Chapter 11 Cases, they will file a motion on the Petition Date requesting that the Bankruptcy Court set a date and time as soon as practicable after the Petition Date for a hearing (such hearing, the "Confirmation Hearing") for the Bankruptcy Court to determine whether the Disclosure Statement contains adequate information under section 1125(a) of the Bankruptcy Code, whether the Debtors' prepetition solicitation of acceptances in support of the Plan complied with section 1126(b) of the Bankruptcy Code, and whether the Plan should be confirmed in light of both the affirmative requirements of the Bankruptcy Code and objections, if any, that are timely filed, as permitted by section 105(d)(2)(B)(2)(v) of the Bankruptcy Code. The Confirmation Hearing, once set, may be continued from time to time without further notice other than an adjournment announced in open court or a notice of adjournment filed with the Bankruptcy Court and served on those parties who have requested notice under Bankruptcy Rule 2002 and the Entities who have filed an objection to the Plan, if any, without further notice to parties in interest. The Bankruptcy Court, in its discretion and prior to the Confirmation Hearing, may put in place additional procedures governing the Confirmation Hearing. Subject to section 1127 of the Bankruptcy Code, the Plan may be modified, if necessary, prior to, during, or as a result of the Confirmation Hearing, without further notice to parties in interest.

Additionally, section 1128(b) of the Bankruptcy Code provides that any party in interest may object to Confirmation. The Debtors, in the same motion requesting a date for Confirmation of the Plan, will request that the Bankruptcy Court set a date and time for parties in interest to file objections to the adequacy of the Disclosure Statement, the Debtors' prepetition solicitation of acceptances in support of the Plan, and Confirmation of the Plan. All such objections must be filed with the Bankruptcy Court and served on the Debtors and certain other parties in interest in accordance with the applicable order of the Bankruptcy Court so that they are received before the deadline to file such objections.

**1. Confirmation Hearing.**

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Disclosure Statement contains adequate information under section 1125(a) of the Bankruptcy Code, the Debtors' prepetition solicitation of acceptances in support of the Plan complied with section 1126(b) of the Bankruptcy Code, and the Plan should be Confirmed in light of both the affirmative requirements of the Bankruptcy Code and objections, if any, that are timely filed. For a more detailed discussion of the Confirmation Hearing, see Section VI of this Disclosure Statement, entitled "Confirmation of the Plan."

**2. Effect of Confirmation and Consummation of the Plan.**

Following Confirmation, and subject to satisfaction or waiver of each condition precedent in Article IX of the Plan, the Plan will be Consummated on the Effective Date. Among other things, on the Effective Date, certain release, injunction, exculpation, and discharge provisions set forth in Article VIII of the Plan will become effective. Accordingly, it is important to read the provisions contained in Article VIII of the Plan very carefully so that you understand how Confirmation and Consummation—which effectuates such release, injunction, exculpation, and discharge provisions—will affect you and any Claim or Interest you may hold with respect to the Debtors so that you may cast your vote accordingly. These provisions are described in Section V of this Disclosure Statement.

**F. Additional Plan-Related Documents.**

The Debtors will file certain documents that provide more details about implementation of the Plan in the Plan Supplement, which pursuant to the terms of the Plan will be filed with the Bankruptcy Court no later than seven (7) calendar days before the Confirmation Objection Deadline. The Debtors will serve a notice that will inform all parties that the initial Plan Supplement was filed, list the information included therein, and explain how copies of the Plan Supplement may be obtained. Eligible Holders of Claims entitled to vote to accept or reject the Plan shall not be entitled to change their vote based on the contents of the Plan Supplement after the Voting Deadline. The Plan Supplement will include:

- the New Organizational Documents;
- the Exit Facility Agreement;
- the identity of the members of the Reorganized Longview Board and the officers of Reorganized Longview;
- the Rejected Executory Contract and Unexpired Lease List;
- the Assumed Executory Contract and Unexpired Lease List;
- the schedule of retained Causes of Action; and
- the New Warrant Agreement.

***THE FOREGOING EXECUTIVE SUMMARY IS ONLY A GENERAL OVERVIEW OF THIS DISCLOSURE STATEMENT AND THE MATERIAL TERMS OF, AND TRANSACTIONS PROPOSED BY, THE PLAN AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO, AND SHOULD BE READ IN CONJUNCTION WITH, THE MORE DETAILED DISCUSSIONS APPEARING ELSEWHERE IN THIS DISCLOSURE STATEMENT AND THE EXHIBITS ATTACHED TO THIS DISCLOSURE STATEMENT, INCLUDING THE PLAN.***

## II. The Debtors' Business Operations and Capital Structure

### A. The Debtors' Corporate History and Operations.

The Company is a privately owned power company that was formed in 2003 for the purpose of constructing and operating the coal-burning Longview Plant in Monongalia County, West Virginia. The Longview Plant is subject to an evergreen ground lease between Longview Power, LLC, the Monongalia County Development Authority (the "MCDA"), and the County Commission of Monongalia County, West Virginia, which lease permits Longview to operate the Longview Plant on ground currently owned by the MCDA. Longview employs over 140 employees, most of whom work at the Longview Plant. None of the Debtors' employees are represented by a collective bargaining unit.

The Longview Plant, which cost over $2 billion to construct, is the Debtors' primary asset. The Longview Plant began operations at the end of 2011 and has set the industry standard for clean-coal technology since its opening. The Longview Plant utilizes advanced power generation technology to meet the highest environmental standards and a supercritical pulverized-coal fired boiler to generate electric power. The Longview Plant is one of the lowest cost coal-fired producers of power in the PJM. Electricity generated by the Longview Plant is sold to PJM in the day-ahead or real-time markets. Longview's marketing activities with PJM are undertaken on Longview's behalf by Tenaska Power Services, Co. ("Tenaska"), a third-party services provider, pursuant to an agreement between Longview and Tenaska.

#### 1. The 2013 Bankruptcy.

The Longview Plant construction process was hampered by delays, and once delivered, the facility did not operate as originally designed. The Longview Plant was plagued by unscheduled forced outages, extended planned outages, and material repair obligations, and had a capacity factor of approximately 68 percent compared to designed levels of approximately 90 percent. These construction issues resulted in a multiyear arbitration between Longview Power and the contractors that built the facility. Moreover, these construction issues made it impossible for Longview to repay the original $1 billion loan that was used as part of plant construction. Given these issues, Longview filed for chapter 11 protection in August 2013. *See In re Longview Power, LLC, et al.*, Case No. 13-12211 (BLS) (Bankr. D. Del.). The arbitration continued in parallel with those chapter 11 cases. The litigation spilled into the bankruptcy court, and Longview and the lenders brought claims against the lenders' title insurer. This resulted in parallel arbitration proceedings, litigation in the bankruptcy court, and mediation among the parties.

Ultimately, in January 2015, the parties reached a global settlement, which included repairs to the Longview Plant. Longview was then able to confirm a chapter 11 plan in March 2015, and emerged on April 13, 2015, with a new money $325 million exit facility provided by new third party lenders and with Longview's preexisting lenders taking 100 percent of the equity in the reorganized company. The lenders and equity owners have remained similar to this day, though there has been some trading of debt and equity since that time. The Longview Plant has generally operated at designed levels since completing the repairs agreed to as part of the global settlement.

#### 2. Discontinued Mining Operations.

Debtor Longview Intermediate Holdings C, LLC owns non-debtors Mepco Holdings, LLC and its direct and indirect subsidiaries (collectively, the "Mepco Entities"). The Mepco Entities previously owned or operated a combination of underground and surface mines located in northern West Virginia and southwestern Pennsylvania (collectively, the "Mepco Mines"), including a mine within four miles of the Longview Plant, which was intended to serve as its primary coal source. In 2018, due to a variety of factors including the geology of the Mepco Mines and associated high production costs, the Mepco Entities discontinued operations at all of their remaining active mines.

The Mepco Mines are now in various stages of post-closure reclamation (the process by which the mines are closed and the surface areas restored), to satisfy applicable permits and environmental regulations. One of the Mepco Entities, Mepco, LLC, performs necessary services for Longview involving the removal and disposal of coal combustion byproducts in exchange for fees, which the Mepco Entities use to pay for their ongoing reclamation obligations.

The choice to discontinue operations at the Mepco Mines, while necessary in the long term, was disruptive to Longview's business. At their peak, the Mepco Mines produced approximately 4 million tons of coal per year, approximately half of which was utilized by Longview and half of which was sold to third party buyers. The Longview Plant was designed specifically so coal from the Mepco Mines could be delivered directly to the Longview Plant on a four-mile-long conveyer belt. When the Mepco Mine operations were discontinued, the Debtors had to establish infrastructure for alternative coal sourcing. To this end, Longview invested approximately $8.3 million in building a dock on the Monongahela River to accept coal deliveries from third-party mines.

**3. Water Treatment and Waste Water Disposal.**

As part of its power generation business, Longview requires both a reliable water supply and waste water disposal services. To this end, non-debtor DCWTS Holdings, LLC and its non-debtor subsidiary own and operate a water treatment facility (the "Dunkard Creek Facility") and contract with non-debtor affiliate AMD Reclamation, Inc. ("AMDRI") for waste water removal services. The Dunkard Creek Facility and AMDRI's facility are both located in Greene County, Pennsylvania.

The Dunkard Creek Facility's sole function and revenue source is supplying the Longview Plant with the water it needs to operate. AMDRI treats water discharged from the Longview Plant and the Dunkard Creek Facility.

**4. Expansion Projects.**

Due to the advanced planning of Longview's original investors, the site on which the Longview Plant sits is uniquely positioned for diversified expansion. To that end, Longview has been working with site engineers to develop plans for a 1,210 megawatt gas-fired combined cycle plant with a state-of-the-art advanced class gas turbine with water cooling (the "CCGT Expansion Project"). The Dunkard Creek Facility is already sufficiently equipped to service both the Longview Plant and the CCGT Expansion Project. The site for the CCGT Expansion Project is already owned by Longview, and permitting for the CCGT Expansion Project is on schedule to be completed during the first quarter of 2021. Because of the infrastructure already built into the Maidsville site, Longview has the ability to pursue the CCGT Expansion Project at a cost of more than $200 million less than the cost competitors would have to pay for a comparable new build in the PJM region.

Additionally, Longview has been evaluating production estimates, layouts, and designs, and commenced the permitting process, for a potential utility-grade solar expansion project (the "Solar Expansion Project"). The Solar Expansion Project contemplates construction of approximately 188,000 solar panels, rated at 370 watts each, over 300 acres of land owned or leased in Maidsville and Greene County, Pennsylvania. The Solar Expansion Project plans dovetail with the CCGT Expansion Project in that the lay down areas (i.e., the areas used for receipt, storage, and assembly) for the CCGT Expansion Project would be repurposed to house solar panels for the Solar Expansion Project after the CCGT Expansion Project is completed.

The CCGT Expansion Project and the Solar Expansion Project highlight Longview's forward-looking approach to energy production. Longview's experienced management team can coordinate the development, operation, market origination, and energy management required in connection with these projects and operate the additional power plants at a minimal cost. The addition of a gas plant and a solar farm would provide Longview with fuel diversity and, according to projections, increase revenue potential at a lower fixed cost per kilowatt.

**B. The Debtors' Corporate Structure and Prepetition Capital Structure.**

As a privately held company, Longview is not listed on any public exchange. As of the Petition Date, the Company had approximately 57,769,211 shares outstanding, all of which are in one class of common shares. The Company's outstanding shares are closely held, largely by lenders from Longview's prior chapter 11 cases.

All of the wholly-owned entities are obligors, as either borrowers or guarantors, of Longview's prepetition funded debt. As of the Petition Date, Longview has approximately $355.8 million in total funded debt obligations, consisting of: (a) approximately $25 million in aggregate principal amount outstanding under the Revolving Facility; (b) approximately $286.5 million in aggregate principal amount outstanding under the Term Loan Facility; and (c) approximately $44.3 million in aggregate principal and accrued interest outstanding under the Subordinated Notes.

The following table summarizes the Debtors' prepetition capital structure:

| Secured Debt | | |
|---|---|---|
| Revolving Facility | April 13, 2020 | $25 million |
| Term Loan Facility | April 13, 2021 | $286.5 million |
| **Total Secured Debt** | | **$311.5 million** |
| Unsecured Debt | | |
| Subordinated Notes | October 12, 2021 | $44.3 million[2] |
| **Total Funded Debt** | | **$355.8 million** |

**1. The Prepetition Credit Agreement.**

All Longview entities are obligors under that certain Credit Agreement, dated as of April 13, 2015, which was entered into as exit financing in connection with the Company's prior chapter 11 cases (as amended from time to time and with all supplements and exhibits thereto, the "Prepetition Credit Agreement"), by and between Longview and, among others, Morgan Stanley Senior Funding, Inc., as administrative agent, and Deutsche Bank Trust Company Americas, as collateral agent. As amended, the Prepetition Credit Agreement provides the Debtors with a $25 million Revolving Facility and a $300 million Term Loan Facility, subject to the terms and conditions set forth therein (together, the "Prepetition Credit Facility"). Obligations arising under the Prepetition Credit Facility are secured by first priority liens on substantially all of the Company's assets, subject to customary exceptions and exclusions, and the Revolving Facility and the Term Loan Facility share the same priority liens on all assets. The Revolving Facility matures on April 13, 2020, necessitating this filing.

**2. The Subordinated Note**s.

Pursuant to that certain Notes Purchase Agreement dated December 15, 2016, Debtor Longview Intermediate Holdings C, LLC issued a $30 million 12% senior note due October 12, 2021 (the "Note Purchase Agreement"). The Subordinate Note features payment-in-kind interest. As of the Petition Date, Longview owes $44.3 million on account of the Subordinate Notes, inclusive of accrued interest (the "Subordinated Indebtedness").

Each direct and indirect subsidiary of Longview Intermediate Holdings C, LLC serves as a guarantor for the Subordinated Notes, which are not secured by any collateral. The Subordinated Notes are subordinated in their entirety to the obligations under the Prepetition Credit Facility. Under the Notes Purchase Agreement, until the indebtedness under the Prepetition Credit Agreement has been repaid in full, the noteholders under the Note Purchase Agreement have empowered the prepetition secured lenders to vote their ratable share of the full amount of the Subordinated Indebtedness in connection with any resolution, arrangement, plan of reorganization, compromise, settlement or extension and to take all such other action as each prepetition secured lender (or its representative(s)) may deem necessary or desirable for the enforcement of the subordination provisions of the Note Purchase Agreement.

[2] The Subordinated Notes include payment-in-kind interest, which is reflected herein.

### 3. Other Secured Claims.

In the ordinary course of business, the Debtors routinely transact business with a number of third-party contractors and vendors who may be able to assert liens against the Debtors and their property (such as equipment) if the Debtors fail to pay for the goods delivered or services rendered. These parties perform various services for the Debtors, including manufacturing and repair of equipment and component parts necessary for the Debtors' transporting and energy production equipment. Additionally, the Debtors are party to certain equipment loans and leases that allow the Debtors to buy or lease business equipment in the ordinary course of business.

## III. Events Leading to These Chapter 11 Cases

### 1. Factors Causing the Debtors' Liquidity Strain.

The Company emerged from its 2013 restructuring exactly five years ago with a substantially deleveraged capital structure, but recent fluctuations in the energy market have presented the Debtors with new balance sheet challenges. A surplus of historically cheap natural gas has put downward pressure on prices, and at the same time, market demand has decreased due to unseasonably warm winters and a shift toward energy efficient products and alternative power sources (such as LED light bulbs and solar roofs). Combined with relentless competition in the overall marketplace and recent capital expenditures in connection with the closure of the Mepco Mines, Longview has been operating on its heels for the last several months.

More specifically, the presence of low-price natural gas reduces the variable costs of natural-gas fired power facilities and, in turn, reduces the wholesale market price for all generators. Currently, natural gas is selling at approximately $1.40 per MMBtu at the Dominion South hub, after a modest uptick due to the recent rapid decline in the oil industry (which will reduce the supply of natural gas due to the reduction in oil drilling, which produces natural gas as a byproduct), as compared to $2.65 per MMBtu on average in 2018 and 2019. Year-to-date, the average price per megawatt for electricity sold in PJM West on a day-ahead basis was approximately $19.83 per megawatt-hour as compared to $37.48 per megawatt-hour on average in 2018 and 2019. The price of natural gas is even lower in the immediate area where Longview operates due to the presence of shale gas.

In addition to depressed energy prices, demand is also abnormally low due to record-high average temperatures across the country, specifically in the PJM Region. Higher-than-normal temperatures reduce the need for home heating, which is a substantial source of consumer energy consumption. At the same time, consumers are turning to energy saving technologies in their everyday lives, further reducing demand. Further exacerbating this problem of demand destruction, the coronavirus pandemic has resulted in significant reductions in demand as industrial and commercial users are shutdown throughout the region and country.

Despite recent trends, the PJM Region requires a dependable coal-fired option in place for when energy demands inevitably increase. At times of national crisis, dependable utilities are at their most essential, and one key feature distinguishes coal from other existing energy sources—it can be stored. If natural gas exceeds available supply, coal is a reliable energy source that offers near-constant availability that other energy alternatives, like solar and wind power, cannot compete with.

Notwithstanding the Debtors' recent headwinds, the Debtors are confident that the services they provide are necessary and essential to the PJM Region. Moreover, the Debtors are better equipped to provide these services than any of their competitors. For example, the Longview Plant operates about 20 percent more efficiently than other, older technology coal plants. In addition, the Longview Plant's air emissions profile allows it to compete more effectively against other power plants because it complies with current federal regulations that have caused other coal-fired power plant operators to incur significant costs in upgrading their facilities or to shut down. Recognizing this, Longview's creditors have worked with the Debtors to present a consensual path forward to a more manageable liquidity profile. Once this deal is realized, Longview can go forward with a restructured balance sheet and continue to provide essential services to the PJM Region.

**2. Negotiations Around Restructuring Transactions.**

Faced with significant liquidity concerns as well as ongoing market distress, in January 2020 Longview began reviewing strategic alternatives and engaged in good-faith, arm's-length negotiations with the lenders under the Prepetition Credit Agreement. As the negotiations progressed, the lenders eventually organized into an ad hoc group to facilitate productive discussions. Over several months, Longview facilitated lender diligence and explored potential restructuring transactions with the ad hoc group to determine the go-forward capital structure to best position Longview for future success.

At the end of March 2020, a requisite number of term loan lenders executed a forbearance agreement with respect to a $750,000 amortization payment to accommodate ongoing negotiations and preserve liquidity. Longview used the time permitted by this forbearance agreement to continue negotiating the terms of a consensual deleveraging transaction in an effort to achieve the best terms available for Longview's go-forward business strategy. In early April, these negotiations culminated in an agreement in principle between Longview and the ad hoc group involving a comprehensive balance sheet restructuring that will reduce Longview's debt burden, increase liquidity, and send a strong message to Longview's employees, vendors, and other business partners that Longview is well positioned for future success. As described further below, the terms of the comprehensive restructuring are reflected in the Plan, RSA, and the Exit Facility.

**3. SBA Payroll Protection Program.**

Longview has applied for a loan with the Small Business Administration under the Payroll Protection Program and was notified on April 10, 2020, that the loan was approved. Longview expects to receive the funds postpetition and expects to learn more about the amount of the loan following the Petition Date. Longview expects to use the loan proceeds to fund payroll.

## IV. The Debtors' Proposed Restructuring: Key Components

### A. The RSA, the Plan, and the Exit Facility.

The RSA contemplates a comprehensive financial restructuring of the Debtors achieved through the Plan that will de-lever the Debtors' balance sheet by approximately $315 million, while paying in full all general unsecured claims against the Debtors. The Plan contemplates stakeholder recoveries as follows:

- each Holder of an Allowed Prepetition Credit Agreement Claim will receive its pro rata share of 10% of the New Common Equity, the Exit Facility Subscription Rights, and the New Warrants;
- all outstanding and undisputed General Unsecured Claims against the Debtors will be unimpaired and unaffected by the restructuring and will be paid in full in Cash, unless otherwise agreed to by Holders of General Unsecured Claims;
- all Subordinated Notes Claims and all Interests in Longview will be discharged, cancelled, released, and extinguished as of the Effective Date in exchange for receiving the benefit of the releases under the Plan; and
- all Administrative Claims, Priority Tax Claims, Other Secured Claims, and Other Priority Claims will be paid in full in Cash or receive such other treatment that renders such Claims unimpaired under the Bankruptcy Code.

Importantly, the RSA includes a commitment for a post-Effective Date first lien senior secured exit facility in the aggregate principal amount of $40 million pursuant to the terms and conditions set forth in the Exit Facility Documents, which facility will be entered into in exchange for 90% of the New Common Equity that will be issued through the Exit Facility Subscription Rights and the exercise of the New Warrants. The Exit Facility is backstopped by certain of the Consenting Lenders (the "Exit Facility Commitment Parties") in accordance with the terms of the RSA. The other key economic terms of the Exit Facility are set forth below.

| Exit Facility | |
|---|---|
| **Amount** | Senior secured first lien term loan facility in the aggregate principal amount equal to $40,000,000. |
| **Borrower and Guarantor** | Longview Power shall be the borrower, and each of the guarantors under the Prepetition Credit Agreement (other than Longview Power II, LLC and Longview Renewable Power, LLC) shall be guarantors, but the Reorganized Longview shall pledge 100% of its ownership interests in Longview Power II, LLC and Longview Renewable Power, LLC. |
| **Lenders** | Any Prepetition Lender may participate in the Exit Facility based on its pro rata share of outstanding commitments under the Prepetition Credit Agreement; *provided* that such Prepetition Lender commits to participate in the Exit Facility on or before the Voting Deadline through the exercise of the Subscription Rights. |
| **Term** | The Exit Facility will mature upon the earlier of five years following the Effective Date or the acceleration of the loans upon the occurrence of an Event of Default under the Exit Facility Agreement. |
| **Draws** | The Exit Facility will be a $40 million term loan facility. Provided that the Minimum Liquidity Condition (as defined below) and the other conditions precedent to borrowing are satisfied, (A) $20 million will be released to Reorganized Longview on the Effective Date and (B) the remaining $20 million will be held in trust and will be released on the earlier to occur of (i) the second anniversary of the Effective Date or (ii) resolution by the board of directors of Reorganized Longview.<br><br>The "Minimum Liquidity Condition" will mean the Company maintains unencumbered and unrestricted cash and cash equivalents held in one or more accounts over which the Exit Lenders have a deposit or securities account control agreement of no less than $20 million plus the aggregate of all accrued but unpaid fees, costs, expenses and employee bonuses incurred as a result of the Restructuring Transactions.<br><br>Should the Effective Date occur more than 90 days after the Petition Date, so long as the Debtors have diligently continued to pursue the plan approval and bankruptcy emergence process, the Minimum Liquidity Condition shall be reduced by $500,000 for each subsequent 10-day period, however, in no event will the Minimum Liquidity Condition be less than $17 million. |
| **Interest** | Interest on the Exit Facility shall be three month LIBOR +10.0% per annum, with a 1.5% LIBOR floor. Reorganized Longview may at its option toggle 500 bps of interest to PIK interest over the term of the loan, which interest payments shall be paid on a quarterly basis on December 31, March 31, June 30 and September 30 of each year. |
| **Amortization** | The Exit Facility shall have a 1%, per annum, amortization, which amortization shall be subject to the Repayment Fee. |
| **Repayment Fee** | A repayment fee of 30% of the amounts being repaid shall be due upon all repayments of principal and accrued PIK interest. |
| **Backstop Fee** | None |

Pursuant to the RSA, Longview has secured support for the Plan and the value-maximizing financial restructuring it contemplates from their senior stakeholders. The Holders of Prepetition Credit Agreement Claims

party to the RSA all agreed under the RSA to support the Plan. This consensus will save the Debtors the time and expense of protracted chapter 11 cases and avoid value-destructive disputes between the parties.

Additionally, Longview maintains a broad "fiduciary out" under the RSA, which provides, in relevant part, "nothing in [the RSA] shall require the Company, or any directors, managers, officers, or employees of the Company (in such person's capacity as a director, manager, officer, or employee) to take any action, or to refrain from taking any action, to the extent that the Company's board of directors determines in good faith that taking such action or refraining from taking such action may be inconsistent with its or their fiduciary obligations under applicable law, and any such exercise of such fiduciary duties shall not be deemed to constitute a breach of the terms of [the RSA]." This fiduciary out will permit the Company to pursue alternative transactions if the Company believes a more value-maximizing transaction is available.

**B. The Debtors' Proposed Disclosure Statement and Solicitation Process.**

Following the execution of the RSA, the Debtors commenced a prepackaged solicitation of the Plan on the date hereof by delivering a copy of the Plan and this related Disclosure Statement (including Ballots) to Holders of Class 3 Prepetition Credit Agreement Claims, the only Class entitled to vote to accept or reject the Plan. The Debtors have established May 1, 2020, at 5:00 p.m., prevailing Eastern Time, as the deadline for the receipt of votes to accept or reject the Plan (the "Voting Deadline"). The Debtors expect that they will commence the Chapter 11 Cases on or about April 14, 2020.

The Debtors will seek Bankruptcy Court approval of the Voting Deadline at the outset of the Chapter 11 Cases. As soon as practicable after the Voting Deadline, the Solicitation Agent will file with the Bankruptcy Court the Voting Report setting forth the voting results for Allowed Class 3 Prepetition Credit Agreement Claims. Based on the execution of the RSA by the Consenting Lenders, the Debtors believe that the Voting Report likely will show that the Holders of Claims entitled to vote on the Plan have overwhelmingly voted to accept the Plan. Accordingly, on the Petition Date, the Debtors intend to file the Plan, this Disclosure Statement, and a motion to approve the Solicitation Procedures and schedule the Confirmation Hearing to consider approval of this Disclosure Statement and Confirmation of the Plan. The following table sets forth the timetable for the solicitation process and the anticipated Chapter 11 Cases.

| **Proposed Solicitation and Confirmation Timeline** | |
|---|---|
| Record Date | April 9, 2020 |
| Commencement of Prepetition Solicitation | April 13, 2020 |
| Voting Deadline | May 1, 2020, at 5:00 p.m., prevailing Eastern Time |
| Mailing of Confirmation Hearing Notice | One business day after entry of an order approving this motion |
| Plan Supplement | May 8, 2020 |
| Objection Deadline | May 15, 2020, at 5:00 p.m., prevailing Eastern Time, or such other date as the Court may direct |
| Deadline to File Reply Brief | May 20, 2020, at 4:00 p.m., prevailing Eastern Time, or such other date as the Court may direct |
| Anticipated Confirmation Hearing Date | May 22, 2020, or such other date as the Court may direct |

**C. Employee and Equity Considerations in the Plan.**

The Plan shall provide for a management incentive plan (the "Management Incentive Plan") to be implemented on the Effective Date. The Management Incentive Plan shall grant options for up to 5% of the equity in Restructured Holdings, which options may be exercised when the equity value of Restructured Holdings equals or exceeds $150,000,000. Further, the Management Incentive Plan shall grant options for up to 5% of the membership interests in Longview Power II, LLC, which options may be exercised on terms and conditions to be determined by

the new board of Restructured Holdings. The terms of the Management Incentive Plan will be determined by the Reorganized Longview Board.

**D. The Debtors' First Day Motions and Certain Related Relief.**

To minimize disruption to the Debtors' operations and effectuate the terms of the Plan, upon the commencement of the Chapter 11 Cases, the Debtors intend to file motions seeking various relief, including authority to: (1) use cash collateral; (2) continue utilizing the Debtors' prepetition cash management system, including with respect to intercompany transactions; (3) pay certain prepetition claims in the ordinary course of business; (4) pay prepetition wages and certain administrative costs related to those wages; and (5) pay certain taxes and fees that accrued or arose in the ordinary course of business before the Petition Date. All of the relief requested by the first-day motions and throughout the Chapter 11 Cases will be subject to any orders regarding the Debtors' use of cash collateral.

Additionally, the Debtors intend to file a motion (or motions) seeking (1) entry of an order scheduling the Confirmation Hearing and approving the form of notices and procedures related thereto, (2) approval of the Disclosure Statement as containing adequate information under section 1125(a) of the Bankruptcy Code, and (3) approval of the Solicitation Procedures.

**E. Other Requested First-Day Relief and Retention Applications.**

The Debtors also plan to file motions and/or applications seeking certain customary relief, including the entry of an order directing the joint administration of the Debtors' Chapter 11 Cases under a single docket and the entry of orders approving the retention of the Debtors' bankruptcy advisors, including Kirkland & Ellis LLP and Kirkland & Ellis International LLP as legal counsel, Houlihan Lokey, Inc., as financial advisor and investment banker, 3Cubed Advisory Services, LLC, as restructuring advisor, and Donlin, Recano & Company, Inc. as Solicitation Agent.

## V. Summary of the Plan

**SECTION V OF THIS DISCLOSURE STATEMENT IS INTENDED ONLY TO PROVIDE A SUMMARY OF THE KEY TERMS, STRUCTURE, CLASSIFICATION, TREATMENT, AND IMPLEMENTATION OF THE PLAN, AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE ENTIRE PLAN AND EXHIBITS TO THE PLAN. ALTHOUGH THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT INCLUDE SUMMARIES OF THE PROVISIONS CONTAINED IN THE PLAN AND IN DOCUMENTS REFERRED TO THEREIN, THIS DISCLOSURE STATEMENT DOES NOT PURPORT TO BE A PRECISE OR COMPLETE STATEMENT OF ALL RELATED TERMS AND PROVISIONS, AND SHOULD NOT BE RELIED ON FOR A COMPREHENSIVE DISCUSSION OF THE PLAN. INSTEAD, REFERENCE IS MADE TO THE PLAN AND ALL SUCH DOCUMENTS FOR THE FULL AND COMPLETE STATEMENTS OF SUCH TERMS AND PROVISIONS. THE PLAN ITSELF (INCLUDING ATTACHMENTS) AND THE PLAN SUPPLEMENT WILL CONTROL THE TREATMENT OF HOLDERS OF CLAIMS AND INTERESTS UNDER THE PLAN. TO THE EXTENT THERE ARE ANY INCONSISTENCIES BETWEEN THIS SECTION V AND THE PLAN (INCLUDING ANY ATTACHMENTS TO THE PLAN) AND THE PLAN SUPPLEMENT, THE PLAN AND PLAN SUPPLEMENT, AS APPLICABLE, SHALL GOVERN.**

**A. Treatment of Unclassified Claims.**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified and, thus, are excluded from the Classes of Claims and Interests set forth in Article III of the Plan.

**1. Administrative Claims.**

Unless otherwise agreed to by the Holders of an Allowed Administrative Claim and the Debtors or the Reorganized Debtors, as applicable, each Holder of an Allowed Administrative Claim (other than Holders of Professional Fee Claims and Claims for fees and expenses pursuant to section 1930 of chapter 123 of title 28 of the

United States Code) will receive in full and final satisfaction of its Administrative Claim an amount of Cash equal to the amount of such Allowed Administrative Claim in accordance with the following: (1) if an Administrative Claim is Allowed as of the Effective Date, on the Effective Date (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (2) if such Administrative Claim is not Allowed as of the Effective Date, no later than sixty days after the date on which an order Allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; (3) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date in accordance with the terms and conditions of the particular transaction giving rise to such Allowed Administrative Claim without any further action by the Holders of such Allowed Administrative Claim; or (4) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court.

**2. Professional Fee Claims.**

**(a) Professional Fee Escrow Account**.

As soon as reasonably practicable after the Confirmation Date, and no later than one Business Day prior to the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Escrow Amount. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals and for no other Entities until all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the Professionals pursuant to one or more Final Orders of the Bankruptcy Court. No Liens, claims, or interests shall encumber the Professional Fee Escrow Account or Cash held in the Professional Fee Escrow Account in any way. Such funds shall not be considered property of the Estates, the Debtors, or the Reorganized Debtors.

The amount of Professional Fee Claims owing to the Professionals shall be paid in Cash to such Professionals by the Debtors or the Reorganized Debtors, as applicable, from the funds held in the Professional Fee Escrow Account as soon as reasonably practicable after such Professional Fee Claims are Allowed by an order of the Bankruptcy Court; *provided* that the Debtors' and the Reorganized Debtors' obligations to pay Allowed Professional Fee Claims shall not be limited nor be deemed limited to funds held in the Professional Fee Escrow Account. When all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the Professionals pursuant to one or more Final Orders of the Bankruptcy Court, any remaining funds held in the Professional Fee Escrow Account shall promptly be paid to the Reorganized Debtors without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

**(b) Final Fee Applications and Payment of Accrued Professional Compensation Claims**.

All final requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Confirmation Date must be filed no later than 45 days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code, Bankruptcy Rules, and prior Bankruptcy Court orders. The Reorganized Debtors shall pay the amount of the Allowed Professional Fee Claims owing to the Professionals in Cash to such Professionals, including from funds held in the Professional Fee Escrow Account when such Professional Fee Claims are Allowed by entry of an order of the Bankruptcy Court.

**(c) Professional Fee Escrow Amount**.

The Professionals shall provide a reasonable and good-faith estimate of their fees and expenses incurred in rendering services to the Debtors before and as of the Effective Date projected to be outstanding as of the Effective Date, and shall deliver such estimate to the Debtors no later than five days before the anticipated Effective Date; *provided*, *however*, that such estimate shall not be considered an admission or limitation with respect to the fees and expenses of such Professional and such Professionals are not bound to any extent by the estimates. If a Professional does not provide an estimate, the Debtors may estimate a reasonable amount of unbilled fees and expenses of such Professional, taking into account any prior payments; *provided*, *however*, that such estimate shall not be binding or considered an admission with respect to the fees and expenses of such Professional. The total aggregate amount so estimated as of the Effective Date shall be utilized by the Debtors to determine the amount to be funded to the Professional Fee Escrow Account, *provided* that the Reorganized Debtors shall use Cash on hand to increase the

amount of the Professional Fee Escrow Account to the extent fee applications are Filed after the Effective Date in excess of the amount held in the Professional Fee Escrow Account based on such estimates.

**(d) Post-Confirmation Date Fees and Expenses**.

From and after the Confirmation Date, the Debtors or Reorganized Debtors, as applicable, shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred by the Debtors or the Reorganized Debtors, as applicable. Upon the Confirmation Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Debtors may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

The Debtors and Reorganized Debtors, as applicable, shall pay, within ten business days after submission of a detailed invoice to the Debtors or Reorganized Debtors, as applicable, such reasonable claims for compensation or reimbursement of expenses incurred by the retained Professionals of the Debtors or the Reorganized Debtors, as applicable. If the Debtors or Reorganized Debtors, as applicable, dispute the reasonableness of any such invoice, the Debtors or Reorganized Debtors, as applicable, or the affected professional may submit such dispute to the Bankruptcy Court for a determination of the reasonableness of any such invoice, and the disputed portion of such invoice shall not be paid until the dispute is resolved.

**3. Priority Tax Claims.**

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code.

**B. Classification and Treatment of Claims and Interests.**

**1. Classification of Claims and Interests.**

The Plan constitutes a separate Plan proposed by each Debtor. Except for the Claims addressed in Article II. of the Plan, all Claims and Interests are classified in the Classes set forth below in accordance with section 1122 of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or an Interest also is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

The classification of Claims and Interests against each Debtor (as applicable) pursuant to the Plan is as set forth below. The Plan shall apply as a separate Plan for each of the Debtors, and the classification of Claims and Interests set forth herein shall apply separately to each of the Debtors (except for Class 7 Intercompany Interests, which shall only apply to Debtor Longview Power, and Class 8 Interests in Longview, which shall only apply to Debtor Longview). All of the potential Classes for the Debtors are set forth herein. Voting tabulations for recording acceptances or rejections of the Plan shall be conducted on a Debtor-by-Debtor basis as set forth above:

| *Class* | *Claim or Interest* | *Status* | *Voting Rights* | *Projected Plan Recovery (%)*[3] |
|---|---|---|---|---|
| 1 | Other Secured Claims | Unimpaired | Not Entitled to Vote (Deemed to Accept) | 100% |
| 2 | Other Priority Claims | Unimpaired | Not Entitled to Vote (Deemed to Accept) | 100% |
| 3 | Prepetition Credit Agreement Claims | Impaired | Entitled to Vote | 34.4%[4] |
| 4 | Subordinated Notes Claims | Impaired | Not Entitled to Vote (Deemed to Reject) | 0% |
| 5 | General Unsecured Claims | Unimpaired | Not Entitled to Vote (Deemed to Accept) | 100% |
| 6 | Intercompany Claims | Unimpaired / Impaired | Not Entitled to Vote (Deemed to Accept or Reject) | 100% / 0% |
| 7 | Intercompany Interests | Unimpaired / Impaired | Not Entitled to Vote (Deemed to Accept or Reject) | 100% / 0% |
| 8 | Interests in Longview | Impaired | Not Entitled to Vote (Deemed to Reject) | 100% |
| 9 | Section 510(b) Claims | Impaired | Not Entitled to Vote (Deemed to Reject) | 0% |

**2. Treatment of Classes of Claims and Interests.**

To the extent a Class contains Allowed Claims or Allowed Interests with respect to any Debtor, the classification of Allowed Claims and Allowed Interests is specified below.

1. Class 1 — Other Secured Claims

(a) *Classification*: Class 1 consists of any Other Secured Claims.

(b) *Treatment*: Except to the extent that a Holder of an Allowed Other Secured Claim agrees to a less favorable treatment of its Allowed Claim, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Other Secured Claim, each such Holder shall receive, at the option of the applicable Debtor(s), either:

(i) payment in full in Cash;

(ii) delivery of collateral securing any such Claim and payment of any interest required under section 506(b) of the Bankruptcy Code;

(iii) reinstatement of such Allowed Other Secured Claim; or

[3] The projected Plan recoveries for Classes 4 and 8 do not take into account the potential value of the Debtor Release or Third-Party Release, which is speculative and uncertain.

[4] The projected Plan recovery for Class 3 is a blended average assuming 100% participation based on the low to high range of recovery, which is 3.4% to 40.9%, respectively.

(iv) such other treatment rendering its Allowed Other Secured Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code.

(c) *Voting*: Class 1 is Unimpaired under the Plan. Holders of Allowed Other Secured Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Other Secured Claims are not entitled to vote to accept or reject the Plan.

2. Class 2 — Other Priority Claims

(a) *Classification*: Class 2 consists of any Other Priority Claims.

(b) *Treatment*: Except to the extent that a Holder of an Allowed Other Priority Claim agrees to a less favorable treatment of its Allowed Claim, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Other Priority Claim, each such Holder shall receive, at the option of the applicable Debtor(s), either:

(i) payment in full in Cash; or

(ii) such other treatment rendering its Allowed Other Priority Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code.

(c) *Voting*: Class 2 is Unimpaired under the Plan. Holders of Allowed Other Priority Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Other Priority Claims are not entitled to vote to accept or reject the Plan.

3. Class 3 —Prepetition Credit Agreement Claims

(a) *Classification*: Class 3 consists of any Prepetition Credit Agreement Claims against any Debtor.

(b) *Allowance*: On the Effective Date, Prepetition Credit Agreement Claims shall be Allowed in the aggregate amount of $316,481,577.

(c) *Treatment*: Except to the extent that a Holder of an Allowed Prepetition Credit Agreement Claim agrees to a less favorable treatment of its Allowed Claim, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Prepetition Credit Agreement Claim, each Holder of an Allowed Prepetition Credit Agreement Claim shall receive its Pro Rata share of:

(i) 10% of the New Common Equity;

(ii) the Exit Facility Subscription Rights; and

(iii) the New Warrants.

(d) *Voting*: Class 3 is Impaired under the Plan. Holders of Prepetition Credit Agreement Claims are entitled to vote to accept or reject the Plan.

4. Class 4 — Subordinated Notes Claims

(a) *Classification*: Class 4 consists of any Subordinated Notes Claims against any Debtor.

(b) *Allowance*: On the Effective Date, the Subordinated Notes Claims shall be Allowed in the aggregate amount of $44,291,907.01.

(c) *Treatment*: On the Effective Date, all Subordinated Notes Claims shall be discharged, cancelled, released, and extinguished as of the Effective Date, and shall be of no further force or effect, and Holders of Subordinated Notes Claims will not receive any distribution on account of such Claims.

(d) *Voting*: Class 4 is Impaired under the Plan. Holders of Allowed Subordinated Notes Claims are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Holders of Allowed Subordinated Notes Claims are not entitled to vote to accept or reject the Plan.

5. Class 5 — General Unsecured Claims

(a) *Classification*: Class 5 consists of any General Unsecured Claims against any Debtor.

(b) *Treatment*: Except to the extent that a Holder of an Allowed General Unsecured Claim agrees to a less favorable treatment of its Allowed Claim, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Claim, each Holder of an Allowed General Unsecured Claim shall receive either:

(i) payment in Cash in an amount equal to such Allowed General Unsecured Claim in the ordinary course of business in accordance with the terms and conditions of the particular transaction giving rise to such Allowed General Unsecured Claim;

(ii) Reinstatement of such Allowed General Unsecured Claim; or

(iii) such other treatment rendering its Allowed General Unsecured Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code.

(c) *Voting*: Class 5 is Unimpaired under the Plan. Holders of Allowed General Unsecured Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed General Unsecured Claims are not entitled to vote to accept or reject the Plan.

6. Class 6 — Intercompany Claims

(a) *Classification*: Class 6 consists of any Intercompany Claims.

(b) *Treatment*: Each Allowed Intercompany Claim shall, at the option of the applicable Debtors, be:

(i) Reinstated;

(ii) converted to equity; or

(iii) extinguished, compromised, addressed, cancelled, or settled without any distribution on account of such Claims.

(c) *Voting*: Holders of Allowed Intercompany Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) or deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Holders of Allowed Intercompany Claims are not entitled to vote to accept or reject the Plan.

7. Class 7 — Intercompany Claims

(a) *Classification*: Class 7 consists of all Interests in Longview Power.

(b) *Treatment*: On the Effective Date, Intercompany Interests shall be, at the option of Longview, either:

(i) Reinstated in exchange for the Debtors' and the Reorganized Debtors' agreement under the Plan to make certain distributions to the Holders of Allowed Claims; or

(ii) discharged, cancelled, released, and extinguished and of no further force or effect without any distribution on account of such Interests.

For the avoidance of doubt, any Interest in non Debtor subsidiaries owned by a Debtor shall continue to be owned by the applicable Reorganized Debtor. It is Longview's current expectation that it will exercise option (i) with respect to Longview Power

(c) *Voting*: Holders of Intercompany Interests are conclusively presumed to have accepted the Plan pursuant to section 1126(f) or deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Holders of Intercompany Interests are not entitled to vote to accept or reject the Plan.

8. Class 8 — Interests in Longview

(a) *Classification*: Class 8 consists of all Interests in Longview.

(b) *Treatment*: On the Effective Date, all Interests in Longview shall be discharged, cancelled, released, and extinguished as of the Effective Date, and shall be of no further force or effect, and Holders of Allowed Interests in Longview shall not receive any distribution on account of such Allowed Interests in Longview.

(c) *Voting*: Class 8 is Impaired under the Plan. Holders of Interests in Longview are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Holders of Interests in Longview are not entitled to vote to accept or reject the Plan.

9. Class 9 — Section 510(b) Claims

(a) *Classification*: Class 9 consists of any Section 510(b) Claims.

(b) *Allowance*: Notwithstanding anything to the contrary in the Plan, a Section 510(b) Claim, if any such Claim exists, may only become Allowed by Final Order of the Bankruptcy Court. The Debtors are not aware of any asserted Class 9 Claim and believe that no Section 510(b) Claims exist.

(c) *Treatment:* Allowed Section 510(b) Claims, if any, shall be discharged, cancelled, released, and extinguished as of the Effective Date, and shall be of no further force or effect, and Holders of Allowed Section 510(b) Claims shall not receive any distribution on account of such Allowed Section 510(b) Claims.

(d) *Voting*: Class 9 is Impaired under the Plan. Holders, if any, of Allowed Section 510(b) Claims are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Holders, if any, of Allowed Section 510(b) Claims are not entitled to vote to accept or reject the Plan.

**3. Special Provision Governing Unimpaired Claims.**

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtors' or the Reorganized Debtors' rights regarding any Unimpaired Claim, including all rights regarding legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claim.

**4. Elimination of Vacant Classes.**

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing 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 by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

**5. Voting Class; Presumed Acceptance by Non-Voting Classes.**

If a Class contains Claims or Interests eligible to vote and no Holders of Claims or Interests eligible to vote in such Class vote to accept or reject the Plan, the Debtors shall request the Bankruptcy Court to deem the Plan accepted by the Holders of such Claims or Interests in such Class.

**6. Subordinated Claims.**

The allowance, classification, and treatment of all Allowed Claims and Allowed Interests and the respective distributions and treatments under the Plan take into account and 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. Pursuant to section 510 of the Bankruptcy Code, the Reorganized Debtors reserve the right to reclassify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

**7. Intercompany Interests.**

To the extent Reinstated under the Plan, distributions on account of Intercompany Interests are not being received by Holders of such Intercompany Interests on account of their Intercompany Interests, but for the purposes of administrative convenience and in exchange for the Debtors' and Reorganized Debtors' agreement under the Plan to provide management services to Longview Power and the Non-Debtor Loan Parties and to use certain funds and assets as set forth in the Plan to make certain distributions and satisfy certain obligations of certain other Debtors and Reorganized Debtors to the Holders of certain Allowed Claims. For the avoidance of doubt, any Interest in non-Debtor subsidiaries owned by a Debtor shall continue to be owned by the applicable Reorganized Debtor.

**8. Controversy Concerning Impairment.**

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

**9. Confirmation of Plan Pursuant to Section 1129(b) of the Bankruptcy Code.**

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by one or more of the Classes entitled to vote pursuant to Article III.B of the Plan. The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtors reserve the right to modify the Plan in accordance with Article X of the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims to render such Class of Claims Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules or to withdraw the Plan as to such Debtor.

**C. Means for Implementation of the Plan.**

**1. General Settlement of Claims and Interests.**

Unless otherwise set forth in the Plan, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims and Interests and controversies resolved pursuant to the Plan.

**2. Restructuring Transactions.**

On and after the Confirmation Date, the Debtors or Reorganized Debtors, as applicable, may take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan that are consistent with and pursuant to the terms and conditions of the Plan and the RSA, which transactions may include, as applicable: (a) the execution and delivery of appropriate agreements or other documents of merger, amalgamation, consolidation, restructuring, reorganization, conversion, disposition, transfer, arrangement, continuance, dissolution, sale, purchase, or liquidation containing terms that are consistent with the terms of the Plan; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and having other terms to which the applicable parties agree; (c) the filing of appropriate certificates or articles of incorporation, reincorporation, formation, merger, consolidation, conversion, amalgamation, arrangement, continuance, or dissolution or other certificates or documentation for other transactions as described in clause (a), pursuant to applicable state law; (d) the execution and delivery of any certificates or articles of incorporation, bylaws, or such other applicable formation documents (if any) of each Reorganized Debtor; (e) the execution and delivery of the New Organizational Documents (including all actions to be taken, undertakings to be made, and obligations to be incurred and fees and expenses to be paid by the Debtors and/or the Reorganized Debtors, as applicable), and the issuance, distribution, reservation, or dilution, as applicable, of the New Common Equity, as set forth herein; (f) the execution and delivery of the Exit Facility Documents (including all actions to be taken, undertakings to be made, and obligations to be incurred and fees and expenses to be paid by the Debtors and/or the Reorganized Debtors, as applicable); (g) the adoption of the Management Incentive Plan and the issuance and reservation of the Management Incentive Plan Equity to the participants in the Management Incentive Plan on the terms and conditions set by the Reorganized Longview Board after the Effective Date; (h) the execution and delivery of the New Warrant Agreement and the issuance of the New Warrants; and (i) all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law in connection with the Restructuring Transactions.

**3. Sources of Consideration for Plan Distributions.**

The Debtors shall fund distributions under the Plan, as applicable, with: (1) Cash proceeds of the Exit Facility; (2) the New Warrants; (3) the New Common Equity; (4) the Exit Facility Subscription Rights; and (5) the Debtors' encumbered Cash on hand. Each distribution and issuance referred to in Article VI of the Plan shall be governed by the terms and conditions set forth in the Plan applicable to such distribution or issuance and by the terms and conditions of the instruments or other documents evidencing or relating to such distribution or issuance, which terms and conditions shall bind each Entity receiving such distribution or issuance. The issuance, distribution, or authorization, as applicable, of certain securities in connection with the Plan, including the Exit Facility, the New Warrants, and the New Common Equity, will be exempt from SEC registration, as described more fully in Article IV.G of the Plan.

**(a) Exit Facility**.

On the Effective Date, the Reorganized Debtors shall execute and deliver the Exit Facility Documents and such documents shall become effective in accordance with their terms. On and after the Effective Date, the Exit Facility Documents shall constitute legal, valid, and binding obligations of the Reorganized Debtors and be enforceable in accordance with their respective terms. The terms and conditions of the Exit Facility Documents shall bind Reorganized Longview Power, Reorganized Longview (as guarantor), and each other Entity that enters into such Exit Facility Documents as a guarantor. Any Entity's entry into the Exit Facility Agreement shall be deemed as its

agreement to the terms of such Exit Facility Documents, as amended or modified from time to time following the Effective Date in accordance with their terms.

Confirmation shall be deemed approval of the Exit Facility Documents (including the transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations and guarantees to be incurred and fees and expenses paid in connection therewith), and, to the extent not approved by the Bankruptcy Court previously, the Reorganized Debtors will be authorized to execute and deliver those documents necessary or appropriate to obtain the Exit Facility, including the Exit Facility Documents, without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order or rule or vote, consent, authorization, or approval of any Person, subject to such modifications as the Debtors or Reorganized Debtors may deem to be necessary to consummate the Exit Facility.

On the Effective Date, immediately upon receipt of the payments required in Article II.A of the Plan, all of the claims, liens, and security interests to be granted in accordance with the terms of the Exit Facility Documents (a) shall be legal, binding, and enforceable liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the Exit Facility Documents, (b) shall be deemed automatically attached and perfected on the Effective Date, subject only to such other liens and security interests as may be permitted under the Exit Facility Documents, and (c) shall not be subject to avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever and shall not constitute preferential transfers, fraudulent conveyances, or other voidable transfers under the Bankruptcy Code or any applicable non-bankruptcy law.

**(b) The New Warrants.**

On the Effective Date, Reorganized Longview will enter into the New Warrant Agreement, which shall be substantially in the form included in the Plan Supplement, and issue the New Warrants to Holders of Prepetition Credit Agreement Claims, the Exit Facility Subscription Parties, and the Exit Facility Commitment Parties in accordance herewith. The issuance of the New Warrants shall be authorized without the need for any further corporate action and without any further action by the Holders of Claims or Interests. Each Person that receives New Warrants shall be deemed to have executed, without any further action by any party, the New Warrant Agreement. The New Common Equity issued upon exercise of the New Warrants shall be issued to the Holders of Prepetition Credit Agreement Claims, the Exit Facility Subscription Parties, and the Exit Facility Commitment Parties in the same proportion as such Person has agreed to participate in the Exit Facility. **For the avoidance of doubt, the New Warrants are exercisable only to the extent the Holder thereof participates in the Exit Facility**.

**(c) The Exit Facility Subscription Rights.**

The Debtors shall distribute the Exit Facility Subscription Rights to Holders of Allowed Prepetition Credit Agreement Claims in accordance herewith. Each Holder of an Allowed Prepetition Credit Agreement Claim that (a) in the case of an Exit Facility Commitment Party, exercises its Exit Facility Subscription Rights by executing the RSA, shall and shall be deemed to commit at least its Pro Rata portion of the Exit Facility and (b) in all other cases, exercises its Exit Facility Subscription Rights by electing to subscribe to the Exit Facility on its applicable ballot to vote on the Plan and executing a joinder to the RSA (to the extent of the commitments thereunder to fund the Exit Facility) shall and shall be deemed to (i) be an Exit Facility Subscription Party and (ii) commit to provide its Pro Rata portion of the Exit Facility.

On the Exit Facility Backstop Notification Date, the Exit Facility Subscription Agent will, pursuant to the RSA, notify each Exit Facility Commitment Party of its portion of the unsubscribed commitments under the Exit Facility and its revised Exit Facility Commitments under and as defined in the RSA. Each Exit Facility Commitment Party shall provide such amount in accordance with Section 7 of the RSA, the terms of which are incorporated herein by reference.

Reorganized Longview shall be deemed to accept, as consideration for the exercise of the New Warrants, the exercise of the Exit Facility Subscription Rights of each participating Exit Facility Subscription Party and Exit Facility Commitment Party.

**(i) No Transfer; Detachment Restrictions; No Revocation.**

The Exit Facility Subscription Rights are not transferable or detachable (other than, for the avoidance of doubt, a transfer to an investment vehicle, managed account or fund controlled by such Person). Any transfer or detachment, or attempted transfer or detachment, in violation of this restriction will be null and void. Once a Holder of an Allowed Prepetition Credit Agreement Claim has exercised any of its Exit Facility Subscription Rights, such exercise may only be revoked, rescinded, or annulled in the sole discretion of the Debtors or the Reorganized Debtors.

**(ii) Validity of Exercise of Subscription Rights.**

All questions concerning the timeliness, validity, form, and eligibility of any exercise, or purported exercise, of Exit Facility Subscription Rights shall be determined by the Debtors or the Reorganized Debtors, as applicable. The Debtors or the Reorganized Debtors, as applicable, in their reasonable discretion, may waive any defect or irregularity, or permit a defect or irregularity to be corrected within such times as they may determine, or reject the purported exercise of any Exit Facility Subscription Rights. The Debtors or the Reorganized Debtors, as applicable, will use commercially reasonable efforts to give written notice to any Person regarding any defect or irregularity in connection with any purported exercise of Exit Facility Subscription Rights by such Person and may permit such defect or irregularity to be cured within such time as they determine in good faith to be appropriate, *provided*, *however*, that neither the Debtors, the Reorganized Debtors, nor any of their related Persons shall have or incur any liability for giving, or failing to give, such notification and opportunity to cure.

**(d) Issuance and Distribution of the New Common Equity**.

On the Effective Date, the New Common Equity shall be issued and distributed to the Entities entitled to receive the New Common Equity pursuant to the Plan. The issuance of New Common Equity shall be authorized without the need for any further corporate action and without any action by the Holders of Claims or other parties in interest. All of the New Common Equity issued under the Plan shall be duly authorized, validly issued, fully paid, and non-assessable.

Other than any New Common Equity issued pursuant to the Management Incentive Plan, all of the New Common Equity issued pursuant to the Plan as of the Effective Date shall be subject to dilution by the New Warrants.

Each distribution and issuance of the New Common Equity under the Plan shall be governed by the terms and conditions set forth in the Plan applicable to such distribution, issuance, and/or dilution, as applicable, and by the terms and conditions of the instruments evidencing or relating to such distribution, issuance, and/or dilution, as applicable, including the New Organizational Documents, which terms and conditions shall bind each Entity receiving such distribution of the New Common Equity. Any Entity's acceptance of New Common Equity (including, for the avoidance of doubt, via exercise of the New Warrants) shall be deemed as its agreement to the New Organizational Documents, as the same may be amended or modified from time to time following the Effective Date in accordance with their terms. The New Common Equity will not be registered on any exchange as of the Effective Date.

**(e) Cash on Hand**.

The Debtors or Reorganized Debtors, as applicable, shall use Cash on hand to fund distributions to certain Holders of Claims, including the payment of Allowed General Unsecured Claims as set forth in Article III of the Plan.

**4. Exemption from Registration Requirements.**

Pursuant to section 1145 of the Bankruptcy Code, the offering, issuance, and distribution of the New Common Equity and the New Warrants issued to Holders of Allowed Prepetition Credit Agreement Claims and the Exit Facility Subscription Parties pursuant to the Plan is exempt from, among other things, the registration requirements of Section 5 of the Securities Act and any other applicable U.S. state or local law requiring registration prior to the offering, issuance, distribution, or sale of Securities. The shares of New Common Equity, including the shares of New Common Equity underlying the New Warrants issued to Holders of Prepetition Credit Agreement Claims and the Exit Facility Commitment Parties, to be issued under the Plan (a) are not "restricted securities" as defined in Rule 144(a)(3) under the Securities Act, and (b) are freely tradable and transferable by any initial recipient thereof that (i) is not an "affiliate" of the Debtors as defined in Rule 144(a)(1) under the Securities Act, (ii) has not

been such an "affiliate" within 90 days of such transfer, and (iii) is not an entity that is an "underwriter" as defined in Section 2(a)(11) of the Securities Act and in Section 1145 of the Bankruptcy Code.

Pursuant to section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder, the offering, issuance, and distribution of the New Warrants issued to the Exit Facility Commitment Parties pursuant to the Plan and the RSA is exempt from, among other things, the registration requirements of Section 5 of the Securities Act and any other applicable U.S. state or local law requiring registration prior to the offering, issuance, distribution, or sale of Securities. The shares of New Common Equity underlying the New Warrants issued to the Exit Facility Commitment Parties pursuant to the Plan and the RSA will be "restricted securities." Resales of such restricted securities would not be exempted by section 1145 of the Bankruptcy Code from registration under the Securities Act or other applicable law. Holders of restricted securities would, however, be permitted to resell New Warrants without registration if they are able to comply with the applicable provisions of Rule 144 or Rule 144A or any other registration exemption under the Securities Act, or if such securities are registered with the SEC.

**5. Corporate Existence.**

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

**6. Corporate Action.**

On or before the Effective Date, as applicable, all actions contemplated under the Plan or the Plan Supplement shall be deemed authorized and approved in all respects, including: (1) adoption or assumption, as applicable, of the agreements with existing management; (2) selection of the directors, managers, and officers for the Reorganized Debtors; (3) implementation of the Restructuring Transactions; (4) the applicable Reorganized Debtors' entry into the Exit Facility Documents; (5) the distribution of the Exit Facility Subscription Rights; (6) the entry into the New Warrant Agreement and issuance of the New Warrants; and (7) all other actions contemplated under the Plan (whether to occur before, on, or after the Effective Date). All matters provided for in the Plan involving the corporate structure of the Debtors or the Reorganized Debtors, as applicable, and any corporate action required by the Debtors or the Reorganized Debtors in connection with the Plan shall be deemed to have occurred and shall be in effect, without any requirement of further action by the security holders, directors, managers, or officers of the Debtors or the Reorganized Debtors, as applicable. On or (as applicable) prior to the Effective Date, the appropriate officers of the Debtors or the Reorganized Debtors, as applicable, shall be authorized to issue, execute, and deliver the agreements, documents, securities, and instruments contemplated under the Plan (or necessary or desirable to effect the transactions contemplated under the Plan) in the name of and on behalf of the Reorganized Debtors, including the Exit Facility Documents and any and all other agreements, documents, securities, and instruments relating to the foregoing. The authorizations and approvals contemplated by Article IV.I of the Plan shall be effective notwithstanding any requirements under non-bankruptcy law.

**7. Vesting of Assets in the Reorganized Debtors.**

Except as otherwise provided in the Plan or the Plan Supplement, or in any agreement, instrument, or other document incorporated in the Plan, on the Effective Date, all property in each Debtor's Estate, all Causes of Action, and any property acquired by any of the Debtors under the Plan shall vest in each respective Reorganized Debtor, free and clear of all Liens, Claims, charges, or other encumbrances (except for Liens securing obligations under the Exit Facility Documents and the Liens securing obligations on account of Other Secured Claims that are Reinstated pursuant to the Plan, if any). On and after the Effective Date, except as otherwise provided in the Plan, each Reorganized Debtor may operate its business and may use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

**8. Cancellation of Notes, Instruments, Certificates, and Other Documents.**

On the Effective Date, except to the extent otherwise provided in the Plan, all notes, instruments, certificates, and other documents evidencing Claims shall be cancelled, and the obligations of the Debtors or the Reorganized Debtors and any non-Debtor Affiliates thereunder or in any way related thereto shall be discharged and deemed satisfied in full, and the Prepetition Agents shall be released from all duties thereunder; *provided*, *however*, that notwithstanding Confirmation or the occurrence of the Effective Date, any credit document or agreement that governs the rights of the Holder of a Claim or Interest shall continue in effect solely for purposes of (1) allowing Holders of Allowed Claims to receive distributions under the Plan, (2) allowing and preserving the rights of the Prepetition Administrative Agent to make distributions pursuant to the Plan, (3) preserving the Prepetition Agents' rights to compensation and indemnification as against any money or property distributable to Holders of Prepetition Credit Agreement Claims, including permitting each of the Prepetition Agents to maintain, enforce, and exercise its charging liens against such distributions, (4) preserving all rights, including rights of enforcement, of the Prepetition Agents against any person other than a Released Party (including the Debtors), including with respect to indemnification or contribution from the Prepetition Lenders pursuant and subject to the terms of the Prepetition Credit Agreement as in effect on the Effective Date, (5) permitting the Prepetition Agents to enforce any obligation (if any) owed to the Prepetition Agents under the Plan, respectively, (6) permitting the Prepetition Agents to appear in the Chapter 11 Cases or in any proceeding in the Bankruptcy Court or any other court, and (7) permitting the Prepetition Agents to perform any functions that are necessary to effectuate the foregoing; *provided*, *further*, *however*, that the preceding proviso shall not affect the discharge of Claims or Interests pursuant to the Bankruptcy Code, the Confirmation Order, or the Plan, or result in any expense or liability to the Debtors or Reorganized Debtors, as applicable, except as expressly provided for in the Plan.

The Prepetition Agents shall be discharged and shall have no further obligation or liability except as provided in the Plan and Confirmation Order, and after the performance by the Prepetition Agents and their representatives and professionals of any obligations and duties required under or related to the Plan or Confirmation Order, the Prepetition Agents shall be relieved of and released from any obligations and duties arising thereunder. The fees, expenses, and costs of the Prepetition Agents, including the fees, expenses, and costs of its professionals incurred after the Effective Date in connection with the Prepetition Credit Agreement and reasonable and documented costs and expenses associated with effectuating distributions pursuant to the Plan will be paid by the Reorganized Debtors in the ordinary course.

**9. Release of Non-Debtor Loan Parties**

On the Effective Date, the Prepetition Lenders shall be deemed, and, to the extent applicable, shall be deemed to have directed the Prepetition Agents (solely in their capacities as such) to, release any and all obligations of, security interests in, and claims against each Non-Debtor Loan Party (including any indebtedness, guaranty, or other obligations under the Prepetition Credit Agreement or any other Loan Document (as defined therein)). In addition, on the Effective Date, the Prepetition Lenders shall be deemed to release any and all obligations of, security interests in, and claims against each Non-Debtor Loan Party on behalf of the Holders of Subordinated Notes Claims in accordance with the Subordinated Notes Purchase Agreement and the subordination provisions thereunder.

**10. Effectuating Documents; Further Transactions.**

On and after the Effective Date, the Reorganized Debtors, and the officers and members of the boards of directors and managers thereof, are authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan, the Exit Facility Documents, the New Organizational Documents, and the Securities issued pursuant to the Plan in the name of and on behalf of the Reorganized Debtors, without the need for any approvals, authorizations, or consents except for those expressly required under the Plan.

**11. Exemptions from Certain Taxes and Fees.**

To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfers (whether from a Debtor to a Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors or the Reorganized

Debtors, including the Exit Facility and the New Common Equity; (b) the Restructuring Transactions; (c) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (d) the making, assignment, or recording of any lease or sublease; (e) the grant of collateral as security for any or all of the Exit Facility; or (f) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(c) of the Bankruptcy Code, shall forego the collection of any such tax or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

**12. New Organizational Documents.**

On or immediately before the Effective Date, Longview or Reorganized Longview, as applicable, will file its New Organizational Documents with the applicable Secretary of State and/or other applicable authorities in its state of incorporation or formation in accordance with the applicable laws of their respective state of incorporation or formation, to the extent required for such New Organizational Documents to become effective. Pursuant to section 1123(a)(6) of the Bankruptcy Code, the New Organizational Documents will prohibit the issuance of non-voting equity securities. After the Effective Date, Reorganized Longview may amend and restate its formation, organizational, and constituent documents as permitted by the laws of its respective jurisdiction of formation and the terms of such documents.

**13. Directors and Officers.**

As of the Effective Date, the terms of the current members of the board of directors or managers of Longview shall expire, such directors or managers shall cease to hold office or have any authority from or after such time to the extent not expressly included in the roster of the Reorganized Longview Board, and all of the directors or managers for the initial term of the Reorganized Longview Board shall be appointed in accordance with the New Organizational Documents and each other constituent document of each Reorganized Debtor. To the extent known, the identities of the members of the Reorganized Longview Board will be disclosed in the Plan Supplement or prior to the Confirmation Hearing consistent with section 1129(a)(5) of the Bankruptcy Code.

**14. Management Incentive Plan.**

On the Effective Date, the Reorganized Longview Board and the Reorganized Debtors shall adopt and implement the Management Incentive Plan and distribute the Management Incentive Plan Equity to participants in the Management Incentive Plan. The Reorganized Longview Board shall be authorized to institute such Management Incentive Plan and enact and enter into related policies and agreements based on the terms and conditions determined by the Reorganized Longview Board

**15. Preservation of Causes of Action.**

In accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors shall retain and may enforce all rights to commence and pursue any and all Causes of Action, whether arising before or after the Petition Date, including any actions specifically enumerated in the Plan Supplement, and the Reorganized Debtors' rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date, other than the Causes of Action released by the Debtors pursuant to the releases and exculpations contained in the Plan, including in Article VIII of the Plan, which shall be deemed released and waived by the Debtors and Reorganized Debtors as of the Effective Date.

The Reorganized Debtors may pursue such Causes of Action, as appropriate, in accordance with the best interests of the Reorganized Debtors. **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 or the Reorganized Debtors will not pursue any and all available Causes of Action against it. The Debtors and the Reorganized Debtors expressly reserve all rights to prosecute any and all Causes of Action against any Entity.** Unless any Cause of Action against an Entity is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Final Order of the Bankruptcy Court, the Reorganized Debtors expressly reserve all Causes of Action, for later adjudication, 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 Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

**D. Conditions Precedent to Confirmation and Consummation of the Plan.**

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

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

- the RSA shall not have been terminated and shall remain in full force and effect in accordance with its terms;
- the Bankruptcy Court shall have entered the Confirmation Order;
- the Debtors shall have obtained all authorizations, consents, regulatory approvals, rulings, or documents that are necessary to implement and effectuate the Plan;
- the final version of the Plan Supplement and all of the schedules, documents, and exhibits contained therein, and all other schedules, documents, supplements and exhibits to the Plan, shall have been filed;
- the Exit Facility Documents shall be in full force and effect (with all conditions precedent thereto having been satisfied or waived), subject to any applicable post-closing execution and delivery requirements;
- the New Organizational Documents shall be in full force and effect (with all conditions precedent thereto having been satisfied or waived), subject to any applicable post-closing execution and delivery requirements;
- the New Warrant Agreement shall be in full force and effect and (with all conditions precedent thereto having been satisfied or waived), subject to any applicable post-closing execution and delivery requirements; and
- all Professional Fee Claims and expenses of retained professionals required to be approved by the Bankruptcy Court shall have been paid in full or amounts sufficient to pay such fees and expenses after the Effective Date have been placed in the Professional Fee Escrow Account pending approval by the Bankruptcy Court.

**2. Waiver of Conditions Precedent to the Effective Date.**

The Debtors, with the reasonable consent of the Required Consenting Lenders, may waive any of the conditions to the Effective Date set forth in Article IX.A of the Plan at any time without any notice to any other parties in interest and without any further notice to or action, order, or approval of the Bankruptcy Court, and without any formal action other than proceeding to confirm and consummate the Plan.

**3. Substantial Consummation.**

"Substantial Consummation" of the Plan, as defined in section 1101(2) of the Bankruptcy Code, with respect to any of the Debtors, shall be deemed to occur on the Effective Date with respect to such Debtor.

**4. Effect of Non-Occurrence of Conditions to Consummation.**

If the Effective Date does not occur with respect to any of the Debtors, the Plan shall be null and void in all respects with respect to such Debtor, and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any Claims by or Claims against or Interests in such Debtors; (2) prejudice in any manner the rights of such Debtors, any Holders of a Claim or Interest, or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking by such Debtors, any Holders, or any other Entity in any respect.

**E. Settlement, Release, Injunction, and Related Provisions.**

**1. Compromise and Settlement of Claims, Interests, and Controversies.**

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a Holder of a Claim or Interest may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their Estates, and Holders of Claims and Interests and is fair, equitable, and reasonable. In accordance with the provisions of the Plan, pursuant to Bankruptcy Rule 9019, without any further notice to or action, order, or approval of the Bankruptcy Court, after the Effective Date, the Reorganized Debtors may compromise and settle Claims against, and Interests in, the Debtors and their Estates and Causes of Action against other Entities.

**2. Discharge of Claims.**

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims (including any Intercompany Claims resolved or compromised after the Effective Date by the Reorganized Debtors), Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability (including withdrawal liability) to the extent such Claims or Interests relate to services performed by employees of the Debtors prior to the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a Proof of Claim based upon such debt or right is filed or deemed filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the Holder of such a Claim or Interest has accepted the Plan or voted to reject the Plan. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the occurrence of the Effective Date, except as otherwise specifically provided in the Plan.

**3. Release of Liens.**

**Except (1) with respect to the Liens securing (a) the Exit Facility, (b) Other Secured Claims that are Reinstated pursuant to the Plan, or (c) obligations pursuant to Executory Contracts and Unexpired Leases assumed pursuant to the Plan or (2) as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates and, subject to the**

**consummation of the applicable distributions contemplated in the Plan, shall be fully released and discharged, at the sole cost of and expense of the Reorganized Debtors, and the Holders of such mortgages, deeds of trust, Liens, pledges, or other security interests shall execute such documents as may be reasonably requested by the Debtors or the Reorganized Debtors, as applicable, to reflect or effectuate such releases, and all of the right, title, and interest of any Holders of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtor and its successors and assigns.**

**4. Debtor Release.**

**Effective as of the Effective Date, pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, the adequacy of which is hereby confirmed, on and after the Effective Date, each Released Party is deemed released and discharged by each and all of the Debtors, the Reorganized Debtors, and their Estates, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other entities who may purport to assert any Cause of Action, directly or derivatively, by, through, for, or because of the foregoing entities, from any and all Causes of Action, whether known or unknown, including any derivative claims, asserted or assertable on behalf of any of the Debtors, that the Debtors, the Reorganized Debtors, or their Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in, a Debtor or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), the purchase, sale, or rescission of any security of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions, the Prepetition Credit Agreement (including the Prepetition Revolving Facility and the Prepetition Term Loan Facility), the Subordinated Notes Purchase Agreement, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, entry into, or filing of, as applicable, the RSA, the Disclosure Statement, the Exit Facility Documents, the New Organizational Documents, the New Warrant Agreement, the Plan, or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the RSA, the Disclosure Statement, the Exit Facility Documents, the New Organizational Documents, the New Warrant Agreement, 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, including the issuance or distribution of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other related act, or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (1) any post-Effective Date obligations of any party or Entity under the Plan, any Restructuring Transaction, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan or (2) any retained Causes of Action.**

**5. Third-Party Release.**

**Effective as of the Effective Date, each Releasing Party, in each case on behalf of itself and its respective successors, assigns, and representatives, and any and all other entities who may purport to assert any Cause of Action, directly or derivatively, by, through, for, or because of the foregoing entities, is deemed to have released and discharged each Debtor, Reorganized Debtor, and Released Party from any and all Causes of Action, whether known or unknown, including any derivative claims, asserted or assertable on behalf of any of the Debtors, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership or operation thereof), the purchase, sale, or rescission of any security of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions, the Prepetition Credit Agreement (including the Prepetition Revolving Facility and the Prepetition Term Loan Facility), the Subordinated Notes Purchase Agreement, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, entry into, or filing of, as applicable, the RSA, the Disclosure Statement, the Exit Facility Documents, the New Organizational Documents, the New Warrant Agreement, the Plan, or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in**

**connection with the RSA, the Disclosure Statement, the Exit Facility Documents, the New Organizational Documents, the New Warrant Agreement, 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, including the issuance or distribution of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other related act, or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any post-Effective Date obligations of any party or Entity under the Plan, any Restructuring Transaction, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.**

**6. Exculpation.**

**Effective as of the Effective Date, to the fullest extent permissible under applicable law and without affecting or limiting either the Debtor Release or the Third-Party Release, and except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur, and each Exculpated Party is released and exculpated from any Cause of Action for any claim based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership or operation thereof), the purchase, sale, or rescission of any security of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions, the Prepetition Credit Agreement (including the Prepetition Revolving Facility and the Prepetition Term Loan Facility), the Subordinated Notes Purchase Agreement, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, entry into, or filing of, as applicable, the RSA and related prepetition transactions, the Disclosure Statement, the Exit Facility Documents, the New Organizational Documents, the New Warrant Agreement, the Plan, or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Disclosure Statement, the Exit Facility Documents, the New Organizational Documents, the New Warrant Agreement, 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, including the issuance or distribution of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other related act, or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date (including, for the avoidance of doubt, providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Exculpated Party on the Plan or the Confirmation Order in lieu of such legal opinion), except for claims related to any act or omission that is determined in a Final Order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, 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, and upon completion of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.**

**7. Injunction.**

**Effective as of the Effective Date, pursuant to section 524(a) of the Bankruptcy Code, to the fullest extent permissible under applicable law, and except as otherwise expressly provided in the Plan or for obligations issued or required to be paid pursuant to the Plan or the Confirmation Order, all Entities that have held, hold, or may hold claims or interests that have been released, discharged, or are subject to exculpation are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, the Exculpated Parties, or the Released Parties: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with 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 the estates of such Entities on account of or in connection with or with respect to any such claims or interests; (4) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such claims or interests unless such Holder has filed a motion requesting the right to perform such setoff on or before the Effective Date, and notwithstanding an indication of a claim or interest or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and (5) 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.**

**8. Protection Against Discriminatory Treatment.**

In accordance with section 525 of the Bankruptcy Code, and consistent with paragraph 2 of Article VI of the United States Constitution, no Governmental Unit shall discriminate against any Reorganized Debtor, or any Entity with which a Reorganized Debtor has been or is associated, or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Reorganized Debtors, or another Entity with whom the Reorganized Debtors have been associated, solely because such Reorganized Debtor was a Debtor under chapter 11, may have been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before such Debtor was granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

**9. Recoupment.**

In no event shall any Holder of Claims or Interests be entitled to recoup any Claim or Interest against any claim, right, or Cause of Action of the Debtors or the Reorganized Debtors, as applicable, unless such Holder actually has performed such recoupment and provided notice thereof in writing to the Debtors on or before the Confirmation Date, notwithstanding any indication in any Proof of Claim or Interest or otherwise that such Holder asserts, has, or intends to preserve any right of recoupment.

**10. Reimbursement or Contribution.**

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the Effective Date, such Claim shall be forever disallowed notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Effective Date (1) such Claim has been adjudicated as non-contingent or (2) the relevant Holder of a Claim has filed a non-contingent Proof of Claim on account of such Claim and a Final Order has been entered determining such Claim as no longer contingent.

**11. Term of Injunctions or Stays.**

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

**12. Document Retention.**

On and after the Effective Date, the Reorganized Debtors may maintain documents in accordance with their standard document retention policy, as may be altered, amended, modified, or supplemented by the Reorganized Debtors.

## VI. Confirmation of the Plan

### A. The Confirmation Hearing.

At the Confirmation Hearing, the Bankruptcy Court will determine whether to approve the Disclosure Statement and whether the Plan should be Confirmed in light of both the affirmative requirements of the Bankruptcy Code and objections, if any, that are timely filed. **The Confirmation Hearing may be adjourned from time to time without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or the filing of a notice of such adjournment served in accordance with the order approving the Solicitation Procedures.**

### B. Deadline to Object to Approval of the Disclosure Statement and Confirmation of the Plan.

Upon commencement of the Chapter 11 Cases and scheduling of the Confirmation Hearing, the Debtors will provide notice of the Confirmation Hearing, and, if approved by the Bankruptcy Court, the notice will provide that objections to the Disclosure Statement and Confirmation of the Plan must be filed and served at or before 5:00 p.m., prevailing Eastern Time, on May 15, 2020. Unless objections to the Disclosure Statement or Confirmation of the Plan are timely served and filed, they may not be considered by the Bankruptcy Court.

### C. Requirements for Approval of the Disclosure Statement.

Pursuant to sections 1125(g) and 1126(b) of the Bankruptcy Code, prepetition solicitation of votes to accept or reject a chapter 11 plan must comply with applicable federal or state securities laws and regulations (including the registration and disclosure requirements thereof) or, if such laws and regulations do not apply, provide "adequate information" under section 1125 of the Bankruptcy Code. At the Confirmation Hearing the Debtors will seek a determination from the Bankruptcy Court that the Disclosure Statement satisfies sections 1125(g) and 1126(b) of the Bankruptcy Code.

### D. Requirements for Confirmation of the Plan.

#### 1. Requirements of Section 1129(a) of the Bankruptcy Code.

Among the requirements for Confirmation are the following: (a) the Plan is accepted by all impaired Classes of Claims and Interests or, if the Plan is rejected by an Impaired Class, at least one Impaired Class of Claims or Interests has voted to accept the Plan and a determination that the Plan "does not discriminate unfairly" and is "fair and equitable" as to Holders of Claims or Interests in all rejecting Impaired Classes; (b) the Plan is feasible; and (c) the Plan is in the "best interests" of Holders of Impaired Claims and Interests (*i.e.*, Holders of Class 3 Claims, Holders of Class 4 Claims, Holders of Class 6 Claims and Class 7 Interests, if applicable, Holders of Class 8 Claims, and Holders of Class 9 Claims (if any)).

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies the requirements of section 1129 of the Bankruptcy Code. The Debtors believe that the Plan satisfies or will satisfy all of the necessary requirements of chapter 11 of the Bankruptcy Code. Specifically, in addition to other applicable requirements, the Debtors believe that the Plan satisfies or will satisfy the applicable Confirmation requirements of section 1129 of the Bankruptcy Code set forth below.

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Debtors, as the Plan proponents, have complied with the applicable provisions of the Bankruptcy Code.
- The Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or promised under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, will be disclosed to the Bankruptcy Court, and any such payment: (a) made before Confirmation will be

reasonable or (b) will be subject to the approval of the Bankruptcy Court as reasonable, if it is to be fixed after Confirmation.

- Either each Holder of an Impaired Claim against or Interest in the Debtors will accept the Plan, or each non-accepting Holder will receive or retain under the Plan on account of such Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount that the Holder would receive or retain if the Debtors were liquidated on that date under chapter 7 of the Bankruptcy Code.

- Except to the extent that the Holder of a particular Claim agrees to a different treatment of its Claim, the Plan provides that, to the extent an Allowed Administrative Claim has not already been paid in full or otherwise satisfied during the Chapter 11 Cases, Allowed Administrative Claims and Other Priority Claims will be paid in full on the Effective Date, or as soon thereafter as is reasonably practicable.

- At least one Class of Impaired Claims will have accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim in that Class.

- Confirmation is not likely to be followed by liquidation or the need for further financial reorganization of the Debtors or any successors thereto under the Plan.

- All fees of the type described in 28 U.S.C. § 1930, including the fees of the U.S. Trustee, will be paid as of the Effective Date.

Section 1126(c) of the Bankruptcy Code provides that a class of claims has accepted a plan of reorganization if such plan has been accepted by creditors that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class. Section 1126(d) of the Bankruptcy Code provides that a class of interests has accepted a plan of reorganization if such plan has been accepted by holders of such interests that hold at least two-thirds in amount of the allowed interests of such class.

**2. The Debtor Release, Third-Party Release, Exculpation, and Injunction Provisions.**

Article VIII of the Plan provides for releases of certain claims and Causes of Action the Debtors may hold against the Released Parties. The Released Parties are: (a) each of the Debtors; (b) the Reorganized Debtors; (c) each of the Prepetition Lenders; (d) the Prepetition Agents; (e) the Exit Lenders; (f) the Exit Facility Agent; (g) all Holders of Subordinated Notes Claims; (h) all Holders of Interests in Longview; (i) with respect to each of the foregoing, where any of the foregoing is an investment manager, advisor, or sub-advisor for a beneficial holder, such beneficial holder; and (j) with respect to each of the foregoing entities in clauses (a) through (i), such Entity and its current and former Affiliates, and such Entities' and their current and former Affiliates' current and former directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, and assigns, subsidiaries, affiliated investment funds or investment vehicles, managed accounts or funds, investment managers, advisors, and sub-advisors with discretionary authority, participants, and each of their respective current and former equity holders, officers, directors, managers, principals, members, management companies, fund advisors, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals; *provided*, *however*, that any Entity identified in the foregoing clauses (a) through (j) that opts out of the releases shall not be a "Released Party."

Article VIII of the Plan provides for releases of certain claims and Causes of Action that Holders of Claims or Interests may hold against the Released Parties in exchange for the good and valuable consideration and the valuable compromises made by the Released Parties (the "Third-Party Release"). The "Released Parties" are: (a) each of the Debtors; (b) the Reorganized Debtors; (c) each of the Prepetition Lenders; (d) the Prepetition Agents; (e) each of the Exit Lenders; (f) the Exit Facility Agent; (g) all Holders of Claims or Interests that vote to accept or are deemed to accept the Plan; (h) all Holders of Claims that vote to reject the Plan or do not vote to accept or reject the Plan but, in either case, do not affirmatively elect to "opt out" of being a releasing party by timely objecting to the Plan's third-party release provisions; (i) all Holders of Claims or Interests that are deemed to reject the Plan that do not affirmatively elect to "opt out" of being a releasing party by timely objecting to the Plan's third-party release provisions; (j) with respect to each of the Debtors, the Reorganized Debtors, and each of the foregoing entities in clauses (a) through (i), such Entity and its current and former Affiliates, and such Entities' and their current and former Affiliates' current and former directors, managers, officers, equity holders (regardless of whether such interests are

held directly or indirectly), predecessors, successors, and assigns, subsidiaries, managed accounts or funds, participants, and each of their respective current and former equity holders, officers, directors, managers, principals, members, management companies, fund advisors, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such collectively.

Article VIII of the Plan provides for the exculpation of each Exculpated Party for certain acts or omissions taken in connection with the Chapter 11 Cases. The released and exculpated claims are limited to those claims or Causes of Action that may have arisen in connection with, related to, or arising out of the Plan, this Disclosure Statement, or the Chapter 11 Cases. The Exculpated Parties are: (a) each of the Debtors; (b) each of the Reorganized Debtors; (c) any statutory committees appointed in the Chapter 11 Cases and each of their respective members; and (d) with respect to each of the foregoing in clauses (a) through (c), such Entity and its current and former Affiliates, and such Entity's and its current and former Affiliates' current and former subsidiaries, officers, directors, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such.

Article VIII of the Plan permanently enjoins Entities who have held, hold, or may hold Claims, Interests, or Liens that have been discharged or released pursuant to the Plan or are subject to exculpation pursuant to the Plan from asserting such Claims, Interests, or Liens against each Debtor, the Reorganized Debtors, and the Released Parties.

Under applicable law, a debtor release of the Released Parties is appropriate where: (a) there is an identity of interest between the debtor and the third party, such that a suit against the released non-debtor party is, at core, a suit against the debtor or will deplete assets of the estate; (b) there is a substantial contribution by the non-debtor of assets to the reorganization; (c) the injunction is essential to the reorganization; (d) there is overwhelming creditor support for the injunction; and (e) the chapter 11 plan will pay all or substantially all of the claims affected by the injunction. *Indianapolis Downs, LLC*, 486 B.R. 286, 303 (Bankr. D. Del. 2013). Importantly, these factors are "neither exclusive nor are they a list of conjunctive requirements," but "[i]nstead, they are helpful in weighing the equities of the particular case after a fact-specific review." *Id.* Further, a chapter 11 plan may provide for a release of third party claims against non-debtors, such as the Third-Party Release, where such releases are consensual. *Id*. at 304–06. In addition, exculpation is appropriate where it applies to estate fiduciaries. *Id.* at 306. Finally, an injunction is appropriate where it is necessary to the reorganization and fair pursuant to section 105(a) of the Bankruptcy Code. *In re W.R. Grace & Co*., 475 B.R. 34, 107 (D. Del. 2012). In addition, approval of the releases, exculpations, and injunctions for each of the Released Parties and each Exculpated Party as part of Confirmation of the Plan will be limited to the extent such releases, exculpations, and injunctions are permitted by applicable law.

The Debtors believe that the releases, exculpations, and injunctions set forth in the Plan are appropriate because, among other things, the releases are narrowly tailored to the Debtors' restructuring proceedings, and each of the Released Parties has contributed value to the Debtors and aided in the reorganization process, which facilitated the Debtors' ability to propose and pursue confirmation of the Plan. The Debtors believe that each of the Released Parties has played an integral role in formulating the Plan and has expended significant time and resources analyzing and negotiating the issues presented by the Debtors' prepetition capital structure. The Debtors further believe that such releases, exculpations, and injunctions are a necessary part of the Plan. In addition, the Debtors believe the Third-Party Release is entirely consensual under the established case law in the United States Bankruptcy Court for the District of Delaware. See *Indianapolis Downs*, 486 B.R. at 304–06. The Debtors will be prepared to meet their burden to establish the basis for the releases, exculpations, and injunctions for each of the Released Parties and each Exculpated Party as part of Confirmation of the Plan.

**3. Best Interests of Creditors—Liquidation Analysis.**

Often called the "best interests" test, section 1129(a)(7) of the Bankruptcy Code requires that a bankruptcy court find, as a condition to confirmation, that a chapter 11 plan provides, with respect to each class, that each holder of a claim or an interest in such class either (a) has accepted the plan, or (b) will receive or retain under the plan property of a value, as of the effective date of the plan, that is not less than the amount that such holder would receive or retain if the debtors liquidated under chapter 7 of the Bankruptcy Code.

To demonstrate compliance with the "best interests" test, the Debtors, with the assistance of their advisors, prepared the Liquidation Analysis, attached hereto as **Exhibit F**, showing that the value of the distributions provided

to Holders of Allowed Claims and Interests under the Plan would be the same or greater than under a hypothetical chapter 7 liquidation. Accordingly, the Debtors believe that the Plan is in the best interests of creditors.

**4. Feasibility/Financial Projections.**

Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of a chapter 11 plan of reorganization is not likely to be followed by the liquidation of the reorganized debtor or the need for further financial reorganization of the debtor, or any successor to the debtor (unless such liquidation or reorganization is proposed in the chapter 11 plan). For purposes of determining whether the Plan meets this requirement, the Debtors have analyzed their ability to meet their obligations under the Plan. As part of this analysis, the Debtors have prepared certain unaudited pro forma financial statements with regard to the Reorganized Debtors (the "Financial Projections"), which projections and the assumptions upon which they are based are attached hereto as **Exhibit D**. Based on these Financial Projections, the Debtors believe the deleveraging contemplated by the Plan meets the financial feasibility requirement. Moreover, the Debtors believe that sufficient funds will exist to make all payments required by the Plan. Accordingly, the Debtors believe that the Plan satisfies the feasibility requirement of section 1129(a)(11) of the Bankruptcy Code.

**5. Acceptance by Impaired Classes.**

The Bankruptcy Code requires that, except as described in the following section, each impaired class of claims or interests must accept a plan in order for it to be confirmed. A class that is not "impaired" under a plan is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to the class is not required. A class is "impaired" unless the plan: (a) leaves unaltered the legal, equitable, and contractual rights to which the claim or the interest entitles the holder of the claim or interest; (b) cures any default, reinstates the original terms of such obligation, compensates the holder for certain damages or losses, as applicable, and does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest; or (c) provides that, on the consummation date, the holder of such claim receives cash equal to the allowed amount of that claim or, with respect to any equity interest, the holder of such interest receives value equal to the greater of (i) any fixed liquidation preference to which the holder of such equity interest is entitled, (ii) the fixed redemption price to which such holder is entitled, or (iii) the value of the interest.

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of allowed claims in that class, counting only those claims that actually voted to accept or to reject the plan. Thus, a class of claims will have voted to accept the plan only if two-thirds in amount and a majority in number of creditors actually voting cast their ballots in favor of acceptance. For a class of impaired interests to accept a plan, section 1126(d) of the Bankruptcy Code requires acceptance by interest holders that hold at least two-thirds in amount of the allowed interests of such class, counting only those interests that actually voted to accept or reject the plan. Thus, a class of interests will have voted to accept the plan only if two-thirds in amount actually voting cast their ballots in favor of acceptance.

**6. Confirmation Without Acceptance by All Impaired Classes.**

Section 1129(b) of the Bankruptcy Code allows a bankruptcy court to confirm a plan even if all impaired classes have not accepted the plan, *provided* that the plan has been accepted by at least one impaired class of claims. Pursuant to section 1129(b) of the Bankruptcy Code, notwithstanding an impaired class rejection or deemed rejection of the plan, the plan will be confirmed, at the plan proponent's request, in a procedure commonly known as "cramdown," so long as the plan does not "discriminately unfairly" and is "fair and equitable" with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

If any Impaired Class of Claims or Interests rejects the Plan, including Classes of Claims or Interests deemed to reject the Plan, the Debtors will request Confirmation of the Plan, as it may be modified from time to time, utilizing the "cramdown" provision under section 1129(b) of the Bankruptcy Code. The Debtors reserve the right to modify the Plan in accordance with Article X of the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims to render such Class of Claims Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules or to withdraw the Plan as to such Debtor.

The Debtors believe that the Plan and the treatment of all Classes of Claims and Interests under the Plan satisfy the requirements for cramdown and the Debtors will be prepared to meet their burden to establish that the Plan can be Confirmed pursuant to section 1129(b) of the Bankruptcy Code as part of Confirmation of the Plan.

**(a) No Unfair Discrimination**.

The "unfair discrimination" test applies with respect to classes of claim or interests that are of equal priority but are receiving different treatment under a proposed plan. The test does not require that the treatment be the same or equivalent, but that the treatment be "fair." In general, bankruptcy courts consider whether a plan discriminates unfairly in its treatment of classes of claims of equal rank (*e.g.*, classes of the same legal character). Bankruptcy courts will take into account a number of factors in determining whether a plan discriminates unfairly. Under certain circumstances, a proposed plan may treat two classes of unsecured creditors differently without unfairly discriminating against either class.

With respect to the unfair discrimination requirement, all Classes under the Plan are provided treatment that is substantially equivalent to the treatment that is provided to other Classes that have equal rank. Accordingly, the Debtors believe that the Plan meets the standard to demonstrate that the Plan does not unfairly discriminate and the Debtors will be prepared to meet their burden to establish that there is no unfair discrimination as part of Confirmation of the Plan.

**(b) Fair and Equitable Test**.

The "fair and equitable" test applies to classes of different priority and status (*e.g.*, secured versus unsecured) and includes the general requirement that no class of claims receive more than 100% of the amount of the allowed claims in such class. As to each non-accepting class and as set forth below, the test sets different standards depending on the type of claims or interests in such class. The Debtors believe that the Plan satisfies the "fair and equitable" requirement, notwithstanding the fact that certain Classes are deemed to reject the Plan. There is no Class receiving more than a 100% recovery and no junior Class is receiving a distribution under the Plan until all senior Classes have received a 100% recovery or agreed to receive a different treatment under the Plan.

**(i) Secured Claims**.

The condition that a plan be "fair and equitable" to a non-accepting class of secured claims includes the requirements that: (A) the holders of such secured claims retain the liens securing such claims to the extent of the allowed amount of the claims, whether the property subject to the liens is retained by the debtor or transferred to another entity under the plan; and (B) each holder of a secured claim in the class receives deferred cash payments totaling at least the allowed amount of such claim with a value, as of the effective date, at least equivalent to the value of the secured claimant's interest in the debtor's property subject to the claimant's liens.

**(ii) Unsecured Claims**.

The condition that a plan be "fair and equitable" to a non-accepting class of unsecured claims includes the requirement that either: (A) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date, equal to the allowed amount of such claim; or (B) the holder of any claim or any interest that is junior to the claims of such class will not receive or retain any property under the plan on account of such junior claim or junior interest, subject to certain exceptions.

**(iii) Interests**.

The condition that a plan be "fair and equitable" to a non-accepting class of interests, includes the requirements that either: (A) the plan provides that each holder of an interest in that class receives or retains under the plan on account of that interest property of a value, as of the effective date, equal to the greater of: (1) the allowed amount of any fixed liquidation preference to which such holder is entitled; (2) any fixed redemption price to which such holder is entitled; or (3) the value of such interest; or (B) the holder of any interest that is junior to the interests of such class will not receive or retain any property under the plan on account of such junior interest.

### 7. Valuation of the Debtors.

The Debtors' investment banker, Houlihan, has prepared an independent valuation analysis, which is attached to this Disclosure Statement as **Exhibit E** (the "Valuation Analysis"). The Valuation Analysis should be considered in conjunction with the Risk Factors discussed in Section VIII of this Disclosure Statement, entitled "Risk Factors," and the Financial Projections. The Valuation Analysis is dated as of April 10, 2020, and is based on data and information as of that date. Holders of Claims and Interests should carefully review the information in **Exhibit E** in its entirety. The Debtors believe that the Valuation Analysis demonstrates that the Plan is "fair and equitable" to the non-accepting classes.

## VII. Voting Instructions

### A. Overview.

Holders of Claims entitled to vote should carefully read the below voting instructions.

### B. Solicitation Procedures.

#### 1. Solicitation Agent.

The Debtors have proposed to retain Donlin, Recano & Company, Inc. to act, among other things, as the Solicitation Agent in connection with the solicitation of votes to accept or reject the Plan. The Solicitation Agent will process and tabulate Ballots for each Class entitled to vote to accept or reject the Plan and will file the Voting Report as soon as practicable after the Voting Deadline.

#### 2. Solicitation Package.

The following materials constitute the solicitation package (the "Solicitation Package") distributed to Holders of Claims in the Voting Class:

- the Debtors' cover letter in support of the Plan;
- the appropriate Ballot and applicable voting instructions, together with a pre-addressed, postage pre-paid return envelope; and
- this Disclosure Statement and all exhibits hereto, including the Plan and all exhibits thereto (which may be distributed in paper or USB-flash drive format).

#### 3. Voting Deadline.

The period during which Ballots with respect to the Plan will be accepted by the Debtors will terminate at **5:00 p.m., prevailing Eastern Time, on May 1, 2020**, unless the Debtors extend the date until which Ballots will be accepted. Except to the extent that the Debtors so determine or as permitted by the Bankruptcy Court, Ballots that are received after the Voting Deadline will not be counted or otherwise used by the Debtors in connection with the Debtors' request for Confirmation of the Plan (or any permitted modification thereof).

The Debtors reserve the right, at any time or from time to time, to extend the period of time (on a daily basis, if necessary) during which Ballots will be accepted for any reason, including determining whether or not the requisite number of acceptances have been received, by making a public announcement of such extension no later than the first Business Day next succeeding the previously announced Voting Deadline. The Debtors will give notice of any such extension in a manner deemed reasonable to the Debtors in their discretion. There can be no assurance that the Debtors will exercise its right to extend the Voting Deadline.

**4. Distribution of the Solicitation Package and Plan Supplement.**

The Debtors will cause the Solicitation Agent to distribute the Solicitation Package to Holders of Claims in the Voting Class on April 13, 2020, which is 18 days before the Voting Deadline (a total of 14 business days).

The Solicitation Package (except the Ballots) may also be obtained from the Solicitation Agent by: (a) calling the Debtors' restructuring hotline at (800) 761-6523 (domestic toll-free) or 212-771-1128 (international toll), and asking for the Solicitation Group; (b) emailing DRCVote@DonlinRecano.com and referencing "Longview Power" in the subject line; or (c) writing to Donlin, Recano & Company, Inc., Attn: Longview Power Ballot Processing, c/o Donlin, Recano & Company, Inc., P.O. Box 199043, Blythebourne Station, Brooklyn, New York 11219. When the Debtors file the Chapter 11 Cases, you may also obtain copies of any pleadings filed with the Bankruptcy Court for free by visiting the Debtors' restructuring website, www.donlinrecano.com/longviewpower, or for a fee at https://ecf.deb.uscourts.gov/.

The Debtors will file the Plan Supplement in accordance with the terms of the Plan. As the Plan Supplement is updated or otherwise modified, such modified or updated documents will be made available on the Debtors' restructuring website. The Debtors will not serve paper or CD-ROM copies of the Plan Supplement; however, parties may obtain a copy of the Plan Supplement at no cost from the Solicitation Agent by: (a) calling the Solicitation Agent at one of the telephone numbers set forth above; (b) visiting the Debtors' restructuring website, https://www.donlinrecano.com/longviewpower; or (c) emailing the Solicitation Agent at the email address set forth above.

**C. Voting Procedures.**

April 9, 2020, (the "Voting Record Date"), is the date that was used for determining which Holders of Claims are entitled to vote to accept or reject the Plan and receive the Solicitation Package in accordance with the solicitation procedures. Except as otherwise set forth herein, the Voting Record Date and all of the Debtors' solicitation and voting procedures shall apply to all of the Debtors' creditors and other parties in interest.

In order for the Holder of a Claim in the Voting Class to have such Holder's Ballot counted as a vote to accept or reject the Plan, such Holder's Ballot must be properly completed, executed, and delivered by (a) using the enclosed pre-paid, pre-addressed return envelope, (b) via first class mail to the Solicitation Agent at Donlin, Recano & Company, Inc., Attn: Longview Power Ballot Processing, c/o Donlin, Recano & Company, Inc., P.O. Box 199043, Blythebourne Station, Brooklyn, New York 11219, (c) via overnight courier or hand delivery to the Solicitation Agent at Donlin, Recano & Company, Inc., Attn: Longview Power Ballot Processing, c/o Donlin, Recano & Company, Inc., 6201 15th Avenue, Brooklyn, New York 11219, or (d) via electronic email to the Solicitation Agent at LongviewVote@DonlinRecano.com with "Longview Vote" in the subject line, so that such Holder's Ballot is **actually received** by the Solicitation Agent before the Voting Deadline.

In addition to casting a vote on the Plan, the Holders of Class 3 Prepetition Credit Agreement Claims may exercise their non-transferable, non-certificated subscription rights to participate in the Exit Facility (the "Exit Facility Subscription Rights") by (1) electing to do so on the the Ballot and (2) executing a joinder to the RSA to commit to fund their pro rata share of the Exit Facility; *provided* that such joinder will not cause such Holder to be a Consenting Lender and will only bind such Holder to fund their Pro Rata portion of the Exit Facility.

The Debtors are providing the Solicitation Package to Holders of Class 3 Prepetition Credit Agreement Claims. If a Holder of a Claim in a Voting Class transfers all of such Claim to one or more parties on or after the Voting Record Date and before the Holder has cast its vote on the Plan, such Claim is automatically deemed to have provided a voting proxy to the purchaser(s) of the Holder's Claim and such purchaser(s) shall be deemed to be the Holder(s) thereof as of the Voting Record Date for purposes of voting on the Plan, provided that the transfer complies with the applicable requirements under the RSA, if applicable.

IF A BALLOT IS RECEIVED AFTER THE VOTING DEADLINE, IT WILL NOT BE COUNTED UNLESS THE DEBTORS DETERMINE OTHERWISE.

ANY BALLOT THAT IS PROPERLY EXECUTED BY THE HOLDER OF A CLAIM BUT THAT DOES NOT CLEARLY INDICATE AN ACCEPTANCE OR REJECTION OF THE PLAN OR ANY BALLOT THAT

INDICATES BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN WILL NOT BE COUNTED FOR PURPOSES OF ACCEPTING OR REJECTING THE PLAN.

EACH HOLDER OF A CLAIM MUST VOTE ALL OF ITS CLAIMS WITHIN A PARTICULAR CLASS EITHER TO ACCEPT OR REJECT THE PLAN AND MAY NOT SPLIT SUCH VOTES. BY SIGNING AND RETURNING A BALLOT, EACH HOLDER OF A CLAIM WILL CERTIFY TO THE BANKRUPTCY COURT AND THE DEBTORS THAT NO OTHER BALLOTS WITH RESPECT TO SUCH CLAIM HAVE BEEN CAST OR, IF ANY OTHER BALLOTS HAVE BEEN CAST WITH RESPECT TO SUCH CLASS OF CLAIMS, SUCH OTHER BALLOTS INDICATED THE SAME VOTE TO ACCEPT OR REJECT THE PLAN. IF A HOLDER CASTS MULTIPLE BALLOTS WITH RESPECT TO THE SAME CLASS OF CLAIMS AND THOSE BALLOTS ARE IN CONFLICT WITH EACH OTHER, SUCH BALLOTS WILL NOT BE COUNTED FOR PURPOSES OF ACCEPTING OR REJECTING THE PLAN.

IT IS IMPORTANT THAT THE HOLDER OF A CLAIM IN THE VOTING CLASS FOLLOWS THE SPECIFIC INSTRUCTIONS PROVIDED ON SUCH HOLDER'S BALLOT.

**D. Voting Tabulation.**

A Ballot does not constitute, and shall not be deemed to be, a Proof of Claim or an assertion or admission of a Claim. Only Holders of Claims in the Voting Class shall be entitled to vote with regard to such Claims.

Unless the Debtors decide otherwise, Ballots received after the Voting Deadline may not be counted. A Ballot will be deemed delivered only when the Solicitation Agent actually receives the executed Ballot as instructed in the applicable voting instructions. No Ballot should be sent to the Debtors, the Debtors' agents (other than the Solicitation Agent) or the Debtors' financial or legal advisors.

The Bankruptcy Code may require the Debtors to disseminate additional solicitation materials if the Debtors make material changes to the terms of the Plan or if the Debtors waive a material condition to confirmation of the Plan. In that event, the solicitation will be extended to the extent directed by the Bankruptcy Court.

To the extent there are multiple Claims within a Voting Class, the Debtors may, in their discretion, and to the extent possible, aggregate the Claims of any particular Holder within a Voting Class for the purpose of counting votes.

In the event a designation of lack of good faith is requested by a party in interest under section 1126(e) of the Bankruptcy Code, the Bankruptcy Court will determine whether any vote to accept and/or reject the Plan cast with respect to that Claim will be counted for purposes of determining whether the Plan has been accepted and/or rejected.

The following Ballots will not be counted in determining the acceptance or rejection of the Plan: (a) any Ballot that is illegible or contains insufficient information to permit the identification of the Holder; (b) any Ballot cast by a person or entity that does not hold a Claim or Interest that is entitled to vote on the Plan; (c) any unsigned Ballot; (d) any Ballot not marked to accept or reject the Plan, or marked both to accept and reject the Plan; (e) any Ballot received after the Voting Deadline, unless otherwise determined by the Debtors; and (f) any Ballot submitted by a party not entitled to cast a vote with respect to the Plan.

Each holder of a Claim entitled to vote or reject the Plan may cast only one ballot for each Claim held by such holder. By signing and returning a ballot or otherwise voting pursuant to the instructions set forth on the ballot, each holder of a Claim entitled to vote will certify to the Bankruptcy Court and the Debtors that no other votes with respect to such Claim has been cast or, if any other votes have been cast with respect to such Claim, such earlier votes are suspended and revoked.

As soon as practicable after the Voting Deadline, the Solicitation Agent will file the Voting Report with the Bankruptcy Court. The Voting Report shall, among other things, delineate every Ballot that does not conform to the voting instructions or that contains any form of irregularity (each an "Irregular Ballot"), including those Ballots that are late or (in whole or in material part) illegible, unidentifiable, lacking signatures or lacking necessary information, or damaged. The Solicitation Agent will attempt to reconcile the amount of any Claim reported on a Ballot with the Debtors' records, but in the event such amount cannot be timely reconciled without undue effort on the part of the

Solicitation Agent, the amount shown in the Debtors' records shall govern. The Voting Report also shall indicate the Debtors' intentions with regard to such Irregular Ballots. Neither the Debtors nor any other Person or Entity will be under any duty to provide notification of defects or irregularities with respect to delivered Ballots other than as provided in the Voting Report, nor will any of them incur any liability for failure to provide such notification.

## VIII. Risk Factors

**BEFORE TAKING ANY ACTION WITH RESPECT TO THE PLAN, HOLDERS OF CLAIMS AGAINST THE DEBTORS WHO ARE ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN SHOULD READ AND CONSIDER CAREFULLY THE RISK FACTORS SET FORTH BELOW, AS WELL AS THE OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT, THE PLAN, AND THE DOCUMENTS DELIVERED TOGETHER HEREWITH, REFERRED TO, OR INCORPORATED BY REFERENCE INTO THIS DISCLOSURE STATEMENT, INCLUDING OTHER DOCUMENTS FILED WITH THE BANKRUPTCY COURT IN THE CHAPTER 11 CASES. THE RISK FACTORS SHOULD NOT BE REGARDED AS CONSTITUTING THE ONLY RISKS PRESENT IN CONNECTION WITH THE DEBTORS' BUSINESSES OR THE RESTRUCTURING AND CONSUMMATION OF THE PLAN. EACH OF THE RISK FACTORS DISCUSSED IN THIS DISCLOSURE STATEMENT MAY APPLY EQUALLY TO THE DEBTORS AND THE REORGANIZED DEBTORS, AS APPLICABLE AND AS CONTEXT REQUIRES.**

### A. Risks Related to the Restructuring.

#### 1. The Debtors Will Consider All Available Restructuring Alternatives if the Restructuring Transactions are not Implemented, and Such Alternatives May Result in Lower Recoveries for Holders of Claims Against and Interests in the Debtors.

If the Restructuring Transactions are not implemented, the Debtors will consider all available restructuring alternatives, including filing an alternative chapter 11 plan, converting to a chapter 7 plan, commencing section 363 sales of the Debtors' assets and any other transaction that would maximize the value of the Debtors' estates. The terms of any alternative restructuring proposal may be less favorable to Holders of Claims against and Interests in the Debtors than the terms of the Plan as described in this Disclosure Statement.

Any material delay in the confirmation of the Plan, the Chapter 11 Cases, or the threat of rejection of the Plan by the Bankruptcy Court, would add substantial expense and uncertainty to the process.

The uncertainty surrounding a prolonged restructuring would have other adverse effects on the Debtors. For example, it would adversely affect:

- the Debtors' ability to raise additional capital;
- the Debtors' liquidity;
- how the Debtors' business is viewed by regulators, investors, lenders, and credit ratings agencies;
- the Debtors' enterprise value; and
- the Debtors' business relationship with customers and vendors.

#### 2. Even if the Restructuring Transactions are Successful, the Debtors Will Continue to Face Risks.

The Restructuring Transactions are generally designed to reduce the Debtors' cash interest expense, improve the Debtors' liquidity and provide the Debtors' greater flexibility to generate long-term growth. Even if the Restructuring Transactions are implemented, the Debtors will continue to face a number of risks, including certain risks that are beyond the Debtors' control, such as changes in economic conditions, changes in the Debtors' industry and changes in commodity prices. As a result of these risks, there is no guarantee that the Restructuring Transactions will achieve the Debtors' stated goals.

**3. Risks Related to the Exit Facility and the New Common Equity.**

The following are some of the risks that apply to Holders of Claims against the Debtors or other parties who become Holders of the New Common Equity pursuant to the Plan. By virtue of the New Warrants being exercisable into New Common Equity, risks that relate to the New Common Equity will necessarily also affect the New Warrants. There are additional risk factors related to ownership of the New Common Equity that Holders of Claims against the Debtors should consider before deciding to vote to accept or reject the Plan.

**(a) The Consideration Under the Plan Does Not Reflect any Independent Valuation of Claims against or Interests in the Debtors**.

The Debtors have not obtained or requested an opinion from any bank or other firm as to the fairness of the consideration under the Plan.

**(b) The Terms of the New Common Equity Are Subject to Change Based on Negotiation and the Approval of the Bankruptcy Court**.

The terms of the New Common Equity are subject to change based on negotiations between the Debtors and the Consenting Lenders. Holders of Claims that are not the Consenting Lenders will not participate in these negotiations and the results of such negotiations may alter the terms of the New Common Equity in a material manner. As a result, the final terms of the New Common Equity may be less favorable to Holders of Claims than as described herein and in the Plan.

**(c) The Terms of the New Organizational Documents Are Subject to Change Based on Negotiation and the Approval of the Bankruptcy Court.**

The terms of the New Organizational Documents are subject to change based on negotiations between the Debtors and the Consenting Lenders. Holders of Claims that are not the Consenting Lenders will not participate in these negotiations and the results of such negotiations may affect the rights of equityholders in Reorganized Longview following the Effective Date.

**(d) The Reorganized Debtors May Not Be Able to Generate or Receive Sufficient Cash to Service Their Debt and May Be Forced to Take Other Actions to Satisfy their Obligations, Which May Not Be Successful**.

The Reorganized Debtors' ability to make scheduled payments on their debt obligations depends on their financial condition and operating performance, which is subject to prevailing economic and competitive conditions and to certain financial, business, and other factors beyond the Reorganized Debtors' control. The Reorganized Debtors may not be able to maintain a level of cash flow sufficient to permit them to pay the principal, premium, if any, and interest on their debt, including the Exit Facility.

If cash flows and capital resources are insufficient to fund the Reorganized Debtors' debt obligations, they could face substantial liquidity problems and might be forced to reduce or delay investments and capital expenditures, or to dispose of assets or operations, seek additional capital or restructure or refinance debt, including the Exit Facility. These alternative measures may not be successful, may not be completed on economically attractive terms, or may not be adequate to satisfy their debt obligations when due.

Further, if the Reorganized Debtors suffer or appear to suffer from a lack of available liquidity, the evaluation of their creditworthiness by counterparties and rating agencies and the willingness of third parties to do business with them could be adversely affected.

**(e) The Ownership Percentage Represented by the New Common Equity Will Be Subject to Dilution from the Equity Issued in Connection with the New Warrants.**

The ownership percentage represented by the New Common Equity distributed on the Effective Date under the Plan will be subject to dilution from the equity issued in connection with the New Warrants, the Management Incentive Plan, any other shares that may be issued in connection with the Plan or post-emergence, and the conversion

of any other options, warrants, convertible securities, exercisable securities, or other securities that may be issued post-emergence.

**4. The Terms of the Exit Facility Documents Are Subject to Change Based on Negotiation and the Approval of the Bankruptcy Court**.

The terms of the Exit Facility Documents have not been finalized and are subject to change based on negotiations between the Debtors, the Exit Lenders, and the Consenting Lenders. Holders of Claims and Interests that are not the Consenting Lenders will not participate in these negotiations and the results of such negotiations may affect the rights of the holders of the Exit Facility or the New Common Equity following the Effective Date. As a result, the final terms of the Exit Facility Documents may be less favorable to Holders of Claims and Interests than as described herein and in the Plan.

**5. The Exit Facility Will Be Secured Only to the Extent of the Value of the Assets Granted as Security for the Exit Facility. The Fair Market Value of the Reorganized Debtors Upon Any Foreclosure May Not Be Sufficient to Repay the Holders of the Exit Facility in Full**.

The Exit Facility will be secured by a first-priority lien on substantially all of the Debtors' assets (the "Exit Facility Collateral"). The fair market value of the Exit Facility Collateral may not be sufficient to repay both the Exit Facility and all of the Holders of other debt holding a security interest in the Exit Facility Collateral, if any, upon any foreclosure. The fair market value of the Exit Facility Collateral is subject to fluctuations based on factors that include, among other things, a decline in revenue in the Debtors' businesses. The amount to be received by creditors upon a sale of any Exit Facility Collateral would be dependent on numerous factors, including the value obtainable by selling the Exit Facility Collateral at the time, general market and economic conditions, and the timing and the manner of the sale.

In the event a subsequent bankruptcy or similar proceeding is commenced by or against the Reorganized Debtors, Holders of the Exit Facility may be deemed to have an unsecured claim if the Reorganized Debtors' obligation under the Exit Facility exceeds the value of the Exit Facility Collateral. Upon a finding by a bankruptcy court that the Exit Facility is under-collateralized, the Claims in the bankruptcy proceeding with respect to such debt instrument, absent an election by the Holders of the Exit Facility pursuant to section 1111(b) of the Bankruptcy Code, would be bifurcated between a Secured Claim and an Unsecured Claim, and the Unsecured Claim would not be entitled to the benefits of security in the Exit Facility Collateral. Additionally, some or all accrued but unpaid interest may be disallowed in any bankruptcy proceeding.

The security interests granted in favor of the administrative agent under the Exit Facility Documents (the "Exit Facility Agent") are subject to practical problems generally associated with the realization of security interests in collateral. For example, the Exit Facility Agent may need to obtain the consent of a third party to obtain or enforce a security interest in a contract, and the Debtors cannot assure Holders of the Exit Facility that the Exit Facility Agent will be able to obtain any such consent. The consents of any third parties may not be given when required to facilitate a foreclosure on any particular assets. Accordingly, the Exit Facility Agent may not have the ability to foreclose upon such assets, and the value of the Exit Facility Collateral may significantly decrease.

**6. A Decline in the Reorganized Debtors' Credit Ratings Could Negatively Affect the Debtors' Ability to Refinance Their Debt**.

The Debtors' or the Reorganized Debtors' credit ratings could be lowered, suspended, or withdrawn entirely, at any time, by the rating agencies, if, in each rating agency's judgment, circumstances warrant, including as a result of exposure to the credit risk and the business and financial condition of the Debtors or the Reorganized Debtors, as applicable. Downgrades in the Reorganized Debtors' long-term debt ratings may make it more difficult to refinance their debt and increase the cost of any debt that they may incur in the future.

**7. Necessary Governmental Approvals May Not be Granted.**

Consummation of the Restructuring Transaction depends upon approval of FERC and any other approvals required by a Governmental Unit. Failure by any Governmental Unit to grant a necessary approval could prevent consummation of the Restructuring Transactions and Confirmation of the Plan.

**8. Risks Related to Confirmation and Consummation of the Plan.**

**(a) The RSA May Be Terminated.**

As more fully set forth in Sections 9 through 12 of the RSA, the RSA may be terminated upon the occurrence of certain events, including, among others, the Debtors' failure to meet specified milestones relating to the filing, confirmation, and consummation of the Plan, and breaches by the Debtors and/or the Consenting Lenders of their respective obligations under the RSA. In the event that the RSA is terminated, the Debtors may seek a non-consensual restructuring alternative, including a potential liquidation of their assets.

**(b) Conditions Precedent to Confirmation May Not Occur**.

As more fully set forth in Article IX of the Plan, the occurrence of Confirmation and the Effective Date are each subject to a number of conditions precedent. If each condition precedent to Confirmation is not met or waived, the Plan will not be Confirmed, and if each condition precedent to Consummation is not met or waived, the Effective Date will not take place. In the event that the Plan is not Confirmed or is not Consummated, the Debtors may seek Confirmation of a new plan. If the Debtors do not secure sufficient working capital to continue their operations or if the new plan is not confirmed, however, the Debtors may be forced to liquidate their assets.

**(c) Parties in Interest May Object to the Plan's Classification of Claims and Interests**.

Section 1122 of the Bankruptcy Code provides that a plan may place a Claim or an Interest in a particular Class only if such Claim or Interest is substantially similar to the other Claims or Interests in such Class. The Debtors believe that the classification of Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because the Debtors created Classes of Claims and Interests, each encompassing Claims or Interests, as applicable, that are substantially similar to the other Claims or Interests, as applicable, in each such Class. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

**(d) The Debtors May Not Be Able to Satisfy Vote Requirements**.

Pursuant to section 1126(c) of the Bankruptcy Code, section 1129(a)(7)(A)(i) of the Bankruptcy Code will be satisfied with respect to Class 3 if Holders of at least two-thirds in amount and more than one-half in number of the Allowed Claims in Class 3 that vote on the Plan cast votes to accept the Plan. There is no guarantee that the Debtors will receive the necessary acceptances from Holders of Claims in the Voting Class. If the Voting Class votes to reject the Plan, the Debtors may elect to amend the Plan, commence chapter 11 cases notwithstanding rejection of the Plan in accordance with the RSA, or continue operating under the current *status quo* outside of chapter 11.

**(e) The Debtors May Not Be Able to Secure Confirmation**.

Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a chapter 11 plan, and requires, among other things, a finding by the bankruptcy court that: (i) the plan "does not unfairly discriminate" and is "fair and equitable" with respect to any non-accepting Classes; (ii) the plan is not likely to be followed by a liquidation or a need for further financial reorganization unless liquidation or reorganization is contemplated by the plan; and (iii) the value of distributions to non-accepting Holders of Claims and Interests within a particular Class under the plan will not be less than the value of distributions such Holders would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code.

There can be no assurance that the requisite acceptances to confirm the Plan will be received. Even if the requisite acceptances are received, there can be no assurance that the Bankruptcy Court will confirm the Plan. A dissenting Holder of an Allowed Claim might challenge either the adequacy of this Disclosure Statement or whether the voting results satisfy the requirements of the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court determines that this Disclosure Statement and the voting results are appropriate, the Bankruptcy Court can decline to confirm the Plan if it finds that any of the statutory requirements for Confirmation have not been met, including the requirement that the terms of the Plan do not "unfairly discriminate" and are "fair and equitable" to non-accepting Classes.

If the Plan is not Confirmed, it is unclear what distributions, if any, Holders of Allowed Claims and Interests will receive with respect to their Allowed Claims and Interests, as applicable.

Subject to the limitations contained in the Plan, the Debtors reserve the right to modify the Plan and seek Confirmation consistent with the Bankruptcy Code and, as appropriate, not resolicit votes on such modified Plan. Any modifications could result in a less favorable treatment of any Class than the treatment currently provided in the Plan, such as a distribution of property to the Class affected by the modification of a lesser value than currently provided in the Plan.

**(f) Parties in Interest May Object to the Releases Contained in the Plan**.

Confirmation is also subject to the Bankruptcy Court's approval of the settlement, release, injunction, and related provisions described in Article VIII of the Plan. Certain parties in interest may assert that the Debtors cannot demonstrate that they meet the standards for approval of releases, exculpations, and injunctions established by the United States Court of Appeals for the Third Circuit.

**(g) The Debtors May Not Be Able to Pursue Nonconsensual Confirmation Over Certain Impaired Non-Accepting Classes**.

Generally, a bankruptcy court may confirm a plan under the Bankruptcy Code's "cramdown" provisions over the objection of an impaired non-accepting class of claims or interests if at least one impaired class of claims has accepted the plan (with acceptance being determined without including the vote of any "insider" in that accepting class), and, as to each impaired class that has not accepted the plan, the bankruptcy court determines that the plan "does not discriminate unfairly" and is "fair and equitable" with respect to the rejecting impaired classes.

As to Class 3 (Prepetition Credit Agreement Claims), while the Debtors believe they have secured Plan support from the Holders of Claims well in excess of the requisite two-thirds in amount and more than one-half in number of the Allowed Class 3 Prepetition Credit Agreement Claims pursuant to the RSA, the amount required for an accepting Class of Claims pursuant to section 1126(c) of the Bankruptcy Code, there is no guarantee that those Holders will vote in those Claims favor of the Plan. If Class 3 does not vote to accept the Plan, the Debtors would be required to seek to enforce the RSA against any breaching Consenting Lenders, as well as other relief, which could include an alternative chapter 11 plan of reorganization or a process through which to liquidate their assets. There can be no assurances that the Debtors will confirm a chapter 11 plan and emerge as a reorganized company in that event, and it is unclear what distributions, if any, Holders of Allowed Claims and Interests will receive with respect to their Allowed Claims and Interests in that instance. In addition, the pursuit of an alternative restructuring proposal may result in, among other things, increased expenses relating to Professional Fee Claims.

Finally, to the extent that a Voting Class votes to reject the Plan, the Debtors may not be able to seek to "cramdown" such Voting Class under section 1129(b) of the Bankruptcy Code because there is no other impaired Class of Claims entitled to vote under the Plan.

**(h) The Debtors May Object to the Amount or Classification of a Claim or Interest**.

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

**(i) The Debtors' Historical Financial Information May Not Be Comparable to the Financial Information of the Reorganized Debtors**.

As a result of Consummation and the transactions contemplated thereby, the financial condition and results of operations of the Reorganized Debtors from and after the Effective Date may not be comparable to the financial condition or results of operations reflected in the Debtors' historical financial statements.

**(j) The Effective Date May Not Occur**.

Although the Debtors believe that the Effective Date may occur quickly after the Confirmation Date, there can be no assurance as to such timing or as to whether the Effective Date will, in fact, occur.

**9. Operating in Bankruptcy for a Long Period of Time May Harm the Debtor's Business.**

The Debtors' future results will be dependent upon the successful confirmation and implementation of a plan of reorganization. A long period of operations under Bankruptcy Court protection could have a material adverse effect on the Debtors' business, financial condition, results of operations, and liquidity. So long as the proceedings related to the Chapter 11 Cases continue, senior management will be required to spend a significant amount of time and effort dealing with the reorganization instead of focusing exclusively on business operations. A prolonged period of operating under Bankruptcy Court protection also may make it more difficult to retain management and other key personnel necessary to the success and growth of the Debtors' business. Further, so long as the proceedings related to the Chapter 11 Cases continue, the Debtors will be required to incur substantial costs for professional fees and other expenses associated with the administration of the Chapter 11 Cases. Furthermore, the Debtors cannot predict the ultimate amount of all settlement terms for the liabilities that will be subject to a plan of reorganization. Even after a plan of reorganization is approved and implemented, the Reorganized Debtors' operating results may be adversely affected by the possible reluctance of prospective lenders and other counterparties to do business with a company that recently emerged from bankruptcy protection.

**B. Risks Related to Recoveries Under the Plan.**

**1. The Debtors May Not Be Able to Achieve Their Projected Financial Results or Meet Their Post-Restructuring Debt Obligations.**

The Financial Projections represent management's best estimate of the future financial performance of the Debtors or the Reorganized Debtors, as applicable, based on currently known facts and assumptions about future operations of the Debtors or the Reorganized Debtors, as applicable, as well as the U.S. and world economy in general and the relevant industries in which the Debtors operate. There is no guarantee that the Financial Projections will be realized, and actual financial results may differ significantly from the Financial Projections. To the extent the Reorganized Debtors do not meet their projected financial results or achieve projected revenues and cash flows, the Reorganized Debtors may lack sufficient liquidity to continue operating as planned after the Effective Date, may be unable to service their debt obligations as they come due, or may not be able to meet their operational needs, all of which may negatively affect the value of the Exit Facility and the New Common Equity. Further, a failure of the Reorganized Debtors to meet their projected financial results could lead to cash flow and working capital constraints, which may require the Debtors to seek additional working capital. The Reorganized Debtors may be unable to obtain such working capital when required, or may only be able to obtain such capital on unreasonable or cost prohibitive terms. For example, the Reorganized Debtors may be required to take on additional debt, the interest costs of which could adversely affect the results of the operations and financial condition of the Reorganized Debtors, and also have a negative effect on the value of the Exit Facility and the New Common Equity. In addition, if any such required capital is obtained in the form of equity, the New Common Equity to be issued to Holders of Allowed Class 3 Prepetition Credit Agreement Claims under the Plan could be diluted.

**2. Estimated Valuations of the Debtors, the Exit Facility, and the New Common Equity, and Estimated Recoveries to Holders of Allowed Claims and Interests Are Not Intended to Represent Potential Market Values.**

The Debtors' estimated recoveries to Holders of Allowed Claims and Allowed Interests are not intended to represent the market value of the Debtors' Securities. The estimated recoveries are based on numerous assumptions (the realization of many of which will be beyond the control of the Debtors), including: (a) the successful reorganization of the Debtors; (b) an assumed date for the occurrence of the Effective Date; (c) the Debtors' ability to achieve the operating and financial results included in the Financial Projections; (d) the Debtors' ability to maintain adequate liquidity to fund operations; (e) the assumption that capital and equity markets remain consistent with current conditions; and (f) the Debtors' ability to maintain critical existing customer relationships, including customer relationships with key customers.

**3. Holders of Claims That Acquire the New Common Equity Will Assert Significant Control Over the Reorganized Debtors.**

Upon Consummation of the Plan, Holders of Allowed Class 3 Prepetition Credit Agreement Claims will become Holders of 10% of the New Common Equity in Reorganized Longview pursuant to the Plan. Additionally, each Holder of an Allowed Prepetition Credit Agreement Claim that participates in the Exit Facility shall receive its share of 90% of the New Common Equity. As a result, following Consummation, the Holders of Allowed Class 3 Prepetition Credit Agreement Claims that participate in the Exit Facility may exercise substantial influence over the Reorganized Debtors and their affairs.

**4. Certain Tax Implications of the Debtors' Bankruptcy and Reorganization May Increase the Tax Liability of the Reorganized Debtors.**

Holders of Allowed Claims should carefully review Section X of this Disclosure Statement, entitled "Certain U.S. Federal Tax Consequences of the Plan," to determine how the tax implications of the Plan and the Chapter 11 Cases may adversely affect the Debtors.

**C. Risks Related to the Offer and Issuance of Securities Under the Plan.**

**1. The Debtors Do Not Intend to Offer to Register or to Exchange the New Common Equity or New Warrants in a Registered Exchange Offer.**

The New Common Equity and New Warrants have not been registered under the Securities Act or any state securities laws and, subject to the discussion of section 1145 of the Bankruptcy Code and section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder below and as summarized in Section IX of this Disclosure Statement, entitled "Important Securities Laws Disclosures," unless so registered, the New Common Equity and New Warrants may not be re-offered or re-sold except pursuant to an exemption from the registration requirements of the Securities Act and applicable state securities laws. The Debtors do not intend to register the New Common Equity or New Warrants under the Securities Act or to offer to exchange the New Common Equity and New Warrants in an exchange offer registered under the Securities Act. As a result, the New Common Equity and New Warrants may be transferred or re-sold only in transactions exempt from the securities registration requirements of federal and applicable state laws. In addition, the Debtors are not subject to the reporting requirements of the Securities Act, and Holders of the New Common Equity and New Warrants will not be entitled to any information except as expressly required by the New Organizational Documents.

The Debtors believe that the issuance of the New Common Equity and New Warrants issued to Holders of Prepetition Credit Agreement Claims and the Exit Facility Subscription Parties with respect to Allowed Claims is covered by section 1145 of the Bankruptcy Code. Accordingly, the Debtors believe that the New Common Equity to be issued to Holders of Allowed Class 3 Prepetition Credit Agreement Claims on account of such Claims may be resold without registration under the Securities Act or other federal securities laws, unless the Holder is (a) an "underwriter" (as discussed in Section IX.B.2 below) with respect to such Securities, as that term is defined in section 2(a)(11) of the Securities Act and in section 1145(b) of the Bankruptcy Code; or (b) an affiliate of the Reorganized Debtors (or has been such an "affiliate" within 90 days of such transfer).

The Debtors believe that the New Warrants issued to Exit Facility Commitment Parties will be issued pursuant to section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder. The New Warrants, and the shares of New Common Equity underlying the New Warrants, issued to the Exit Facility Commitment Parties will be "restricted securities." Restricted securities may not be transferred except pursuant to an effective registration statement under the Securities Act or an available exemption therefrom. Rule 144 provides an exemption for the public resale of "restricted securities" if certain conditions are met (as discussed in Section IX.B.3 below).

The information which the Debtors are required to provide in order to issue the New Common Equity and New Warrants may be less than the Debtors would be required to provide if the New Common Equity and New Warrants were registered. Among other things, the Debtors may not be required to provide: (a) separate financial information for any subsidiary; (b) selected historical consolidated financial data of Longview; (c) selected quarterly financial data of Longview; (d) certain information about the Debtors' disclosure controls and procedures and their internal controls over financial reporting; and (e) certain information regarding the Debtors' executive compensation

policies and practices and historical compensation information for their executive officers. This lack of information could impair your ability to evaluate your ownership and the marketability of the New Common Equity and New Warrants.

**2. There is No Established Market for the New Common Equity and New Warrants.**

The New Common Equity and New Warrants will be new issuances of Securities and there is no established trading market for those Securities. The Debtors do not intend to apply for the New Common Equity or New Warrants to be listed on any securities exchange or to arrange for quotation on any automated dealer quotation system. You may not be able to sell your New Common Equity or New Warrants at a particular time or at favorable prices. As a result, the Debtors cannot assure you as to the liquidity of any trading market for the New Common Equity and New Warrants. Accordingly, you may be required to bear the financial risk of your ownership of the New Common Equity and New Warrants indefinitely. If a trading market were to develop, future trading prices of the New Common Equity and New Warrants may be volatile and will depend on many factors, including: (a) the Debtors' operating performance and financial condition; (b) the interest of securities dealers in making a market for them; and (c) the market for similar Securities.

**D. Risk Factors Related to the Business Operations of the Debtors and Reorganized Debtors.**

**1. The Debtors Will File Voluntary Petitions for Relief Under Chapter 11 of the Bankruptcy Code and Will Be Subject to the Risks and Uncertainties Associated with Any Chapter 11 Restructuring.**

For the duration of the Chapter 11 Cases, the Debtors' operations and the Debtors' ability to execute their business strategy will be subject to the risks and uncertainties associated with bankruptcy. These risks include, among other things:

- the Debtors' ability to obtain approval of the Bankruptcy Court with respect to pleadings and motion papers filed in the Chapter 11 Cases from time to time;
- the Debtors' ability to obtain creditor and Bankruptcy Court approval for, and then to Consummate, the Plan to emerge from bankruptcy;
- the occurrence of any event, change, or other circumstance that could give rise to the termination of the RSA;
- the Debtors' ability to obtain and maintain normal trade terms with service providers and maintain contracts that are critical to their operations;
- the Debtors' ability to attract, motivate, and retain key employees;
- the Debtors' ability to attract and retain customers; and
- the Debtors' ability to fund and execute their business plan.

The Debtors will also be subject to risks and uncertainties with respect to the actions and decisions of creditors and other third parties who have interests in the Chapter 11 Cases that may be inconsistent with the Plan.

These risks and uncertainties could affect the Debtors' businesses and operations in various ways. For example, negative events or publicity associated with the Chapter 11 Cases could adversely affect the Debtors' relationships with their customers, as well as their suppliers and employees, which, in turn, could adversely affect the Debtors' operations and financial condition. Also, pursuant to the Bankruptcy Code, the Debtors need Bankruptcy Court approval for transactions outside the ordinary course of business, which may limit their ability to respond timely to certain events or take advantage of certain opportunities. Because of the risks and uncertainties associated with the Chapter 11 Cases, the Debtors cannot predict or quantify the ultimate effect that events occurring during the Chapter 11 Cases will have on their businesses, financial condition, and results of operations.

As a result of the Chapter 11 Cases, the realization of assets and the satisfaction of liabilities are subject to uncertainty. While operating as debtors in possession, and subject to approval of the Bankruptcy Court, or otherwise as permitted in the normal course of business or Bankruptcy Court order, the Debtors may sell or otherwise dispose of assets and liquidate or settle liabilities. Further, the Plan could materially change the amounts and classifications of assets and liabilities reported in the historical consolidated financial statements. The historical consolidated financial statements do not include any adjustments to the reported amounts of assets or liabilities that might be necessary as a result of Confirmation.

**2. Potential for the Loss of Key Members of the Executive Management Team.**

If the Debtors were to lose key members of their senior management team on account of the Chapter 11 Cases or otherwise, the Debtors' business, financial condition, liquidity, and results of operations could be adversely affected.

**3. The Debtors May Not Be Able to Achieve Their Projected Financial Results.**

Because the Debtors largely only sell power to PJM, it is not guaranteed any rate of return on its capital investments. Rather, its financial condition, results of operations and cash flows will depend, in large part, upon prevailing market prices for power and the fuel to generate such power. Wholesale power markets are subject to significant price fluctuations over relatively short periods of time and can be unpredictable. Such factors that may materially impact the power markets and the Company's financial results include:

(a) economic conditions;

(b) the existence and effectiveness of demand-side management;

(c) conservation efforts and the extent to which they impact electricity demand;

(d) regulatory constraints on pricing (current or future) or the functioning of the energy trading markets and energy trading generally;

(e) the proliferation of advanced shale gas drilling increasing domestic natural gas supplies;

(f) fuel price volatility; and

(g) increased competition or price pressure driven by generation from renewable sources.

Given the volatility of commodity power prices, to the extent the Reorganized Debtors do not secure long-term power sales agreements for the output of the Longview Plant, revenues and profitability will be subject to increased volatility, and the Reorganized Debtors' financial condition, results of operations and cash flows could be materially adversely affected. Further, declines in the market prices of natural gas and wholesale electricity have reduced the outlook for cash flow that can be expected to be generated by the Reorganized Debtor in the next several years.

**4. If the Debtors Do Not Obtain Additional Capital to Fund Their Operations and Obligations, the Debtors' Growth May Be Limited.**

The Debtors may require additional capital to fund their operations and obligations, which will depend on several factors, including:

- the Debtors' ability to enter into new customer agreements and to extend the duration of existing agreements;
- the success rate of the Debtors' sales efforts;
- costs of recruiting and retaining qualified personnel;

- expenditures and investments to implement the Debtors' business strategy; and
- the identification and successful completion of acquisitions.

If the Debtors cannot raise additional capital, the Debtors may be required to curtail internal growth initiatives and/or forgo the pursuit of acquisitions. The Debtors do not know whether additional financing will be available on commercially acceptable terms, if at all, when needed. If sufficient funding is not available or is not available on commercially acceptable terms, the Debtors' ability to fund their operations, support the growth of their business, or otherwise respond to competitive pressures could be significantly delayed or limited, which could materially adversely affect the Debtors' business, financial condition, or results of operations.

**5. Employee and Labor Risks.**

Given the nature of the specialized work the Debtors perform, many of the Debtors' employees are trained in and possess specialized technical skills. When unemployment rates for such skilled laborers are low, it can be difficult for the Debtors to find qualified and affordable personnel. The Debtors may be unable to hire and retain a sufficient skilled labor force necessary to support the Debtors' operating requirements and growth strategy. The Debtors' labor expenses may increase as a result of a shortage in the supply of skilled personnel. Additionally, the Debtors may also be forced to incur significant training expenses if they are unable to hire employees with the requisite skills. Accordingly, labor shortages or increased labor or training costs could materially adversely affect the Debtors' business, financial condition, or results of operations.

The Debtors' energy operations can place the Debtors' employees and others in difficult or dangerous environments. If the Debtors fail to implement appropriate safety procedures or if the Debtors' procedures fail, the Debtors' employees, subcontractors and others may suffer injuries. The failure to comply with such procedures or applicable regulations, including those established by the Occupational Safety and Health Administration, could subject the Debtors to losses and liability and adversely impact the Debtors' ability to hire employees or subcontractors or obtain projects in the future.

**6. Seasonality.**

The Debtors' principal sources of revenue is power generation. The Debtors' experience seasonal revenue patterns similar to those of other companies in the power generation industry. This seasonality can be expected to also cause fluctuations in the Reorganized Debtors' revenues, cash flows, profit margins, and net income.

**7. The Debtors' Operations or Ability to Emerge May be Impacted By the Continuing COVID-19 Pandemic.**

The continued spread of COVID-19 could have a significant impact on the Debtors' business, both in the context of consumer demand and production capacity. On a macro level, this pandemic could dampen global growth and ultimately lead to an economic recession. If this occurs, demand for power would likely decline. Such a scenario would negatively impact the Debtors' financial performance. In addition, government lockdowns and employee infections could both inhibit the Debtors' ability to generate power. This diminished production capacity would negatively affect the Debtors' financial performance.

**8. Cyber-Attack Risks.**

As power generators, the Debtors face heightened risk of terrorism, including cyber terrorism, either by a direct act against the Longview Plant or an act against the transmission and distribution infrastructure that is used to transport power. Although the entire industry is exposed to these risks, our generating facilities and the transmission and distribution infrastructure located in the PJM Region are particularly at risk because of the proximity to major population centers, including governmental and commerce centers.

The Debtors rely on information technology networks and systems to operate Longview Plant, engage in asset management activities, and process, transmit, and score electronic information. Security breaches of this information technology infrastructure, particularly through cyber-attacks and cyber terrorism, including by computer hackers, foreign governments, and cyber terrorists, could lead to system disruptions, generating facility shutdowns or

unauthorized disclosure of confidential information related to the Debtors' employees, vendors, and counterparties. Confidential information includes banking, vendor, counterparty, and personal identity information.

Systematic damage to one or more of the Debtors' Longview Plant and/or to transmission and distribution infrastructure could result in the inability to operate in one or all of the markets the Debtors serve for an extended period of time. If the Debtors' generating facilities are shut down, the Debtors would be unable to fulfill obligations under various energy and/or capacity arrangements, resulting in lost revenues and potential fines, penalties, and other liabilities. The cost to restore the Debtors' Longview Plant after such an occurrence could be material.

**9. Power Generating Industry Hazards Risks.**

The Debtors' power generation operations involve hazardous activities, including acquiring, transporting, and unloading fuel, operating large pieces of high-speed rotating equipment and delivering electricity to transmission and distribution systems. In addition, natural disasters such as earthquake, flood, storm surge, lightning, hurricane, tornado, and wind pose a risk to Debtors' infrastructure and operations, and the risk of natural disasters is generally expected to increase as a consequence of global climate change. Further, hazards such as fire, explosion, collapse, and machinery failure are inherent risks in the Debtors' operations. These hazards can cause significant injury to personnel or loss of life, severe damage to and destruction of property, plant and equipment, contamination of, or damage to, the environment and suspension of operations. The occurrence of any one of these events may result in one or more of the Debtors being named as a defendant in lawsuits asserting claims for substantial damages, environmental cleanup costs, personal injury, and fines and/or penalties.

**10. Competitive Technology Risks.**

The Debtors generate electricity using fossil fuels at the Maidsville Plant. This method results in economies of scale and lower costs than newer technologies such as fuel cells, battery storage, micro turbines, windmills, and photovoltaic solar cells. It is possible that advances in such competitive technologies, or governmental incentives for renewable energies, will reduce their costs to levels that are equal to or below that of most central station electricity production, and could make the Debtors less competitive in the energy market.

**11. Regulatory Risks.**

The Reorganized Debtors' business is subject to extensive energy and environmental regulation, with respect to, among other things, air quality, water quality, and waste disposal, by federal, state and local authorities. The Reorganized Debtors will be required to comply with numerous laws and regulations and to obtain numerous governmental permits for the operation or ownership of its facilities, as the case may be. Typically, environmental laws require a lengthy and complex process for obtaining licenses, permits and approvals prior to construction, operation or modification of a project or generating facility. The Reorganized Debtors cannot provide assurance that they will be able to obtain and comply with all necessary licenses, permits and approvals for its facilities. If there is a delay in obtaining required approvals or permits, or if the Reorganized Debtors fails to obtain and comply with such permits, the operation of its facilities may be interrupted or subject the Reorganized Debtors to civil or criminal liability, the imposition of liens or fines, or actions by regulatory agencies seeking to curtail the Reorganized Debtors' operations. The Reorganized Debtors will also be subject to certain environmental laws and regulations relating to the management and remediation of releases of hazardous materials, and the Reorganized Debtors may be exposed to liability risks arising from past, current or future contamination at their facilities. Additionally, the Reorganized Debtors cannot assure that existing regulations will not be revised or reinterpreted, that new laws and regulations will not be adopted or become applicable to them or their facilities, or that future changes in laws and regulations will not have a material effect on their business.

Federal laws and regulations govern, among other things, transactions by and with wholesale sellers and purchasers of power, including utility companies, the development and construction of generation facilities, the ownership and operation of generation facilities, and access to transmission. Generation facilities are also subject to federal, state and local laws and regulations that govern, among other things, the geographical location, zoning, land use, and operation of a project. The Reorganized Debtors believe that they will have obtained all material energy-related federal, state and local permits and approvals currently required to operate their facilities. Although not currently required, additional regulatory approvals may, however, be required in the future due to a change in laws and regulations, a change in the Reorganized Debtors' customers or for other reasons. FERC may impose various

forms of market mitigation measures, including price caps and operating restrictions, where it determines that potential market power may exist and mitigation is required. FERC also may impose penalties, costs, fines and/or refund obligations arising from past, current or future FERC jurisdictional activities and sales.

Regional transmission organizations and independent system operators may impose bidding and scheduling rules, both to curb the potential exercise of market power and to facilitate market functions. Such actions may materially affect the Reorganized Debtor's results of operations. The facilities are also subject to mandatory reliability standards promulgated by the North American Electric Reliability Corporation, compliance with which can increase the facilities' operating costs or capital expenditures. This extensive governmental regulation creates significant risks and uncertainties for the Reorganized Debtors' business. Additionally, the Reorganized Debtors cannot assure that they will be able to obtain all required regulatory approvals that it does not yet have or that it may require in the future, or that it will be able to obtain any necessary modifications to existing regulatory approvals or maintain all required regulatory approvals. I f there is a delay in obtaining any required regulatory approvals or if the Reorganized Debtors fail to obtain and comply with any required regulatory approvals, the operation of their facilities or the sale of electricity to third parties could be prevented or subject to additional costs.

The Reorganized Debtors are required to comply with numerous statutes, regulations and ordinances relating to the safety and health of employees and the public, which are constantly changing. The Reorganized Debtors may incur significant additional costs to comply with new requirements. If the Reorganized Debtors fail to comply with existing or new requirements, they could be subject to civil or criminal liability and the imposition of liens or penalties. The Reorganized Debtors cannot assure that they will, at all times, be in compliance with all applicable health and safety laws and regulations or that steps to bring their facilities into compliance would not materially and adversely affect its ability to service debt obligations on the Exit Facility.

The operation of any coal-fired power generation facility represents a degree of danger for its employees and the general public, should they come in contact with power lines or electrical equipment. Injuries caused by such contact can subject the Reorganized Debtors to liability that, despite the existence of insurance coverage, can be significant. Such liabilities could be significant but are very difficult to predict. The range of possible liabilities includes amounts that could adversely affect the Reorganized Debtors' liquidity and results of operations.

The Reorganized Debtors will need to devote significant resources to environmental monitoring, emissions control equipment, emission allowances, and other measures to comply with environmental regulatory requirements, which may become more stringent over time. The adoption of additional policies, laws and regulations regarding CO2 (carbon dioxide) emissions, as well as actions by private actors seeking to reduce greenhouse gas emissions, could adversely affect coal-fired power plants. Other environmental laws, particularly with respect to air pollution, disposal of ash, water withdrawal, wastewater discharge and cooling water systems, are also generally becoming more stringent. The impact of these and other future policies, laws, and regulations is not currently known and could require the Reorganized Debtors to retire or suspend operations at their facilities, or restrict or modify the operations of their facilities, and their business, results of operations and financial condition could be adversely affected.

**12. Customer Concentration at the Longview Plant May Expose the Debtors to Significant Financial or Performance Risks.**

The Debtors may rely on a single customer or a few customers to purchase all or a significant portion of the Longview Plant's output, in some cases under long-term agreements that account for a substantial percentage of the Debtors' anticipated revenue. The Debtors may not be able to enter into replacement agreements on terms as favorable as its existing agreements, or at all. If the Debtors were unable to enter into replacement agreements, the Debtors would sell the Longview Plant's power at market prices.

**E. Miscellaneous Risk Factors and Disclaimers.**

**1. The Financial Information Is Based on the Debtors' Books and Records and, Unless Otherwise Stated, No Audit Was Performed.**

In preparing this Disclosure Statement, the Debtors relied on financial data derived from their books and records that was available at the time of such preparation. Although the Debtors have used their reasonable business judgment to assure the accuracy of the financial information provided in this Disclosure Statement, and while the

Debtors believe that such financial information fairly reflects their financial condition, the Debtors are unable to warrant or represent that the financial information contained in this Disclosure Statement (or any information in any of the exhibits to the Disclosure Statement) is without inaccuracies.

**2. No Legal or Tax Advice Is Provided By This Disclosure Statement.**

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

**3. No Admissions Made.**

The information and statements contained in this Disclosure Statement will neither (a) constitute an admission of any fact or liability by any Entity (including the Debtors) nor (b) be deemed evidence of the tax or other legal effects of the Plan on the Debtors, the Reorganized Debtors, Holders of Allowed Claims or Interests, or any other parties in interest.

**4. Failure to Identify Litigation Claims or Projected Objections.**

No reliance should be placed on the fact that a particular litigation claim or projected objection to a particular Claim is, or is not, identified in this Disclosure Statement. The Debtors may seek to investigate, file, and prosecute Claims and may object to Claims after Confirmation and Consummation of the Plan, irrespective of whether this Disclosure Statement identifies such Claims or objections to Claims.

**5. Information Was Provided by the Debtors and Was Relied Upon by the Debtors' Advisors.**

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

**6. No Representations Outside This Disclosure Statement Are Authorized.**

No representations concerning or relating to the Debtors, the Chapter 11 Cases, or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. Any representations or inducements made to secure voting Holders' acceptance or rejection of the Plan that are other than as contained in, or included with, this Disclosure Statement, should not be relied upon by voting Holders in arriving at their decision. Voting Holders should promptly report unauthorized representations or inducements to counsel to the Debtors and the Office of the United States Trustee for the District of Delaware.

**7. No Duty to Update.**

The statements contained in this Disclosure Statement are made by the Debtors as of the date hereof, unless otherwise specified herein, and the delivery of this Disclosure Statement after that date does not imply that there has been no change in the information set forth herein since that date. The Debtors have no duty to update this Disclosure Statement unless otherwise ordered to do so by the Bankruptcy Court.

## IX. Important Securities Laws Disclosures

### A. Plan Consideration.

The Plan provides for the Reorganized Debtors to distribute (1) 10% of the New Common Equity in Reorganized Longview to Holders of Allowed Class 3 Prepetition Credit Agreement Claims. The Debtors believe that shares of New Common Equity may constitute "securities," as defined in section 2(a)(1) of the Securities Act, section 101 of the Bankruptcy Code, and all applicable state Blue Sky Laws.

**B. Exemption from Registration Requirements; Issuance and Resale of New Common Equity and New Warrants Issued to Holders of Prepetition Credit Agreement Claims and the Exit Facility Subscription Parties; Definition of "Underwriter" Under Section 2(a)(11) of the Securities Act and in Section 1145(b) of the Bankruptcy Code.**

**1. Exemption from Registration Requirements; Issuance and Resale of New Common Equity and New Warrants Issued to Holders of Prepetition Credit Agreement Claims and the Exit Facility Subscription Parties.**

Section 1145 of the Bankruptcy Code provides that the registration requirements of section 5 of the Securities Act (and any applicable state Blue Sky Laws) shall not apply to the offer or sale of stock, options, warrants, or other securities by a debtor if: (a) the offer or sale occurs under a plan of reorganization; (b) the recipients of the securities hold a claim against, an interest in, or claim for administrative expense against, the debtor; and (c) the securities are issued in exchange for a claim against or interest in a debtor or are issued principally in such exchange and partly for cash and property. In reliance upon these exemptions, the offer, issuance and distribution of the New Common Equity in respect of Claims as contemplated by the Plan will not be registered under the Securities Act or any applicable state Blue Sky Laws.

The Debtors believe that the issuance of the New Common Equity and New Warrants issued to holders of Prepetition Credit Agreement Claims and the Exit Facility Subscription Parties in respect of Claims as contemplated by the Plan is covered by section 1145 of the Bankruptcy Code. Accordingly, in respect of Claims as contemplated by the Plan is covered by section 1145 of the Bankruptcy Code. Accordingly, the Debtors believe that such New Common Equity and New Warrants issued to holders of Prepetition Credit Agreement Claims and the Exit Facility Subscription Parties may be resold without registration under the Securities Act or other federal securities laws, unless the Holder is an "underwriter" (as discussed in Section IX.B.2 below) with respect to such securities, as that term is defined in section 2(a)(11) of the Securities Act and in section 1145(b) of the Bankruptcy Code, or an affiliate of the Reorganized Debtors (or has been such an "affiliate" within 90 days of such transfer). The Debtors will seek to obtain, as part of the Confirmation Order, a provision confirming such exemption. In addition, the New Common Equity and New Warrants issued to holders of Prepetition Credit Agreement Claims and the Exit Facility Subscription Parties to be issued in respect of Claims as contemplated by the Plan generally may be able to be resold without registration under applicable state Blue Sky Laws by a Holder that is not an underwriter or an affiliate of the Reorganized Debtors pursuant to various exemptions provided by the respective Blue Sky Laws of those states. The availability of such exemptions cannot be known, however, unless individual state Blue Sky Laws are examined.

Recipients of the New Common Equity and New Warrants issued to holders of Prepetition Credit Agreement Claims and the Exit Facility Subscription Parties to be issued in respect of Claims as contemplated by the Plan are advised to consult with their own legal advisors as to the availability and applicability of section 1145 of the Bankruptcy Code to such New Common Equity and New Warrants issued to holders of Prepetition Credit Agreement Claims and the Exit Facility Subscription Parties and any other potential exemption from registration under the Securities Act or applicable state Blue Sky Laws in any given instance and as to any applicable requirements or conditions to such availability.

The Debtors do not have any contract, arrangement, or understanding relating to, and will not, directly or indirectly, pay any commission or other remuneration to any broker, dealer, salesperson, agent, or any other person for soliciting votes to accept or reject the Plan. The Debtors have received assurances that no person will provide any information to Holders of Prepetition Credit Agreement Claims relating to the solicitation of votes on the Plan other than to refer such Holders to the information contained in this Disclosure Statement. In addition, no broker, dealer, salesperson, agent, or any other person, is engaged or authorized to express any statement, opinion, recommendation, or judgment with respect to the relative merits and risks of the Plan. Thus, no person will receive any commission or other remuneration, directly or indirectly, for soliciting votes to accept or reject the Plan or in connection with the offer of any Securities that may be the deemed to occur in connection with voting on the Plan.

**2. Definition of "Underwriter" Under Section 1145(b) of the Bankruptcy Code; Implications for Resale of New Common Equity and New Warrants Issued to Holders of Prepetition Credit Agreement Claims and the Exit Facility Subscription Parties.**

The New Common Equity and New Warrants issued to holders of Prepetition Credit Agreement Claims and the Exit Facility Subscription Parties may be freely transferred by most recipients following the initial issuance under the Plan, subject to any restrictions in the New Organizational Documents, and all resales and subsequent transfers of the New Common Equity and New Warrants issued to holders of Prepetition Credit Agreement Claims and the Exit Facility Subscription Parties are exempt from registration under the Securities Act and state securities laws, unless the holder is an "underwriter" with respect to such securities. section 1145(b)(1) of the Bankruptcy Code defines an "underwriter" as one who, except with respect to "ordinary trading transactions of an entity that is not an issuer": (a) purchases a claim against, interest in, or claim for an administrative expense in the case concerning, the debtor, if such purchase is with a view to distribution of any security received or to be received in exchange for such claim or interest; (b) offers to sell securities offered or sold under a plan for the holders of such securities; (c) offers to buy securities offered or sold under a plan from the holders of such securities, if such offer to buy is (i) with a view to distribution of such securities and (ii) under an agreement made in connection with the plan, with the consummation of the plan, or with the offer or sale of securities under the plan; or (d) is an issuer of the securities within the meaning of section 2(a)(11) of the Securities Act. In addition, a Person who receives a fee in exchange for purchasing an issuer's securities could also be considered an underwriter within the meaning of section 2(a)(11) of the Securities Act.

The definition of an "issuer," for purposes of whether a Person is an underwriter under section 1145(b)(1)(D) of the Bankruptcy Code, by reference to section 2(a)(11) of the Securities Act, includes as "statutory underwriters" all persons who, directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with, an issuer of securities. The reference to "issuer," as used in the definition of "underwriter" contained in section 2(a)(11) of the Securities Act, is intended to cover "controlling persons" of the issuer of the securities. "Control," as defined in Rule 405 of the Securities Act, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise. Accordingly, an officer or director of a reorganized debtor or its successor under a plan of reorganization may be deemed to be a "controlling Person" of such debtor or successor, particularly if the management position or directorship is coupled with ownership of a significant percentage of the reorganized debtor's or its successor's voting securities. In addition, the legislative history of section 1145 of the Bankruptcy Code may suggest that a creditor who owns 10% or more of a class of voting securities of a reorganized debtor may be presumed to be a "controlling Person" and, therefore, an underwriter.

Resales of the New Common Equity and New Warrants issued to holders of Prepetition Credit Agreement Claims and the Exit Facility Subscription Parties by entities deemed to be "underwriters" (which definition includes "controlling Persons") are not exempted by section 1145 of the Bankruptcy Code from registration under the Securities Act or other applicable law. Under certain circumstances, holders of New Common Equity and New Warrants issued to holders of Prepetition Credit Agreement Claims and the Exit Facility Subscription Parties who are deemed to be "underwriters" may be entitled to resell their New Common Equity pursuant to the limited safe harbor resale provisions of Rule 144 of the Securities Act. Generally, Rule 144 of the Securities Act would permit the public sale of securities received by such Person if the required holding period has been met and, under certain circumstances, current information regarding the issuer is publicly available and volume limitations, manner of sale requirements and certain other conditions are met. Whether any particular Person would be deemed to be an "underwriter" (including whether the Person is a "controlling Person") with respect to the New Common Equity would depend on various facts and circumstances applicable to that Person. Accordingly, the Debtors express no view as to whether any Person would be deemed an "underwriter" with respect to the New Common Equity and, in turn, whether any Person may freely resell the New Common Equity and New Warrants issued to holders of Prepetition Credit Agreement Claims and the Exit Facility Subscription Parties.

The foregoing summary discussion is general in nature and has been included in this Disclosure Statement solely for informational purposes. We make no representations concerning, and do not provide, any opinions or advice with respect to the New Common Equity and New Warrants issued to holders of Prepetition Credit Agreement Claims and the Exit Facility Subscription Parties or the bankruptcy matters described in the Disclosure Statement.

**3. Exemption from Registration Requirements; Issuance and Resale of New Warrants Issued to Exit Facility Commitment Parties.**

The New Warrants issued to Exit Facility Commitment Parties will be issued pursuant to section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder.¶

The New Warrants, and the shares of New Common Equity underlying the New Warrants, issued to the Exit Facility Commitment Parties will be "restricted securities." The Exit Facility Commitment Parties that hold the New Warrants may be entitled to resell their New Warrants pursuant to the limited safe harbor resale provisions of Rule 144 of the Securities Act. Generally, Rule 144 of the Securities Act would permit the public sale of securities received by such Person if the required holding period has been met and, under certain circumstances, current information regarding the issuer is publicly available and volume limitations, manner of sale requirements, and certain other conditions are met.

**IN VIEW OF THE COMPLEX, SUBJECTIVE NATURE OF THE QUESTION OF WHETHER A RECIPIENT OF SECURITIES MAY BE AN UNDERWRITER OR AN AFFILIATE OF THE REORGANIZED DEBTORS, THE DEBTORS MAKE NO REPRESENTATIONS CONCERNING THE RIGHT OF ANY PERSON TO TRADE IN SECURITIES TO BE DISTRIBUTED PURSUANT TO THE PLAN. ACCORDINGLY, THE DEBTORS RECOMMEND THAT POTENTIAL RECIPIENTS OF SECURITIES CONSULT THEIR OWN COUNSEL CONCERNING WHETHER THEY MAY FREELY TRADE SUCH SECURITIES.**

## X. Certain U.S. Federal Tax Consequences of the Plan

### A. Introduction.

The following discussion summarizes certain U.S. federal income tax consequences of the implementation of the Plan to the Debtors, the Reorganized Debtors, and certain Holders of Claims. This summary is based on the Internal Revenue Code of 1986, as amended (the "Tax Code"), the U.S. Treasury regulations promulgated thereunder (the "Treasury Regulations"), judicial decisions and published administrative rules, and pronouncements of the Internal Revenue Service (the "IRS"), all as in effect on the date hereof (collectively, "Applicable Tax Law"). Changes in the rules or new interpretations of the rules may have retroactive effect and could significantly affect the U.S. federal income tax consequences described below. The Debtors have not requested, and will not request, any ruling or determination from the IRS or any other taxing authority with respect to the tax consequences discussed herein, and the discussion below is not binding upon the IRS or the courts. No assurance can be given that the IRS would not assert, or that a court would not sustain, a different position than any position discussed herein.

This summary does not address non-U.S., state, or local tax consequences of the Plan, nor does it purport to address all aspects of U.S. federal income taxation that may be relevant to a Holder in light of such Holder's individual circumstances or to a Holder that may be subject to special tax rules (such as Persons who are related to the Debtors within the meaning of the Tax Code, persons subject to the alternative minimum tax or the "Medicare" tax on net investment income, non-U.S. taxpayers, broker-dealers, banks, mutual funds, insurance companies, financial institutions, small business investment companies, regulated investment companies, tax exempt organizations, pass-through entities, beneficial owners of pass-through entities, subchapter S corporations, persons who hold Claims or who will hold the New Common Equity or New Warrants as part of a straddle, hedge, conversion transaction, or other integrated investment, persons using a mark-to-market method of accounting, and Holders of Claims who are themselves in bankruptcy). Further, this summary assumes that each Holder holds only Claims in a single Class and holds each Claim only as a "capital asset" (within the meaning of section 1221 of the Tax Code). This summary also assumes that the various debt and other arrangements to which any of the Debtors are a party will be respected for U.S. federal income tax purposes in accordance with their form. This summary does not discuss differences in tax consequences to Holders of Claims that act or receive consideration in a capacity other than any other Holder of a Claim of the same Class or Classes, and the tax consequences for such Holders may differ materially from those described below. This summary does not address the U.S. federal income tax consequences to (1) Holders that have Claims that are Unimpaired or otherwise entitled to payment in full in Cash under the Plan, (2) Holders that are deemed to reject the Plan, or (3) Consenting Lenders that agree to backstop the Exit Facility. The Debtors believe, and the following discussion assumes, that the New Warrants are properly treated as outstanding New Common Equity (rather

than an "option" to acquire such New Common Equity) for U.S. federal income tax purposes for Holders that are Exit Facility Subscription Parties or Exit Facility Commitment Parties.

For purposes of this discussion, a "U.S. Holder" is a Holder of a Claim that is: (1) an individual citizen or resident of the United States for U.S. federal income tax purposes; (2) a corporation (or other Entity treated as a corporation for U.S. federal income tax purposes) created or organized under the laws of the United States, any state thereof or the District of Columbia; (3) an estate the income of which is subject to U.S. federal income taxation regardless of the source of such income; or (4) a trust (a) if a court within the United States is able to exercise primary jurisdiction over the trust's administration and one or more United States persons have authority to control all substantial decisions of the trust or (b) that has a valid election in effect under applicable Treasury Regulations to be treated as a United States person. For purposes of this discussion, a "non-U.S. Holder" is any Holder of a Claim that is not a U.S. Holder other than any partnership (or other Entity treated as a partnership or other pass-through Entity for U.S. federal income tax purposes).

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

**ACCORDINGLY, THE FOLLOWING SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES PERTAINING TO A HOLDER OF A CLAIM. ALL HOLDERS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS AS TO THE FEDERAL, STATE, LOCAL, AND NON-U.S. INCOME, ESTATE, AND OTHER TAX CONSEQUENCES OF THE PLAN.**

### B. Certain U.S. Federal Income Tax Consequences to the Debtors and the Reorganized Debtors.

#### 1. Characterization of the Restructuring Transactions.

As of December 31, 2019, the Debtors had approximately $404 million of federal NOL carryforwards, $69.1 million of disallowed interest carryforwards, and $624.2 million of tax basis in their assets. Additional losses and interest deductions may be generated in 2020, which will ultimately increase the Debtors' NOLs and disallowed interest carryforwards. Depending on the how the Restructuring Transactions are implemented, some NOLs remaining upon implementation of the Plan may be able to offset future taxable income for up to 20 years in the case of NOLs arising before 2018 and indefinitely for NOLs arising in taxable years starting in 2018, thereby being available to reduce the Debtors' future aggregate tax obligations. As discussed below, however, the Debtors' NOLs are expected to be reduced upon implementation of the Plan and could be subject to other limitations.

The Restructuring Transactions will not give rise to any gain or loss to the Debtors (other than as a result of CODI, as described below). The Debtors' tax attributes will, subject to the rules discussed below regarding CODI and Section 382 of the Tax Code, survive the restructuring process and potentially be usable by the Reorganized Debtors going forward.

#### 2. Cancellation of Debt and Reduction of Tax Attributes.

In general, absent an exception, a debtor will realize and recognize CODI, for U.S. federal income tax purposes, upon satisfaction of its outstanding indebtedness for total consideration less than the amount of such indebtedness. The amount of CODI, in general, is the excess of (a) the adjusted issue price of the indebtedness satisfied, over (b) the sum of (i) the amount of Cash paid, (ii) the issue price of any new indebtedness of the taxpayer issued, and (iii) the fair market value of any other new consideration (including equity interests in the debtor) given in satisfaction of such indebtedness at the time of the exchange.

Under section 108 of the Tax Code, a debtor is not required to include CODI in gross income if the debtor is under the jurisdiction of a court in a case under chapter 11 of the Bankruptcy Code and the discharge of debt occurs pursuant to that proceeding. Instead, as a consequence of such exclusion, a debtor must reduce its tax attributes by

the amount of CODI that it excluded from gross income pursuant to the rule discussed in the preceding sentence. Such reduction in tax attributes occurs only after the tax for the year of the debt discharge has been determined. In general, tax attributes will be reduced in the following order: (a) NOLs and NOL carryforwards; (b) general business credit carryovers; (c) minimum tax credit carryovers; (d) capital loss carryovers; (e) tax basis in assets (but not below the amount of liabilities to which the debtor remains subject); (f) passive activity loss and credit carryovers; and (g) foreign tax credit carryovers. Alternatively, a debtor with CODI may elect first to reduce the basis of its depreciable assets pursuant to section 108(b)(5) of the Tax Code. Any excess CODI over the amount of available tax attributes is not subject to U.S. federal income tax and has no other U.S. federal income tax impact.

As a result of the Restructuring Transactions, the Debtors expect to realize CODI. The exact amount of any CODI that will be realized by the Debtors will not be determinable until the consummation of the Plan. Because the Plan provides that certain Holders of Claims will receive non-Cash consideration, the amount of CODI, and accordingly the amount of tax attributes required to be reduced, will depend, in part, on the fair market value of the non-Cash consideration received, which cannot be known with certainty at this time.

**3. Limitation of NOL Carryforwards and Other Tax Attributes.**

As of December 31, 2019, the Debtors had approximately $404 million of available federal NOLs, $69.1 million of disallowed interest carryforwards, and $624.2 million of tax basis in their assets. Additional losses and interest deductions may be generated in 2020. Following the Effective Date, unless the 382(l)(5) Exception (as defined below) applies, any NOL carryovers, disallowed interest carryforwards, and certain other tax attributes (such as losses and deductions that have accrued economically but are unrecognized as of the date of the ownership change) of the Reorganized Debtors that are not reduced according to the CODI rules described above and that are allocable to periods before the Effective Date (collectively, "Pre-Change Losses") may be subject to limitation under section 382 of the Tax Code as a result of an "ownership change" of the Reorganized Debtors by reason of the transactions consummated pursuant to the Plan.

Under section 382 of the Tax Code, if a corporation undergoes an "ownership change," the amount of its Pre-Change Losses that may be utilized to offset future taxable income generally is subject to an annual limitation. The rules of section 382 of the Tax Code are complicated, but as a general matter, the Debtors anticipate that the distribution of the New Common Equity and New Warrants pursuant to the Plan will result in an "ownership change" of the Reorganized Debtors for these purposes, and that the Reorganized Debtors' use of their Pre-Change Losses will be subject to limitation unless the 382(l)(5) Exception (as defined below) applies.

For this purpose, if a corporation has a net unrealized built-in loss at the time of an ownership change (taking into account most assets and items of "built-in" income and deductions), then generally built-in losses (including amortization or depreciation deductions attributable to such built-in losses) recognized during the following five years (up to the amount of the original net unrealized built-in loss) will be treated as Pre-Change Losses and similarly will be subject to the annual limitation. In this case, the Debtors expect to have a substantial net unrealized built-in loss as of the Effective Date that would be subject to the foregoing rules in the absence of a special bankruptcy exception (as discussed below).

**(a) General Section 382 Annual Limitation.**

In general, the amount of the annual limitation to which a corporation that undergoes an "ownership change" would be subject is equal to the product of (i) the fair market value of the stock of the corporation immediately before the "ownership change" (with certain adjustments) multiplied by (ii) the "long-term tax-exempt rate" (which is the highest of the adjusted federal long-term rates in effect for any month in the 3-calendar-month period ending with the calendar month in which the "ownership change" occurs, currently 1.63 percent for April 2020). Any unused limitation may be carried forward, thereby increasing the annual limitation in the subsequent taxable year. As discussed below, however, special rules may apply in the case of a corporation that experiences an ownership change as the result of a bankruptcy proceeding.

Notwithstanding the rules described above, if post-ownership change, a debtor corporation and its subsidiaries do not continue the debtor corporation's historic business or use a significant portion of its historic business assets in a new business for two years after the ownership change, the annual limitation resulting from the ownership change is zero.

**(b) Special Bankruptcy Exceptions.**

An exception to the foregoing annual limitation rules generally applies when shareholders and creditors of a debtor corporation in chapter 11 receive, in the case of creditors, with respect of their "qualified claims", at least 50 percent of the vote and value of the stock of the reorganized debtor (or a controlling corporation if also in chapter 11) pursuant to a confirmed chapter 11 plan (the "382(l)(5) Exception"). Under the 382(l)(5) Exception, a debtor's Pre-Change Losses are not limited on an annual basis, but, instead, NOL carryforwards will be reduced by the amount of any interest deductions claimed during the three taxable years preceding the effective date of the plan of reorganization, and during the part of the taxable year prior to and including the effective date of the plan of reorganization, in respect of all debt converted into stock in the reorganization. If the 382(l)(5) Exception applies and the Reorganized Debtors undergo another "ownership change" within two years after the Effective Date, then the Reorganized Debtors' Pre-Change Losses effectively would be eliminated in their entirety.

Where the 382(l)(5) Exception is not applicable to a corporation in bankruptcy (either because the debtor does not qualify for it or the debtor otherwise elects not to utilize the 382(l)(5) Exception), a second special rule generally will apply (the "382(l)(6) Exception"). Under the 382(l)(6) Exception, the annual limitation will be calculated by reference to the lesser of the value of the debtor corporation's new stock (with certain adjustments) immediately after the ownership change and the value of such debtor corporation's assets (determined without regard to liabilities) immediately before the ownership change. This differs from the ordinary rule that requires the fair market value of a debtor corporation that undergoes an "ownership change" to be determined before the events giving rise to the change. The 382(l)(6) Exception also differs from the 382(l)(5) Exception in that the debtor corporation is not required to reduce its NOL carryforwards by the amount of interest deductions claimed within the prior three-year period, and the debtor may undergo an ownership change within two years without triggering the elimination of its Pre-Change Losses. The resulting limitation from a subsequent ownership change would be determined under the regular rules for ownership changes.

The Debtors currently believe that the Restructuring Transactions may qualify for the 382(l)(5) Exception, although analysis is ongoing. If the Restructuring Transactions are eligible for the 382(l)(5) Exception, the Debtors and the Consenting Lenders have not yet decided whether the Debtors would elect out of its application. Regardless of whether the Reorganized Debtors take advantage of the 382(l)(6) Exception or the 382(l)(5) Exception, the Reorganized Debtors' use of their Pre-Change Losses after the Effective Date may be adversely affected if an "ownership change" within the meaning of section 382 of the Tax Code were to occur after the Effective Date.

**C. Certain U.S. Federal Income Tax Consequences to U.S. Holders of Allowed Prepetition Credit Agreement Claims.**

The following discussion assumes that the Debtors will undertake the Restructuring Transactions currently contemplated by the Plan. Holders of Claims are urged to consult their tax advisors regarding the tax consequences of the Restructuring Transactions. As discussed below, the Debtors expect that a portion of the New Common Equity received upon exercise of the New Warrants will be treated as received as part of an "investment unit" in connection with funding the Exit Facility. The remainder of such New Common Equity generally should be treated as distributed in respect of Prepetition Credit Agreement Claims. The Debtors believe, and the following discussion assumes, that the New Warrants are properly treated as outstanding New Common Equity for U.S. federal income tax purposes for Exit Facility Subscription Parties and Exit Facility Commitment Parties. Thus, for purposes of the following discussion, solely in the case of Exit Facility Subscription Parties and Exit Facility Commitment Parties, the term "New Common Equity" shall include the New Warrants.

**1. Exchanges of Allowed Prepetition Credit Agreement Claims Under the Plan.**

Pursuant to the Plan, except to the extent that a U.S. Holder of an Allowed Prepetition Credit Agreement Claim agrees to a less favorable treatment in exchange for full and final satisfaction, settlement, release and discharge of such Prepetition Credit Agreement Claim, each such U.S. Holder will receive its pro rata share of New Common Equity. The U.S. federal income tax consequences to a U.S. Holder of such exchange will depend, in part, on whether the Claims surrendered constitute "securities" of Longview for U.S. federal income tax purposes.

Neither the Tax Code nor the Treasury Regulations promulgated thereunder defines the term "security." Whether a debt instrument constitutes a "security" for U.S. federal income tax purposes is determined based on all the

relevant facts and circumstances, but most authorities have held that the length of the term of a debt instrument is an important factor in determining whether such instrument is a security for U.S. federal income tax purposes. These authorities have indicated that a term of less than five years is evidence that the instrument is not a security, whereas a term of ten years or more is evidence that it is a security. There are numerous other factors that could be taken into account in determining whether a debt instrument is a security, including the security for payment, the creditworthiness of the obligor, the subordination or lack thereof to other creditors, the right to vote or otherwise participate in the management of the obligor, convertibility of the instrument into an equity interest of the obligor, whether payments of interest are fixed, variable, or contingent, and whether such payments are made on a current basis or accrued. Due to the inherently factual nature of the determination, U.S. Holders are urged to consult their own tax advisors regarding the status of their Claims as "securities" for U.S. federal income tax purposes. Although not free from doubt, the Debtors intend to take the position that an Allowed Prepetition Credit Agreement Claim constitutes a "security."

If an Allowed Prepetition Credit Agreement Claim qualifies as a "security" of Longview, the Holder of the Allowed Prepetition Credit Agreement Claim should be treated as receiving its New Common Equity in a tax-free recapitalization under the Tax Code. Subject to the rules regarding "accrued but untaxed interest" (as discussed in Section XI.C.2 of this Disclosure Statement, entitled "Accrued Interest"), a Holder of such Claim should not recognize any gain or loss in the recapitalization. The Holder should obtain a tax basis in the New Common Equity received, other than any such amounts treated as received in satisfaction of accrued but untaxed interest, equal to the tax basis of the Claim surrendered. The tax basis of any New Common Equity treated as received in satisfaction of accrued but untaxed interest should equal the amount of such accrued but untaxed interest. Subject to amounts treated as received in satisfaction of accrued but untaxed interest, the holding period for the New Common Equity received should include the holding period for the exchanged Claim. The holding period for any New Common Equity treated as received in satisfaction of accrued but untaxed interest should begin on the day following the receipt of such property.

If an Allowed Prepetition Credit Agreement Claim does not qualify as a security of Longview, the Holder of such Claim will be treated as exchanging such Claim for New Common Equity in a taxable exchange under section 1001 of the Tax Code. Subject to the rules regarding accrued but untaxed interest, each Holder of such Claim in that case should recognize gain or loss equal to the difference between (i) the fair market value of the New Common Equity received and (ii) such Holder's adjusted basis in such Claim. The character of such gain as capital gain or ordinary income will be determined by a number of factors including the tax status of the Holder, the rules regarding accrued but untaxed interest and market discount, whether the Claim constitutes a capital asset in the hands of the Holder, and whether and to what extent the Holder had previously claimed a bad debt deduction with respect to its Claim. If recognized gain or loss is capital in nature, it generally would be long-term capital gain if the Holder held its Claim for more than one year at the time of the exchange. Subject to the rules regarding accrued but untaxed interest, a Holder's tax basis in any New Common Equity received should equal the fair market value of the New Common Equity as of the date such New Common Equity is distributed to the Holder. A Holder's holding period for the New Common Equity received should begin on the day following the date it receives the New Common Equity.

**2. Accrued Interest.**

To the extent that any amount received by a U.S. Holder of a Claim is attributable to accrued but untaxed interest on the debt instruments constituting the surrendered Claim, the receipt of such amount should be taxable to the U.S. Holder as ordinary interest income (to the extent not already taken into income by the U.S. Holder). Conversely, a U.S. Holder of a Claim may be able to recognize a deductible loss (or, possibly, a write off against a reserve for worthless debts) to the extent that any accrued interest previously was included in the U.S. Holder's gross income but was not paid in full by the Debtors. Such loss may be ordinary, but the tax law is unclear on this point.

If the fair market value of the consideration is not sufficient to fully satisfy all principal and interest on Allowed Prepetition Credit Agreement Claims, the extent to which such consideration will be attributable to accrued interest is unclear. Under the Plan, the aggregate consideration to be distributed to Holders of Allowed Prepetition Credit Agreement Claims in each Class will be allocated first to the principal amount of Allowed Prepetition Credit Agreement Claims, with any excess allocated to unpaid interest that accrued on these Claims, if any. Certain legislative history indicates that an allocation of consideration as between principal and interest provided in a chapter 11 plan of reorganization is binding for U.S. federal income tax purposes, while certain Treasury Regulations treat payments as allocated first to any accrued but unpaid interest. The IRS could take the position that the consideration received by the Holder should be allocated in some way other than as provided in the Plan. U.S. Holders of Claims

should consult their own tax advisors regarding the proper allocation of the consideration received by them under the Plan.

**U.S. HOLDERS SHOULD CONSULT THEIR OWN TAX ADVISORS CONCERNING THE ALLOCATION OF CONSIDERATION RECEIVED IN SATISFACTION OF THEIR CLAIMS AND THE FEDERAL INCOME TAX TREATMENT OF ACCRUED BUT UNPAID INTEREST.**

**3. Market Discount.**

Under the "market discount" provisions of the Tax Code, some or all of the gain realized, if any, by a U.S. Holder of a Claim who exchanges the Claim for consideration on the Effective Date may be treated as ordinary income (instead of capital gain), to the extent of the amount of "market discount" on the debt instruments constituting the exchanged Claim. In general, a debt instrument is considered to have been acquired with "market discount" if it is acquired other than on original issue and if its Holder's adjusted tax basis in the debt instrument is less than (a) the sum of all remaining payments to be made on the debt instrument, excluding "qualified stated interest" or (b) in the case of a debt instrument issued with original issue discount, its adjusted issue price, by at least a *de minimis* amount (equal to 0.25 percent of the sum of all remaining payments to be made on the debt instrument, excluding qualified stated interest, multiplied by the number of remaining whole years to maturity).

Any gain recognized by a U.S. Holder on the taxable disposition of an Allowed Prepetition Credit Agreement Claim (determined as described above) that was acquired with market discount should be treated as ordinary income to the extent of the market discount that accrued thereon while the Claim was considered to be held by the U.S. Holder (unless the U.S. Holder elected to include market discount in income as it accrued). To the extent that the Allowed Prepetition Credit Agreement Claims that were acquired with market discount are exchanged in a tax-free transaction for other property (such as the New Common Equity), any market discount that accrued on the Allowed Prepetition Credit Agreement Claims (i.e., up to the time of the exchange) but was not recognized by the U.S. Holder is carried over to the property received therefore, and any gain recognized on the subsequent sale, exchange, redemption, or other disposition of the property is treated as ordinary income to the extent of the accrued, but not recognized, market discount, with respect to the exchanged debt instrument.

**U.S. HOLDERS SHOULD CONSULT THEIR OWN TAX ADVISORS CONCERNING THE APPLICATION OF THE MARKET DISCOUNT RULES TO THEIR CLAIMS.**

**4. Ownership and Disposition of New Common Equity.**

**(a) Dividends on New Common Equity.**

Any distributions made on account of the New Common Equity will constitute dividends for U.S. federal income tax purposes to the extent of the current or accumulated earnings and profits of Reorganized Longview as determined under U.S. federal income tax principles. "Qualified dividend income" received by an individual U.S. Holder is subject to preferential tax rates. To the extent that a U.S. Holder receives distributions that exceed such current and accumulated earnings and profits, such distributions will be treated first as a non-taxable return of capital reducing the U.S. Holder's basis in its shares of the New Common Equity. Any such distributions in excess of the U.S. Holder's basis in its shares (determined on a share-by-share basis) generally will be treated as capital gain.

Subject to applicable limitations, distributions treated as dividends paid to U.S. Holders that are corporations generally will be eligible for the dividends-received deduction so long as there are sufficient current or accumulated earnings and profits. However, the dividends-received deduction is only available if certain holding period requirements are satisfied. The length of time that a shareholder has held its stock is reduced for any period during which the shareholder's risk of loss with respect to the stock is diminished by reason of the existence of certain options, contracts to sell, short sales, or similar transactions. In addition, to the extent that a corporation incurs indebtedness that is directly attributable to an investment in the stock on which the dividend is paid, all or a portion of the dividends received deduction may be disallowed.

**(b) Sale, Redemption, or Repurchase of New Common Equity.**

Unless a non-recognition provision applies, U.S. Holders generally will recognize capital gain or loss upon the sale, redemption, or other taxable disposition of the New Common Equity. Such capital gain will be long-term capital gain if at the time of the sale, exchange, retirement, or other taxable disposition, the U.S. Holder has held the New Common Equity for more than one year. Long-term capital gains of an individual taxpayer generally are taxed at preferential rates. The deductibility of capital losses is subject to certain limitations as described below.

**5. Ownership and Disposition of the Exit Facility.**

**(a) Characterization of the Exit Facility.**

A debt instrument that provides for one or more contingent payments may implicate the provisions of the Treasury Regulations relating to "contingent payment debt obligations," in which case the timing and amount of income inclusions and the character of income recognized may be different from the consequences described herein. Under such Treasury Regulations, however, one or more contingencies will not cause a debt instrument to be treated as a contingent payment debt instrument if, as of the issue date, such contingencies in the aggregate are considered "remote" or "incidental."

In addition, the Treasury Regulations contain exceptions from the characterization as contingent payment debt obligations for a number of categories of debt instruments, including "variable rate debt instruments." A debt instrument qualifies as a "variable rate debt instrument" if (a) the issue price does not exceed the total non-contingent principal payments due under the debt instrument by more than a specified *de minimis* amount and (b) the debt instrument provides for stated interest, paid or compounded at least annually, at current values of a single fixed rate and one or more qualified floating rates. A "qualified floating rate" is any variable rate where variations in the value of such rate can reasonably be expected to measure contemporaneous variations in the cost of newly borrowed funds in the currency in which the debt instrument is denominated.

The remainder of this discussion assumes that the Exit Facility will be treated as a variable rate debt instrument and will not be treated as a contingent payment debt instrument. However, the Reorganized Debtors' treatment of the Exit Facility ultimately will be based on the final terms and conditions agreed upon by the Debtors, the Exit Facility Subscription Parties, the Exit Facility Commitment Parties, and the Consenting Lenders. Such treatment will be binding on a U.S. Holder, unless the U.S. Holder explicitly discloses to the IRS on its tax return for the year during which such U.S. Holder acquires an interest in the Exit Facility that it is taking a different position. Our position will not be binding on the IRS. Each U.S. Holder should consult its own tax advisor regarding our determination.

**(b) Payment of Qualified Stated Interest.**

Payments or accruals of "qualified stated interest" (as defined below) on the Exit Facility will be taxable to a U.S. Holder as ordinary income at the time that such payments are accrued or are received in accordance with such Holder's regular method of accounting for U.S. federal income tax purposes. The term "qualified stated interest" generally means stated interest that is unconditionally payable in cash or property at least annually during the entire term of the Exit Facility, at a single fixed rate of interest, or, subject to certain conditions, based on one or more interest indices. If any interest payment (or portion thereof) is payable in additional debt instruments of the issuer, such interest payment (or portion thereof) will not be treated as qualified stated interest.

**(c) Original Issue Discount.**

A debt instrument is treated as issued with original issue discount ("OID") for U.S. federal income tax purposes if its issue price is less than its stated redemption price at maturity by more than a *de minimis* amount.

The amount of OID (if any) on the Exit Facility will be the difference between the "stated redemption price at maturity" (the sum of all payments to be made on the debt instrument other than "qualified stated interest," including certain amounts payable upon repayment or redemption of the debt instrument) of the Exit Facility and the "issue price" of the Exit Facility. The "issue price" of a debt instrument issued for money generally is the amount paid for the debt instrument. A debt instrument issued together with other property may constitute an "investment unit," in

which case the amount paid for the investment unit must be allocated between the debt instrument and the other property based on their relative fair market values on the date of acquisition, thereby resulting in a reduction of what otherwise might be the issue price of the debt instrument. Under the Plan, each Holder of an Allowed Prepetition Credit Agreement Claim will receive its pro rata share of the New Warrants, which shall be exercisable only to the extent the holder thereof participates in the Exit Facility. The Debtors expect that a portion of the New Common Equity received upon exercise of the New Warrants will be treated as received as part of an "investment unit" for purposes of the rules described above, in which case, the Exit Facility will have OID at least to that extent.

A U.S. Holder (whether a cash or accrual method taxpayer) generally will be required to include the OID in gross income (as ordinary interest income) as the OID accrues (on a constant yield to maturity basis), in advance of the Holder's receipt of cash payments attributable to this OID. In general, the amount of OID includible in the gross income of a U.S. Holder will be equal to a ratable amount of OID with respect to the debt instrument for each day in an accrual period during the taxable year or portion of the taxable year on which a U.S. Holder held the debt instrument. An accrual period may be of any length and the accrual periods may vary in length over the term of the debt instrument, provided that each accrual period is no longer than one year and each scheduled payment of principal or interest occurs either on the final day of an accrual period or on the first day of an accrual period. The amount of OID allocable to any accrual period is an amount equal to the excess, if any, of (i) the product of the debt instrument's adjusted issue price at the beginning of such accrual period and its yield to maturity, determined on the basis of a compounding assumption that reflects the length of the accrual period over (ii) the sum of the qualified stated interest payments on the debt instruments allocable to the accrual period. The adjusted issue price of a debt instrument at the beginning of any accrual period generally equals the issue price of the debt instrument increased by the amount of all previously accrued OID and decreased by any cash payments previously made on the debt instrument other than payments of qualified stated interest. The rules regarding OID are complex. You should consult your own tax advisors regarding the consequences of OID, including the amount of OID that you would include in gross income for a taxable year.

Under applicable Treasury Regulations, in order to determine the amount of qualified stated interest and OID in respect of a variable rate debt instrument for which not all interest is qualified stated interest, an "equivalent fixed rate debt instrument" must be constructed. The "equivalent fixed rate debt instrument" is a hypothetical instrument that has terms that are identical to the debt instrument, except that the equivalent fixed rate debt instrument provides for a fixed rate substitute for each qualified floating rate in lieu of each actual rate on the debt instrument. A fixed rate substitute for each qualified floating rate on the debt instrument is the value of such rate as of its issue date.

Once the equivalent fixed rate debt instrument has been constructed pursuant to the foregoing rules, the amount of OID and qualified stated interest, if any, are determined for the equivalent fixed rate debt instrument by applying the general OID rules to the equivalent fixed rate debt instrument and a U.S. Holder of the Exit Facility will account for such OID and qualified stated interest as if the U.S. Holder held the equivalent fixed rate debt instrument. For each accrual period, appropriate adjustments will be made to the amount of qualified stated interest or OID assumed to have been accrued or paid with respect to the "equivalent" fixed rate debt instrument in the event that such amounts differ from the actual amount of interest accrued or paid on the debt instrument during the accrual period.

**(d) Acceleration of Income Recognition.**

Accrual method U.S. Holders that prepare an "applicable financial statement" (as defined in section 451 of the Code) generally will be required to include certain items of income such as OID no later than the time such amounts are reflected on such a financial statement. This could result in an acceleration of income recognition for income items differing from the above description. U.S. Holders should consult their tax advisors with respect to the application of section 451 to interest and OID on the Exit Facility.

**(e) Sale, Taxable Exchange or other Taxable Disposition.**

Upon the disposition of the Exit Facility by sale, exchange, retirement, redemption or other taxable disposition, a U.S. Holder will generally recognize gain or loss equal to the difference, if any, between (i) the amount realized on the disposition (other than amounts attributable to accrued but unpaid interest, which will be taxed as ordinary interest income to the extent not previously so taxed, and other than any market discount on debt instruments constituting the exchanged Claim that was not realized by the holder) and (ii) the U.S. Holder's adjusted tax basis in the Exit Facility, as applicable. A U.S. Holder's adjusted tax basis will generally be equal to the holder's initial tax basis in the Exit Facility, increased by any accrued OID previously included in such holder's gross income. A U.S.

Holder's gain or loss will generally constitute capital gain or loss and will be long-term capital gain or loss if the U.S. Holder has held such Exit Facility for longer than one year. Non-corporate taxpayers are generally subject to a reduced tax rate on net long-term capital gains. The deductibility of capital losses is subject to certain limitations discussed below.

**6. Limitation on use of Capital Losses.**

A U.S. Holder that recognizes capital losses will be subject to limits on the use of such capital losses. For a non-corporate U.S. Holder, capital losses may be used to offset any capital gains (without regard to holding periods), and also ordinary income to the extent of the lesser of (a) $3,000 ($1,500 for married individuals filing separate returns) or (b) the excess of the capital losses over the capital gains. A non-corporate U.S. Holder may carry over unused capital losses and apply them against future capital gains and a portion of their ordinary income for an unlimited number of years. For corporate U.S. Holders, capital losses may only be used to offset capital gains. A corporate U.S. Holder that has more capital losses than may be used in a tax year may carry back unused capital losses to the three years preceding the capital loss year or may carry over unused capital losses for the five years following the capital loss year.

**D. Certain U.S. Federal Income Tax Consequences to Certain Non-U.S. Holders of Allowed Prepetition Credit Agreement Claims.**

The following discussion includes only certain U.S. federal income tax consequences of the Restructuring Transactions to non-U.S. Holders. The discussion does not include any non-U.S. tax considerations. The rules governing the U.S. federal income tax consequences to non-U.S. Holders are complex. Each non-U.S. Holder should consult its own tax advisor regarding the U.S. federal, state, and local and the non-U.S. tax consequences of the consummation of the Plan to such non-U.S. Holder and the ownership and disposition of the Exit Facility and New Common Equity, as applicable. The Debtors believe, and the following discussion assumes, that the New Warrants are properly treated as outstanding New Common Equity for U.S. federal income tax purposes for Exit Facility Subscription Parties and Exit Facility Commitment Parties. Thus, for purposes of the following discussion, solely in the case of Exit Facility Subscription Parties and the Exit Facility Commitment Parties, the term "New Common Equity" shall include the New Warrants.

**1. Gain Recognition.**

Whether a non-U.S. Holder realizes gain or loss in connection with an exchange of Prepetition Credit Agreement Claims pursuant to the Plan or the subsequent sale or other disposition of the Exit Facility or New Common Equity, as applicable, and the amount of such gain or loss is generally determined in the same manner as set forth above in connection with U.S. Holders.

A non-U.S. Holder generally will not be subject to U.S. federal income tax with respect to any gain realized unless:

- such non-U.S. Holder is an individual who is present in the United States for 183 days or more in the taxable year of disposition and certain other conditions are met;
- such gain is effectively connected with such non-U.S. Holder's conduct of a U.S. trade or business (and if an income tax treaty applies, such gain is attributable to a permanent establishment maintained by such non-U.S. Holder in the United States); or
- in the case of the sale of New Common Equity, the Reorganized Debtors are or have been, during a specified testing period, a "United States real property holding corporation" (a "USRPHC") for U.S. federal income tax purposes.

If the first exception applies, the non-U.S. Holder generally will be subject to U.S. federal income tax at a rate of 30 percent (unless an applicable income tax treaty provides for a reduced rate or exemption from tax) on the amount by which such non-U.S. Holder's capital gains allocable to U.S. sources exceed capital losses allocable to U.S. sources during the taxable year of disposition. If the second exception applies, the non-U.S. Holder generally will be subject to U.S. federal income tax with respect to such gain in the same manner as a U.S. Holder, and a non-

U.S. Holder that is a corporation for U.S. federal income tax purposes may also be subject to a branch profits tax with respect to such non-U.S. Holder's effectively connected earnings and profits that are attributable to such gains at a rate of 30 percent (unless a reduced rate or exemption applies under an applicable income tax treaty)

If the third exception applies in the case of a sale of New Common Equity, the non-U.S. Holder generally will be subject to U.S. federal income tax on any gain recognized on the disposition of all or a portion of its New Common Equity and will be required to file U.S. federal income tax returns. Taxable gain from the disposition of an interest in a USRPHC (generally equal to the difference between the amount realized and such non-U.S. Holder's adjusted tax basis in such interest) will constitute effectively connected income. Further, the buyer of the New Common Equity will be required to withhold a tax equal to 15 percent of the amount realized on the sale. The amount of any such withholding would be allowed as a credit against the non-U.S. Holder's federal income tax liability and may entitle the non-U.S. Holder to a refund, provided that the non-U.S. Holder properly and timely files a tax return with the IRS. In general, the provisions described above will not apply if (a) the non-U.S. Holder does not directly or indirectly own more than 5 percent of the value of such interest during a specified testing period and (b) such interest is regularly traded on an established securities market.

The Debtors do not expect that Reorganized Longview will constitute a USRPHC as of the Effective Date, and thus expect that the New Common Equity will not constitute a United States real property interest, for the period relevant under the Tax Code. Non-U.S. Holders who may receive or acquire New Common Equity in connection with the Restructuring Transactions are urged to consult a U.S. tax advisor with respect to the U.S. tax consequences applicable to their acquisition, holding, and disposition of New Common Equity.

**2. Payments of Interest (Including Interest Attributable to Accrued but Untaxed Interest)**.

Payments to a non-U.S. Holder that are attributable to (x) interest on (or OID accruals with respect to) the Exit Facility and (y) accrued but untaxed interest received pursuant to the Plan generally will not be subject to U.S. federal income or withholding tax, provided that the withholding agent has received or receives, prior to payment, appropriate documentation (generally, IRS Form W-8BEN or W-8BEN-E, or successor form) establishing that the non-U.S. Holder is not a U.S. person, unless:

- the non-U.S. Holder actually or constructively owns 10 percent or more of the total combined voting power of Longview (in the case of interest payments received pursuant to the Plan) or Reorganized Longview (in the case of interest payments with respect to the Exit Facility);
- the non-U.S. Holder is a "controlled foreign corporation" related to Longview (in the case of interest payments received pursuant to the Plan) or Reorganized Longview (in the case of interest payments with respect to the Exit Facility), actually or constructively through the ownership rules under Section 864(d)(4) of the Tax Code;
- the non-U.S. Holder is a bank receiving interest described in Section 881(c)(3)(A) of the Tax Code; or
- such interest is effectively connected with the conduct by the non-U.S. Holder of a trade or business within the United States, in which case, provided the non-U.S. Holder provides a properly executed IRS Form W-8ECI (or successor form) to the withholding agent, the non-U.S. Holder (x) generally will not be subject to withholding tax, but (y) will be subject to U.S. federal income tax in the same manner as a U.S. Holder (unless an applicable income tax treaty provides otherwise), and a non-U.S. Holder that is a corporation for U.S. federal income tax purposes may also be subject to a branch profits tax with respect to such non-U.S. Holder's effectively connected earnings and profits that are attributable to such interest (including accrued but untaxed interest) at a rate of 30 percent (unless a reduced rate or exemption applies under an applicable income tax treaty).

A non-U.S. Holder that does not qualify for exemption from withholding tax with respect to interest (including accrued but untaxed interest) that is not effectively connected income generally will be subject to withholding of U.S. federal income tax at a 30 percent rate (unless a reduced rate or exemption applies under an applicable income tax treaty) on payments that are attributable to (x) interest on (or OID accruals with respect to) the Exit Facility and (y) accrued but untaxed interest received pursuant to the Plan. For purposes of providing a properly executed IRS Form W-8BEN or W-8BEN-E, special procedures are provided under applicable Treasury Regulations

for payments through qualified foreign intermediaries or certain financial institutions that hold customers' securities in the ordinary course of their trade or business. Non-U.S. Holders who participate in the Exit Facility in connection with the Restructuring Transactions are urged to consult a U.S. tax advisor with respect to the U.S. tax consequences applicable to their acquisition, holding, and disposition of the Exit Facility.

**3. Distributions on New Common Equity**.

Any distributions made with respect to New Common Equity will constitute dividends for U.S. federal income tax purposes to the extent of the current or accumulated earnings and profits of Reorganized Longview, as determined under U.S. federal income tax principles. Except as described below, dividends paid with respect to New Common Equity held by a non-U.S. Holder that are not effectively connected with a non-U.S. Holder's conduct of a U.S. trade or business (or, if an income tax treaty applies, are not attributable to a permanent establishment maintained by such non-U.S. Holder in the United States) will be subject to U.S. federal withholding tax at a rate of 30% (unless a reduced rate or exemption applies under an applicable income tax treaty). A non-U.S. Holder generally will be required to satisfy certain IRS certification requirements in order to claim a reduction of or exemption from withholding under a tax treaty by filing IRS Form W-8BEN or W-8BEN-E, as applicable (or successor form), upon which the non-U.S. Holder certifies, under penalties of perjury, its status as a non-U.S. person and its entitlement to the lower treaty rate or exemption from tax with respect to such payments. Dividends paid with respect to New Common Equity held by a non-U.S. Holder that are effectively connected with a non-U.S. Holder's conduct of a U.S. trade or business (and, if an income tax treaty applies, are attributable to a permanent establishment maintained by such non-U.S. Holder in the United States) generally will be subject to U.S. federal income tax in the same manner as a U.S. Holder, and a non-U.S. Holder that is a corporation for U.S. federal income tax purposes may also be subject to a branch profits tax with respect to such Non-U.S. Holder's effectively connected earnings and profits that are attributable to the dividends at a rate of 30% (unless a reduced rate or exemption applies under an applicable income tax treaty). Non-U.S. Holders who may receive or acquire New Common Equity in connection with the Restructuring Transactions are urged to consult a U.S. tax advisor with respect to the U.S. tax consequences applicable to their acquisition, holding, and disposition of New Common Equity.

**4. FATCA.**

Under the Foreign Account Tax Compliance Act ("FATCA"), non-U.S. financial institutions and certain other non-U.S. entities must report certain information with respect to their U.S. account Holders and investors or be subject to withholding on the receipt of "withholdable payments." For this purpose, "withholdable payments" are generally U.S. source payments of fixed or determinable, annual or periodical income (including interest and dividends, if any, on New Common Equity). FATCA withholding will apply even if the applicable payment would not otherwise be subject to U.S. federal nonresident withholding tax.

Each non-U.S. Holder is urged to consult its own tax advisor regarding the possible impact of these rules on such non-U.S. Holder.

**E. Information Reporting and Back-Up Withholding**.

The Debtors will withhold all amounts required by law to be withheld from payments of interest, dividends, and other amounts payable under the Plan or with respect to the Exit Facility, New Common Equity, and New Warrants. The Debtors will comply with all applicable reporting requirements of the Tax Code. In general, information reporting requirements may apply to distributions or payments made to a Holder of a Claim under the Plan. In addition, backup withholding of taxes will generally apply to payments in respect of an Allowed Prepetition Credit Agreement Claim under the Plan unless, in the case of a U.S. Holder, such U.S. Holder provides a properly executed IRS Form W-9.

Backup withholding is not an additional tax. Amounts withheld under the backup withholding rules may be credited against a Holder's U.S. federal income tax liability, and a Holder may obtain a refund of any excess amounts withheld under the backup withholding rules by filing an appropriate claim for refund with the IRS (generally, a federal income tax return).

In addition, from an information reporting perspective, the Treasury Regulations generally require disclosure by a taxpayer on its U.S. federal income tax return of certain types of transactions in which the taxpayer participated,

including, among other types of transactions, certain transactions that result in the taxpayer's claiming a loss in excess of specified thresholds. Holders are urged to consult their tax advisors regarding these regulations and whether the transactions contemplated by the Plan would be subject to these regulations and require disclosure on the Holders' tax returns.

**THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. THE FOREGOING SUMMARY DOES NOT DISCUSS ALL ASPECTS OF FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR HOLDER IN LIGHT OF SUCH HOLDER'S CIRCUMSTANCES AND INCOME TAX SITUATION. ALL HOLDERS OF CLAIMS AND INTERESTS SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL, OR NON-U.S. TAX LAWS, AND OF ANY CHANGE IN APPLICABLE TAX LAWS.**

## XI. Recommendation of the Debtors

In the opinion of the Debtors, the Plan is preferable to the alternatives described in this Disclosure Statement because it provides for a larger distribution to Holders of Allowed Claims and Interests than would otherwise result in a liquidation under chapter 7 of the Bankruptcy Code. In addition, any alternative other than Confirmation could result in extensive delays and increased administrative expenses resulting in smaller distributions to Holders of Allowed Claims than proposed under the Plan. Accordingly, the Debtors recommend that Holders of Claims and Interests entitled to vote to accept or reject the Plan support Confirmation and vote to accept the Plan.

Longview Power, LLC,
on behalf of itself and each of the other Debtors

By: */s/ Jeffery L. Keffer*

Name: Jeffery L. Keffer
Title: Chief Executive Officer

Prepared By:

Daniel J. DeFranceschi (No. 2732)
Zachary I. Shapiro (No. 5103)
**RICHARDS, LAYTON & FINGER, P.A.**
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
Telephone: (302) 651-7700
Facsimile: (302) 651-7701
Email: defranceschi@rlf.com
shapiro@rlf.com

*Proposed Counsel to the Debtors and Debtors in Possession*

David R. Seligman, P.C. (*pro hac vice* pending)
Joseph M. Graham (*pro hac vice* pending)
**KIRKLAND & ELLIS LLP**
**KIRKLAND & ELLIS INTERNATIONAL LLP**
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
Email: david.seligman@kirkland.com
joe.graham@kirkland.com

*Proposed Counsel to the Debtors and Debtors in Possession*

**FIFTH AMENDED AND RESTATED**

**LIMITED LIABILITY COMPANY AGREEMENT**

**OF**

**LONGVIEW INTERMEDIATE HOLDINGS C, LLC**

(a Delaware limited liability company)

Effective as of

**[***INSERT***]**

TABLE OF CONTENTS

**FIFTH AMENDED AND RESTATED**
**LIMITED LIABILITY COMPANY AGREEMENT**
**OF**
**LONGVIEW INTERMEDIATE HOLDINGS C, LLC**

**THIS FIFTH AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT** (this "Agreement") of LONGVIEW INTERMEDIATE HOLDINGS C, LLC, a Delaware limited liability company (the "Company"), effective as of **[***INSERT***]**, is adopted and entered into by and among the Persons who are parties hereto as listed on Schedule 3.1 hereto (collectively, the "Members," which word shall also include such other Persons who shall become members of the Company in accordance with the terms of this Agreement and pursuant to and in accordance with the Delaware Limited Liability Company Act (6 Del. C. § 18-101 et seq.), as amended from time to time (the "Act")).

WHEREAS, the Company was formed as a limited liability company pursuant to and in accordance with the Act by the filing of its certificate of formation on May 8, 2001, as amended by the filing of Certificates of Amendment on July 9, 2002, August 26, 2002 and June 21, 2005, and as amended and restated by the filing of an Amended and Restated Certificate of Formation on February 7, 2007 (the "Certificate of Formation") and the execution and delivery of the Limited Liability Company Agreement of the Company, dated as of January 24, 2007 (the "Initial Agreement");

WHEREAS, the Initial Agreement subsequently was amended and restated pursuant to (i) the Amended and Restated Limited Liability Company Agreement of the Company, (ii) the Second Amended and Restated Limited Liability Company Agreement of the Company, dated as of February 28, 2007, (iii) the Third Amended and Restated Limited Liability Company Agreement of the Company, dated as of June 20, 2011, and (iv) the Fourth Amended and Restated Limited Liability Company Agreement of the Company, dated April 13, 2015 (as so amended and restated, the "Amended LLC Agreement"); and

WHEREAS, pursuant to this Agreement, the parties hereto desire to further amend and restate the Amended LLC Agreement in accordance with and pursuant to the terms set forth in the Company's and its Affiliates' Joint Plan of Reorganization filed on **[***INSERT***]** with the Bankruptcy Court (as may be further amended and restated from time to time, the "Plan").

NOW, THEREFORE, in consideration of the premises and of the covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I
## DEFINITIONS

1.1 Definitions.

As used in this Agreement, the following terms shall have the meanings set forth below:

"Act" has the meaning set forth in the preamble hereto.

"Additional Capital Contribution" has the meaning set forth in Section 3.2.

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such Person. The word "control" (including the terms "controlled by" and "under common control with") as used in this definition means the possession, directly or indirectly (including through one or more intermediaries), of the power or authority to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. The word "Affiliated" shall have a correlative meaning. In calculating any Member's ownership of Shares for the purposes of determining whether a Member shall have certain rights under this Agreement, all Shares held by Affiliated Members shall be aggregated for the purposes of such determination.

"Agreement" means this Agreement as the same may be amended, supplemented or modified in accordance with the terms hereof.

"Amended LLC Agreement" has the meaning set forth in the recitals.

"Appointed Bank" has the meaning set forth in Section 9.5(d).

"Approved Sale" has the meaning set forth in Section 9.4(b).

"Bankruptcy Code" has the meaning set forth in Section 2.2(b).

"Bankruptcy Court" means the United States Bankruptcy Court for the District of Delaware having jurisdiction over the Chapter 11 Cases and, to the extent of the withdrawal of any reference under 28 U.S.C. § 157 and/or the General Order of the District Court pursuant to section 151 of title 28 of the United States Code, the United States District Court for the District of Delaware.

"Board of Managers" means the Board of Managers provided in Article V.

"Business Day" means any calendar day that is not a Saturday, Sunday or other calendar day on which banks are required or authorized to be closed in the City of New York. Unless designated a "Business Day," any reference to the word "day" in this Agreement shall mean calendar day. If the last calendar day of a period of time is a Saturday, a Sunday or other calendar day on which banks are required or authorized to be closed in the City of New York, then the period of time shall run until the end of the next Business Day.

"Buyout Notice" has the meaning set forth in Section 9.4(a).

"Cetus" shall mean Cetus Capital III LP, Cetus Capital VI LP, Littlejohn Opportunities Master Fund LP, OFM II LP, VSS Fund LP, and Affiliates, collectively.

"Chairman" has the meaning set forth in Section 5.3(n).

"Chairman Incapacity Notice" has the meaning set forth in Section 5.3(n).

"Change of Control" means the occurrence of any of the following: (i) the direct or indirect sale, lease, transfer, conveyance or other disposition, in one or a series of related transactions (including any merger or consolidation or whether by operation of law or otherwise), of all or substantially all of the properties or assets of the Company and its Subsidiaries, to any one Third Party Purchaser (or group of Affiliated Third Party Purchasers) or (ii) the consummation of any transaction (including any merger or consolidation or whether by operation of law or otherwise), the result of which is that any one Third Party Purchaser (or group of Affiliated Third Party Purchasers) becomes the beneficial owner, directly or indirectly, of more than fifty percent (50%) of the then outstanding Shares or of the surviving entity of any such merger or consolidation.

"Chief Executive Officer" means the natural person from time to time serving as chief executive officer of the Company in accordance with this Agreement.

"Code" means the Internal Revenue Code of 1986, as amended, including any successor provisions and transition rules.

"Commission" means the United States Securities and Exchange Commission.

"Common Share" means a Share representing a fractional part of the equity interests in the Company having the preferences, rights, obligations and limitations specified with respect to the Common Shares in this Agreement.

"Company" has the meaning set forth in the preamble to this Agreement.

"Company Executive Manager" has the meaning set forth in Section **Error! Reference source not found.**.

"Confidential Information" has the meaning set forth in Section 11.14(a).

"Damages" has the meaning set forth in Section 7.2(a).

"Drag-Along Outside Date" has the meaning set forth in Section 9.4(c).

"Drag-Along Sale" has the meaning set forth in Section 9.4(a).

"Eaton Vance" shall mean Eaton Vance Management and Affiliates, collectively.

"Effective Date" has the meaning set forth in Section 2.2(a).

"Effective Transfer Time" has the meaning set forth in Section 9.7.

"Event of Dissolution" has the meaning set forth in Section 10.1.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, or any successor statute thereto, and the rules and regulations of the Commission promulgated thereunder.

"Family Member" means an individual's spouse, domestic partner, sibling, child, or other lineal descendant of such individual (including adoptive relationships and stepchildren) and the spouses of each such natural person.

"FINRA" means the Financial Industry Regulatory Authority.

"Fund Indemnitee" has the meaning set forth in Section 7.2(c).

"Fund Indemnitors" has the meaning set forth in Section 7.2(c).

"GAAP" means United States generally accepted accounting principles in effect from time to time.

"Governmental Authority" means the government of any nation, state, city, locality or other political subdivision thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and any corporation or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing.

"Incentive Shares" has the meaning set forth in Section 9.9(a).

"Indemnitee" has the meaning set forth in Section 7.2(a).

"Independent Bank" has the meaning set forth in Section 9.5(d).

"Independent Manager" means a natural person, appointed by a majority of the members of the Board of Managers from time to time as an "Independent Manager" and, who, for the five-year period prior to his or her appointment as Independent Manager, has not been, and during the continuation of his or her service as Independent Manager is not (i) an employee, director, member or other equityholder or officer of the Company or any of its Affiliates (other than his or her service as an Independent Manager); (ii) a customer or supplier of the Company or any of its Affiliates; or (iii) Family Member of a person described in (i) or (ii).

"Initial Agreement" has the meaning set forth in the recitals.

"Initial Public Offering" means a bona fide firm commitment underwritten public offering of the equity interests of the Company, pursuant to an effective registration statement filed under the Securities Act.

"Manager" means a natural person serving as a member of the Board of Managers in accordance with this Agreement.

"Members" has the meaning set forth in the preamble hereto; provided, however, that a Person shall cease to be a Member for purposes of this Agreement at such time as such Person ceases to own any Shares.

"NAIC" means the National Association of Insurance Commissioners.

"New Securities" has the meaning set forth in Section 9.9(a).

"Non-Voting Observer" has the meaning set forth in Section 5.3(i).

"Notice of Acceptance" has the meaning set forth in Section 9.9(b).

"Offer Shares" has the meaning set forth in Section 9.5(a).

"Offered Securities" has the meaning set forth in Section 9.9(a).

"Offerees" has the meaning set forth in Section 9.5(a).

"Officer Incapacity Notice" has the meaning set forth in Section 5.8(d).

"Order" has the meaning set forth in Section 2.2(a).

"Participating Offeree" has the meaning set forth in Section 9.5(b).

"Permitted Transferees" has the meaning set forth in Section 9.2.

"Person" means any individual, corporation, company, voluntary association, partnership, joint venture, limited liability company, trust, estate, unincorporated organization, Governmental Authority or other entity and shall include any "group" within the meaning of the regulations promulgated by the Commission under Section 13(d) of the Exchange Act.

"Plan" has the meaning set forth in the recitals.

"Planned ROFO Purchase Date" has the meaning set forth in Section 9.5(b).

"Preemptive Offer" has the meaning set forth in Section 9.9(a).

"Preemptive Right" has the meaning set forth in Section 9.9(a).

"Proportionate Percentage" has the meaning set forth in Section 9.9(a).

"Proposed ROFO Transferee(s)" has the meaning set forth in Section 9.5(a).

"Proposed Transfer" has the meaning set forth in Section 9.3(b).

"Protected Person" has the meaning set forth in Section 7.1(a).

"Related Person" means (i) any Affiliate of the Company and (ii) any other Person if such other Person and its Affiliates, beneficially own (within the meaning of Rule 13d-3 under the Exchange Act), in the aggregate more than nine percent (9%) of the outstanding Shares.

"ROFO Acceptance Notice" has the meaning set forth in Section 9.5(b).

"ROFO Offer Notice" has the meaning set forth in Section 9.5(a).

"ROFO Offer Terms" has the meaning set forth in Section 9.5(a).

"ROFO Transferring Holder" has the meaning set forth in Section 9.5(a).

"Sale Price" has the meaning set forth in Section 9.5(a).

"SARs" means stock appreciation rights.

"Securities" means "securities" as defined in Section 2(a)(1) of the Securities Act and includes, with respect to any Person, such Person's capital stock or other equity interests or any options, warrants or other securities that are directly or indirectly convertible into, or exercisable or exchangeable for, such Person's capital stock.

"Securities Act" means the Securities Act of 1933, as amended, or any successor statute thereto, and the rules and regulations of the Commission promulgated thereunder.

"Selling Members" has the meaning set forth in Section 9.4(a).

"Selling Tag Member" has the meaning set forth in Section 9.3(a).

"Share" means an ownership interest of a Member in the Company, including each of the Common Shares or any other class or series of Shares designated by the Board of Managers.

"Stock" has the meaning set forth in Section 9.10(c).

"Subject Purchaser" has the meaning set forth in Section 9.9(a).

"Subsidiary" shall mean, with respect to any Person, any corporation, limited liability company, partnership, association or business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof or (ii) if a limited liability company, partnership, association or other business entity (other than a corporation), a majority of such partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof.

"Successor Corporation" has the meaning set forth in Section 9.9(a).

"Tag-Along Notice" has the meaning set forth in Section 9.3(b).

"Tag-Along Notice Period" has the meaning set forth in Section 9.3(b).

"Tag-Along Rightholder" has the meaning set forth in Section 9.3(a).

"Taxes" means any and all taxes (including net income, gross income, franchise, ad valorem, gross receipts, sales, use, property, and stamp taxes), levies, imposts, duties, charges, assessments, or withholdings of any nature whatsoever, general or special, ordinary or extraordinary, now existing or hereafter created or adopted, together with any and all penalties, fines, additions to tax, and interest thereon.

"Third Party Purchaser" has the meaning set forth in Section 9.3(a).

"Transfer" means any direct or indirect transfer, sale, assignment, pledge, hypothecation or other disposition of any Share, whether voluntary or involuntary, or any

agreement to transfer, sell, assign, pledge, hypothecate or otherwise dispose of any Share, including any such disposition by operation of law or otherwise to an heir, successor or assign; provided, however, that (i) a transaction that is a pledge shall not be deemed to be a Transfer but a foreclosure pursuant thereto shall be deemed to be a Transfer; (ii) with respect to any Member that is a widely held "investment company" as defined in the Investment Company Act of 1940, as amended, or any publicly traded company whose securities are registered under the Exchange Act, a sale, transfer, assignment, pledge, hypothecation, encumbrance or other disposition of ownership interests in such investment company or publicly traded company shall not be deemed a Transfer; and (iii) with respect to any Member that is a private equity fund, hedge fund or similar vehicle, any Transfer of limited partnership or other similar non-control interest in any entity which is a pooled investment vehicle holding other material investments and which is an equityholder (directly or indirectly) of a Member, or the change in control of any general partner, manager or similar person of such entity, will not be deemed to be a Transfer for purposes hereof. The words "Transferred," "Transferor" and "Transferee" shall have their respective correlative meanings.

"Trilogy" shall mean Trilogy Portfolio Company LLC, R&F Markets LLC, and Affiliates, collectively.

"Valuation Process Notice" has the meaning set forth in Section 9.5(d).

1.2 Usage Generally. The definitions in this Article I or the Schedule to this Agreement shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. All references herein to Articles, Sections and Schedule shall be deemed to be references to Articles and Sections of, and Schedule to, this Agreement unless the context shall otherwise require. The Schedule attached hereto shall be deemed incorporated herein as if set forth in full herein and, unless otherwise defined therein, all terms used in any Schedule shall have the meaning ascribed to such term in this Agreement. The words "include," "includes" and "including" shall be deemed to be followed by the term "without limitation." All accounting terms not defined in this Agreement shall have the meanings determined by GAAP. The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise expressly provided herein, any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein.

## ARTICLE II
## THE COMPANY AND ITS BUSINESS

2.1 Agreement; Effect of Inconsistencies with Act. The Members hereby adopt this Agreement as the limited liability agreement of the Company, to set forth the rules, regulations and provisions regarding the management of the business of the Company, the governance of the Company, the conduct of its business and the rights and privileges of its Members. The Members agree to the terms and conditions of this Agreement, as it may from time to time be amended, supplemented or restated according to its terms. The powers and authorities granted by this

Agreement are subject to the provisions of the Act. To the extent any provision of this Agreement is prohibited or ineffective under the Act or any other law, this Agreement shall be considered amended to the smallest degree possible in order to make such provision effective under the Act or such other law. If the Act or applicable law is subsequently amended or interpreted in such a way as to validate a provision of this Agreement that was formerly invalid, such provision shall be considered to be valid from the effective date of such interpretation or amendment. Each Member shall be entitled to rely on the provisions of this Agreement, and no Member shall be liable to the Company or to any other Member for any action or refusal to act taken in good faith reliance on this Agreement. Notwithstanding anything to the contrary in this Agreement, Section 18-210 of the Act (entitled "Contractual Appraisal Rights") shall not apply or be incorporated into this Agreement.Effective Date. (a) This Agreement is effective as of the date first above written. The Company commenced on the date the Certificate of Formation of the Company was filed with the Secretary of State of the State of Delaware and shall continue in existence until it is dissolved and terminated in accordance with the terms hereof. This Agreement, which amends and restates the Amended LLC Agreement, was filed with the Bankruptcy Court pursuant to the Plan, confirmed by an order of the Bankruptcy Court, dated **[***INSERT***]** in *In re: Longview Power, LLC, et al.*, Case No.: 20-10951 (**[***INSERT***]**) under Chapter 11 of Title 11 of the United States Code (the "Order") and became effective **[***INSERT***]** (the "Effective Date"). Pursuant to the Order and as set forth in the Plan, among other things, all equity Securities of the Company issued and outstanding immediately prior to the Effective Date were discharged, terminated and cancelled. To the extent that the rights or obligations of any Member are different by reason of any provision of this Agreement than they would be in the absence of such provisions, this Agreement shall, to the extent permitted by the Act, control.

(b) Notwithstanding anything to the contrary in this Agreement, the Company shall not be authorized to issue non-voting equity securities (which shall not be deemed to include Incentive Shares) in violation of section 1123(a)(6) of Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"); provided, however, that the forgoing restriction shall (i) have no further force and effect beyond that required under section 1123(a)(6) of the Bankruptcy Code, and (ii) only have such force and effect for so long as such section 1123(a)(6) is in effect and applies to the Company, and (iii) be deemed void or eliminated if required under applicable law.

(c) If, on the Effective Date, any Member (together with its Affiliates) owns or controls ten percent (10%) or more of the then outstanding Common Shares, such Member shall not be entitled to vote any Common Shares on any matter under this Agreement in excess of the Common Shares representing nine and ninety-nine one-hundredths percent (9.99%) of the then outstanding Common Shares unless and until the ownership or control by such Member has been authorized by the Federal Energy Regulatory Commission pursuant to Section 203 of the Federal Power Act, as amended.

2.3 Name. The name of the Company shall be "Longview Intermediate Holdings C, LLC". The Company may adopt and conduct its business under such assumed or trade names as the Board of Managers may from time to time determine. The term "Limited Liability Company,"

the acronym "LLC," or similar words, terms, acronyms or letters shall be included in the Company's name where necessary for the purpose of complying with the laws of any jurisdiction that so requires. The Board of Managers may change the name of the Company at any time and from time to time and shall notify the Members of such change in the next regular communication to the Members.Registered Agent and Office. The registered agent for the service of process and the registered office shall be that Person and location reflected in the Certificate of Formation. The Board of Managers may, from time to time, change the registered agent or office through appropriate filings with the Secretary of State of the State of Delaware. If the registered agent ceases to act as such for any reason or the location of the registered office shall change, the Board of Managers shall promptly designate a replacement registered agent or file a notice of change of address as the case may be.Principal Executive Office. The principal executive office of the Company is located at 1375 Fort Martin Road, Maidsville, West Virginia 26541. The Company may locate its principal executive office at any other place or places as the Board of Managers may, from time to time, deem advisable. The Company may maintain offices at such other place or places within or outside the State of Delaware as the Board of Managers determines to be necessary or appropriate.Foreign Qualification. The Company Executive Manager, Chief Executive Officer, President, Chief Financial Officer, any Vice President, the Secretary and any Assistant Secretary of the Company are, and each of them individually is, hereby authorized to qualify the Company to do business as a foreign limited liability company in any state or territory in the United States in which the Company may wish to conduct business, and each is hereby designated as an authorized person, within the meaning of the Act, to execute, deliver and file any amendments or restatements of the Certificate of Formation, any other certificates and any amendments or restatements thereof necessary for the Company (subject to any required consent of the Members) to so qualify to do business in any such state or territory.No State Law Partnership. The Members intend that the LLC not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member by virtue of this Agreement and neither this Agreement nor any other document entered into by the LLC or any Member relating to the subject matter hereof shall be construed to suggest otherwise.

2.8 Purposes. The Company is formed for the purposes of engaging in any lawful acts or activities for which limited liability companies may be organized under the Act and to engage in any and all activities necessary or incidental thereto. The Company shall have all the powers necessary or convenient to carry out the purposes for which it is formed, including the powers granted by the Act.

## ARTICLE III
## MEMBERS; DISTRIBUTIONS

3.1 Members.

(a) The identity, address and e-mail address of each Member, the number and class of Shares held by such Member and such Member's Class Member Percentage is set forth on Schedule 3.1 attached hereto.

(b) Schedule 3.1 shall be amended by the Company following any Transfer as provided by Article IX or any issuance of additional Shares in accordance with this Agreement.

(c) Each Person designated for admission to the Company as an additional Member in accordance with this Agreement (other than in connection with a Transfer made in accordance with Article IX) shall contribute cash, other property (including securities) or services rendered in the amount and of the type designated by the Board of Managers and Schedule 3.1 shall be amended at the time of such additional Members' admission as a Member by the Board of Managers to reflect such contribution.

3.2 Additional Capital Contributions. No Member shall be obligated to make an Additional Capital Contribution to the Company. All amounts paid to the Company by a Member as additional equity capital shall be deemed to be an "Additional Capital Contribution" by such Member for the purposes of this Agreement, and Schedule 3.1 shall be amended at the time of such Additional Capital Contribution.

3.3 No Interest in Company Property. A Member's Shares shall for all purposes be personal property. A Member has no interest in specific Company property.

3.4 Distributions. No Member shall be entitled to receive any distribution from the Company except as provided in this Agreement. Distributions (whether interim distributions or distributions on liquidation) made after the Effective Date shall be made in amounts determined by the Board of Managers to the Members, subject to the restrictions set forth in the Act. All distributions shall be made to Members pro rata in accordance with the number of Common Shares held by each; provided, however, for the avoidance of doubt, that unvested Incentive Shares shall receive no distributions and shall not be entitled to any distributions (even if such Incentive Shares later become vested), except as may be provided in the definitive grant agreement related to such Incentive Shares.

## ARTICLE IV
## SHARES

4.1 Shares. As of the Effective Date, the ownership interests in the Company are evidenced by one class of Shares, Common Shares.

4.2 Designation of Shares. The Board of Managers shall have the power to designate the ownership interests in the Company into one or more classes and/or series of Shares and to fix for such class or series such voting powers, full or limited, or no voting powers, and such distinctive designations, preferences and relative, participating, optional or other special rights and such qualifications, limitations or restrictions thereof, as shall be stated and expressed in the properly approved resolution or resolutions of the Board of Managers providing for such designation, and such resolution or resolutions of the Board of Managers shall set forth such amendments to this Agreement as shall be necessary or reasonable in the sole judgment of the Board of Managers to effect such resolution and subject to Section 6.9 and Section 11.4, such amendments shall be binding upon all of the Members of the Company upon a properly adopted resolution by the Board of Managers.

4.3 Issue of Shares; Register; Transfer. Subject to Section 9.9, the Board of Managers may issue Shares from time to time in such portions of the entire interests in the Company as the Board of Managers shall properly approve, either for cash, services, Securities, property or other value, or in exchange for other Shares, and at such price and upon such terms as the Board of Managers may, subject to the terms of this Agreement, determine. The Board of Managers may (a) provide that a register of holders of any or all Shares shall be kept and (b) may appoint one or more transfer agents and one or more registrars, all in accordance with such rules, regulations and procedures as the Board of Managers may determine.

4.4 Certificates. The Company may, upon the direction of the Board of Managers, issue certificates of limited liability company interests evidencing the Shares. Upon the direction of the Board of Managers, each certificate evidencing any Share shall bear such appropriate legend indicating the existence of this Agreement and the restrictions on Transfer contained herein and imposed by applicable law.

## ARTICLE V
## MANAGEMENT OF THE COMPANY

5.1 Management and Control of the Company. The management, operation and control of the business and affairs of the Company shall be vested exclusively in the Board of Managers, except as otherwise expressly provided for in this Agreement. The Board of Managers shall have full and complete power, authority and discretion for, on behalf of and in the name of the Company, to enter into and perform all contracts and other undertakings that it may deem necessary or advisable to carry out any and all of the objects and purposes of the Company. A Manager acting individually will not have the power to bind the Company. The power and authority of the Board of Managers may be delegated by the Board of Managers to a committee of Managers, to any officer of the Company or to any other Person engaged to act on behalf of the Company.

5.2 Members Shall Not Manage or Control. The Members, other than as they may act by and through the Board of Managers, shall take no part in the management of the business and affairs of the Company and shall transact no business for the Company, in each case other than as specifically delegated by the Board of Managers.

5.3 Board of Managers.

(a) A Board of Managers shall be established and shall consist of five (5) natural persons in accordance with this Section 5.3, except if an increase or a decrease in the number of Managers is required in accordance with Section 5.3(c)(i), Section 5.3(c)(ii), Section 5.3(g) and Section 5.3(h). The Board of Managers shall be comprised of the following five (5) Managers:

(i) the Company Executive Manager (the "Company Executive Manager"), who also may be (but is not required to be) the Chief Executive Officer or another officer of the Company, and who as of the Effective Date shall be Jeffery L. Keffer;

(ii) two (2) Managers appointed by Trilogy so long as Trilogy continues to hold fifteen percent (15%) or greater of all of the then outstanding

Shares (excluding Incentive Shares), who as of the Effective Date shall be **[***INSERT***]** and **[***INSERT***]**;

(iii) one (1) Manager appointed by Cetus so long as Cetus continues to hold seven and one-half percent (7.5%) or greater of all of the then outstanding Shares (excluding Incentive Shares), who as of the Effective Date shall be **[***INSERT***]**; and

(iv) one (1) Manager appointed by Eaton Vance so long as Eaton Vance continues to hold seven and one-half percent (7.5%) or greater of all of the then outstanding Shares (excluding Incentive Shares), who as of the Effective Date shall be **[***INSERT***]**.

(b) In the event that Common Shares are Transferred by Trilogy to a Transferee in compliance with Article IX (i) equal to fifteen percent (15%) or greater of all of the then outstanding Shares (excluding Incentive Shares), Trilogy may transfer (but is not obligated to transfer), in its sole and absolute discretion, the right to appoint one (1) Manager or two (2) Managers in accordance with this Section 5.3(b), and, if the right to appoint Manager(s) is transferred, then the Transferee shall continue to have the right to appoint the Manager(s) so long as the Transferee continues to hold fifteen percent (15%) or greater of the then outstanding Shares (excluding Incentive Shares), or (ii) equal to seven and one-half percent (7.5%) or greater of all of the then outstanding Shares (excluding Incentive Shares), Trilogy may transfer (but is not obligated to transfer), in its sole and absolute discretion, the right to appoint one (1) Manager in accordance with this Section 5.3(b), and, if the right to appoint a Manager is transferred, then the Transferee shall continue to have the right to appoint the Manager so long as the Transferee continues to hold seven and one-half percent (7.5%) or greater of the then outstanding Shares (excluding Incentive Shares).

(c) In the event that Common Shares are Transferred by Cetus or Eaton Vance, as the case may be, to a Transferee in compliance with Article IX equal to seven and one-half percent (7.5%) or greater of all of the then outstanding Shares (excluding Incentive Shares), Cetus or Eaton Vance, as the case may be, may transfer (but is not obligated to transfer), in its sole and absolute discretion, the right to appoint one (1) Manager in accordance with this Section 5.3(c), and, if the right to appoint a Manager is transferred, then the Transferee shall continue to have the right to appoint the Manager so long as the Transferee continues to hold seven and one-half percent (7.5%) or greater of the then outstanding Shares (excluding Incentive Shares).

(i) In the event that Shares are Transferred by a Member or Members (including Trilogy or Eaton Vance, as the case may be, if Trilogy or Eaton Vance, as the case may be, did not transfer the right to appoint Manager(s) in accordance with Section 5.3(b) or this Section 5.3(c), and excluding Trilogy or Eaton Vance, as the case may be, if Trilogy or Eaton Vance, as the case may be, did transfer the right to appoint Manager(s) in accordance with Section 5.3(b) or this Section 5.3(c)) to Cetus in compliance with Article IX that results in Cetus holding thirty-five percent (35%) or greater, up to fifty percent (50%), of all of the then outstanding Shares (excluding Incentive Shares), and so long as Cetus continues to hold thirty-five percent (35%) or greater, up to fifty percent (50%), of all of the then

outstanding Shares (excluding Incentive Shares), Cetus shall have a right to appoint one (1) Manager, and, if necessary, the size of the Board of Managers set forth in Section 5.3(a) shall be increased to accommodate the one (1) additional Manager. In the event that Cetus shall hold less than thirty-five percent (35%) of all of the then outstanding Shares (excluding Incentive Shares), Cetus shall no longer have the right to appoint a Manager, the Manager appointed by Cetus shall automatically be removed without any further action required by any Person, and, if the size of the Board of Managers was increased to accommodate the one (1) additional Manager, then the size of the Board of Managers shall be decreased and no seat on the Board of Managers shall be vacant. At no time shall Cetus have a right to appoint one (1) Manager in accordance with this Section 5.3(c)(i) if at any time Cetus was transferred the right to appoint Manager(s) in accordance with Section 5.3(b) or this Section 5.3(c).

(ii) In the event that Shares are Transferred by a Member or Members (including Trilogy or Cetus, as the case may be, if Trilogy or Cetus, as the case may be, did not transfer the right to appoint Manager(s) in accordance with Section 5.3(b) or this Section 5.3(c), and excluding Trilogy or Cetus, as the case may be, if Trilogy or Cetus, as the case may be, did transfer the right to appoint Manager(s) in accordance with Section 5.3(b) or this Section 5.3(c)) to Eaton Vance in compliance with Article IX that results in Eaton Vance holding thirty-five percent (35%) or greater, up to fifty percent (50%), of all of the then outstanding Shares (excluding Incentive Shares), and so long as Eaton Vance continues to hold thirty-five percent (35%) or greater, up to fifty percent (50%), of all of the then outstanding Shares (excluding Incentive Shares), Eaton Vance shall have a right to appoint one (1) Manager, and, if necessary, the size of the Board of Managers set forth in Section 5.3(a) shall be increased to accommodate the one (1) additional Manager. In the event that Eaton Vance shall hold less than thirty-five percent (35%) of all of the then outstanding Shares (excluding Incentive Shares), Eaton Vance shall no longer have the right to appoint a Manager, the Manager appointed by Eaton Vance shall automatically be removed without any further action required by any Person, and, if the size of the Board of Managers was increased to accommodate the one (1) additional Manager, then the size of the Board of Managers shall be decreased and no seat on the Board of Managers shall be vacant. At no time shall Eaton Vance have a right to appoint one (1) Manager in accordance with this Section 5.3(c)(ii) if at any time Eaton Vance was transferred the right to appoint Manager(s) in accordance with Section 5.3(b) or this Section 5.3(c).

(d) Unless Transferred by Trilogy to a Transferee in accordance with Section 5.3(b), in the event that Trilogy (i) holds less than fifteen percent (15%), but continues to hold seven and one-half percent (7.5%) or greater, of all of the then outstanding Shares (excluding Incentive Shares), Trilogy shall have the right to appoint one (1) Manager to the Board of Managers and, at that time, if two (2) Managers appointed by Trilogy are serving on the Board of Managers, then one (1) Manager appointed by Trilogy shall automatically be removed without any further action required by any Person, or (ii) holds less than seven and one-half percent (7.5%) of all of the then outstanding Shares (excluding Incentive Shares), Trilogy shall no longer have the right to appoint Manager(s) to the Board

of Managers and, at that time, the Manager(s) appointed by Trilogy shall automatically be removed without any further action required by any Person(s).

(e) Unless Transferred by Cetus or Eaton Vance, as the case may be, to a Transferee in accordance with Section 5.3(c), in the event that Cetus or Eaton Vance, as the case may be, holds less than seven and one-half percent (7.5%) of all of the then outstanding Shares (excluding Incentive Shares), Cetus or Eaton Vance, as the case may be, shall no longer have the right to appoint a Manager to the Board of Managers and, at that time, the Manager appointed by Cetus or Eaton Vance, as the case may be, shall automatically be removed without any further action required by any Person.

(f) In the event that a vacancy or vacancies the Board of Managers are created in accordance with Section 5.3(d) or Section 5.3(e), a majority of the remaining Managers shall appoint one or more natural persons to serve as Independent Manager(s) to fill the vacancy or vacancies. Each Independent Manager shall serve until his or her removal by a majority of the Managers (excluding the Independent Manager being removed), or his or her resignation or death. In the event that a vacancy or vacancies on the Board of Managers are created by the removal, resignation, or death of one or more Independent Managers in accordance with this Section 5.3(f), a majority of the remaining Managers (excluding the Independent Manager being removed) shall appoint one or more natural persons to serve as Independent Manager(s) to fill the vacancy or vacancies.

(g) In the event that Shares are Transferred by a Member or group of Members (including individually and collectively Trilogy, Cetus, and Eaton Vance if Trilogy, Cetus, or Eaton Vance, as the case may be, did not transfer the right to appoint Manager(s) in accordance with Section 5.3(b) or Section 5.3(c), and excluding individually and collectively Trilogy, Cetus, and Eaton Vance if Trilogy, Cetus, or Eaton Vance, as the case may be, did transfer the right to appoint Manager(s) in accordance with Section 5.3(b) or Section 5.3(c)) to a Transferee in compliance with Article IX that results in the Transferee holding thirty percent (30%) or greater, up to fifty percent (50%), of all of the then outstanding Shares (excluding Incentive Shares), and so long as the Transferee continues to hold thirty percent (30%) or greater, up to fifty percent (50%), of all of the then outstanding Shares (excluding Incentive Shares), the Transferee shall have a right to appoint one (1) Manager, and, if necessary, the size of the Board of Managers set forth in Section 5.3(a) shall be increased to accommodate the one (1) additional Manager. In the event that the Transferee shall hold less than thirty percent (30%) of all of the then outstanding Shares (excluding Incentive Shares), the Transferee shall no longer have the right to appoint a Manager, the Manager appointed by the Transferee shall automatically be removed without any further action required by any Person, and, if the size of the Board of Managers was increased to accommodate the one (1) additional Manager, then the size of the Board of Managers shall be decreased and no seat on the Board of Managers shall be vacant. At no time shall a Transferee have a right to appoint one (1) Manager in accordance with this Section 5.3(g) if at any time the Transferee was transferred the right to appoint Manager(s) in accordance with Section 5.3(b) or Section 5.3(c).

(h) Notwithstanding the appointment of Managers in accordance with Section 5.3(g), in the event that Shares are Transferred by a Member or group of Members (including individually or collectively Trilogy, Cetus and Eaton Vance) to a Transferee in

compliance with Article IX that results in the Transferee holding greater than fifty percent (50%) of all of the then outstanding Shares (excluding Incentive Shares), and so long as the Transferee continues to hold greater than fifty percent (50%) of all of the then outstanding Shares (excluding Incentive Shares), the Transferee shall have a right to appoint a majority of the members of the Board of Managers, and, if necessary, the size of the Board of Managers set forth in Section 5.3(a) shall be increased to accommodate the additional Manager(s). In the event that the Transferee shall no longer hold greater than fifty percent (50%) of all of the then outstanding Shares (excluding Incentive Shares), the Transferee shall no longer have the right to appoint a majority of the members of the Board of Managers, the Manager(s) appointed by the Transferee shall automatically be removed without any further action required by any Person(s), and, if the size of the Board of Managers was increased to accommodate the additional Manager(s), then the size of the Board of Managers shall be decreased and no seat on the Board of Managers shall be vacant.

(i) Notwithstanding the right to appoint Managers in accordance with Section 5.3(a), (i) Trilogy shall have the right to appoint one (1) Non-Voting Observer to the Board of Managers, so long as Trilogy holds seven and one-half percent (7.5%) or greater of all of the then outstanding Shares (excluding Incentive Shares), (ii) Cetus shall have the right to appoint one (1) Non-Voting Observer to the Board of Managers, so long as Cetus holds seven and one-half percent (7.5%) or greater of all of the then outstanding Shares (excluding Incentive Shares), and (iii) Eaton Vance shall have the right to appoint one (1) Non-Voting Observer to the Board of Managers, so long as Eaton Vance holds seven and one-half percent (7.5%) or greater of all of the then outstanding Shares (excluding Incentive Shares).

(j) Each Member (other than Trilogy, Cetus, and Eaton Vance)) that holds ten percent (10%) or greater of the then outstanding Shares (excluding Incentive Shares) shall have the right to appoint one (1) Non-Voting Observer to the Board of Managers so long as the Member continues to hold ten percent (10%) or greater of the then outstanding Shares (excluding Incentive Shares).

(k) Each Non-Voting Observer shall be entitled to attend and speak at all meetings of the Board of Managers, and shall receive all reports, meeting materials, notices and other materials as and when provided to the Managers. The Non-Voting Observers shall not have the power to vote or consent to any matter presented to the Board of Managers, to take any action proposed to be taken by the Board of Managers, or to otherwise participate in the management of or direct the actions of the Company. Neither the failure to give proper notice to the Non-Voting Observer, nor the failure of the Non-Voting Observer to attend a meeting of any of the Board of Managers shall invalidate any actions of the Board of Managers that are otherwise duly taken. Notwithstanding the foregoing, one or more of the Non-Voting Observers may be excluded from having access to any materials of the Board of Managers and may be excluded from an entire or any portion of a meeting of the Board of Managers if, upon the affirmative vote of a majority of the members of the Board of Managers, such exclusion (i) is reasonably necessary to preserve the attorney-client privilege of the Company or the Board of Managers, or (ii) is deemed necessary for any reason in the sole and absolute discretion of the Board of Managers. As a condition of participating in any meeting or receiving any materials or

notices, each Non-Voting Observer shall agree to be bound by the confidentiality requirements set forth in Section 11.14.

(l) All or any number of the Managers may be removed at any time, with or without cause, by the Members that appointed the Manager(s), in accordance with this Section **Error! Reference source not found.**. The Company Executive Manager may be removed at any time, with or without cause, by a majority of the members of the Board of Managers. For the purpose of the removal of the Company Executive Manager, the Company Executive Manager shall not be included in the calculation of a quorum of the Board of Managers in accordance with Section 5.5(a), and shall not be entitled to vote or to abstain in accordance with Section 5.5(b).

(m) All Managers (other than the Company Executive Manager serving as such as of the date hereof) shall be entitled to reimbursement of their reasonable and documented out-of-pocket expenses incurred in connection with their attendance of meetings of the Board of Managers and any committees of the Board of Managers.

(n) A majority of the members of the Board of Managers shall elect, from one of the Managers listed in Section **Error! Reference source not found.**, a member of the Board of Managers to serve as "Chairman" until such time as such Chairman (i) resigns, (ii) is removed and replaced by a majority of the members of the Board of Managers, (iii) is incapacitated or (iv) dies. Upon the resignation or death of such Chairman, a majority of the Board of Managers shall elect a member of the Board of Managers to serve as Chairman. For purposes of this Section 5.3(n), incapacity of the Chairman shall be deemed to exist if, (i) as a result of the Chairman's disability due to physical or mental illness, (ii) the Chairman shall have been absent from two (2) consecutive meetings of the Board of Managers, (iii) a majority of the Board of Managers shall have given the Chairman written notice informing the Chairman that the Chairman shall be removed as the Chairman because of incapacity at the next meeting of the Board of Managers (the "Chairman Incapacity Notice"), and (iv) the Chairman shall not have attended the next meeting of the Board of Managers (which has been noticed in accordance with Section 5.4) after the Chairman receives the Chairman Incapacity Notice.

(o) Any Manager may resign at any time by so notifying the Chairman in writing. Such resignation shall take effect upon receipt of such notice by the Chairman or at such later time as is therein specified, and unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective.

(p) If at any time a vacancy on the Board of Managers is created by reason of the removal, death or resignation of any Manager (other than the Company Executive Manager), then the vacancy shall be filled by the Members that appointed the Manager in accordance with this Section 5.3. If at any time a vacancy is created on the Board of Managers by reason of the removal, death or resignation of the Company Executive Manager, the vacancy shall be filled by another natural person selected by a majority of the members of the Board of Managers.

(q) Compensation of Managers, if any, for service on the Board of Managers or any duly authorized committee thereof shall be set at the sole and absolute discretion and by a vote of a majority of the members of the Board of Managers.

(r) The designation of a natural person as a Manager shall not of itself create a right to continued membership on the Board of Managers or employment with the Company.

5.4 Meetings of the Board of Managers. The Board of Managers shall hold regular meetings at least once during each fiscal quarter at such time and place as shall be determined by the Board of Managers. Special meetings of the Board of Managers may be called at any time by any two or more Managers. Written notice shall be required with respect to any meeting of the Board of Managers, and written notice of any special meetings shall specify the purpose of the special meeting. Unless waived by all of the Managers in writing (before, during or after a meeting) or with respect to any Manager at such meeting, prior notice of any regular or special meeting (including reconvening a meeting following any adjournments or postponements thereof) shall be given to each Manager at least one (1) Business Day before the date of such meeting. Notice of any meeting need not be given to any Manager who shall submit, either before, during or after such meeting, a signed waiver of notice. Attendance of a Manager at a meeting shall constitute a waiver of notice of such meeting, except when the Manager attends the meeting for the express purpose of objecting at the beginning thereof to the transaction of any business because the meeting is not properly noticed, called or convened.

5.5 Quorum and Voting.

(a) Except as provided in Section 5.3 regarding the removal of the Company Executive Manager, no action may be taken by the Board of Managers unless a quorum is present. A quorum shall consist of the presence, in person or by proxy, of a majority of the Managers then in office.

(b) Except as provided in Section 5.3 regarding the removal of the Company Executive Manager, when a quorum is present, the Board of Managers shall act by vote of a majority of the Managers then present (unless otherwise specified herein), and each Manager shall have one vote.

(c) Each Manager may authorize in writing another natural person or natural persons to vote and act for such member by proxy, and such natural person or natural persons holding such proxy shall be counted towards the determination of whether a quorum of the Board of Managers is present. One natural person may hold more than one proxy and each such proxy held by such natural person shall be counted towards the determination of whether a quorum of the Board of Managers exists.

5.6 Procedural Matters of the Board of Managers.

(a) Any action required or permitted to be taken by the Board of Managers (or any duly authorized committee thereof) may be taken without a meeting, if all of the Managers who are entitled to vote on such action consent in writing to such action. Such consent shall have the same effect as a vote of the Board of Managers.

(b) The Board of Managers (and each duly authorized committee thereof) shall cause to be kept a book of minutes of all of its actions by written consent and in which there shall be recorded with respect to each meeting of the Board of Managers (or any duly authorized committee thereof) the time and place of such meeting, whether regular or special (and if special, how called), the names of those present and the proceedings thereof.

(c) Managers may participate in a meeting of the Board of Managers (or any duly authorized committee thereof) by conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear one another, and such participation shall constitute presence in person at such meeting.

(d) At each meeting of the Board of Managers, the Chairman shall preside and, in his or her absence, Managers holding a majority of the votes present may appoint any member of the Board of Managers to preside at such meeting. The secretary (or such other person as shall be designated by the Board of Managers, which may include counsel to the Company) shall act as secretary at each meeting of the Board of Managers. In case the secretary shall be absent from any meeting of the Board of Managers, an assistant secretary shall perform the duties of secretary at such meeting or the person presiding at the meeting may appoint any person to act as secretary of the meeting.

(e) The Board of Managers may designate one or more committees to take any action that may be taken hereunder by the Board of Managers, which committees shall take actions under such procedures (not inconsistent with this Agreement) as shall be designated by it.

5.7 Officers.

(a) All officers of the Company shall have such authority and perform such duties as may be provided in this Agreement or, to the extent not so provided, by resolution passed by the Board of Managers. The officers of the Company shall, at a minimum, consist of a Company Executive Manager, Chief Executive Officer, President, Chief Financial Officer and Secretary. The officers (other than the Company Executive Manager) shall be appointed by a majority of the members of the Board of Managers. The Company Executive Manager shall be appointed by a majority of the members of the Board of Managers (other than the Company Executive Manager) in accordance with Section 5.3(l) and Section 5.3(p). As of the Effective Date, the Company Executive Manager shall be Jeffrey Keffer.

(b) Each officer shall be a natural person eighteen (18) years of age or older. One natural person may hold more than one office. The office of Company Executive Manager and the office of Chief Executive Officer are separate offices that may be held by the same natural person or different natural persons. In all cases where the duties of any officer, agent or employee are not prescribed by this Agreement, such officer, agent or

employee shall follow the orders and instructions of the Company Executive Manager unless otherwise directed by the Board of Managers. The officers, to the extent of their powers as set forth in this Agreement or as delegated to them by the Board of Managers, are agents of the Company and the actions of the officers taken in accordance with such powers shall bind the Company.

(c) The Secretary shall generally perform all the duties usually appertaining to the office of Secretary of a limited liability company.

5.8 Terms of Office; Resignation; Removal.

(a) Each officer shall hold office until he or she is removed in accordance with clause (c) below or his or her earlier death, incapacity or resignation. Any vacancy occurring in any of the officers of the Company, for any reason, shall be filled by action of the Board of Managers.

(b) Any officer may resign at any time by giving written notice to the Board of Managers. Such resignation shall take effect at the time specified in such notice or, if the time be not specified, upon receipt thereof by the Board of Managers. Unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

(c) Each officer shall be subject to removal by the Board of Managers.

(d) For purposes of this Section 5.8, incapacity of an officer shall be deemed to exist if, (i) as a result of an officer's disability due to physical or mental illness, (ii) the officer shall have been absent from the full-time performance of the officer's duties with the Company for a period of six (6) consecutive months, (iii) a majority of the Board of Managers shall have given the officer written notice informing the officer that the officer shall be removed as an officer because of incapacity (the "Officer Incapacity Notice"), and (iv) within thirty (30) days after the Officer Incapacity Notice is given, the officer shall not have returned to the full-time performance of the officer's duties.

5.9 Compensation. The compensation and terms of employment of all of the officers shall be fixed by the Board of Managers.

5.10 Approval of Certain Matters.

(a) Neither the Company nor any of its Subsidiaries shall enter into any transaction, agreement or arrangement with any Related Person unless such transaction, agreement or arrangement is approved by seventy-five percent (75%) or greater of the disinterested members of the Board of Managers (or, if there are no such disinterested members, by the entire Board of Managers acting reasonably). For purposes of this Section 5.10(a), (i) employment or indemnification arrangements with Managers, officers or employees of the Company in the ordinary course of business, (ii) the reimbursement of reasonable and documented out-of-pocket expenses to Managers in accordance with Section 5.3(m), and (iii) the compensation of Managers in accordance with Section 5.3(q) are not (and shall not be considered for purposes of this Section 5.10(a)) transactions, agreements or arrangements with a Related Person.

(b) Approval of seventy-five percent (75%) of greater of the members of the Board of Managers shall be required in order for the Company to: (i) file or consent to the institution of bankruptcy or insolvency proceedings against the Company or any of its Subsidiaries or the filing of any petition, either voluntary or involuntary, to take advantage of any applicable federal or state law relating to bankruptcy; (ii) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or other similar official of the Company or any of its Subsidiaries or a substantial part of the Company's or any of its Subsidiaries' property; (iii) take any action that might cause such entity to become insolvent or otherwise seek any relief under any laws relating to the relief of debts or the protection of creditors generally; (iv) make an assignment for the benefit of creditors; (v) admit in writing the Company's or any of its Subsidiaries' inability to pay its debts generally as they become due, or any similar action; or (vi) take action in furtherance of any of the foregoing actions.

## ARTICLE VI
## MEMBERS AND MEETINGS

6.1 Members. The name, address, class and number and type of Shares of each Member are set forth on Schedule 3.1 hereto. Such schedule shall be amended from time to time to reflect the admission of new Members, Additional Capital Contributions of the Members, and the Transfer of Shares, each as permitted by the terms of this Agreement. Each update to Schedule 3.1 shall be identified in sequence and dated as of the date of such update as follows: Schedule 3.1A (dated the date hereof), Schedule 3.1B (dated [_____]), Schedule 3.1C (dated [_____]), etc.

6.2 Admission of New Members. New Members may be admitted (a) by the Board of Managers or (b) in accordance with the transfer provisions contained in Article IX. Each new Member, prior to being admitted, shall represent and warrant to the Company that such new member is acquiring the Shares solely for its own account for investment purposes and not with a view to, or for offer or sale in connection with, any distribution thereof, that such new Member acknowledges that the Shares are not registered under the Securities Act, and that the Shares may not be transferred or sold except pursuant to the registration provisions of the Securities Act, as amended or pursuant to an applicable exemption therefrom and subject to state securities laws and regulations, as applicable, and make such other representations as the Company shall deem necessary or appropriate.

6.3 Resignation. A Member may not resign or withdraw from the Company prior to the dissolution and winding up of the Company.

6.4 Power of Members. The Members shall have the power to exercise any and all rights or powers granted to Members pursuant to the express terms of this Agreement and the Act. Except as otherwise specifically provided by this Agreement or required by the Act, no Member shall have the power to act for or on behalf of, or to bind, the Company. All Members shall constitute one class or group of members for purposes of the Act.

6.5 Meetings of Members. Meetings of the Members shall be called by the Board of Managers. The Members may vote, approve a matter or take any action by vote of the Members at a meeting, in person or by proxy, or without a meeting by written consent of the Members pursuant to Section 6.11.

6.6 Place of Meetings. The Board of Managers or a duly authorized committee thereof may designate any place, either within or outside of the State of Delaware, as the place of meeting for any annual meeting or for any special meeting of the Members. If no designation is made, the place of meeting shall be the principal executive offices of the Company. Members may participate in a meeting by means of a conference telephone or electronic media by means of which all persons participating in the meeting can communicate concurrently with each other, and any such participation in a meeting shall constitute presence in person of such Member at such meeting.

6.7 Notice of Members' Meetings.

(a) In connection with the calling of any meeting of the Members, the Board of Managers may set a record date for determining the Members entitled to vote at such meeting. Written notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose for which the meeting is called shall be delivered not less than three (3) days nor more than fifty (50) days before the date of the meeting, either personally, by facsimile or by mail, by or at the direction of any Manager calling the meeting to each Member, whether or not such Member is entitled to vote at such meeting.

(b) Notice to Members shall be given in accordance with Section 11.3.

(c) When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Company may transact any business that might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each Member holding Shares entitled to vote at the meeting.

(d) When a meeting that has been noticed is postponed to another time, notice need be given of the postponed meeting in accordance with Section 6.7(a), Section 6.7(b), and Section 11.3.

6.8 Waiver of Notice.

(a) When any notice is required to be given to any Member of the Company under the provisions of this Agreement, a waiver thereof in writing signed by the Person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

(b) By attending a meeting, a Member:

(i) Waives objection to lack of notice or defective notice of such meeting unless the Member, at the beginning of the meeting, objects to the holding of the meeting or the transacting of business at the meeting; and

(ii) Waives objection to consideration at such meeting of a particular matter not within the purpose or purposes described in the meeting notice unless the Member objects to considering the matter when it is presented.

6.9 Voting. Subject to Section 2.2(c) and Section 9.1(d), each holder of Common Shares shall be entitled to one (1) vote for each Common Share owned by such holder, except as expressly provided otherwise in this Agreement. Incentive Shares (if and when issued) shall not be entitled to vote except as otherwise determined by the Board of Managers in an award agreement.

6.10 Quorum; Vote Required. The presence at a meeting, in person or by proxy, of Members owning a majority of the outstanding Common Shares entitled to vote on the subject matter of the meeting at the time of the action taken constitutes a quorum for the transaction of business required. When a quorum is present, the affirmative vote, in person or by proxy, of a majority of the Common Shares present at the meeting shall be the act of the Members, unless the vote of a greater proportion or number or voting by classes is required by the Act or by this Agreement. If a quorum is not represented at any meeting of the Members, such meeting may be adjourned to a period not to exceed sixty (60) days at any one adjournment.

6.11 Action by Written Consent of Members. Any action required or permitted to be taken at any meeting of the Members may be taken without a meeting if Members holding not less than the minimum number of Shares that would be necessary to approve the action pursuant to the terms of this Agreement, consent thereto in writing, and the writing or writings are filed with the minutes of the proceedings of the Members. In no instance where action is authorized by written consent shall a meeting of Members be required to be called or notice required to be given; provided, however, a copy of the action taken by written consent shall be filed with the records of the Company. Reasonably prompt notice of the taking of any action taken without a meeting by less than unanimous written consent shall be given to those Members who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of Members to take the action were obtained; provided, that the effectiveness of such action is not dependent on the giving of such notice. Written consent by the Members pursuant to this Section 6.11 shall have the same force and effect as a vote of such Members taken at a duly held meeting of the Members and may be stated as such in any document.

6.12 Voting by Ballot. Voting on any question may be by voice vote unless the presiding officer shall order or any Member shall demand that voting be by ballot.

6.13 No Cumulative Voting. No Member shall be entitled to cumulative voting in any circumstance.

## ARTICLE VII
## EXCULPATION; INDEMNIFICATION; LIABILITY; OPPORTUNITY

7.1 Exculpation.

(a) Subject to Section 7.3(d), no Manager, officer of the Company or any of its direct or indirect Subsidiaries, or Member, in any way, guarantees the return of any Members' capital contributions or a profit for the Members from the operations of the Company. To the fullest extent permitted by Section 18-1101 of the Act, none of the Members, Managers, officers of the Company or any of its direct or indirect Subsidiaries, any of their respective Affiliates, nor any of their respective officers, directors, employees, partners, members, representatives or equityholders (each, a "Protected Person") will be liable to any other officer, the Company or any Member for any loss or damage sustained by the Company or any Member except as specifically provided to the contrary in the immediately following sentence. Subject to Section 7.3(d), none of the Protected Persons shall be liable to the Company or its Members for any loss or damage resulting from any act or omission taken or suffered by such Protected Person in connection with the conduct of the affairs of the Company or otherwise in connection with this Agreement or the matters contemplated hereby, unless such loss or damage is incurred by reason of such Protected Person's acts or omissions that constitute a bad faith violation of the implied contractual covenant of good faith and fair dealing. Any Protected Person or officer may consult with legal counsel, accountants, advisors or other similar persons with respect to the Company's affairs and shall be fully protected and justified in any action or inaction that is taken or omitted in good faith, in reliance upon and in accord with the opinion or advice of such persons, provided they shall have been selected in good faith. The preceding sentence shall in no way limit any Person's right to rely on information to the extent provided in Section 18-406 of the Act.

(b) None of the Members, by reason of their execution of this Agreement or their status as members of the Company shall be responsible or liable for any indebtedness, liability or obligation of any other Member incurred either before or after the execution of this Agreement.

7.2 Indemnification.

(a) To the fullest extent permitted under applicable law and the Act, as the same exist or may hereafter be amended, the Company shall indemnify and hold harmless each of the Protected Persons (each, an "Indemnitee") from and against any and all claims, liabilities, damages, losses, costs and expenses (including amounts paid in satisfaction of judgments, in compromises and settlements, as fines and penalties (including, without limitation, excise and similar taxes and punitive damages) and legal or other costs and reasonable expenses of investigating or defending against any claim or alleged claim) of any nature whatsoever, known or unknown, liquidated or unliquidated (collectively, "Damages"), that are incurred by any Indemnitee, and arise out of or in connection with (i) the affairs of the Company or the performance by such Indemnitee of any of the Indemnitee's responsibilities hereunder or (ii) the service at the request of the Company by such Indemnitee as a partner, member, manager, director, officer, trustee, employee or agent of any other Person; provided that the Indemnitee acted in good faith and in a manner

such Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such Indemnitee's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the Indemnitee did not act in good faith and in a manner such Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such Indemnitee's conduct was unlawful. The indemnification obligations of the Company pursuant to this Section 7.2 shall be satisfied from and limited to the Company's assets and no Member shall have any personal liability on account thereof.

(b) The Company shall pay reasonable, documented expenses incurred by any Indemnitee in defending any action, suit or proceeding described in Section 7.2(a) in advance of the final disposition of such action, suit or proceeding, as such Damages are incurred; provided, however, that any such advance shall only be made if such Indemnitee provides written affirmation to repay such advance if it shall ultimately be determined by a court of competent jurisdiction that such Indemnitee is not entitled to be indemnified by the Company pursuant to this Section 7.2.

(c) Certain Indemnitees that are directors, officers, employees, stockholders, partners, limited partners, members, equityholders, managers, or advisors of any Member or any of such Member's Affiliates (each such Person, a "Fund Indemnitee") may have certain rights to indemnification, advancement of expenses and/or insurance provided by or on behalf of such Member and/or its Affiliates (collectively, the "Fund Indemnitors"). Notwithstanding anything to the contrary in this Agreement: (i) the Company is the indemnitor of first resort (*i.e.*, the Company's obligations to each Fund Indemnitee are primary and any obligation of the Fund Indemnitors to advance Damages or to provide indemnification for such Damages incurred by each Fund Indemnitee are secondary), (ii) the Company shall be required to advance the full amount of Damages incurred by each Fund Indemnitee and will be liable for the full amount of all of such Damages paid in settlement to the extent legally permitted and as required by this Agreement, without regard to any rights each Fund Indemnitee may have against the Fund Indemnitors, and (iii) the Company irrevocably waives, relinquishes and releases the Fund Indemnitors from any and all claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. Notwithstanding anything to the contrary in this Agreement or otherwise, no advancement or payment by the Fund Indemnitors on behalf of a Fund Indemnitee with respect to any claim for which such Fund Indemnitee has sought indemnification or advancement of Damages from the Company shall affect the foregoing and the Fund Indemnitors will have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of such Fund Indemnitee against the Company. The Fund Indemnitors are express third party beneficiaries of the terms of this Section 7.2(c).

(d) Without limiting Section 7.2(c), the indemnification provided by this Section 7.2 shall not be deemed exclusive of any other rights to indemnification to which those seeking indemnification may be entitled under any agreement, determination of the Board of Managers or otherwise. The rights to indemnification and reimbursement or

advancement of expenses provided by, or granted pursuant to, this Section 7.2 shall continue as to an Indemnitee who has ceased to be a Member, Manager or officer (or other Person indemnified hereunder) for any actions or omissions that occurred while such Indemnitee was a Member, Manager or officer and shall inure to the benefit of the successors, executors, administrators, legatees and distributees of such Person.

(e) The provisions of this Section 7.2 shall be a contract between the Company, on the one hand, and each Indemnitee who served at any time while this Section 7.2 is in effect in any capacity entitling such Indemnitee to indemnification hereunder, on the other hand, pursuant to which the Company and each such Indemnitee intend to be legally bound. No repeal or modification of this Section 7.2 shall affect any rights or obligations with respect to any state of facts then or theretofore existing or thereafter arising or any action, suit or proceeding theretofore or thereafter brought or threatened based in whole or in part upon such state of facts.

(f) The Company may enter into indemnity contracts with Indemnitees and adopt written procedures pursuant to which arrangements are made for the advancement of expenses and the funding of obligations under this Section 7.2 hereof and containing such other procedures regarding indemnification as are appropriate. For the avoidance of doubt, each of the Managers shall be entitled to receive indemnity contracts with the Company on terms no less favorable than any other indemnity contract entered into between the Company (or any of its Subsidiaries) and any other Manager.

(g) Notwithstanding anything to the contrary in this Agreement, in connection with any Change of Control, the Company shall cause a six (6) year directors and officers liability insurance "tail policy" to be acquired in connection therewith, and any portion of the cost of such policy which the Company is required to bear shall be borne pro rata by the holders of all of the Shares out of the consideration received in such Change of Control.

7.3 Liability; Duties.

(a) No Member, Manager or officer of the Company shall be personally liable for any indebtedness, liability or obligation of the Company, except as specifically provided for in this Agreement or required pursuant to the Act or any other applicable law.

(b) To the fullest extent permitted by Section 18-1101 of the Act, each Member agrees that any fiduciary or other duties imposed under Delaware law (including the duty of loyalty and the duty of care) on the Managers are hereby eliminated, except to the extent specifically set forth in this Agreement.

(c) Any duties (including fiduciary duties) of a Member (but not the duties of the officers of the Company, which officers include the officer of the Company appointed by the Board of Managers as the Company Executive Manager at any given time, in each case, in their capacity as an officer of the Company) that would otherwise apply at law or in equity (including the duty of loyalty and the duty of care) are hereby waived and eliminated to the fullest extent permitted under Delaware law and any other applicable law; provided that (i) the foregoing shall not eliminate the obligation of each Member to act in compliance with the express terms of this Agreement and (ii) the foregoing shall not be

deemed to eliminate the implied contractual covenant of good faith and fair dealing. In furtherance of the foregoing (but subject to the provisos in the foregoing), when any Member (but not the officers of the Company, which officers include the Company Executive Manager, in their capacity as such) takes any action under this Agreement to give or withhold its consent or approval, such Member shall have no duty (fiduciary or other) to consider the interests of the Company, its Subsidiaries or the other Members, and may act exclusively in its own interest.

(d) The officers of the Company and its direct and indirect Subsidiaries, in their capacity as such, shall owe the same duties (including fiduciary duties) to the Company and the Members as the duties that officers of a Delaware corporation owe to such corporation and its stockholders.

(e) The Members acknowledge and agree that the foregoing is intended to comply with the provisions of the Act (including Section 18-1101 of the Act) permitting members and managers of a limited liability company to eliminate fiduciary duties to the fullest extent permitted under the Act.

7.4 Insurance. The Company shall purchase and maintain insurance, on behalf of such Indemnitees, and may purchase and maintain insurance on behalf of the Company, against any liability that may be asserted against or expenses that may be incurred by any such Person in connection with the activities of the Company or such Indemnitees, and in such amounts, as the Board of Managers reasonably determines are customary for similarly-situated businesses such as the Company and its Subsidiaries, regardless of whether the Company would have the power to indemnify such Person against such liability under the provisions of this Agreement.

7.5 Limited Liability Company Opportunity.

(a) Each Member acknowledges and affirms that the other Members may have, and may continue to, participate, directly or indirectly, in investments in assets and businesses which are, or will be, suitable for the Company or competitive with the Company's business.

(b) Each Member, individually and on behalf of the Company, expressly (i) waives any conflicts of interest or potential conflicts of interest that exist or arise as a result of any such investments and agrees that no Member, Manager nor any of their respective representatives shall have liability to any Member or any Affiliate thereof, or the Company with respect to such conflicts of interest or potential conflicts of interest, (ii) acknowledges and agrees that no Member nor any of their respective representatives (including any Manager) will have any duty to disclose to the Company or any other Member any such business opportunities, whether or not competitive with the Company's business and whether or not the Company might be interested in such business opportunity for itself (other than to the extent that such representative is an officer, consultant or employee of the Company or its Subsidiaries), (iii) agrees that the terms of this Section 7.5 to the extent that they modify or limit a duty or other obligation (including fiduciary duties), if any, that a Member may have to the Company or any other Member under the Act or other applicable law, rule or regulation, are reasonable in form, scope and content; and (iv) waives to the fullest extent permitted by the Act any duty or other obligation, if any, that a Member may

have to the Company or another Member, pursuant to the Act or any other applicable law, rule or regulation, to the extent necessary to give effect to the terms of this Section 7.5.

## ARTICLE VIII
## ACCOUNTING; FINANCIAL AND TAX MATTERS

8.1 Books and Records; Reports.

(a) The books of the Company will be maintained at the Company's principal place of business.

(b) The Board of Managers shall maintain or cause to be maintained a system of accounting established and administered in accordance with the accrual method of accounting or as shall be required by GAAP, and shall set aside on the books of the Company or otherwise record all such proper reserves pursuant to the accrual method of accounting or as shall be required by GAAP.

(c) As soon as reasonably practicable after the end of each fiscal year of the Company, but in any event not later than (i) one hundred and fifty (150) days after the end of the fiscal year ended December 31, 2020, and (ii) one hundred and twenty (120) days after the end of each fiscal year of the Company thereafter, the Company shall provide to each Member a copy of the consolidated balance sheets and related statements of operations, cash flows and owners' equity showing the financial position of the Company and its Subsidiaries as of the close of such fiscal year and the consolidated results of their operations during such year and setting forth in comparative form the corresponding figures for the prior fiscal year all audited by independent public accountants of recognized national standing and accompanied by an opinion of such accountants to the effect that such consolidated financial statements fairly present, in all material respects, the financial position and results of operations of the Company and its Subsidiaries on a consolidated basis in accordance with GAAP.

(d) As soon as reasonably practicable after the end of each fiscal quarter, but in any event not later than sixty (60) days after the end of each such fiscal quarter, the Company shall provide to each Member the consolidated balance sheet of the Company and its Subsidiaries as at the end of such fiscal quarter and the related consolidated statements of income, stockholders' equity and cash flows of the Company and its Subsidiaries for such fiscal quarter and for the period from the beginning of the then current fiscal year to the end of such fiscal quarter, setting forth in each case and in comparative form the corresponding figures for the corresponding periods of the previous fiscal year and the corresponding figures from the budget for the current fiscal year, all in reasonable detail, together with a certificate of an appropriate officer of the Company. In addition, as soon as reasonably practicable after the end of each fiscal quarter, but in any event not later than sixty (60) days after the end of each such fiscal quarter, the Company shall provide to each Member an operating report reflecting (i) revenue, fuel, emissions and operating data for the Company, (ii) the actual level of dispatch, capacity factors or similar operating and performance data for the Company, (iii) a summary of the operating and maintenance costs and improvement costs incurred during such fiscal quarter and (iv) management discussion

of operating performance for the Company, all certified by an appropriate officer of the Company.

(e) The Company shall make the information and reports to be provided pursuant to Section 8.1(c) and Section 8.1(d) available to the Members, which access shall be provided by posting such information and reports on an online data system, such as intralinks, with a 'click-through' confidentiality agreement; provided, however, that if the material non-public information is related to any significant transaction of the Company (or any of its Subsidiaries), the Company shall only be obligated to post such information if approved by a majority of the disinterested members of the Board of Managers.

(f) The current accounting firm of the Company is KPMG. The Board of Managers (or a duly authorized committee thereof) shall retain the current accounting firm or select a new accounting firm for the Company annually. Any new accounting firm shall be selected from among the following "big four" nationally recognized accounting firms: KPMG, PricewaterhouseCoopers, Deloitte & Touche or Ernst & Young.

8.2 Fiscal Year; Taxable Year. The fiscal year of the Company for financial accounting purposes shall end on December 31. The taxable year of the Company for federal, state and local income tax purposes shall end on December 31 unless another date is required by the Code.

8.3 Bank and Investment Accounts. All funds of the Company shall be deposited in its name, or in such name as may be designated by the Board of Managers, in such checking, savings or other accounts, or held in its name in the form of such other investments, as shall be designated by the Board of Managers. The funds of the Company shall not be commingled with the funds of any other Person. All withdrawals of such deposits or liquidations of such investments by the Company shall be made exclusively upon the signature or signatures of such officer or officers of the Company as the Board of Managers may designate.

8.4 United States Tax Classification. The Company elected to be treated as an association taxable as a corporation for U.S. federal, state and local income Tax purposes under Treasury Regulation section 301.7701-3 and under any corresponding provision of state or local law. The Company made the check-the-box election on Internal Revenue Service Form 8832 and any other necessary elections to be treated as a corporation for United States federal, state and local income Tax purposes. The Company intends to maintain its status as an association taxable as a corporation for U.S. federal, state and local income tax purposes.

8.5 Tax Returns. The Company shall cause to be prepared and filed all necessary Tax and information returns of the Company required under applicable Tax law.

## ARTICLE IX
## TRANSFERS OF SHARES; TAG-ALONG RIGHT; DRAG-ALONG RIGHT; RIGHT OF FIRST OFFER; PREEMPTIVE RIGHTS

9.1 Limitation on Transfer.

(a) The Members shall not directly or indirectly Transfer any Shares except in accordance with the provisions of this Agreement. Any attempt to Transfer any Shares in violation of the other provisions of this Article IX shall be null and void *ab initio* and the

Company shall not register or effect any such Transfer. Any Transfer pursuant to Section 9.2, Section 9.3 or Section 9.4 shall not be prohibited by this Section 9.1.

(b) Subject to (i) the provisions of this Agreement, including Section 9.1(c), Section 9.1(d), Section 9.3, Section 9.4, Section 9.5, and Section 9.6, if applicable, (ii) any contractual provision set forth herein binding on any Member, and (iii) compliance with applicable law, including the Securities Act, the Federal Power Act, as amended, and, in each case, any rules, regulations and interpretations promulgated thereunder, the Shares shall be freely Transferrable to any Person.

(c) Except for any Transfer of Shares on the effective date of an Initial Public Offering, no Transfer contemplated by this Article IX shall be permitted if as a result of such Transfer, the Company would be reasonably likely to be subject to reporting obligations under the Exchange Act or otherwise required to make any filing with the Commission. The Company may institute legal proceedings to force rescission of a Transfer prohibited by this Section 9.1(c) and to seek any other remedy available to it at law, in equity or otherwise, including an injunction prohibiting any such Transfer.

(d) Notwithstanding anything to the contrary in this Agreement, if, at any time after the Effective Date, any Transfer otherwise permitted by this Article IX shall result in the Transferee (together with its Affiliates) owning or controlling ten percent (10.0%) or more of the then outstanding Common Shares, the Transferee shall not be entitled to vote any Common Shares on any matter under this Agreement in excess of the Common Shares representing nine and ninety-nine one-hundredths percent (9.99%) of the then outstanding Common Shares unless and until such Transfer has been authorized by the Federal Energy Regulatory Commission pursuant to Section 203 of the Federal Power Act, as amended.

(e) The Board of Managers shall have the power to determine all matters related to this Section 9.1, including matters necessary or desirable to administer or to determine compliance with this Section 9.1 and, absent actual fraud, bad faith, manifest error, or self-dealing, the determinations of the Board of Managers shall be final and binding on the Company and the Members and any proposed transferee.

9.2 Permitted Transfers. Without compliance with Section 9.3 hereof: (i) a Member may Transfer its Shares or any portion thereof to any Affiliate of such Member; (ii) a Member may Transfer its Shares or any portion thereof to another Member; and (iii) a Member may Transfer his or her Shares or any portion thereof to any Family Member (or a Family Member of such Member's spouse, parent or sibling), a company, partnership or a trust established for the benefit of any of the foregoing or any personal representative, estate or executor under any will of such Member or pursuant to the laws of intestate succession, provided that, in each case, such Transfer is made in accordance with the applicable provisions of Section 9.6. The Persons to whom Members may Transfer their Shares or any portion thereof pursuant to this Section 9.2 are referred to hereinafter as "Permitted Transferees").

9.3 Tag-Along Right.

(a) Prior to an Initial Public Offering, if a Member or group of Members (the "Selling Tag Member") elects to Transfer Shares comprising greater than fifty percent

(50%) of all of the then outstanding Shares (on a fully diluted basis) to any Person (other than to a Permitted Transferee) (a "Third Party Purchaser"), in one or a series of related transactions, then such Selling Tag Member shall offer each other Member (so long as the Member has a percentage interest equal to or greater than five percent (5%) of all of the then outstanding Shares (on a fully diluted basis)) (each a "Tag-Along Rightholder") the right to include in such Selling Tag Member's Transfer to the Third Party Purchaser the Tag-Along Rightholder's pro-rata portion (excluding unvested Incentive Shares) of the Shares proposed to be Transferred by the Selling Tag Member at the same price and on the same terms and conditions described in the Tag-Along Notice (as defined below).

(b) Prior to the consummation of any proposed Transfer described in Section 9.3(a) (a "Proposed Transfer"), the Selling Tag Member proposing to make the Proposed Transfer shall offer to the other Tag-Along Rightholders the right to be included in the Proposed Transfer by sending written notice (the "Tag-Along Notice") to the Company and the Tag-Along Rightholders, which notice shall (i) state the name of such Selling Tag Member, (ii) state the name and address of the proposed Third Party Purchaser, (iii) state the portion of such Selling Tag Members' Shares to be sold, (iv) state the proposed purchase price and form of consideration of payment and all other material terms and conditions of such sale (including the identity of the Third Party Purchaser), (v) include a calculation of the consideration to be received by each Tag-Along Rightholder, (vi) include a representation that the Third Party Purchaser has been informed of the "tag-along" rights provided in this Section 9.3 and has agreed to purchase the Shares in accordance with the terms hereof, and (vii) be accompanied by a written offer from the Third Party Purchaser. Such right shall be exercisable by written notice to the Selling Tag Member proposing to make the Proposed Transfer (with a copy to the Company) given within fifteen (15) days after delivery of the Tag-Along Notice (the "Tag-Along Notice Period") specifying the number of Shares with respect to which such Tag-Along Rightholder shall exercise its rights under this Section 9.3. If the Third Party Purchaser elects to purchase less than all of the Shares offered for sale as a result of the Tag-Along Rightholder's exercise of their "tag-along" rights provided in this Section 9.3, the Selling Tag Member and each Tag-Along Rightholder exercising its rights shall have the right to include its pro rata portion of the Shares to be Transferred to the Third Party Purchaser on the same terms and conditions as the Selling Tag Member, including, in exchange for the pro rata share of consideration received by the Selling Tag Member. Failure by a Tag-Along Rightholder to respond within the Tag-Along Notice Period shall be regarded as a rejection of the offer made pursuant to the Tag-Along Notice and a decline by such Tag-Along Rightholder of its rights under this Section 9.3.

(c) Each Tag-Along Rightholder shall agree (i) to make such representations, warranties, covenants, indemnities and agreements to the Third Party Purchaser as made by the Selling Tag Member in connection with the Tag-Along Transfer (other than any noncompetition or similar agreements or covenants that would bind the Tag-Along Rightholder or its Affiliates), and (ii) to substantially the same terms and conditions to the Transfer as the Selling Tag Member agrees (including the same consideration the Selling Tag Member receives); provided, however, that (A) the representations, warranties, indemnities, covenants, conditions, escrow agreements and other provisions and agreements relating to such Tag-Along Transfer shall in no event be broader or more burdensome than those given by the Selling Tag Member, (B) all such representations,

warranties, covenants, indemnities and agreements shall be made by each Tag-Along Rightholder severally and not jointly and severally, (C) a Tag-Along Rightholder's liability under the definitive purchase agreement with respect to such transaction will not exceed the total purchase price received by such Tag-Along Rightholder in such transaction except for liability resulting from fraud or knowing and willful breach, and (D) any consideration, including escrow or holdbacks, applicable to such Proposed Transfer shall be applied pro rata among the Members participating in the Proposed Transfer. It being further agreed that in no event shall any Affiliate (other than any Affiliate of such Tag-Along Rightholder that is selling its Shares in such transaction) of such Tag-Along Rightholder be liable under such transaction, in any respect.

9.4 Drag-Along Right.

(a) Prior to an Initial Public Offering, if a Member or group of Members (the "Selling Members") wish to sell Shares comprising greater than fifty percent (50%) of all then outstanding Shares (on a fully diluted basis) to a Third Party Purchaser for cash or publicly traded and freely tradable securities (a "Drag-Along Sale"), then such Selling Members shall have the right, in lieu of complying with the provisions of Section 9.3, to require the other Members to sell all of their Shares to such Third Party Purchaser in connection with such Drag-Along Sale and otherwise on the same terms as such Selling Members selling such Shares. Such right shall be exercisable by written notice (a "Buyout Notice") given to each Member other than the Selling Members which shall state (i) that such Selling Members propose to effect the sale of all of the Shares of every Member of the Company to such Third Party Purchaser, (ii) the name of the Third Party Purchaser, and (iii) the purchase price the Third Party Purchaser is paying for the Shares and which attaches a copy of any definitive agreements between such Selling Members and the other parties to such transaction. Each such Member agrees that, upon receipt of a Buyout Notice, each such Member shall be obligated to sell all of its Shares for the purchase price set forth in the Buyout Notice and upon the other terms and conditions of such transaction (and otherwise take all reasonably necessary action to cause consummation of the proposed transaction, including voting such Shares in favor of such transaction).

(b) If the Board of Managers and the Members approve a Change of Control (an "Approved Sale"), then so long as distributions of consideration to the Members are made in accordance with the provisions of Section 3.4, each Member agrees to vote in favor thereof, use its best efforts to cooperate in the Approved Sale and take all necessary and desirable actions in connection with the consummation of the Approved Sale as are reasonably requested by the Board of Managers, including, without limitation, by waiving any appraisal or similar rights with respect to the Approved Sale. The obligations of the Members to participate in any Approved Sale pursuant to this Section 9.4(b) are subject to the satisfaction of the following condition: if any Member of a class of Shares is given an option as to the form and amount of consideration to be received with respect to Shares in a class, all holders of Shares of such class will be given the same option; provided, however, that any arrangements entered into between a member of management of the Company and the Third Party Purchaser (or its Affiliates) in connection with the Approved Sale, including any rollover of equity or debt securities by such member of management into the Third Party Purchaser (or its Affiliates), shall not be deemed to violate or otherwise conflict with the terms of this Section 9.4(b).

(c) The closing with respect to any Drag-Along Sale pursuant to this Section 9.4 shall be held as soon as practicable and at the time and place specified in the Buyout Notice but in any event within three (3) months of the date the Buyout Notice is delivered to the Members (the "Drag-Along Outside Date"); provided, that if the approval of any Governmental Authority is required for the Drag-Along Sale and such approval has not been obtained by the Drag-Along Outside Date, then the Drag-Along Outside Date shall be extended to the date that is five days after the receipt of such approval. Consummation of the Transfer of Shares by any Member to the Third Party Purchaser in a Drag-Along Sale (i) shall be conditioned upon consummation of the Transfer by each Selling Member to such Third Party Purchaser of the Shares proposed to be Transferred by the Selling Members and (ii) may be effected by a Transfer of the Shares or the merger, consolidation or other combination of the Company with or into the Third Party Purchaser or its Affiliate, in one or a series of related transactions. If the proposed Transfer with respect to the applicable Shares subject to the Buyout Notice does not meet the requirements of Section 9.4(a) prior to the Drag-Along Outside Date, such Selling Members shall be deemed to have forfeited their rights to require the other Members to sell all of their Shares to such Third Party Purchaser in connection with such Drag-Along Sale.

(d) The Selling Members shall arrange for payment in cash (by bank cashier's check or certified check or by wire transfer of immediately available funds to the accounts designated by the other Members) or publicly traded and freely tradable securities directly by the Third Party Purchaser to each other Member, upon delivery of an appropriate assignment in form and substance reasonably satisfactory to the Third Party Purchaser, which assignment shall be made free and clear of all liens, claims and encumbrances, except as provided by this Agreement or as otherwise agreed to by such Third Party Purchaser. In connection with any Transfer pursuant to a Buyout Notice, each other Member shall execute the applicable purchase agreement, if applicable, and make or provide the same representations, warranties, covenants, indemnities and agreements as the Selling Members make or provide in connection with the Drag-Along Sale; provided, that each other Member shall only be obligated to make individual representations and warranties with respect to its title to and ownership of the applicable Shares, authorization, execution and delivery of relevant documents, enforceability of such documents against such Member, and other matters relating to such Member, but not with respect to any of the foregoing with respect to any other Members, the Selling Members or their Shares; provided, further, that all representations, warranties, covenants and indemnities in the applicable purchase agreement shall be made by the Selling Members and the other Members severally and not jointly and any indemnification obligation shall be pro rata based on the consideration received by the Selling Members and each other Member, in each case in an amount not to exceed the aggregate proceeds received by the Selling Members and each other Member in the Drag-Along Sale. Any transaction costs, including transfer taxes and legal, accounting and investment banking fees incurred by the Company and the Selling Members and any other Member participating in a Transfer pursuant to a Buyout Notice shall, unless the applicable Third Party Purchaser refuses, be borne by the Company in the event of an Approved Sale and shall otherwise be borne by the Members on a pro rata basis based on the consideration received by each Member in such Transfer.

9.5 Right of First Offer.

(a) Transfer Notice. Prior to an Initial Public Offering, any Transfer of Common Shares by a holder (the "ROFO Transferring Holder") to any Third Party Purchaser (the "Proposed ROFO Transferee(s)") shall not occur and shall be null and void ab initio unless, prior to the consummation of such Transfer, the ROFO Transferring Holder shall, at least ten (10) Business Days prior to the date that such Transfer is to be consummated, deliver a written notice (the "ROFO Offer Notice") to Trilogy, Cetus, and Eaton Vance (so long as such holder has a percentage interest equal to or greater than five percent (5%) of all of the then outstanding Shares (on a fully diluted basis)) (the "Offerees") setting forth (i) the number of Common Shares proposed to be Transferred by the ROFO Transferring Holder (the "Offer Shares") and (ii) the per Common Share purchase price (the "Sale Price"), the form of consideration and the terms and conditions of payment offered by the Proposed ROFO Transferee(s), and any other material terms and conditions of the proposed Transfer (including a description of any non-cash consideration in sufficient detail to permit a valuation thereof) (collectively, the "ROFO Offer Terms"). Each ROFO Offer Notice shall constitute a binding, irrevocable and exclusive offer by the ROFO Transferring Holder to sell to the Offerees the Offer Shares at the Sale Price on the material terms set forth in the ROFO Offer Notice, which the ROFO Offer Notice shall be delivered by the ROFO Transferring Holder to the Offerees. For purposes of this Section 9.5, any "written notice" shall include all forms of electronic transmission in which receipt of reading is verified, which includes e-mail transmissions or similar transmissions with "read receipt."

(b) Option of the Offerees. The ROFO Offer Notice delivered pursuant to Section 9.5(a) to the Offerees shall constitute, for a period of ten (10) Business Days after the receipt of the ROFO Offer Notice by the Offerees, a binding, irrevocable and exclusive offer to sell to the Offerees any or all of the Offer Shares on the ROFO Offer Terms (at the Sale Price set forth therein); provided that if the ROFO Offer Terms provide for payment of any non-cash consideration, the Offerees may elect to pay the purchase price in respect of such non-cash consideration in cash in an amount that is equal to the fair market value of such non-cash consideration described in the ROFO Offer Terms, as determined in good faith and mutually agreed by the ROFO Transferring Holder and the Offerees (provided, however, if the ROFO Transferring Holder and the Offerees shall be unable to so mutually agree within seven (7) days after the receipt of the ROFO Offer Notice by the Offerees, then either party may commence the valuation process described in Section 9.5(d) and all periods set forth in this Section 9.5(b) shall be tolled for, and such periods (or the remaining portion thereof) shall recommence only upon a final and binding determination of fair market value pursuant to, such valuation process); provided, however, that, until the earlier of (x) ten (10) Business Days after the receipt of the ROFO Offer Notice by the Offerees and (y) the date that all Offerees definitively responded to the ROFO Offer Notice in writing, the ROFO Transferring Holder may not effect the proposed Transfer to the Proposed ROFO Transferee(s). To accept such offer, the Offeree (any such Offeree, a "Participating Offeree") shall deliver written notice (the "ROFO Acceptance Notice") to the ROFO Transferring Holder on or prior to the end of such ten (10) Business Day period setting forth (i) its binding acceptance of such offer, (ii) the maximum number of Offer Shares that the Participating Offeree is committing to purchase, and (iii) the planned date for purchase of the Offer Shares, which shall be a reasonable date within ten (10) Business

Days from the date of the ROFO Acceptance Notice (the "Planned ROFO Purchase Date"), whereupon the ROFO Transferring Holder will be obligated to sell, and the Participating Offeree(s) will be obligated to purchase, some or all of the Offer Shares (up to and including the maximum number of Offer Shares provided in the ROFO Acceptance Notice by each Participating Offeree) in accordance with the ROFO Offer Terms or such other terms and conditions as may be agreed between the ROFO Transferring Holder and the Participating Offeree(s). If more than one Offeree delivers a ROFO Acceptance Notice, each Participating Offeree will purchase some or all of its pro rata share of the Offer Shares (up to and including the maximum number of Offer Shares provided in the ROFO Acceptance Notice by each Participating Offeree), which pro rata share shall be determined based on the proportion of the Shares held by such Participating Offeree in relation to the Shares held by all Participating Offerees. The closing of such purchase and sale shall occur on the Planned ROFO Purchase Date or at such time and place as the ROFO Transferring Holder and the Offeree(s) may agree, pursuant to an agreement containing reasonable and customary representations and warranties and other terms and conditions.

(c) Ability to Sell of the ROFO Transferring Holder. If (i) the Offeree(s) do not deliver ROFO Acceptance Notice(s) on or prior to the end of the ten (10) Business Day period set forth in Section 9.5(b), (ii) the Participating Offeree(s) have not paid the full Sale Price for the Offer Shares on such terms and conditions as may be agreed between the ROFO Transferring Holder and the Offeree(s), or, in the absence of such agreement(s), in accordance with the ROFO Offer Terms, or (iii) the Participating Offerees do not purchase all of the Offer Shares on the Planned ROFO Purchase Date, the ROFO Transferring Holder may, during the 90-day period immediately following the end of the ten (10) Business Day period specified in Section 9.5(b), Transfer the Offer Shares (or the remaining Offer Shares, in the event that the Participating Offerees do not purchase all of the Offer Shares on the Planned ROFO Purchase Date) to the Proposed ROFO Transferee(s) for no less than the Sale Price and the form of consideration, and on substantially similar terms and conditions of payment set forth in the ROFO Offer Terms, and otherwise on terms and conditions no more favorable to the Proposed ROFO Transferee(s) than the ROFO Offer Terms; provided, however, if the ROFO Transferring Holder does not consummate the Transfer of such Offer Shares in accordance with the foregoing within such 90-day period (which period may be extended to the extent necessary to allow the ROFO Transferring Holder and/or any Proposed ROFO Transferee(s) to obtain any required approval or clearance from any Governmental Authority and subject to the ROFO Transferring Holder and Proposed ROFO Transferee(s) using reasonable best efforts to obtain any such approval or clearance during such period), then any attempt to Transfer such Offer Shares shall again be subject to the provisions of this Section 9.5.

(d) Valuation Process for Non-Cash Consideration. If any ROFO Offer Terms provide for payment of any non-cash consideration, then the ROFO Transferring Holder, on the one hand, and the Offeree(s) on the other hand, shall negotiate in good faith to determine the fair market value of such non-cash consideration. If they are unable to agree on such fair market value within seven (7) days of the receipt of the ROFO Offer Notice by the Offerees, then either the ROFO Transferring Holder, on the one hand, or the Offeree(s), on the other hand, may commence the valuation process described in this Section 9.5(d) by providing written notice to the other party (such notice, a "Valuation Process Notice"). In the event a Valuation Process Notice is delivered, then within seven

(7) days of the delivery of the Valuation Process Notice, each of the ROFO Transferring Holder and the Offeree(s) shall appoint an internationally recognized investment banking firm (an "Appointed Bank"). Each of the ROFO Transferring Holder and the Offeree(s) shall instruct its Appointed Bank to determine, by no later than seven (7) days after being appointed, its best estimate of the fair market value of the non-cash consideration, based on the customary methodologies that such Appointed Bank in its professional experience deem relevant to such a determination. On the fifth day following delivery of the Valuation Process Notice or such earlier date as mutually agreed between the ROFO Transferring Holder and the Offeree(s), each Appointed Bank shall present to the other party and its Appointed Bank its determination of the fair market value of such non-cash consideration. In the event the fair market values determined by the Appointed Banks are within ten percent (10%) of one another (determined by reference to the higher of the two), the fair market value shall be the average of those two estimates and such determination of the fair market value of the non-cash consideration shall be final and binding on the ROFO Transferring Holder and the Offeree(s). In the event the fair market values determined by the Appointed Banks are not within ten percent (10%) of one another (determined by reference to the higher of the two), the Appointed Banks shall mutually select an additional internationally recognized investment banking firm (the "Independent Bank") to determine, by no later than five (5) days after being appointed, its best estimate of the fair market value of the non-cash consideration, based on the customary methodologies that such Independent Bank in its professional experience deem relevant to such a determination. The fair market value of the non-cash consideration shall then be determined by the Independent Bank, and such resulting determination shall be final and binding on the ROFO Transferring Holder and the Offeree(s). Each of the ROFO Transferring Holder and the Offeree(s) shall pay the fees and expenses associated with the appointment of its Appointed Bank, and each of the ROFO Transferring Holder and the Offeree(s) shall, if necessary, pay fifty percent (50%) of the fees and expenses associated with the appointment of the Independent Bank.

9.6 Condition to Transfers. In addition to all other terms and conditions contained in this Agreement, no Transfers permitted under this Article IX (excluding Transfers pursuant to Section 9.4) shall be completed or effective for any purpose unless prior thereto:

(a) The Member making such Transfer shall have provided to the Company (i) at least five (5) Business Days' prior notice of such Transfer and (ii) a certificate of the Member making such Transfer, delivered with such notice, containing a statement that such Transfer is permitted under this Article IX, together with such information as is reasonably necessary for the Company to make such determination and (iii) such other information or documents as may be reasonably requested by the Company in order for it to make such determination.

(b) The transferee of such Shares shall have executed and delivered to the Company an agreement by which it shall become a party to and be bound by the applicable terms and provisions of this Agreement.

(c) If requested by the Board of Managers in its reasonable judgment within the five (5) Business Day period referenced in clause (a) above, the Company shall have received the opinion of counsel to the Company, at the expense of the Member making such Transfer, reasonably satisfactory in form and substance to the Board of Managers, to

the effect that: (i) such Transfer would not violate the Securities Act or any state securities or "blue sky" laws applicable to the Company or the Shares to be Transferred, (ii) such Transfer shall not impose liability or reporting obligations on the Company or any Member thereof in any jurisdiction, whether domestic or foreign, or result in the Company or any Member thereof becoming subject to the jurisdiction of any court or governmental entity anywhere, other than the states, courts and governmental entities in which the Company is then subject to such liability, reporting obligation or jurisdiction, (iii) such Transfer would not, individually or together with other concurrently proposed Transfers, cause the Company to be regarded as an "investment company" under the Investment Company Act of 1940, as amended, (iv) such Transfer shall not cause an Event of Dissolution or, unless the Board of Managers determines it to be immaterial, a termination of the Company pursuant to Section 708 of the Code and (v) such Transfer would not violate the Federal Power Act, as amended.

9.7 Effect of Transfer. Upon the close of business on the effective date of any Transfer of Shares (the "Effective Transfer Time") in accordance with the provisions of this Agreement, (a) the Transferee shall be admitted as a Member (if not already a Member) and for purposes of this Agreement such Transferee shall be deemed a Member, and (b) the Transferred Shares shall continue to be subject to all the provisions of this Agreement. Unless the Transferor and Transferee otherwise agree in writing, and give written notice of such agreement to the Company at least seven (7) days prior to such Effective Transfer Time, all distributions declared to be payable to the Transferor at or prior to such Effective Transfer Time shall be made to the Transferor. No Transfer shall relieve the Transferor (or any of its Affiliates) of any of its obligations or liabilities under this Agreement arising prior to the closing of such Transfer.

9.8 Tolling. All time periods specified in this Article IX are subject to reasonable extension for the purpose of complying with requirements of law or regulation as determined by the Board of Managers.

9.9 Preemptive Rights.

(a) If the Company shall propose to issue and sell any Shares or any security convertible into or exchangeable for any Shares (other than any Shares to be issued (i) to Persons who are, or who are becoming, employees, managers, directors or consultants of the Company or its Subsidiaries in connection with a bona fide option or equity participation plan or other bona fide compensation arrangement that is duly approved by the Board of Managers ("Incentive Shares"), (ii) as part of a debt financing transaction or as consideration for an acquisition, a joint venture or joint venture partner duly approved by the Board of Managers, (iii) pursuant to conversion or exchange rights included in equity interests previously issued by the Company, (iv) in connection with an equity interests split, division or dividend duly approved by the Board of Managers, (v) pursuant to an Initial Public Offering or (vi) in connection with an issuance of Shares on account of the EDF Disputed Claim (as defined in the Order), on the terms and subject to the conditions set forth in the Order (collectively, the "New Securities")) or enter into any contracts relating to the issuance or sale of any New Securities to any Person (the "Subject Purchaser"), each Member who is an "accredited investor" (as defined in Rule 501(a) of Regulation D promulgated under the Securities Act) and holds Shares (together with its Affiliates and Permitted Transferees) comprising at least an aggregate of three percent

(3%) of all then outstanding Shares shall have the right (a "Preemptive Right") to purchase such Member's pro rata portion (based on ownership of Shares and determined without regard to Members not eligible for such Preemptive Right) of the New Securities at the same price and on the same other terms proposed to be issued and sold (excluding from such Member's allocated portion an amount of Shares necessary to account for any options, warrants, SARs or other equity rights of Members if the holders of any such options, warrants, SARs or other equity rights are entitled to preemptive rights in any transaction to which this Section 9.9 applies, such that the number of New Securities to be purchased by Members pursuant to this Section 9.9 shall be reduced to permit such preemptive rights following the issuance of the New Securities to such holders upon exercise of their preemptive rights) (the "Proportionate Percentage"). The Company shall offer to sell to any such Member its Proportionate Percentage of such New Securities (the "Offered Securities") and to sell to any such Member such of the Offered Securities as shall not have been subscribed for by the other Members as hereinafter provided, at the price and on the terms described above, which shall be specified by the Company in a written notice delivered to any such Member, which such notice shall also state (A) the number of New Securities proposed to be issued and (B) the portion of the New Securities available for purchase by such Member (the "Preemptive Offer"). The Preemptive Offer shall by its terms remain open for a period of at least thirty (30) days from the date of receipt thereof, or such shorter period of time as determined in good faith by the Board of Managers if in the best interests of the Company (but in no event shall such period of time be less than five (5) Business Days) (the "Preemptive Offer Period"), and shall specify the date on which the Offered Securities will be sold to accepting Members (which date shall be not less than five (5) days or more than sixty (60) days from the expiration of the Preemptive Offer Period). The failure of any Member to respond to the Preemptive Offer during the Preemptive Offer Period shall be deemed a waiver of such Members' Preemptive Right.

(b) Each such Member shall have the right, during the Preemptive Offer Period, to purchase any or all of its Proportionate Percentage of the Offered Securities at the purchase price and on the terms stated in the Preemptive Offer. Notice by any Member of its acceptance, in whole or in part, of a Preemptive Offer shall be in writing (a "Notice of Acceptance") signed by such Member and delivered to the Company prior to the end of the Preemptive Offer Period, setting forth the Offered Securities such Member elects to purchase.

(c) Each such Member shall have the additional right to offer in its Notice of Acceptance to purchase any of the Offered Securities not accepted for purchase by any other Members, in which event such Offered Securities not accepted by such other Members shall be deemed to have been offered to and accepted by the Members exercising such additional right under this Section 9.9(c) pro rata in accordance with the amount of additional Offered Securities proposed to be purchased by such Member (determined without regard to those Members not electing to purchase their full respective Proportionate Percentages under the Section 9.9(a)) on the same terms and conditions as those specified in the Preemptive Offer, but in no event shall any such electing Member be allocated a number of New Securities in the Company in excess of the maximum number of Offered Securities such Member has elected to purchase in its Notice of Acceptance.

(d) At the closing of the purchase of New Securities subscribed for by the Members under this Article IX, the Company shall deliver certificates (if applicable) representing the New Securities, and such New Securities shall be issued free and clear of all liens and the Company shall so represent and warrant, and further represent and warrant that such New Securities shall be, upon issuance thereof to the Members that elected to purchase New Securities and after payment therefor, duly authorized, validly issued, fully paid and non-assessable. Each Member purchasing the New Securities shall deliver at the closing payment in full in immediately available funds for the New Securities purchased by it. At such closing, all of the parties to the transaction shall execute such additional documents as are otherwise necessary or appropriate.

(e) Sale to Subject Purchaser. In the case of any Preemptive Offer, if Notices of Acceptance given by the Members do not cover in the aggregate all of the Offered Securities, the Company may during the period of one hundred and eighty (180) days following the date of expiration of such Preemptive Offer sell to any other Person or Persons all or any part of the New Securities not covered by a Notice of Acceptance, but only on terms and conditions that are no more favorable to such Person or Persons or less favorable to the Company than those set forth in the Preemptive Offer. If such sale is not consummated within such 180-day period for any reason, then the restrictions provided for herein shall again become effective, and no issuance and sale of New Securities may be made thereafter by the Company without again offering the same in accordance with this Article IX. The closing of any issuance and purchase pursuant to this Section 9.9 shall be held at a time and place as the parties to the transaction may agree.

9.10 Change in Business Form.

(a) In connection with an Initial Public Offering of the Company, all Members shall and shall cause their Affiliates to take all necessary or desirable actions in connection with the consummation of such transaction (i) to, as the Board of Managers may reasonably request, (A) convert the Company to a corporate form in a Tax-free transaction (other than to the extent of taxable income or gain required to be recognized by a Member in an amount that does not exceed the amount of cash or any property or rights (other than stock) received by such Member upon the consummation of such transaction and/or any concurrent transaction), or (B) accomplish the foregoing by effecting a transaction that is treated as the contribution of the Shares of the Company into a newly formed "shell" corporation pursuant to Section 351 of the Code, with the result that each Member shall hold capital stock of such surviving corporation or business entity (in each case, the "Successor Corporation"), and (ii) to cause the Successor Corporation to assume all of the obligations of the Company under this Section 9.9.

(b) The Company and the Board of Managers will use their respective best efforts to perform any conversion or restructuring contemplated in Section 9.10(a) in the most Tax efficient manner for the Members, including any Members that are treated as corporations for Federal Income Tax purposes. Upon the unanimous vote of the Board of Managers that such action is necessary to preserve the benefits of "tacking" under Rule 144 of the Securities Act, such conversion or merger may be structured to occur without any action on the part of any Member, and each Member hereby consents in advance to any action that the Board of Managers shall deem necessary to accomplish such result.

(c) In connection with an Initial Public Offering, all of the outstanding Common Shares of the Company shall automatically convert into shares of common stock of the Successor Corporation (the "Stock") immediately prior to the consummation of the Initial Public Offering or at such other time as the Board of Managers may determine.

(d) In the event that the Company determines to permit sales of shares of Stock held by Members in connection with an Initial Public Offering, all Members shall have the right to include in such offering a pro rata number of such Member's Shares.

## ARTICLE X
## DISSOLUTION OF COMPANY; LIQUIDATION AND DISTRIBUTION OF ASSETS

10.1 Events of Dissolution. This Section 10.1 sets forth the exclusive events that will cause the dissolution of the Company. The provisions of Section 18-801 of the Act that apply unless the limited liability company agreement otherwise provides shall not become operative. The Company shall be dissolved upon any of the following events (each, an "Event of Dissolution"):

(a) Subject to Section 5.10, the Board of Managers shall elect to dissolve the Company; or

(b) A dissolution is required under Section 18-801(a)(4) of the Act or there is entered a decree of judicial dissolution under Section 18-802 of the Act.

10.2 Liquidation; Winding Up. Upon the occurrence of an Event of Dissolution, the Board of Managers shall wind up the affairs of the Company in accordance with the Act and shall supervise the liquidation of the assets and property of the Company and, except as hereinafter provided, shall have full, complete and absolute discretion in the mode, method, manner and timing of effecting such liquidation. The Board of Managers shall have full, complete and absolute discretion in determining whether to sell or otherwise dispose of Company assets or to distribute the same in kind. The Board of Managers shall liquidate and wind up the affairs of the Company as follows:

(a) The Board of Managers shall prepare (or cause to be prepared) a balance sheet of the Company in accordance with GAAP as of the date of dissolution.

(b) The assets, properties and business of the Company shall be liquidated by the Board of Managers in an orderly and businesslike manner so as not to involve undue sacrifice. Notwithstanding the foregoing, if it is determined by the Board of Managers not to sell all or any portion of the properties and assets of the Company, such properties and assets shall be distributed in kind in the order of priority set forth in Section 10.2(c); provided, however, that the fair market value of such properties and assets (as determined by the Board of Managers in good faith, which determination shall be binding and conclusive) shall be used in determining the extent and amount of a distribution in kind of such properties and assets in lieu of actual cash proceeds of any sale or other disposition thereof.

(c) The proceeds of the sale of all or substantially all of the properties and assets of the Company and all other properties and assets of the Company not sold, as provided

in Section 10.2(b), and valued at the fair market value thereof as provided in Section 10.2(b), shall be applied and distributed in one or more installments as follows, and in the following order of priority:

(i) First, to the payment of all debts and liabilities of the Company and the expenses of liquidation not otherwise adequately provided for and the setting up of any reserves that are reasonably necessary for any contingent, conditional or unmatured liabilities or obligations of the Company or of the Members arising out of, or in connection with, the Company; and

(ii) Second, the remaining proceeds to the Members in accordance with the applicable provisions of Section 3.4.

(d) A certificate of cancellation, as required by the Act, shall be filed by the Board of Managers.

10.3 Survival of Rights, Duties and Obligations. Termination, dissolution, liquidation or winding up of the Company for any reason shall not release any party from liability which at the time of such termination, dissolution, liquidation or winding up already had accrued to any other party or which thereafter may accrue with respect to any act or omission prior to such termination, dissolution, liquidation or winding up.

10.4 Claims of the Members. Members and former Members shall look solely to the Company's assets for the return of their contributions to the Company, and if the assets of the Company remaining after payment of or due provision for all debts, liabilities and obligations of the Company are insufficient to return such contributions, the Members and former Members shall have no recourse against the Company or any other Member.

## ARTICLE XI
## MISCELLANEOUS

11.1 Expenses. Unless otherwise provided herein, the Company shall bear all of the expenses incurred by the Company in connection with the preparation, execution and performance of this Agreement and, the transactions contemplated hereby, including, without limitation, all fees and expenses of agents, counsel and accountants.

11.2 Further Assurances. Each party to this Agreement agrees to execute, acknowledge, deliver, file and record such further certificates, amendments, instruments and documents, and to do all such other acts and things, as may be required by law or as, in the opinion of the Board of Managers, may be necessary or advisable to carry out the intent and purposes of this Agreement.

11.3 Notices. Any notice or other communication required or permitted to be given hereunder shall be in writing, and shall be deemed given and received (a) when transmitted by facsimile or electronic mail or personally delivered on a Business Day during normal business hours, (b) on the Business Day following the date of dispatch by overnight courier or (c) on the third Business Day following the date of mailing by registered or certified mail, return receipt requested, in each case addressed to the Company or the Board of Managers at the address of the principal office of the Company or to a Member at such Members' address shown on Schedule 3.1, or in any such case to such other address as the Company or any party hereto shall have last

designated to the Company and the Members by notice given in accordance with this Section 11.3. No notices under Section 9.3, Section 9.4, or Section 9.9 may be given by mail pursuant to clause (c) above.

11.4 Amendments. Except as otherwise expressly provided herein, this Agreement and the Certificate of Formation may be modified, amended or restated, and the provisions hereof may be waived, only by an instrument in writing duly executed and delivered by (a) the Company, and (b) Members holding at least a majority of the then outstanding Shares; provided, however, that (i) any amendment, modification or waiver that would adversely affect in any respect the rights or obligations of any Member without similarly affecting the rights or obligations hereunder of all holders of the same class of Shares (for the avoidance of doubt, without giving effect to any Member's specific holdings of Shares, specific tax or economic position or any other matters personal to a Member), shall not be effective as to such Member without such Member's prior written consent; (ii) any amendment, modification or waiver (A) with respect to the right of certain Members to appoint Managers pursuant to Section 5.3, (B) with respect to Section 7.1, Section 7.2, Section 7.3 or Section 7.5, (C) that would require additional Capital Contributions or change the limited liability of the Members provided for herein and in the Act or (D) any waiver of a Members rights pursuant to Section 9.3 or Section 9.9, shall, in the case of each of (A), (B), (C) and (D), require the prior written consent of each Member adversely affected by such amendment, modification or waiver; (iii) any change in the size of the Board of Managers (except if an increase or a decrease in the number of Managers is required in accordance with Section 5.3(c)(1), Section 5.3(c)(ii), Section 5.3(g) and Section 5.3(h)) or any amendment or modification to Section 5.10, Section 8.1, Section 9.1, Section 9.3, Section 9.4, Section 9.9 or this Section 11.4 shall require the prior written consent of holders of sixty percent (60%) or greater of the outstanding Common Shares and (iv) the Company automatically may amend Schedule 3.1 hereto without the consent of the Members. Any waiver of any provision of this Agreement requested by any party hereto must be in writing by the party granting such waiver.

11.5 Severability. Each provision of this Agreement shall be considered severable and if for any reason any provision which is not essential to the effectuation of the basic purposes of this Agreement is determined by a court of competent jurisdiction to be invalid, unenforceable or contrary to the Act or existing or future applicable law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those provisions of this Agreement which are valid, enforceable and legal. In that case, this Agreement shall be construed so as to limit any term or provision so as to make it valid, enforceable and legal within the requirements of any applicable law, and in the event such term or provision cannot be so limited, this Agreement shall be construed to omit such invalid, unenforceable or illegal provisions.

11.6 Headings and Captions. All headings and captions contained in this Agreement and the table of contents hereto are inserted for convenience only and shall not be deemed a part of this Agreement. The Annexes are considered a part of this Agreement.

11.7 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same agreement. Facsimile counterpart signatures to this Agreement shall be binding and enforceable.

11.8 Governing Law. This Agreement shall be governed by and construed under Delaware law (without regard to the rules of conflicts of law to the extent that the application of

the laws of another jurisdiction would be required thereby), and all rights and remedies shall be governed and construed by Delaware law.

11.9 Jurisdiction. The parties hereby agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby, whether in contract, tort or otherwise, shall be brought in the United States District Court for the District of Delaware or in the Court of Chancery of the State of Delaware (or, if such court lacks subject matter jurisdiction, in the Court of Chancery of the State of Delaware), so long as one of such courts shall have subject-matter jurisdiction over such suit, action or proceeding, and that any cause of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of Delaware. Each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. Service of process, summons, notice or other document by registered mail to the address designated in Section 11.3 shall be effective service of process for any suit, action or other proceeding brought in any such court.

11.10 Entire Agreement; Non-Waiver. This Agreement supersedes all prior agreements between the parties with respect to the subject matter hereof and contains the entire agreement between the parties with respect to such subject matter. No delay on the part of any party in exercising any right hereunder shall operate as a waiver thereof, nor shall any waiver, express or implied, by any party of any right hereunder or of any failure to perform or breach hereof by any other party constitute or be deemed a waiver of any other right hereunder or of any other failure to perform or breach hereof by the same or any other party, whether of a similar or dissimilar nature.

11.11 No Third-Party Beneficiaries. Nothing contained in this Agreement (other than the provisions of Article VII hereof), express or implied, is intended to or shall confer upon anyone other than the parties (and their successors and permitted assigns) and the Company any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

11.12 No Right to Partition. The Members, on behalf of themselves and their successors and assigns, if any, hereby specifically renounce, waive and forfeit all rights, whether arising under contract or statute or by operation of law, except as otherwise expressly provided in this Agreement, to seek, bring or maintain any action in any court of law or equity for partition of the Company or any asset of the Company, or any Share which is considered to be Company property, regardless of the manner in which title to such property may be held.

11.13 Investment Representation and Indemnity. Each Member, by execution of this Agreement, (a) represents to each other Member and to the Company that such Member is acquiring a Share in the Company for the purpose of investment for such Members' own account, with the intent of holding such Share for investment and without the intent of participating directly or indirectly in any sale or distribution thereof in a manner that would violate the Securities Act, (b) acknowledges that such Member must bear the economic risk of loss of such Members' capital contributions to the Company because this Agreement contains substantial restrictions on Transfer and because the Shares in the Company have not been registered under applicable United States

federal and state securities laws (it being understood that the Company shall be under no obligation so to register such Shares in the Company) and cannot be Transferred unless registered under such securities laws or an exemption therefrom is available, and (c) agrees to indemnify each other Member and the Company from any loss, damage, liability, claims and expenses (including reasonable attorneys' fees and expenses) incurred, suffered or sustained by any of them as a result of the inaccuracy of any representation contained in this Section 11.13.

11.14 Confidentiality.

(a) Except as and to the extent as may be required by applicable law or required or requested by regulatory authorities or examinations (including FINRA and NAIC) including routine regulatory examinations not directed specifically at the Company, without the prior written consent of the Board of Managers, the Members shall not make, and shall direct their officers, directors, agents, employees and other representatives not to make, directly or indirectly, any public comment, statement, or communication with respect to, or otherwise disclose or permit the disclosure of Confidential Information or, following the Effective Date, any modification or amendment to, or waiver of, this Agreement; provided, however, that the Members and their respective equity owners may disclose Confidential Information (i) to the extent required under any agreement between the Members or their respective equity owners and their respective investors, limited partners or other similar Persons of the Members and their respective equity owners, as applicable who are subject to obligations of confidentiality and in confidential materials delivered to prospective investors, limited partners or other similar Persons of the Members and their respective equity owners, as applicable who are subject to obligations of confidentiality; provided, however, that the Members will use commercially reasonable best efforts to, or cause their respective equity owners, to, enforce their respective rights in connection with a breach of such confidentiality obligations by any Person receiving Confidential Information pursuant to this clause (i), and (ii) to a bona fide potential purchaser of Shares held by such Member if such bona fide potential purchaser executes a confidentiality agreement with such Member containing terms at least as protective as the terms set forth in this Section 11.14 and which, among other things, provides for third-party beneficiary rights in favor of the Company to enforce the terms thereof. As used herein, "Confidential Information" means all information, knowledge, systems or data relating to the business, operations, finances, policies, strategies, intentions or inventions of the Company (including any of the terms of this Agreement and any information provided pursuant to Article VIII) from whatever source obtained, except for any such information, knowledge, systems or data which at the time of disclosure was in the public domain or otherwise in the possession of the disclosing Person unless such information, knowledge, systems or data was placed into the public domain or became known to such disclosing Person in violation of any non-disclosure obligation, including this Section 11.14. Each Member agrees that money damages would not be a sufficient remedy for any breach of this Section 11.14 by a Member, and that in addition to all other remedies, the Company shall be entitled to injunctive or other equitable relief as a remedy for any such breach. Each Member agrees not to oppose the granting of such relief and agrees to waive any requirement for the securing or posting of any bond in connection with such remedy.

(b) If any Member is required by applicable law or required or requested by regulatory authorities or examinations (including FINRA and NAIC) to disclose any

Confidential Information, it must, to the extent permitted by applicable law, first provide notice reasonably in advance to the Company with respect to the content of the proposed disclosure, the reasons that such disclosure is required by law and the time and place that the disclosure will be made. Such Member shall cooperate with the Company to obtain confidentiality agreements or arrangements with respect to any legally mandated disclosure and in any event shall disclose only such information as is required by applicable law when required to do so.

(c) Each Member shall indemnify each other Member and the Company for any loss, damage, liability, claims and expenses (including reasonable attorneys' fees and expenses) incurred, suffered or sustained by any of them as a result of any breach by such Member of this Section 11.14.

* * *

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

**MEMBERS**:

[MEMBER]

_____

Name:
Title:

**Schedule 3.1A**

**(dated [***INSERT***])**

| Owner | Address | Common Shares | Common Share Percentage |
|---|---|---|---|
| | | | |
| | | | |
| **Total** | | | |

**Exhibit M**
**Cross-Subsidization and Encumbrance of Utility Assets**

Based on the facts and circumstances known to Longview or that are reasonably foreseeable, the Transaction will not result in, at the time of the Transaction or in the future, cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. The Transaction does not involve a franchised public utility with captive customers and, therefore, falls within one of the safe harbors set forth in the *Supplemental Policy Statement*.[1] The Commission has recognized that "the detailed explanation and evidentiary support required by Exhibit M may not be warranted" for safe harbor transactions,[2] and that, as a general matter "there is no potential for harm to customers" in the case of such transactions.[3]

Furthermore, in accordance with Section 33.2(j)(1)(ii) of the Commission's regulations,[4] Longview verifies that the Transaction will not result in: (1) transfers of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) new issuances of securities by traditional public utility associate companies that have captive customers or that own or provide transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (3) new pledges or encumbrances of assets of a

---

1 *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 (2007) (the "*Supplemental Policy Statement*").

2 *Id*. at P 15.

3 *Id*. at P 17.

4 18 C.F.R. § 33.2(j)(1)(ii) (2019).

traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (4) new affiliate contracts between non-utility associate companies and traditional public utility associate companies that have captive customers or that own or provide transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review pursuant to FPA Sections 205 and 206.

**Attachment 2**

**Verification**

**UNITED STATES OF AMERICA**
**BEFORE THE**
**FEDERAL ENERGY REGULATORY COMMISSION**

| | | |
|---|---|---|
| **Longview Power, LLC** | ) | **Docket No. EC20-__-000** |

## VERIFICATION OF APPLICATION

The undersigned does hereby swear and affirm under penalty of law that he is an authorized representative of Longview Power, LLC; that he has read said application and knows the contents thereof; and that all of the statements contained therein with respect to the foregoing entity are true and correct to the best of his knowledge, information, and belief.

Jeffery L. Keffer