UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K12G3

CURRENT REPORT

Pursuant to Section 13 or 15 (d) of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): December 7, 2023

CAPSTONE GREEN ENERGY HOLDINGS, INC.

(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation)	001-15957 (Commission File Number)	20-1514270 (IRS Employer Identification No.)
16640 Stagg Street, Van Nuys, California (Address of principal executive offices)		91406 (Zip Code)

(818) 734-5300
(Registrant's telephone number, including area code)

Former name or former address, if changed since last report: N/A

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of exchange on which registered
Common Stock, par value $0.001 per share	N/A	N/A

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Explanatory Note

As previously disclosed, on September 28, 2023 (the "Petition Date"), Capstone Green Energy Corporation ("Old Capstone") and its wholly-owned subsidiaries, Capstone Turbine International, Inc. ("Capstone Turbine International") and Capstone Turbine Financial Services, LLC ("Capstone Financial Services" and, together with Capstone Turbine International and Old Capstone, the "Debtors"), filed voluntary petitions (the "Chapter 11 Cases") for relief under chapter 11 of title 11 ("Chapter 11") of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). The Chapter 11 Cases were jointly administered only for procedural purposes under the caption *In re Capstone Green Energy Corporation*, Case No. 23-11634 (LSS) (Bankr. D. Del.).

On the Petition Date, the Debtors (i) entered into a Transaction Support Agreement (the "TSA") with Goldman Sachs Specialty Lending Group, L.P., in its capacity as collateral agent (the "Collateral Agent") under that certain Amended and Restated Note Purchase Agreement, dated as of October 1, 2020 (as amended, the "Note Purchase Agreement"), and Broad Street Credit Holdings LLC, an affiliate of the Collateral Agent, in its capacity as purchaser ("Purchaser" and, together with the Collateral Agent, the "Pre-Petition Secured Parties") under the Note Purchase Agreement and (ii) filed with the Bankruptcy Court a joint prepackaged chapter 11 plan of reorganization (as amended, restated, supplemented or otherwise modified from time to time, the "Plan"). Capitalized terms used but not otherwise defined in this Current Report on Form 8-K, shall have the respective meanings given to them in the Plan or the TSA, as applicable.

On October 24, 2023, in accordance with the TSA and the Plan, the Debtors filed a supplement to the Plan (the "Plan Supplement") with the Bankruptcy Court. On November 9, 2023, the Debtors filed certain additional exhibits to the Plan Supplement.

On November 14, 2023, the Bankruptcy Court entered an order (the "Confirmation Order") confirming the Plan, including the Plan Supplement and all exhibits and schedules thereto, and all other documents filed in connection with the Plan.

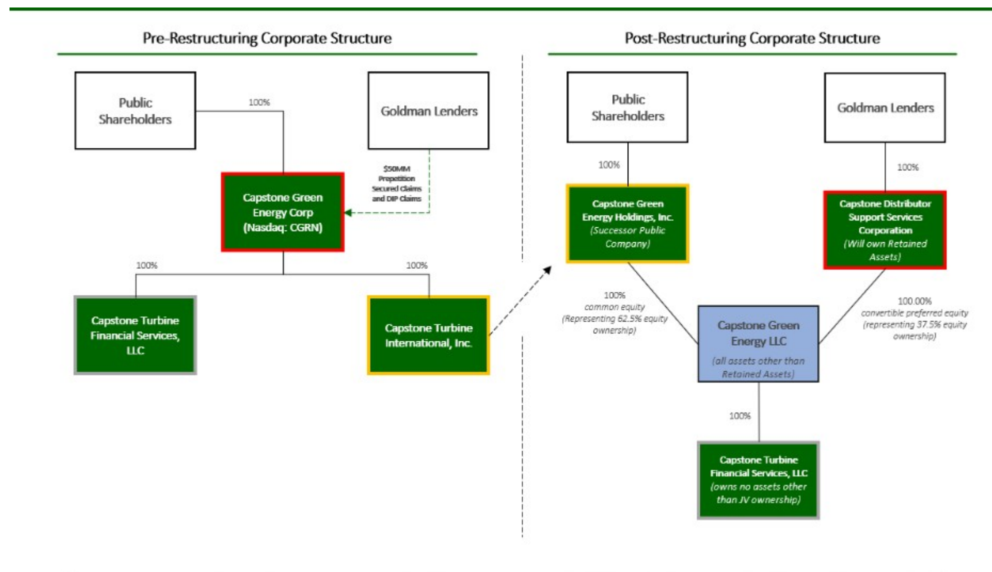
On December 7, 2023 (the "Effective Date"), the Plan, including the Plan Supplement and all exhibits and schedules thereto, became effective in accordance with its terms and the Debtors emerged from the Chapter 11 Cases without any need for further action or order of the Bankruptcy Court.

In connection with the Plan, on December 7, 2023, Old Capstone completed the series of transactions described below pursuant to which, among other things, Capstone Turbine International was re-named Capstone Green Energy Holdings, Inc. and became the successor to Old Capstone.

Pursuant to the TSA and the Plan, the Debtors effectuated certain transactions (collectively, the "Restructuring"), pursuant to which, among other things, Old Capstone was re-named "Capstone Distributor Support Services Corporation" and become a private company ("Reorganized PrivateCo") that continues to own assets consisting of (i) all of Old Capstone's right, title, and interest in and to certain trademarks of Old Capstone and (ii) assets owned by Old Capstone relating to distributor support services ((i) and (ii) together, the "Retained Assets"), and Capstone Turbine International was re-named Capstone Green Energy Holdings, Inc. ("New Capstone") and is a successor to Old Capstone for purposes of U.S. Securities and Exchange Commission (the "Commission") reporting following emergence. New Capstone also expects that certain income tax attributes will remain with Reorganized PrivateCo. The TSA and the Plan also provided that (a) all liabilities and assets other than those directly related to the Retained Assets and otherwise described in the Plan were transferred to a newly formed subsidiary of Old Capstone, which has been named Capstone Green Energy LLC ("New Subsidiary") and is now the primary operating entity, (b) Old Capstone contributed Common Units (as defined in the Amended and Restated Limited Liability Company Agreement of New Subsidiary (the "New Subsidiary LLC Agreement")) of New Subsidiary with an aggregate value representing 62.5% equity ownership in New Subsidiary to New Capstone, while Old Capstone retained Preferred Units (as defined in the New Subsidiary LLC Agreement) of New Subsidiary with an aggregate value representing non-dilutable 37.5% equity ownership in New Subsidiary on an as-converted basis, (c) Old Capstone's stockholders received their pro rata share of one hundred percent (100%) of the equity in New Capstone, subject to dilution from any stock issued as equity incentive compensation pursuant to equity incentive plans, and (d) all other existing equity interests of Old Capstone, including warrants, options, restricted stock units and preferred stock units, were cancelled.

The Preferred Units rank senior in certain respects to the Common Units and subordinate to New Subsidiary's existing and future indebtedness, and the Preferred Units are entitled to vote with the Common Units on an as-converted basis. The holders of the Preferred Units also (i) have certain distribution rights, preemptive rights, registration rights, redemption rights, conversion rights (equal to 37.5% of the Common Units deemed outstanding, on a non-dilutable basis) and a liquidation preference and (ii) subject New Subsidiary to certain affirmative and negative covenants.

A diagram of the above described transactions is set forth below:



This Current Report on Form 8-K is being filed by New Capstone as the initial report of New Capstone to the Commission and as notice that New Capstone is the successor issuer to Old Capstone under Rule 12g-3(a) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). As a result, shares of New Capstone's common stock, par value $0.001 per share (the "Common Stock"), are deemed to be registered under Section 12(g) of the Exchange Act. New Capstone is thereby deemed subject to the informational requirements of the Exchange Act, and the rules and regulations promulgated thereunder, and in accordance therewith will file reports and other information with the Commission. New Capstone will file periodic reports relating to the financial statements of Old Capstone including, without limitation, (i) restated financial statements for the fiscal years ended March 31, 2022, and March 31, 2021, and, as applicable, fiscal quarters within such fiscal years and within the fiscal year ended March 31, 2023, and (ii) financial statements for the fiscal year ended March 31, 2023, and the first two fiscal quarters of the fiscal year ended March 31, 2024.The first periodic report to be filed by New Capstone with the Commission containing financial statements of New Capstone for any period following the Effective Date will be New Capstone's Quarterly Report on Form 10-Q for the period ending December 31, 2023.

Item 1.01 Entry into a Material Definitive Agreement

Exit Facility Agreement

In connection with the emergence form the Chapter 11 Cases, on the Effective Date, New Subsidiary entered into an Exit Note Purchase Agreement (the "Exit Note Purchase Agreement"), by and among New Subsidiary, as the issuer, New Capstone and Capstone Financial Services, as the guarantors (the "Guarantors"), Purchaser and the Collateral Agent. The Exit Note Purchase Agreement provides for:

(i) a roll up of the $12.6 million DIP New Money Notes (plus any accrued unpaid interest);

(ii) a roll up of $8.0 million of DIP Roll Up Notes (plus any accrued unpaid interest) (collectively with the roll up of the $12.6 million DIP New Money Notes, the "Exit Roll Up Notes"); and

(iii) an additional $7.0 million new money committed delayed draw term loan facility (the "Exit New Money Notes" and, together with the Exit Roll Up Notes, the "Notes"), of which $3.0 million was drawn at closing.

The Exit Note Purchase Agreement also provides for a $10.0 million uncommitted incremental facility. The proceeds of the $7.0 million of Exit New Money Notes will be used to fund restructuring expenses and for working capital, for general corporate purposes and to pay interest, premiums, fees and expenses payable under the other Note Documents (as defined in the Exit Note Purchase Agreement). The Notes bear interest at a rate equal to the Adjusted Term SOFR (as defined in the Exit Note Purchase Agreement) plus 7.00% per annum. The Exit Roll Up Notes mature on December 7, 2026, and the Exit New Money Notes mature on December 7, 2025.

The Notes issued pursuant to the Exit Note Purchase Agreement are secured by a lien on substantially all of the present and future property and assets of New Subsidiary and each Guarantor, subject to customary exceptions and exclusions. The Exit Note Purchase Agreement also includes conditions precedent, representations and warranties, affirmative and negative covenants, events of default, and other customary provisions, including financial covenants with respect to minimum consolidated liquidity and minimum consolidated adjusted EBITDA.

The minimum liquidity covenant will be tested at all times from and after June 30, 2024, and will require New Capstone and its subsidiaries to maintain a minimum average Consolidated Liquidity (as defined in the Exit Note Purchase Agreement) during any seven consecutive day period of no less than:

(i) from June 30, 2024 to March 30, 2025, $2,000,000;

(ii) from March 31, 2025 to June 29, 2025, $2,500,000;

(iii) from June 30, 2025 to September 29, 2025, $3,000,000;

(iv) from September 30, 2025 to March 30, 2026, $3,500,000; and

(v) from March 31 2026 to December 7, 2026, $4,000,000.

The minimum consolidated adjusted EBITDA covenant will be tested on the last day of each fiscal quarter, commencing with March 31, 2024, and will require New Capstone and its subsidiaries to maintain a minimum Consolidated Adjusted EBITDA (as defined in the Exit Note Purchase Agreement) as at the end of any fiscal quarter (i) from January 1, 2024 until September 30, 2024, for the period of the fiscal quarters then ended in such calendar year and (ii) from October 1, 2024, for the four fiscal quarter period then ended, of no less than the correlative amount indicated below (with corresponding calendar quarters also included as reference):

Fiscal Quarter Ending	Consolidated Adjusted EBITDA
March 31, 2024	$1,000,000
June 30, 2024	$1,500,000

Fiscal Quarter Ending	Consolidated Adjusted EBITDA
September 30, 2024	$2,500,000
December 31, 2024	$4,000,000
March 31, 2025	$5,000,000
June 30, 2025	$5,500,000
September 30, 2025	$6,000,000
December 31, 2025	$6,500,000
March 31, 2026	$8,000,000
June 30, 2026	$8,000,000
September 30, 2026	$8,000,000

New Subsidiary LLC Agreement

In connection with the emergence from the Chapter 11 Cases, on the Effective Date, New Subsidiary, Reorganized PrivateCo and New Capstone entered into the New Subsidiary LLC Agreement. Pursuant to the New Subsidiary LLC Agreement, New Capstone owns Common Units with an aggregate value representing 62.5% equity ownership in New Subsidiary and Reorganized PrivateCo owns Preferred Units with an aggregate value representing non-dilutable 37.5% equity ownership in New Subsidiary on an as-converted basis. The Preferred Units rank senior in certain respects to the Common Units and subordinate to New Subsidiary's existing and future indebtedness, and the Preferred Units will be entitled to vote with the Common Units on an as-converted basis. Additionally, pursuant to the New Subsidiary LLC Agreement, New Subsidiary may not undertake certain actions without the prior written approval of Reorganized PrivateCo. Subject to certain exceptions, New Subsidiary may not, among other things: (1) alter or change the rights, preferences or privileges of the Preferred Units or amend any of New Subsidiary's governing documents; (2) make any change in corporate form, including conversion to a corporation; (3) increase the authorized number of Preferred Units; (4) issue any Common Units or equivalents to any person or group of persons (other than New Capstone), or approve the sale by New Capstone of Common Units or equivalents to any person or group of persons, such that after the issuance or sale, as applicable, such person or group of persons would own an aggregate number of Common Units in excess of 25% of the actually outstanding Common Units on the date of the New Subsidiary LLC Agreement; (5) create any new class of units with preference over, or parity with, the Preferred Units; (6) authorize, issue or reclassify any securities issued by New Subsidiary, its subsidiaries and controlled affiliates (the "Restricted Entities"), other than issuances of Common Units to New Capstone; (7) sell, issue, sponsor, create or distribute any digital tokens, cryptocurrency or other blockchain-based assets; (8) incur new third party indebtedness exceeding $5.0 million, other than (A) debt contemplated by the TSA, (B) lease or other obligations relating to the rental of equipment to customers or otherwise for energy-as-a-service (EaaS) business activity and (C) debt permitted under the DIP NPA (as defined below); (9) declare or pay distributions other than (A) for tax purposes and (B) distributions from New Subsidiary's subsidiaries or controlled affiliate to New Subsidiary or its wholly owned subsidiaries; (10) effectuate any liquidation event; (11) acquire any business, ownership of any equity securities in any person other than a wholly owned subsidiary, or enter into a joint venture arrangement; (12) conduct any public offering or direct listing on a national securities exchange; (13) enter into any merger or other transaction resulting in New Subsidiary's equity interests being listed or quoted for trading on an exchange or otherwise subject to registration; (14) commence, settle, defend or make any material decisions with respect to any material settlement or litigation; (15) make any material change to the nature of New Subsidiary's Existing Business (as defined in the New Subsidiary LLC Agreement); or (16) enter into any affiliated party transaction except for (A) payments to holders of Common Units (including New Capstone) in accordance with the terms of the New Capstone Services Agreement (described below) and (B) compensation arrangements.

Pursuant to the New Subsidiary LLC Agreement, New Capstone, its subsidiaries and controlled affiliates (other than the Restricted Entities) (the "Unrestricted Entities") may not, without the consent of the holders of a majority of the Preferred Units held by the Preferred Members (the "Preferred Requisite Members" which, on the effective date of the New Subsidiary LLC Agreement is solely Reorganized PrivateCo), engage in any business opportunities, make any investments or enter into any transactions, including any of the foregoing which are or would reasonably be expected to be within the scope of, or would reasonably be deemed to be beneficial to, the Existing Business of New Subsidiary; provided that such consent shall not be unreasonably withheld, conditioned or delayed, including in circumstances in which any Unrestricted Entity proposes to engage in any such business opportunities, make any such investments or enter into any such transactions and (i) where the business opportunity, investment or transaction (the "New Opportunity") would constitute a change in the Existing Business if the Restricted Entities were to engage in such New Opportunity, make such investments or enter into such transactions and the Preferred Requisite Members do not consent to such change following New Subsidiary's request reasonably in advance of such New Opportunity for the Preferred Requisite Members to be able to reasonably consider such request, or (ii) the New Opportunity is not within the scope of the Existing Business and either (A) the New Opportunity is first presented to New Subsidiary, New Subsidiary proposes such New Opportunity to the Preferred Requisite Members reasonably in advance of such New Opportunity for the Preferred Requisite Members to be able to reasonably consider such proposal, and the Preferred Members (as defined in the New Subsidiary LLC Agreement) do not agree to fund their proportionate share of the cost thereof, or (B) the New Opportunity is funded entirely with the proceeds of financing transactions by, or through the issuance of securities of, any Unrestricted Entity.

Pursuant to the New Subsidiary LLC Agreement, at any time during the six-month period following the sixth anniversary of the effective date of the New Subsidiary LLC Agreement, the Preferred Requisite Members may elect to have all, but not less than all, of the then outstanding Preferred Units redeemed (a "Redemption Request"). In such event, New Subsidiary will redeem all, but not less than all, of the Preferred Units, except New Subsidiary may not make such payment if (a) such payment is prohibited by Section 18-607 of the Delaware Limited Liability Company Act, Title 6, Chapter 18, §§ 18-101, et seq. or (b) New Subsidiary is, or by such payment would be, insolvent (together, the "Redemption Exceptions"). The aggregate price for Preferred Units will be an amount equal to the greater of (i) the $10,449,863, plus declared but unpaid distributions, or (ii) the fair market value of the Preferred Units on an as-converted to Common Units basis at the time of such redemption (the "Redemption Price"). If a Redemption Exception prevents New Subsidiary from redeeming all Preferred Units, New Subsidiary will redeem the maximum possible number of Preferred Units from the Preferred Members without triggering any Redemption Exceptions. At any time thereafter when the Redemption Exceptions do not prevent New Subsidiary from redeeming Preferred Units that remain issued and outstanding, New Subsidiary will immediately use its funds to redeem the balance of the Preferred Units that New Subsidiary became obligated to redeem (but which it has not yet redeemed) at the then applicable Redemption Price. New Subsidiary may raise new capital to fund the Redemption Price.

Pursuant to the New Subsidiary LLC Agreement, each Preferred Member has the right to all or any portion of such Preferred Member's pro rata portion, at such Preferred Member's sole discretion, of new securities that any Restricted Entity may from time to time propose to issue or sell to any party, subject to the terms and certain exceptions set forth in the New Subsidiary LLC Agreement. Members may not transfer their Units (as defined in the New Subsidiary LLC Agreement), provided that all, but not less than all, Preferred Units held by the Preferred Members may be transferred only if: (i) transferred to the same transferee (or its Affiliates) as part of the same transaction or series of related transactions, in which case (A) the Preferred Members must cause the recipient(s) of such Preferred Units to comply with the terms of the New Subsidiary LLC Agreement, and (B) if such recipient(s) are competitors of New Capstone only if first converted into Common Units; or (ii) transferred to more than one unaffiliated transferees as part of the same transaction or series of related transactions, in which case (A) the Preferred Members will cause the recipients of such Preferred Units to comply with the terms of the New Subsidiary LLC Agreement, (B) if such recipients are competitors of New Capstone only if first converted into Common Units, and (C) one transferee must continue to hold a sufficient number of Preferred Units so that such transferee qualifies as the Preferred Requisite Member. Each Preferred Member has a right of first refusal if any Common Member (the "Offering Member") receives a bona fide offer that the Offering Member desires to accept to transfer all or any portion of such Offering Member's Units (the "Offered Units"). Each time the Offering Member receives an offer for a transfer of all or any portion of such Offering Member's Units, the Offering Member is required to first make an offering of the Offered Units to the Preferred Members, in accordance with the terms set forth in the New Subsidiary LLC Agreement and subject certain exceptions set forth therein, prior to transferring such Offered Units. Additionally, subject to certain exceptions set forth in the New Subsidiary LLC Agreement, New Capstone has a right of first offer if the Preferred Members wish to transfer Preferred Units to a third

party. Each Preferred Member is permitted to participate in any proposed transfer by a Common Member of any Units to any Person, in accordance with the terms set forth in the New Subsidiary LLC Agreement and subject to certain exceptions set forth therein.

Services Agreement between New Capstone and New Subsidiary

In connection with the emergence from the Chapter 11 Cases, on the Effective Date, New Capstone entered into a Services Agreement (the "New Capstone Services Agreement") by and among New Capstone and New Subsidiary. The New Capstone Services Agreement provides, among other things, that New Capstone will provide certain services to New Subsidiary, in its capacity as a majority equity holder of New Subsidiary, and in consideration for the services provided by the New Capstone, New Subsidiary will reimburse New Capstone for its reasonable audit, board and executive compensation expenses incurred in connection with being a publicly traded company (the "New Capstone Services Fee"). The New Capstone Services Fee for New Capstone's fiscal year 2023 will not exceed $2,500,000, in the aggregate (the "Services Fee Cap"), which amount will be prorated based on the number of days in such fiscal year following execution of the New Capstone Services Agreement. Effective as of April 1 of each year, beginning with April 1, 2024, the Services Fee Cap will increase for each fiscal year by an amount equal to the greater of (a) 3.5000% and (b) the Consumer Price Index, as set by the U.S. Bureau of Labor Statistics and available on March 31 of each year; provided that such increase effective on April 1, 2024, shall be equal to 1.7500%.

Services Agreement between Reorganized PrivateCo and New Subsidiary

In connection with the emergence from the Chapter 11 Cases, on the Effective Date, New Subsidiary entered into a Services Agreement (the "Reorganized PrivateCo Services Agreement") by and among Reorganized PrivateCo and New Subsidiary. The Reorganized PrivateCo Services Agreement provides that, among other things, New Subsidiary will provide certain services to Reorganized PrivateCo, and Reorganized PrivateCo will provide to New Subsidiary's distributors on a subcontracted basis and, where applicable, to New Subsidiary, certain ongoing services and transition services related to Reorganized PrivateCo's distributor support services business. Reorganized PrivateCo will pay to New Subsidiary a service fee (the "Reorganized PrivateCo Services Fee") of an amount in cash equal to 90% of Reorganized PrivateCo's Income (as defined in the Reorganized PrivateCo Services Agreement) less itemized expenses incurred and actually paid in cash by Reorganized PrivateCo in direct support of New Subsidiary's distributors and in Reorganized PrivateCo's performance of the services (excluding the Reorganized PrivateCo Services Fees).

Trademark License Agreement

In connection with the emergence from the Chapter 11 Cases, on the Effective Date, New Capstone entered into a Trademark License Agreement (the "Trademark License Agreement") by and between Reorganized PrivateCo, as licensor, and New Capstone, as licensee. The Trademark License Agreement provides that, among other things, Reorganized PrivateCo grants New Capstone a non-exclusive, royalty-bearing, non-transferable, non-sublicensable (except to New Capstone's affiliates), worldwide, perpetual (subject to the terms and conditions of the Trademark License Agreement), irrevocable (subject to the terms and conditions of the Trademark License Agreement), limited license, under all of its right, title and interest in and to the Capstone Trademarks (as defined in the Trademark License Agreement) to use the Capstone Trademarks solely in connection with the Business (as defined in the Trademark License Agreement). In consideration for the license, New Capstone pays to Reorganized PrivateCo an annual royalty of $100,000. Reorganized PrivateCo may not assign the Capstone Trademarks to any third party without New Capstone's consent, not to be unreasonably withheld, delayed or conditioned (subject to the terms and conditions of the Trademark License Agreement). If Reorganized PrivateCo does not use any of the Capstone Trademarks for six consecutive months, then the Capstone Trademarks will be assigned to New Capstone for no further consideration.

Registration Rights Agreement

In connection with the emergence from the Chapter 11 Cases, on the Effective Date, New Subsidiary entered into a Registration Rights Agreement by and among Reorganized PrivateCo and New Subsidiary (the "Registration Rights Agreement"). Pursuant to the Registration Rights Agreement, at any time after the initial public offering or listing on a securities exchange of New Subsidiary's Common Units, the holders of the majority of the Registrable Securities (as defined in the Registration Rights Agreement) will have certain demand registration and piggyback registration rights.

The foregoing descriptions of the Exit Facility Agreement, the New Subsidiary LLC Agreement, the New Capstone Services Agreement, the Reorganized PrivateCo Services agreement, the Trademark License Agreement and the Registration Rights Agreement do not purport to be complete and are qualified in their entirety by reference to the full texts of the Exit Facility Agreement, the New Subsidiary LLC Agreement, the New Capstone Services Agreement, the Reorganized PrivateCo Services Agreement, the Trademark License Agreement and the Registration Rights Agreement which are attached as Exhibits 4.1, 10.1, 10.2, 10.3, 10.4 and 10.5 hereto, respectively and are incorporated herein by reference.

Item 1.02 Termination of a Material Definitive Agreement

Cancellation of Certain Prepetition Obligations

Pursuant to the terms of the Plan, on the Effective Date, the obligations of Old Capstone and the other Debtors under the following agreements were cancelled:

- Notes issued pursuant to the Amended and Restated Note Purchase Agreement, dated as of October 1, 2020 (as has been amended, restated, modified, supplemented or replaced from time to time prior to the Petition Date, the "Pre-Petition NPA"), by and among Old Capstone, as issuer, New Capstone (f/k/a Capstone Turbine International) and Capstone Financial Services, as guarantors, the Collateral Agent and Purchaser.
- New Money DIP Notes and Roll Up DIP Notes issued pursuant to the DIP Note Purchase Agreement, dated as of October 2, 2023 (as has been amended, restated, modified, supplemented or replaced from time to time, the "DIP NPA"), by and among Old Capstone, as issuer, New Capstone (f/k/a Capstone Turbine International) and Capstone Financial Services, as guarantors, the Collateral Agent and Purchaser.

Material agreements of Old Capstone, other than the Rights Agreement dated as of May 6, 2019, as amended, by and between Old Capstone and Broadridge Financial Solutions, Inc. as rights agent, which was rejected pursuant to the Plan, have been assumed by New Subsidiary.

Cancellation of Prior Equity Securities

In accordance with the Plan, on the Effective Date, all equity securities in Old Capstone outstanding prior to the Effective Date, including the common stock, par value $0.001 per share of Old Capstone (the "Old Common Stock"), were canceled, released and extinguished, and are of no further force or effect without any need for a holder of Old Common Stock to take further action with respect thereto.

In addition, warrants to purchase up to 3,763,860 shares of Old Capstone at various exercise prices for each series were cancelled, as more fully set forth below:

Warrants	**Exercise Price**	**Outstanding Warrants**
September 2019 HCW Series D Common Stock Warrants	$6.12	75,000
February 2019 Goldman Warrants	$2.61	463,067
October 2020 Goldman Warrants	$4.76	291,295
Lake Street Warrants	$2.75	2,934,498
Total Warrants Outstanding		**3,763,860**

Furthermore, all other existing equity interests of Old Capstone, including options, restricted stock units and preferred stock units, were cancelled.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

The information set forth above under Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities

On the Effective Date, in connection with the emergence from the Chapter 11 Cases, New Capstone issued 18,540,877 shares of Common Stock (the "New Common Stock"), pro rata to each holder of common stock of Old Capstone.

The issuance of the shares of Common Stock was made in reliance upon the exemption from registration under the Securities Act of 1933, as amended (the "Securities Act"), provided by Section 1145 of the Bankruptcy Code, as an issuance of shares in exchange for an interest in the debtor represented by the common stock of Old Capstone. The issuance of the shares of the Common Stock will be automatically made to holders of common stock of Old Capstone pursuant to the procedures of The Depository Trust Company and New Capstone's transfer agent.

Item 3.03 Material Modification to Rights of Security Holders

The information contained in the Explanatory Note, Item 1.02 above under the subheading "Cancellation of Prior Equity Securities" and Item 5.03 below is incorporated by reference into this Item 3.03.

Item 5.01 Changes in Control of Registrant

The information set forth in the Explanatory Note and Item 1.02 are incorporated by reference in this Item 5.01.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

Board of Directors

On the Effective Date, Robert C. Flexon, Yon Jorden, Robert F. Powelson, Ping Fu and Denise Wilson, current members of Old Capstone's board of directors, continued serving as members of the board of directors of New Capstone (the "Board"). Ms. Wilson was named as Lead Independent Director.

Robert C. Flexon

Mr. Flexon, age 65, has been a director of Old Capstone since April 2018, and served as Chair since January 2021, as Executive Chairman since August 9, 2023 and as Interim President and Chief Executive Officer since August 22, 2023. Mr. Flexon has served as a director of PG&E Corporation (NYSE: PCG) since June 2020 and is currently the chair of the board. He has also served as a director for Charah Solutions, Inc. (NYSE: CHRA) from June 2018 to July 2023 and of the Electric Reliability Council of Texas (ERCOT) since 2021. Mr. Flexon was President and Chief Executive Officer and a director of Dynegy Inc. (NYSE: DYN), a power-generating company that owns and operates a number of natural gas-fueled and coal-fueled power stations in the U.S, from July 2011 to April 2018. Prior to joining Dynegy, Mr. Flexon served as the Chief Financial Officer of UGI Corporation (NYSE: UGI), a distributor and marketer of energy products and related services from February 2011 to July 2011. Mr. Flexon was the Chief Executive Officer of Foster Wheeler AG (NASDAQ: FWLT) from June to October 2010 and the President and Chief Executive Officer of Foster Wheeler USA from November 2009 to May 2010. Prior to joining Foster Wheeler, Mr. Flexon was Executive Vice President and Chief Financial Officer of NRG Energy, Inc. (NYSE: NRG) from February to November 2009. Mr. Flexon previously served as Executive Vice President and Chief Operating Officer of NRG Energy from March 2008 to February 2009 and as its Executive Vice President and Chief Financial Officer from 2004 to 2008. Prior to joining NRG Energy, Mr. Flexon held executive positions with Hercules, Inc. and various key positions, including General Auditor, with Atlantic Richfield Company. In addition, Mr. Flexon was a CPA with the former Coopers & Lybrand from 1980 to 1987. Mr. Flexon served on the public board of directors of Foster Wheeler from 2006 until 2009 and from May to October 2010, of Westmoreland Coal Company from 2017 to 2019 and of TransAlta Corp. from 2019 to 2020. He served on the Board of Directors for Genesys Works-Houston, an organization that transforms the lives of disadvantaged high school students through meaningful work experience, from 2016 to 2021. He also served on the board of directors of Baker Ripley, a Texas non-profit organization that connects low-income people to opportunities, from 2014 to 2016. Mr. Flexon holds a Bachelor of Science degree in Accounting from Villanova University. He became a Certified Public Accountant (inactive) in the State of Pennsylvania.

Ping Fu
Ms. Fu, age 65, has been a director of Old Capstone since August 2021. She currently serves on the board of directors of Live Nation Entertainment (NYSE: LYV), the world's largest live entertainment company, as well as the boards of Long Now Foundation and Burning Man Project.

In 1996, Ms. Fu co-founded Geomagic, a leader in 3D imaging and 3D printing technologies that has fundamentally changed the way products are designed and manufactured around the world, and she served as its CEO until 2013. Following the acquisition by 3D Systems (NYSE: DDD) of Geomagic in 2013, Ms. Fu served as Chief Strategy Officer and Chief Entrepreneur Officer at 3D Systems until 2016. She was also part of the team that created the NCSA Mosaic software and HTTP server software which were key in the early development of the Internet.

Ms. Fu has received numerous awards for her leadership, including the Outstanding American by Choice award from the U.S. Citizenship and Immigration Services, the Ernst & Young Entrepreneur of the Year award and Inc. Magazine's Entrepreneur of the Year award. Ms. Fu's book, Bend Not Break: A Life in Two Worlds, was on the New York Times bestseller list.

Yon Y. Jorden
Ms. Jorden, age 68, has been a director of Old Capstone since April 2017. Ms. Jorden has also served as director and audit committee member of Cohu, Inc. (NASDAQ: COHU) since May 2021, which is a global leader in back-end semiconductor equipment and services, delivering leading-edge solutions for the manufacturing of semiconductors. She has also served as director and audit committee member of Alignment Healthcare, Inc. (NASDAQ: ALHC), which is a tech-enabled Medicare Advantage plan company, since January 2022. Additionally, she serves as a director and finance committee member of Methodist Health System, a not-for-profit Texas-based hospital system since 2008. Prior to her current roles, Ms. Jorden served as director, chairperson of the compensation committee, a member of the audit committee and a member of the governance and nominating committee, the latter of which she previously served on as chairperson, for Maxwell Technologies (NASDAQ: MXWL), a leader in development and manufacturing of energy storage and power delivery solutions from 2008 to 2017. In addition, she also served as director and chairperson of the audit committee of Magnatek, Inc. (NASDAQ: MAG), a manufacturer of digital power control systems, U.S. Oncology, a privately-held oncology services company, and BioScrip, (NASDAQ: BIOS), a national provider of infusion and home care management solutions. During her business career, Ms. Jorden has served as chief financial officer of four publicly traded companies, including as Executive Vice President and Chief Financial Officer of AdvancePCS (NASDAQ: ADVP), a pharmacy benefits management company, from 2002 to 2004. Previously she was chief financial officer of Informix, a NASDAQ-listed technology company, Oxford Health Plans, a NASDAQ-listed provider of managed health care services, and WellPoint, Inc., a NYSE-listed managed care company. Ms. Jorden received her Bachelor of Science degree in Accounting from the California State University, Los Angeles. Earlier in her career, she was a senior auditor with Arthur Andersen & Co., where she became a Certified Public Accountant (inactive) in the State of California.

Robert F. Powelson
Mr. Powelson, age 54, has been a director of Old Capstone since June 2019. Mr. Powelson has served as the President and Chief Executive Officer of the National Association of Water Companies ("NAWC") since June 2018. Prior to joining NAWC, Mr. Powelson was nominated to the Federal Energy Regulatory Commissioner ("FERC") by President Donald J. Trump in May 2017, confirmed by the U.S. Senate in August 2017, and served as a member of FERC until August 2018. Prior to his appointment to FERC, Mr. Powelson served on the Pennsylvania Public Utility Commission ("PUC") from June 2008 to August 2017, and served as the PUC's chairman from February 2011 to May 2015. Mr. Powelson also served on Pennsylvania's Marcellus Shale Advisory Commission from March 2011 to July 2011. Prior to joining the PUC, Mr. Powelson served as president of the Chester County Chamber of Business & Industry from February 1994 to July 2008. Powelson served as Chairman of the NARUC Water Committee and was past President of the National Association of Regulatory Utility Commissioners. ("NARUC"). He has served on the board of directors of the Electric Power Research Institute and Drexel University. Mr. Powelson holds a Masters of Governmental Administration from the University of Pennsylvania and a Bachelor of Arts from St. Joseph's University.

Denise Wilson
Ms. Wilson, age 64, has been a director of Old Capstone since November 2019 and as Lead Independent Director Since August 10, 2023. Ms. Wilson served as Executive Vice President and President, Alternative Energy Businesses for NRG Energy, Inc. (NYSE: NRG), an independent power company with generation, energy retail business and cleantech ventures, from July 2011 through January 2016. Ms. Wilson served as Executive Vice President and Chief Administrative Officer of NRG from September 2008 through July 2011. Prior to September 2008, Ms. Wilson served as Executive Vice

President, Human Resources for Nash-Finch Company, a national food distributor, and other various senior roles at NRG from 2000 through 2007. Prior to joining NRG, Ms. Wilson held various key positions as Vice President Human Resources with Metris Companies Inc. and Director, Human Resources with General Electric ITS. Ms. Wilson holds a Masters in Industrial Relations from the University of Minnesota.

Board members will serve until the 2024 annual meeting of stockholders of New Capstone and until their successors have been duly elected and qualified (subject to earlier death, resignation, retirement, disqualification or removal).

The Board has (i) an Audit Committee, comprised of Ms. Jorden, as Chair and Ms. Fu, as committee member, (ii) a Compensation and Human Capital Committee (the "Compensation Committee"), comprised of Ms. Wilson, as Chair and Mr. Powelson and Ms. Jorden, as committee members and (iii) a Governance and Sustainability Committee, comprised of Mr. Powelson, as Chair, and Ms. Fu and Ms. Wilson, as committee members. The Board has determined that each of Ms. Wilson, Ms. Jorden, Ms. Fu and Mr. Powelson are "independent" under Nasdaq listing rules, that each of Ms. Wilson, Mr. Powelson and Ms. Jorden are "independent" in accordance with the additional independence tests applicable to compensation committee members, that each of Ms. Jorden and Ms. Fu are "financially literate" and that Ms. Jorden qualifies as an "audit committee financial expert" in accordance with Commission rules.

Each non-executive director will receive an annual base retainer of $75,000, payable in cash on a quarterly basis. The Audit Committee chair will receive an additional annual retainer of $17,000 and each other Audit Committee member will receive an additional annual retainer of $8,000. The Compensation and Human Capital Committee chair will receive an annual retainer of $15,000 and each other Compensation and Human Capital Committee chair will receive an additional annual retainer of $6,000. The Governance and Sustainability Committee chair will receive an additional annual retainer of $10,000 and each other Governance and Sustainability Committee Chair will receive an additional annual retainer of $6,000. Non-executive directors will also receive an annual grant of $10,000 of restricted stock units, commencing with the 2024 annual meeting of stockholders.

Each director also holds 60,795 shares of Non-Voting Common Stock, which were issued prior to the Effective Date.

Appointment of Officers

In connection with the emergence from the Chapter 11 Cases, on the Effective Date, the Board appointed Mr. Flexon to serve as Interim President and Chief Executive Officer of New Capstone, John Juric, to serve as Chief Financial Officer (principal financial officer) Treasurer and Secretary of New Capstone, and Celia Fanning to serve as Chief Accounting Officer and Controller (principal accounting officer) of New Capstone.

Mr. Juric, age 62, spent nearly two years providing management and financial consulting services to C-suite executives in multiple industries. Previously, Mr. Juric served as Vice President of Finance and Chief Financial Officer of USALCO, LLC, a chemical manufacturing and distribution company, for six years, and as President Americas & Asia Industrial Division and Americas Region Chief Financial Officer of Fiberweb, PLC., a global nonwoven products manufacturer and distributor, for nearly five years. Additionally, Mr. Juric's career includes multiple leadership, finance, and accounting roles with publicly traded and privately held organizations. He also previously served as the Director of Finance at Hercules, Inc., a global specialty chemical manufacturing company. Mr. Juric is a Certified Public Accountant, and holds an MBA and Bachelor of Science in Accounting from West Chester University.

Prior to joining Old Capstone, Ms. Fanning, age 55, served as the Vice President Finance and Accounting at Groundwork Coffee Holdings, LLC from April 2018 to February 2022. From September 2015 to October 2017, Ms. Fanning served as the Vice President Finance at Spencer N. Enterprises, Inc. From February 2011 to September 2015, Ms. Fanning served as the Vice President Finance and Controller for Sentry Control Systems, LLC. From February 2000 to February 2010, Ms. Fanning was employed by JAKKS Pacific, Inc. (NASDAQ: JAKK) as Senior Vice President, Finance and Corporate Controller. Ms. Fanning received a Master of Business Administration, emphasis in Marketing and Finance, from the University of Southern California, Marshall School of Business, a Bachelor of Science in Accounting from the Loyola Marymount University and is a Certified Public Accountant (inactive) licensed in California.

In connection with Mr. Flexon's appointment as Interim President and Chief Executive Officer, the Board approved a new compensation arrangement for Mr. Flexon consisting of an annual base salary of $600,000, which base salary will be pro-rated based on his total tenure as Interim President and Chief Executive Officer. In connection with Mr. Juric's appointment as Chief Financial Officer, the Board approved an annual base salary of $375,000. In connection with Ms.

Fanning's appointment as Chief Accounting Officer, the Board approved an annual base salary of $200,000. Mr. Juric and Ms. Fanning hold 114,560 and 20,366 shares of Non-Voting Common Stock, respectively, which were issued prior to the Effective Date.

The Board has also establish an executive bonus program with respect to the remainder of New Capstone's fiscal year ended March 31, 2024, pursuant to which New Capstone's executive officers will be eligible to earn annual and long-term incentive bonuses. Mr. Juric is eligible for an annual incentive plan bonus of 60% of his base salary and Ms. Fanning is eligible for an annual incentive plan bonus of 20% of her base salary.

There are no arrangements or understandings between any of Mr. Flexon, Mr. Juric or Ms. Fanning and any other person pursuant to which such person was selected as Interim President and Chief Executive Officer, Chief Financial Officer or Chief Accounting Officer, respectively and no family relationships between any of Mr. Flexon, Mr. Juric or Ms. Fanning and any other executive officer or director of New Capstone, and no related party transactions within the meaning of Item 404(a) of Regulation S-K between any of Mr. Flexon, Mr. Juric or Ms. Fanning and New Capstone.

Indemnification Agreements

In connection with the emergence from the Chapter 11 Cases, on the Effective Date, the Board approved a form of indemnity agreement (the "Indemnity Agreement") to be entered into by members of the Board and certain of New Capstone's executive officers. The Indemnity Agreement provides for, among other things, the indemnification by the Company of its directors and executive officers to the fullest extent permitted by applicable laws and the mandatory advancement and reimbursement of reasonable expenses (subject to limited exceptions) incurred by indemnitees in various legal proceedings in which they may be involved by reason of their service as directors or executive officers, as applicable, as permitted by Delaware law, the Charter (as defined below), and the Bylaws (as defined below). Each of New Capstone's executive officers and directors has entered or will enter into an Indemnity Agreement.

The foregoing description of the Indemnity Agreement is qualified in its entirety by reference to the Indemnity Agreement, which is filed as Exhibit 10.7 to this Current Report on Form 8-K and incorporated herein by reference.

Severance Pay Plan

In connection with the emergence from the Chapter 11 Cases, on the Effective Date, New Capstone adopted the Capstone Green Energy Holdings, Inc. Severance Pay Plan (the "Severance Plan"). The Severance Plan provides that in the event that an executive officer's employment is terminated by New Capstone without Cause (as defined in the Severance Plan), subject to the execution and non-revocation of a separation agreement containing a general release of claims: (i) the executive officer (other than the chief financial officer and the chief executive officer) will be entitled to receive 26 weeks of severance pay and reimbursement of COBRA premiums for a period of 6 months; (ii) the chief financial officer will be entitled to receive 52 weeks of severance pay and reimbursement of COBRA premiums for a period of 12 months; and (iii) the chief executive officer will be entitled to receive 18 months of severance pay and reimbursement of COBRA premiums for a period of 18 months. Each week of severance pay is equivalent to the weekly compensation regularly paid to the executive officer at the time his/her employment terminates, excluding any overtime pay, bonuses and imputed income.

The foregoing description of the material terms of the Severance Plan is not complete and is qualified in its entirety by reference to the full text of the Severance Plan attached hereto as Exhibit 10.8.

Change in Control Agreement

In connection with the emergence from the Chapter 11 Cases, on the Effective Date, New Capstone entered into a Change in Control Agreement with each of Mr. Juric and Ms. Fanning (the "Change in Control Agreements"). The Change in Control Agreements provide for certain payments and benefits following a termination of such officer's employment either (i) by New Capstone without Cause (as defined in the Change in Control Agreements), other than due to such officer's death, such officer being Disabled (as defined in the Change in Control Agreements), or such officer becoming an employee of any direct or indirect successor to the business or assets of New Capstone, rather than continuing as an employee of New Capstone, or (ii) by such officer for Good Reason (as defined in the Change in Control Agreements), in either case within 6 months prior to or 24 months following a Change in Control (as defined in the Change in Control Agreements and such a termination, a "Qualifying Termination"). In the event of a Qualifying Termination, subject to

such officer's execution and non-revocation of a separation agreement containing a general release of claims and a non-disparagement covenant (the "Separation Agreement"), compliance with such officer's obligations under the Separation Agreement and compliance with any other continuing obligations to New Capstone or its successor, such officer will be eligible to receive: (a) a severance payment equal to 1.0 times the sum of such officer's (i) annual base salary for the calendar year in which the Qualifying Termination occurs (or annual base salary in effect immediately prior to the Change in Control, if higher) and (ii) target annual incentive compensation for the calendar year in which the Qualifying Termination occurs, but pro-rated for the portion of such calendar year that falls prior to the Qualifying Termination; (b) a monthly cash payment in an amount equal to the monthly employer contribution that New Capstone would have made to provide health insurance to such officer if he or she had remained employed by New Capstone, for up to 18 months; and (c) acceleration of any unvested equity awards outstanding on the date of the Qualifying Termination, assuming achievement of performance criteria at target and without reduction for any shortened performance period in the case of performance-based equity awards. Payments under the Change in Control Agreements are in lieu of payments under the Severance Plan.

The foregoing description of the material terms of the Change in Control Agreements are not complete and is qualified in their entirety by reference to the full text of the form of Change in Control Agreement attached hereto as Exhibit 10.9.

Incentive Plan

In connection with the emergence from the Chapter 11 Cases, on November 30, 2023, the Capstone Green Energy Holdings, Inc. 2023 Equity Incentive Plan (the "Incentive Plan") was approved and adopted by the Board. The Incentive Plan is intended to, among other things, (i) attract and retain the types of employees, consultants and directors who will contribute to New Capstone's long-term success, (ii) provide incentives that align the interests of employees, consultants and directors with those of the stockholders of New Capstone, and (iii) promote the success of New Capstone's business.

The Incentive Plan will be administered by the Compensation and Human Capital Committee or the Board. No more than 3,000,000 shares of Common Stock will be available for the grant of awards under the Incentive Plan (the "Total Share Reserve"). New Capstone intends to issue equity awards to incentivize employees whose unvested equity awards were terminated in accordance with the Plan.

The aggregate value of awards granted during a single fiscal year to any non-employee director, together with any cash fees paid or to be paid to such non-employee director during the fiscal year and the value of awards granted to such non-employee director under any other equity compensation plan of New Capstone during the fiscal year, will not exceed a total value of $300,000.

The Board at any time, and from time to time, may amend or terminate the Incentive Plan. However, (i) in some situations, no amendment shall be effective unless approved by the stockholders of New Capstone to the extent stockholder approval is necessary to satisfy any applicable laws, and (ii) rights under any award granted before an amendment shall not be impaired by any amendment without the grantee's written consent.

The foregoing description of the Incentive Plan is qualified in its entirety by reference to the Incentive Plan, which is filed as Exhibits 10.6 to this Current Report on Form 8-K and incorporated herein by reference.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

In connection with the Plan, New Capstone adopted and filed with the State of Delaware a Second Amended and Restated Certificate of Incorporation (the "Charter") and Amended and Restated Bylaws (the "Bylaws"), each of which became effective on December 7, 2023.

Authorized Capital

The Charter authorizes New Capstone to issue One Hundred Million (100,000,000) shares of Common Stock, Six Hundred Thousand (600,000) shares of non-voting common stock, par value $0.001 per share (the "Non-Voting Common Stock") and One Million (1,000,000) shares of preferred stock, par value $0.001 per share (the "Preferred Stock").

Common Stock

Voting Rights

Subject to any voting rights granted to Preferred Stock that may be outstanding from time to time, each share of the Common Stock is entitled to one vote per share on each matter submitted to a vote of New Capstone's stockholders. The holders of a majority of the shares of Common Stock issued and outstanding and entitled to vote, and present in person or represented by proxy, will constitute a quorum for the transaction of business at all meetings of the stockholders. The holders of a plurality of the shares of Common Stock entitled to vote and present in person or represented by proxy at any meeting at which a quorum is present called for the purpose of electing directors will be entitled to elect the directors of New Capstone. The Charter and Bylaws do not provide for cumulative voting.

Dividend Rights

Subject to the preferences applicable to any Preferred Stock outstanding at any time, if any, the holders of shares of Common Stock shall be entitled to receive such dividends and other distributions in cash, property or shares of stock when, as and if declared thereon by the Board from time to time out of any assets or funds of New Capstone legally available therefor and shall share equally on a per share basis in such dividends and distributions.

Preemptive Rights

No holder of Common Stock has any preemptive right to subscribe for any shares of New Capstone's capital stock issuable in the future.

Liquidation Rights

Subject to applicable law and the rights, in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of New Capstone, after payment or provision for payment of the debts and other liabilities of New Capstone and subject to the rights, if any, of the holders of Preferred Stock having a preference over or the right to participate with the Common Stock as to distributions upon liquidation, dissolution or winding up, the holders of all outstanding shares of Common Stock shall be entitled to receive the remaining assets of New Capstone available for distribution ratably in proportion to the number of shares held by each such stockholder.

Non-Voting Common Stock

The Charter provides that the Non-Voting Common Stock does not have any voting rights on any matter on which stockholders of New Capstone are entitled to vote. However, the Non-Voting Common Stock has the right to vote, separately or together with the Common Stock, on any amendments to the Charter (including with respect to any changes to (i) the authorized number of shares of Common Stock or Non-Voting Common Stock or (ii) any preferences, rights or powers of the Non-Voting Common Stock). The number of authorized shares of Non-Voting Common Stock or Common Stock may be increased or decreased (but not below the number of such shares of Non-Voting Common Stock or Common Stock then outstanding, as applicable) by the affirmative vote of the holders of a majority of the Common Stock. All Common Stock and all Non-Voting Common Stock have the same rights and powers, rank equally (including upon any liquidation, dissolution or winding up of the company), share ratably in any dividends and distributions, and are identical in all respects as to all other matters, other than as to voting rights.

The Non-Voting Common Stock is subject to a 12-month lock-up period following the Effective Date (the "Lock-up Period"), during which holders of Non-Voting Common Stock may not transfer any shares of Non-Voting Common Stock, subject to certain exceptions. After the expiration of the Lock-Up Period, upon any sale, assignment or other transfer of any shares of the Non-Voting Common Stock by a holder thereof to any person or entity that is not part of such holder's Family Group (as defined in the Charter), such shares of Non-Voting Common Stock shall automatically, upon such transfer, without further action by the transferor or transferee thereof, convert into shares of Common Stock of New Capstone on a one-to one-basis.

Preferred Stock

The Charter provides that the Board may, by resolution, establish one or more classes or series of Preferred Stock having the number of shares and voting rights, if any, designations, powers, preferences and relative, participating, optional, special and other rights, if any, of each such series and any qualifications, limitations and restrictions thereof as may be fixed by them without further stockholder approval. The holders of any such Preferred Stock may be entitled to preferences over holders of Common Stock with respect to dividends, or upon a liquidation, dissolution, or New

Capstone's winding up, in such amounts as are established by the resolutions of the Board approving the issuance of such shares.

Anti-Takeover Provisions

Authorized but Unissued Capital Stock

The Board may increase or decrease the authorized number of shares within each established series of Preferred Stock pursuant to the General Corporation Law of the State of Delaware; provided, however, that the Board may not decrease the number of shares within a series to less than the number of shares within such series that are then issued, and that the terms of a particular series of Preferred Stock may grant voting rights to the holders thereof regarding these matters.

Special Stockholder Meetings

The Charter provides that, except as otherwise required by applicable law, special meetings of the stockholders may only be called by the Chairperson of the board of directors or the Chief Executive Officer of New Capstone, and our stockholders may not call special stockholder meetings.

Stockholder Action by Written Consent

The Charter provides that stockholder action must take place at the annual or a special meeting of New Capstone stockholders, and no action may be taken by stockholders by written consent.

Requirements for Advance Notification of Stockholder Nominations and Proposals

The Bylaws also include advance notice procedures for stockholder proposals to be brought before an annual meeting of the stockholders, including the nomination of directors. Stockholders at an annual meeting may only consider the proposals specified in the notice of meeting or brought before the meeting by or at the direction of the Board, or by a stockholder of record on the record date for the meeting, who is entitled to vote at the meeting and who has delivered a timely written notice.

Indemnification of Directors, Officers and Employees

The Charter and Bylaws requires New Capstone to indemnify any director, officer, employee or agent of New Capstone who was or is a party to, or is threatened to be made a party to, or is otherwise involved in, any proceeding, by reason of the fact that he or she is or was a director, officer, employee or agent of New Capstone or is or was serving at the request of New Capstone as a director, officer, employee or agent of, or in any other capacity for, another corporation, partnership, joint venture, limited liability company, trust, or other enterprise, to the fullest extent permitted under Delaware law, against all expense, liability and loss (including attorneys' fees, judgments, fines, taxes, penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection with such proceeding.

New Capstone is authorized under its Bylaws to purchase and maintain insurance to protect New Capstone and any current or former director, officer, employee or agent of New Capstone or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not New Capstone would have the power to indemnify such person against such expense, liability or loss under Delaware law. New Capstone has purchased and maintains such insurance.

Exclusive Forum

The Charter provides that, unless New Capstone consents in writing to the selectionof an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for any stockholder (including a beneficial owner) to bring (i) any derivative action or proceeding brought on behalf of New Capstone, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the New Capstone or New Capstone's stockholders, (iii) any action asserting a claim against New Capstone, its directors, officers or employees arising pursuant to any provision of the DGCL or this Second Amended and Restated Certificate or the Bylaws, (iv) any action asserting a claim against New Capstone, its directors, officers or employees governed by the internal affairs doctrine or (v) any action to interpret, apply, enforce or determine the validity of the Charter, except for, as to each of (i) through (iv) above, any claim as to which the Court of Chancery determines that there is an indispensable party not subject to the jurisdiction of the Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within ten days following such determination), which is vested in the exclusive

jurisdiction of a court or forum other than the Court of Chancery, or for which the Court of Chancery does not have subject matter jurisdiction. The Charter further provides that, unless New Capstone consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended. Any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of New Capstone shall be deemed to have notice of and consented to the exclusive forum provisions of the Charter. The exclusive forum provision does not apply to suits brought to enforce a duty or liability created by the Securities Exchange Act of 1934, as amended, or any other claim for which the federal courts have exclusive jurisdiction.

The foregoing descriptions of the Charter and Bylaws are qualified in their entirety by reference to the Charter and Bylaws, which are filed as Exhibits 3.1, and 3.2, respectively, to this Current Report on Form 8-K and incorporated herein by reference.

Item 7.01 Regulation FD Disclosure

On December 7, 2023, New Capstone issued a press release announcing its emergence from bankruptcy. A copy of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

The information contained in this Item 7.01, including Exhibit 99.1, shall not be deemed "filed" for purposes of Section 18 of the Exchange Act, or otherwise subject to the liabilities of that Section, nor shall such information be deemed incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as otherwise expressly set forth by specific reference in such a filing.

Cautionary Statement Concerning Forward-Looking Statements

This Current Report on Form 8-K contains forward-looking statements as defined in the Private Securities Litigation Reform Act of 1995, including the statement regarding the anticipated benefits of the restructuring and the other statements regarding New Capstone's expectations, beliefs, plans, intentions, and strategies. New Capstone has tried to identify these forward-looking statements by using words such as "expect," "anticipate," "believe," "could," "should," "estimate," "intend," "may," "will," "plan," "goal" and similar terms and phrases, but such words, terms and phrases are not the exclusive means of identifying such statements. Actual results, performance and achievements could differ materially from those expressed in, or implied by, these forward-looking statements due to a variety of risks, uncertainties and other factors, including, but not limited to, the following: New Capstone's ability to realize the anticipated benefits of the financial restructuring; New Capstone's ability to comply with the restrictions imposed by covenants contained in the Exit Note Purchase Agreement and in the New Subsidiary LLC Agreement; employee attrition and New Capstone's ability to retain senior management and other key personnel following the restructuring; New Capstone's ability to develop new products and enhance existing products; product quality issues, including the adequacy of reserves therefor and warranty cost exposure; intense competition; financial performance of the oil and natural gas industry and other general business, industry and economic conditions; the impact of litigation and regulatory proceedings; risks related to the restatement previously announced (including discovery of additional information relevant to the financial statements subject to restatement; changes in the effects of the restatement on Old Capstone's financial statements or financial results and further delay in the filing of 10-K's and 10-Q's due to New Capstone's efforts to complete the restatement; the time, costs and expenses associated with the restatement; inquiries from the SEC; the potential material adverse effect on the price of New Capstone's common stock and stockholder lawsuits). For a detailed discussion of factors that could affect New Capstone's future operating results, please see Old Capstone's filings with the Securities and Exchange Commission, including the disclosures under "Risk Factors" in those filings. Except as expressly required by the federal securities laws, New Capstone undertakes no obligation to update or revise any forward-looking statements, whether as a result of new information, changed circumstances or future events or for any other reason.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	Description
3.1	Second Amended and Restated Certificate of Incorporation of Capstone Green Energy Holdings, Inc.
3.2	Amended and Restated Bylaws of Capstone Green Energy Holdings, Inc.
4.1	Exit Note Purchase Agreement, dated December 7, 2023, by and among Capstone Green Energy LLC, Capstone Green Energy Holdings, Inc., Capstone Financial Services, Broad Street Credit Holdings LLC, as Purchaser, and Goldman Sachs Specialty Lending Group, L.P., as Collateral Agent.
10.1	Amended and Restated Limited Liability Company Agreement, dated December 7, 2023, of Capstone Green Energy LLC.
10.2	New Capstone Services Agreement, dated December 7, 2023, by and among Capstone Green Energy Holdings, Inc. and Capstone Green Energy LLC.
10.3	Reorganized PrivateCo Services Agreement, dated December 7, 2023, by and among Capstone Distributor Support Services Corporation and Capstone Green Energy LLC.
10.4	Trademark License Agreement, dated December 7, 2023, by and among Capstone Distributor Support Services Corporation and Capstone Green Energy Holdings, Inc.
10.5	Registration Rights Agreement, dated December 7, 2023, by and among Capstone Green Energy LLC and Capstone Distributor Support Services Corporation.
10.6	Form of Indemnity Agreement.
10.7	Severance Pay Plan of Capstone Green Energy Holdings, Inc.
10.8	Change in Control Agreement
10.9	2023 Equity Incentive Plan of Capstone Green Energy Holdings, Inc.
99.1	Press Release, dated December 7, 2023.
104	Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101).

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

CAPSTONE GREEN ENERGY HOLDINGS, INC.

Date: December 11, 2023

By: /s/ Robert C. Flexon
Name: Robert C. Flexon
Title: Interim President and Chief Executive Officer

EXHIBIT 3.1

SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF CAPSTONE GREEN ENERGY HOLDINGS, INC.

December 7, 2023

Capstone Green Energy Holdings, Inc., a corporation organized and existing under the laws of the State of Delaware (the "***Corporation***"), DOES HEREBY CERTIFY AS FOLLOWS:

1. The name of the Corporation is "Capstone Green Energy Holdings, Inc." The Corporation was originally incorporated under the name "Capstone Turbine International, Inc." under the original certificate of incorporation of the Corporation filed with the Secretary of State of the State of Delaware on June 10, 2004 (the "***Original Certificate***").

2. The Original Certificate was amended and restated on September 27, 2023 (the "***First Amended and Restated Certificate of Incorporation***").

3. This Second Amended and Restated Certificate of Incorporation (this "***Second Amended and Restated Certificate of Incorporation***"), which both restates and amends the provisions of the First Amended and Restated Certificate of Incorporation, was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, as amended from time to time (the "***DGCL***").

4. This Second Amended and Restated Certificate shall become effective on the date of filing with Secretary of State of Delaware.

5. The text of the First Amended and Restated Certificate of Incorporation is hereby restated and amended in its entirety to read as follows:

ARTICLE I
NAME

The name of the Corporation is Capstone Green Energy Holdings, Inc.

ARTICLE II
PURPOSE

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL. In addition to the powers and privileges conferred upon the Corporation by law and those incidental thereto, the Corporation shall possess and may exercise all the powers and privileges that are necessary or convenient to the conduct, promotion or attainment of the business or purposes of the Corporation.

ARTICLE III
REGISTERED AGENT

The address of the Corporation's registered office in the State of Delaware is 251 Little Falls Drive, Wilmington, DE 19808 in the County of New Castle. The name of the registered

agent of the Corporation in the State of Delaware at the registered office is Corporation Service Company.

ARTICLE IV
CAPITALIZATION

Section 4.1 Authorized Capital Stock. The total number of shares of all classes of capital stock which the Corporation is authorized to issue is one hundred one million six hundred thousand (101,600,000) shares, consisting of (a) one hundred million (100,000,000) shares of voting common stock, par value $0.001 per share (the "***Common Stock***"), (b) six hundred thousand (600,000) shares of non-voting common stock, par value $0.001 per share (the "***Non-Voting Common Stock***") and (c) one million (1,000,000) shares of preferred stock, par value $0.001 per share (the "***Preferred Stock***").

Section 4.2 Preferred Stock. The Board of Directors of the Corporation (the "***Board***") is hereby expressly authorized to provide out of the unissued shares of the Preferred Stock for one or more series of Preferred Stock and to establish from time to time the number of shares to be included in each such series and to fix the voting rights, if any, designations, powers, preferences and relative, participating, optional, special and other rights, if any, of each such series and any qualifications, limitations and restrictions thereof, as shall be stated in the resolution or resolutions adopted by the Board providing for the issuance of such series and included in a certificate of designation (a "***Preferred Stock Designation***") filed pursuant to the DGCL, and the Board is hereby expressly vested with the authority to the full extent provided by law, now or hereafter, to adopt any such resolution or resolutions.

Section 4.3 Common Stock.

(a) Voting.

(i) Except as otherwise required by law or this Second Amended and Restated Certificate (including any Preferred Stock Designation), the holders of the shares of Common Stock shall exclusively possess all voting power with respect to the Corporation. The Non-Voting Common Stock shall not have the right to vote, separately or together with the Common Stock, on any amendments hereto (including with respect to any changes to (A) the authorized number of shares of Common Stock or Non-Voting Common Stock or (B) any preferences, rights or powers of the Non-Voting Common Stock).

(ii) Except as otherwise required by law or this Second Amended and Restated Certificate (including any Preferred Stock Designation), the holders of shares of Common Stock shall be entitled to one vote for each such share on each matter properly submitted to the stockholders of the Corporation on which the holders of the shares of Common Stock are entitled to vote. The holders of Common Stock shall vote together as a single class on all matters on which the holders of the shares of Common Stock are entitled to vote.

(iii) Except as otherwise required by law or this Second Amended and Restated Certificate (including any Preferred Stock Designation), at any annual or special meeting of the stockholders of the Corporation, the holders of the shares of Common Stock shall have the exclusive right to vote for the election of directors and on all other matters properly

submitted to a vote of the stockholders of the Corporation. Notwithstanding the foregoing, except as otherwise required by law or this Second Amended and Restated Certificate (including any Preferred Stock Designation), the holders of the shares of Common Stock shall not be entitled to vote on any amendment to this Second Amended and Restated Certificate (including any amendment to any Preferred Stock Designation) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series of Preferred Stock are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Second Amended and Restated Certificate (including any Preferred Stock Designation) or the DGCL.

(b) Dividends. Subject to applicable law and the rights, if any, of the holders of any outstanding series of the Preferred Stock, the holders of the shares of Common Stock and the holders of any shares of Non-Voting Common Stock each shall be entitled to receive such dividends and other distributions (payable in cash, property or capital stock of the Corporation) when, as and if declared thereon by the Board from time to time out of any assets or funds of the Corporation legally available therefor and shall share equally on a per share basis in such dividends and distributions.

(c) Liquidation Dissolution or Winding Up of the Corporation. Subject to applicable law and the rights, if any, of the holders of any outstanding series of the Preferred Stock, in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation, the holders of the shares of Common Stock and the holders of the shares of Non-Voting Common Stock each shall be entitled to receive all the remaining assets of the Corporation available for distribution to its stockholders, ratably in proportion to the number of shares of Common Stock held by them.

Section 4.4 Non-Voting Common Stock.

(a) Generally. Except as otherwise provided herein or required by applicable law, all Non-Voting Common Stock shall have the same rights and powers as the Common Stock, rank equally to the Common Stock (including upon any liquidation, dissolution or winding up of the Corporation), share ratably in any dividends and distributions, and be identical in all respects to the Common Stock as to all other matters.

(b) Lock-Up Period.

(i) The holders of Non-Voting Common Stock may not transfer any such shares of Non-Voting Common Stock until the end of the period ending on the date that is twelve (12) months immediately following the date of this Second Amended and Restated Certificate of Incorporation (the "***Lock-Up Period***"); provided, that a holder of Non-Voting Common Stock may transfer such shares of Non-Voting Common Stock during the Lock-Up Period to: (i) such holder's spouse or descendants (by birth or adoption); (ii) any trust that is and remains solely for the benefit of such holder's spouse or descendants (by birth or adoption); and/or (iii) a family limited partnership or a family limited liability company solely for the benefit of such holder or such holder's spouse or descendants (by birth or adoption) (clauses (i), (ii) and (iii), collectively, such holder's "***Family Group***"). Notwithstanding the forgoing, each of the holders

of Non-Voting Common Stock (and their permitted transferees) may transfer the Non-Voting Common Stock during the Lock-Up Period in connection with a liquidation, merger, stock exchange, reorganization, tender offer approved by the Board or a duly authorized committee thereof or other similar transaction which results in all of the Corporation's stockholders having the right to exchange their shares for cash, securities or other property.

(ii) After the expiration of Lock-Up Period, upon a sale, assignment or other transfer of any shares of Non-Voting Common Stock by a holder thereof to any person or entity that is not part of such holder's Family Group, each share of Non-Voting Common Stock so transferred shall automatically upon such transfer, without further action by the transferor or transferee thereof, convert into a share of Common Stock. The holder selling, assigning or transferring such shares of Non-Voting Common Stock shall surrender the certificate or certificates therefore, duly endorsed, at the office of the Corporation or of any transfer agent for such shares of Non-Voting Common Stock (or such holder shall notify the Corporation that such certificates have been lost, stolen or destroyed in which case such holder shall execute an agreement to indemnify the Corporation from any loss incurred by the Corporation in connection with such certificates) and shall give written notice to the Corporation at such office of the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver, or cause to be issued and delivered, to such recipient of Common Stock the number of full shares of Common Stock issuable upon such conversion. The person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of the effective date of such conversion.

ARTICLE V
BOARD OF DIRECTORS

Section 5.1 Board Powers. The business and affairs of the Corporation shall be managed by, or under the direction of, the Board. In addition to the powers and authority expressly conferred upon the Board by statute, this Second Amended and Restated Certificate or the Bylaws of the Corporation (as may be amended from time to time, the "***Bylaws***"), the Board is hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the DGCL, this Second Amended and Restated Certificate, and any Bylaws adopted by the stockholders of the Corporation; provided, however, that no Bylaws hereafter adopted by the stockholders of the Corporation shall invalidate any prior act of the Board that would have been valid if such Bylaws had not been adopted.

Section 5.2 Number, Election and Term.

(a) The number of directors of the Corporation, other than those who may be elected by the holders of one or more series of the Preferred Stock voting separately by class or series, shall be fixed from time to time exclusively by the Board pursuant to a resolution adopted by a majority of the Board.

(b) Subject to Section 5.5 hereof, the Board shall be divided into three classes, as nearly equal in number as possible and designated Class I (the "***Class I Directors***"),

Class II (the "***Class II Directors***") and Class III (the "***Class III Directors***"). The Board is authorized to designate members of the Board already in office as Class I Directors, Class II Directors or Class III Directors. The term of the initial Class I Directors shall expire at the first annual meeting of the stockholders of the Corporation following the effectiveness of this Second Amended and Restated Certificate, the term of the initial Class II Directors shall expire at the second annual meeting of the stockholders of the Corporation following the effectiveness of this Second Amended and Restated Certificate and the term of the initial Class III Directors shall expire at the third annual meeting of the stockholders of the Corporation following the effectiveness of this Second Amended and Restated Certificate. At each succeeding annual meeting of the stockholders of the Corporation, beginning with the first annual meeting of the stockholders of the Corporation following the effectiveness of this Second Amended and Restated Certificate, each of the successors elected to replace the class of directors whose term expires at that annual meeting shall be elected for a three-year term or until the election and qualification of their respective successors in office, subject to their earlier death, resignation, retirement, disqualification or removal. Subject to Section 5.5 hereof, if the number of directors that constitutes the Board is changed, any increase or decrease shall be apportioned by the Board among the classes so as to maintain the number of directors in each class as nearly equal as possible, but in no case shall a decrease in the number of directors constituting the Board shorten the term of any incumbent director. Subject to the rights of the holders of one or more series of Preferred Stock, voting separately by class or series, to elect directors pursuant to the terms of one or more series of Preferred Stock, the election of directors shall be determined by a plurality of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon. The Board is hereby expressly authorized, by resolution or resolutions thereof, to assign members of the Board already in office to the aforesaid classes at the time this Second Amended and Restated Certificate (and therefore such classification) becomes effective in accordance with the DGCL.

(c) Subject to Section 5.5 hereof, a director shall hold office until the annual meeting for the year in which his or her term expires and until his or her successor has been elected and qualified, subject, however, to such director's earlier death, resignation, retirement, disqualification or removal.

(d) Unless and except to the extent that the Bylaws shall so require, the election of directors need not be by written ballot. The holders of shares of Common Stock shall not have cumulative voting rights.

Section 5.3 Newly Created Directorships and Vacancies. Subject to Section 5.5 hereof, newly created directorships resulting from an increase in the number of directors and any vacancies on the Board resulting from death, resignation, retirement, disqualification, removal or other cause may be filled solely and exclusively by a majority vote of the remaining directors then in office, even if less than a quorum, or by a sole remaining director (and not by stockholders), and any director so chosen shall hold office for the remainder of the full term of the class of directors to which the new directorship was added or in which the vacancy occurred and until his or her successor has been elected and qualified, subject, however, to such director's earlier death, resignation, retirement, disqualification or removal.

Section 5.4 Removal. Subject to Section 5.5 hereof, any or all of the directors may be removed from office at any time, but only for cause and only by the affirmative vote of holders of 66-2/3% of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

Section 5.5 Preferred Stock - Directors. Notwithstanding any other provision of this Article V, and except as otherwise required by law, whenever the holders of one or more series of the Preferred Stock shall have the right, voting separately by class or series, to elect one or more directors, the term of office, the filling of vacancies, the removal from office and other features of such directorships shall be governed by the terms of such series of the Preferred Stock as set forth in this Second Amended and Restated Certificate (including any Preferred Stock Designation) and such directors shall not be included in any of the classes created pursuant to this Article V unless expressly provided by such terms

ARTICLE VI
BYLAWS

In furtherance and not in limitation of the powers conferred upon it by law, the Board shall have the power and is expressly authorized to adopt, amend, alter or repeal the Bylaws by the affirmative vote of a majority of the Board. The Bylaws also may be adopted, amended, altered or repealed by the stockholders of the Corporation; provided, however, that in addition to any vote of the holders of any class or series of capital stock of the Corporation required by law or by this Second Amended and Restated Certificate (including any Preferred Stock Designation), the affirmative vote of the holders of at least 66-2/3% of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required for the stockholders of the Corporation to adopt, amend, alter or repeal the Bylaws; and provided further, however, that no Bylaws hereafter adopted by the stockholders of the Corporation shall invalidate any prior act of the Board that would have been valid if such Bylaws had not been adopted.

ARTICLE VII
SPECIAL MEETINGS OF STOCKHOLDERS; ACTION BY WRITTEN CONSENT

Section 7.1 Special Meetings. Subject to the rights, if any, of the holders of any outstanding series of the Preferred Stock, and to the requirements of applicable law, special meetings of stockholders of the Corporation may be called only by the Chairperson of the Board, the Chief Executive Officer of the Corporation, or the Board pursuant to a resolution adopted by a majority of the Board, and the ability of the stockholders of the Corporation to call a special meeting is hereby specifically denied. Except as provided in the foregoing sentence, special meetings of stockholders of the Corporation may not be called by another person or persons.

Section 7.2 Advance Notice. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws.

Section 7.3 Action by Written Consent. Except as may be otherwise provided for or fixed pursuant to this Second Amended and Restated Certificate (including any Preferred Stock Designation) relating to the rights of the holders of any outstanding series of Preferred Stock,

any action required or permitted to be taken by the stockholders of the Corporation must be effected by a duly called annual or special meeting of such stockholders and may not be effected by written consent of the stockholders of the Corporation.

ARTICLE VIII
LIMITED LIABILITY; INDEMNIFICATION

Section 8.1 Limitation of Director and Officer Liability. To the fullest extent that the DGCL or any other law of the State of Delaware (as any such law exists on the date hereof or as it may hereafter be amended) permits the limitation or elimination of the liability of directors or officers, no director or officer of the Corporation shall be liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director or officer. If, after this Second Amended and Restated Certificate is filed with the Secretary of State of the State of Delaware, the DGCL or any such other law is amended to authorize corporate action further eliminating or limiting the personal liability of directors or officers, then the liability of a director or officer of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL or such other law, as so amended. No amendment to, or modification or repeal of, this Article VIII shall adversely affect any right or protection of, or increase the liability of, any director or officer of the Corporation existing hereunder with respect to any state of facts existing or any act or omission occurring, or any cause of action, suit or claim that, but for this Article VIII, would accrue or arise, prior to such amendment, modification or repeal.

Section 8.2 Indemnification and Advancement of Expenses.

(a) To the fullest extent permitted by applicable law, as the same exists or may hereafter be amended, the Corporation shall indemnify, defend and hold harmless each person who is or was made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "***proceeding***") by reason of the fact that he or she is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan (an "***indemnitee***"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent, or in any other capacity while serving as a director, officer, employee or agent, against all liability and loss suffered and expenses (including, without limitation, attorneys' fees, judgments, fines, ERISA excise taxes and penalties and amounts paid in settlement) reasonably incurred by such indemnitee in connection with such proceeding. The Corporation shall to the fullest extent not prohibited by applicable law pay the expenses (including attorneys' fees) incurred by an indemnitee in defending or otherwise participating in any proceeding in advance of its final disposition; provided, however, that, to the extent required by applicable law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking, by or on behalf of the indemnitee, to repay all amounts so advanced if it shall ultimately be determined that the indemnitee is not entitled to be indemnified under this Section 8.2 or otherwise. The rights to indemnification and advancement of expenses conferred by this Section 8.2 shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators.

Notwithstanding the foregoing provisions of this Section 8.2(a), except for proceedings to enforce rights to indemnification and advancement of expenses, the Corporation shall indemnify and advance expenses to an indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board.

(b) The rights to indemnification and advancement of expenses conferred on any indemnitee by this Section 8.2 shall not be exclusive of any other rights that any indemnitee may have or hereafter acquire under law, this Second Amended and Restated Certificate, the Bylaws, agreements, vote of stockholders or disinterested directors, or otherwise.

(c) Any repeal or amendment of this Section 8.2 by the stockholders of the Corporation or by changes in law, or the adoption of any other provision of this Second Amended and Restated Certificate inconsistent with this Section 8.2, shall, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to provide broader indemnification rights on a retroactive basis than permitted prior thereto), and shall not in any way diminish or adversely affect any right or protection existing at the time of such repeal or amendment or adoption of such inconsistent provision in respect of any proceeding (regardless of when such proceeding is first threatened, commenced or completed) arising out of, or related to, any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

(d) This Section 8.2 shall not limit the right of the Corporation, to the extent and in the manner authorized or permitted by law, to indemnify and to advance expenses to persons other than indemnitees.

ARTICLE IX
AMENDMENT OF SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

The Corporation reserves the right at any time and from time to time to amend, alter, change or repeal any provision contained in this Second Amended and Restated Certificate (including any Preferred Stock Designation), and other provisions authorized by the laws of the State of Delaware at the time in force that may be added or inserted, in the manner now or hereafter prescribed by this Second Amended and Restated Certificate and the DGCL; and, except as set forth in Article VIII, all rights, preferences and privileges of whatever nature herein conferred upon stockholders, directors or any other persons by and pursuant to this Second Amended and Restated Certificate in its present form or as hereafter amended are granted subject to the right reserved in this Article X. Notwithstanding the foregoing, the provisions set forth in Section 4.3 and Articles V, VI, VII, VIII, this Article IX and Article X (and any defined terms referenced therein and herein) may not be repealed or amended in any respect, and no other provision may be adopted, amended or repealed which would have the effect of modifying or permitting the circumvention of the provisions set forth therein unless such action is approved by the affirmative vote of the holders of not less than 66-2/3% of the total voting power of all outstanding securities of the Corporation generally entitled to vote thereon, voting together as a single class.

ARTICLE X
EXCLUSIVE FORUM FOR CERTAIN LAWSUITS

Section 10.1 Forum. Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for any stockholder (including a beneficial owner) to bring (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation, its directors, officers or employees arising pursuant to any provision of the DGCL or this Second Amended and Restated Certificate or the Bylaws, (iv) any action asserting a claim against the Corporation, its directors, officers or employees governed by the internal affairs doctrine or (v) any action to interpret, apply, enforce or determine the validity of this Second Amended and Restated Certificate, except for, as to each of (i) through (iv) above, any claim as to which the Court of Chancery determines that there is an indispensable party not subject to the jurisdiction of the Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within ten days following such determination), which is vested in the exclusive jurisdiction of a court or forum other than the Court of Chancery, or for which the Court of Chancery does not have subject matter jurisdiction. Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended. Any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Section 10.1 This Section 10.1 shall not apply to suits brought to enforce a duty or liability created by the Securities Exchange Act of 1934, as amended, or any other claim for which the federal courts have exclusive jurisdiction.

Section 10.2 Consent to Jurisdiction. If any action the subject matter of which is within the scope of Section 10.1 immediately above is filed in a court other than a court located within the State of Delaware (a "***Foreign Action***") in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce Section 10.1 immediately above (an "***FSC Enforcement Action***") and (ii) having service of process made upon such stockholder in any such FSC Enforcement Action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder. Any person holding, owning or otherwise acquiring any interest in any security of the Corporation shall be deemed to have notice of and consented to all of the provisions of this Second Amended and Restated Certificate.

ARTICLE XI
SEVERABILITY

If any provision or provisions (or any part thereof) of this Second Amended and Restated Certificate shall be held to be invalid, illegal or unenforceable as applied to any person, entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, (i) the validity, legality and enforceability of such provisions in any other circumstance and of the

remaining provisions of this Second Amended and Restated Certificate (including, without limitation, each portion of any paragraph of this Second Amended and Restated Certificate containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby, and (ii) the provisions of this Second Amended and Restated Certificate (including, without limitation, each portion of any paragraph of this Second Amended and Restated Certificate containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service or for the benefit of the Corporation to the fullest extent permitted by law.

IN WITNESS WHEREOF, Capstone Green Energy Holdings, Inc. has caused this Second Amended and Restated Certificate to be duly executed and acknowledged in its name and on its behalf by an authorized officer as of the date first set forth above.

Capstone Green Energy Holdings, Inc.

By: /s/ John Juric
Name: John Juric
Title: Chief Financial Officer (Principal Financial Officer), Treasurer and Secretary

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EXHIBIT 3.2

AMENDED AND RESTATED BYLAWS
OF
CAPSTONE GREEN ENERGY HOLDINGS, INC.
(THE " CORPORATION")

ARTICLE I
OFFICES

Section 1.1 Registered Office. The registered office of the Corporation within the State of Delaware shall be located at either (a) the principal place of business of the Corporation in the State of Delaware or (b) the office of the corporation or individual acting as the Corporation's registered agent in Delaware.

Section 1.2 Additional Offices. The Corporation may, in addition to its registered office in the State of Delaware, have such other offices and places of business, both within and outside the State of Delaware, as the Board of Directors of the Corporation (the "***Board***") may from time to time determine or as the business and affairs of the Corporation may require.

ARTICLE II
STOCKHOLDERS MEETINGS

Section 2.1 Annual Meetings. The annual meeting of stockholders shall be held at such place, either within or without the State of Delaware, and time and on such date as shall be determined by the Board and stated in the notice of the meeting, provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 9.5(a). At each annual meeting, the stockholders entitled to vote on such matters shall elect those directors of the Corporation to fill any term of a directorship that expires on the date of such annual meeting and may transact any other business as may properly be brought before the meeting.

Section 2.2 Special Meetings. Subject to the rights of the holders of any outstanding series of the preferred stock of the Corporation ("***Preferred Stock***"), and to the requirements of applicable law, special meetings of stockholders, for any purpose or purposes, may be called only by the chairperson of the Board (the "***Chairperson of the Board***"), by the Chief Executive Officer, or by the Board pursuant to a resolution adopted by a majority of the Board. Special meetings of stockholders shall be held at such place, either within or without the State of Delaware, and time and on such date as shall be determined by the Board and stated in the Corporation's notice of the meeting; provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 9.5(a).

Section 2.3 Notices. Notice of each stockholders meeting stating the place, if any, date, and time of the meeting, and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, shall be given in the manner permitted by Section 9.3 to each stockholder entitled to vote thereat by the Corporation not less than 10 nor more than 60 days before the date of the meeting, unless otherwise required by the General Corporation Law of the State of Delaware ("***DGCL***"). If said notice is for a stockholders meeting other than an annual meeting, it shall in addition state the purpose or purposes for which the meeting is called, and the business transacted at such meeting shall be limited to the matters so stated in the Corporation's notice of meeting (or any supplement thereto). Any meeting of stockholders as to which notice has been given may be postponed, and any special meeting of stockholders as to which notice has been given may be cancelled, by the Board upon public announcement (as defined in Section 2.7(c)) given before the date previously scheduled for such meeting.

Section 2.4 Quorum. Except as otherwise provided by applicable law, the Corporation's Second Amended and Restated Certificate of Incorporation, as the same may be further amended or restated from time to time (the "***Certificate of Incorporation***"), or these Amended and Restated Bylaws, as the same may be further amended or restated from time to time (these "***Bylaws***"), the presence, in person or by proxy, at a stockholders meeting of the holders of shares of outstanding capital stock of the Corporation representing not less than thirty-three and a third percent (33 1/3%) of the voting power of all outstanding shares of capital stock of the Corporation entitled to vote at such meeting shall constitute a quorum for the transaction of business at such meeting, except that when specified

business is to be voted on by a class or series of stock voting as a class, the holders of shares representing not less than thirty-three and a third percent (33 1/3%) of the voting power of the outstanding shares of such class or series shall constitute a quorum of such class or series for the transaction of such business. If a quorum shall not be present or represented by proxy at any meeting of the stockholders of the Corporation, the chairperson of the meeting may adjourn the meeting from time to time in the manner provided in Section 2.6 until a quorum shall attend. The stockholders present at a duly convened meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the voting power of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation or any such other corporation to vote shares held by it in a fiduciary capacity.

Section 2.5 Voting of Shares.

(a) Voting Lists. The officer who has charge of the stock ledger of the Corporation shall prepare, at least 10 days before every meeting of stockholders, a complete list of the stockholders of record entitled to vote at such meeting and showing the address and the number of shares registered in the name of each stockholder. Nothing contained in this Section 2.5(a) shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting; or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list required by this Section 2.5(a) or to vote in person or by proxy at any meeting of stockholders.

(b) Manner of Voting. At any stockholders meeting, every stockholder entitled to vote may vote in person or by proxy. If authorized by the Board, the voting by stockholders or proxy holders at any meeting conducted by remote communication may be effected by a ballot submitted by electronic transmission (as defined in Section 9.3), provided that any such electronic transmission must either set forth or be submitted with information from which the Corporation can determine that the electronic transmission was authorized by the stockholder or proxy holder. The Board, in its discretion, or the chairperson of the meeting of stockholders, in such person's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

(c) Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. Proxies need not be filed with the Secretary of the Corporation until the meeting is called to order, but shall be filed with the Secretary before being voted. Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy, either of the following shall constitute a valid means by which a stockholder may grant such authority.

(i) A stockholder may execute a writing authorizing another person or persons to act for such stockholder as proxy. Execution may be accomplished by the stockholder or such stockholder's authorized officer, director, employee or agent signing such writing or causing such person's signature to be affixed to such writing by any reasonable means, including, but not limited to, by electronic signature.

(ii) A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of an electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization

or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission; provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder. Any copy or other reliable reproduction of the writing or transmission authorizing another person or persons to act as proxy for a stockholder may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used; provided that such copy or other reproduction shall be a complete reproduction of the entire original writing or transmission.

(d) Required Vote. Subject to the rights of the holders of one or more series of Preferred Stock, voting separately by class or series, to elect directors pursuant to the terms of one or more series of Preferred Stock, the election of directors shall be determined by a plurality of the votes cast by the stockholders present in person or represented by proxy at the meeting, in which such matter is being voted upon at which a quorum is present, and entitled to vote thereon. All other matters presented to the stockholders at a meeting at which a quorum is present shall be determined by the vote of a majority of the votes cast by the common stockholders present in person or represented by proxy at the meeting and entitled to vote thereon, unless the matter is one upon which, by applicable law, the Certificate of Incorporation, these Bylaws or applicable stock exchange rules, a different vote is required, in which case such provision shall govern and control the decision of such matter. For purposes of this Section 2.5(d), a majority of the votes cast shall mean that the number of shares voted "for" a matter exceeds the number of votes cast "against" such matter.

(e) Inspectors of Election. The Board may, and shall if required by law, in advance of any meeting of stockholders, appoint one or more persons as inspectors of election, who may be employees of the Corporation or otherwise serve the Corporation in other capacities, to act at such meeting of stockholders or any adjournment thereof and to make a written report thereof. The Board may appoint one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspectors of election or alternates are appointed by the Board, the chairperson of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall ascertain and report the number of outstanding shares and the voting power of each; determine the number of shares present in person or represented by proxy at the meeting and the validity of proxies and ballots; count all votes and ballots and report the results; determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. No person who is a candidate for an office at an election may serve as an inspector at such election. Each report of an inspector shall be in writing and signed by the inspector or by a majority of them if there is more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors.

Section 2.6 Adjournments. Any meeting of stockholders, annual or special, may be adjourned by the chairperson of the meeting (including due to a technical failure to convene or continue the meeting by remote communication), from time to time, whether or not there is a quorum, to reconvene at the same or some other place. Notice need not be given of any such adjourned meeting if the date, time, and place, if any, thereof, and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting the stockholders, or the holders of any class or series of stock entitled to vote separately as a class, as the case may be, may transact any business that might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 2.7 Advance Notice for Business.

(a) Annual Meetings of Stockholders. No business may be transacted at an annual meeting of stockholders, other than business that is either (i) specified in the Corporation's notice of meeting (or any supplement thereto) given by or at the direction of the Board, (ii) otherwise properly brought before the annual

meeting by or at the direction of the Board or (iii) otherwise properly brought before the annual meeting by any stockholder of the Corporation (x) who is a stockholder of record entitled to vote at such annual meeting on the date of the giving of the notice provided for in this Section 2.7(a) and on the record date for the determination of stockholders entitled to vote at such annual meeting and (y) who complies with the notice procedures set forth in this Section 2.7(a). Notwithstanding anything in this Section 2.7(a) to the contrary, only persons nominated for election as a director to fill any term of a directorship that expires on the date of the annual meeting pursuant to Section 3.2 will be considered for election at such meeting.

(i) In addition to any other applicable requirements, for business (other than nominations) to be properly brought before an annual meeting by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation, or such other person as the Corporation may designate, and such business must otherwise be a proper matter for stockholder action. Subject to Section 2.7(a)(iii), a stockholder's notice to the Secretary with respect to such business, to be timely, must be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the 120th day nor earlier than the close of business on the 150th day before the first anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that in the event that the annual meeting is advanced more than 30 days prior to such anniversary date or delayed more than 70 days after such anniversary date, notice by the stockholder to be timely must be so received not earlier than the close of business on the 150th day before the meeting and not later than the later of (x) the close of business on the 120th day before the meeting or (y) the close of business on the 10th day following the day on which public announcement of the date of the annual meeting is first made by the Corporation. The public announcement of an adjournment or postponement of an annual meeting shall not commence a new time period (or extend any time period) for the giving of a stockholder's notice as described in this Section 2.7(a).

(ii) To be in proper written form, a stockholder's notice to the Secretary with respect to any business (other than nominations) must set forth as to each such matter such stockholder proposes to bring before the annual meeting (A) a brief description of the business desired to be brought before the annual meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event such business includes a proposal to amend these Bylaws, the language of the proposed amendment) and the reasons for conducting such business at the annual meeting, (B) the name and record address of such stockholder and the name and address of the beneficial owner, if any, on whose behalf the proposal is made, (C) the class or series and number of shares of capital stock of the Corporation that are owned beneficially and of record by such stockholder and by the beneficial owner, if any, on whose behalf the proposal is made, (D) a description of all agreements, arrangements or understandings between such stockholder and the beneficial owner, if any, on whose behalf the proposal is made, any of their respective affiliates or associates and any other person or persons (including their names) in connection with the proposal of such business by such stockholder, (E) any material interest of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made in such business, (F) a representation that such stockholder is a holder of record of stock entitled to vote at such meeting and intends to appear in person or by proxy at the annual meeting to bring such business before the meeting, (G) a description of all agreements, arrangements or understandings (including any derivative or short positions, profit interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions and borrowed or loaned shares) that have been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder and the beneficial owner, if any, on whose behalf the proposal is made, whether or not such instrument or right shall be subject to settlement in underlying shares of stock, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or such beneficial owner, if any, with respect to securities of the Corporation, (H) a representation as to whether such stockholder or the beneficial owner, if any, on whose behalf the proposal is made has complied with all state and other legal requirements in

connection with the stockholder's and/or beneficial owner's acquisition of shares of capital stock or other securities of the Corporation and/or the stockholder's and/or beneficial owner's acts or omissions as a stockholder of the Corporation, (I) any direct or indirect material interest or any material contract or agreement between such stockholder or the beneficial owner, if any, on whose behalf the proposal is made with the Corporation, any affiliate of the Corporation or any entity that provides products or services that compete with or are alternative to the principal products produces or services provided by the Corporation or its affiliates (a "***Competitor***") (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement), (J) any material pending or threatened legal proceeding in which such stockholder or the beneficial owner, if any, on whose behalf the proposal is made is a party or material participant involving the Corporation or any of its officers or directors, or any affiliate of the Corporation, (K) any other material relationship between such stockholder or the beneficial owner, if any, on whose behalf the proposal is made, on the one hand, and the Corporation, or any affiliate of the Corporation or any Competitor, on the other hand, and (L) any other information relating to such stockholder and the beneficial owner, if any, on whose behalf the proposal is made required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for such business pursuant to and in accordance with Section 14A of the Exchange Act and the rules and regulations promulgated thereunder, and (M) the written consent of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made to the public disclosure of information provided to the Corporation pursuant to this Section 2.7.

(iii) The foregoing notice requirements of this Section 2.7(a) shall be deemed satisfied by a stockholder as to any proposal (other than nominations) if the stockholder has notified the Corporation of such stockholder's intention to present such proposal at an annual meeting in compliance with Rule 14a-8 (or any successor thereof) of the Securities Exchange Act of 1934, as amended (the "***Exchange Act***"), and such stockholder has complied with the requirements of Rule 14a-8 for inclusion of such proposal in a proxy statement prepared by the Corporation to solicit proxies for such annual meeting. No business shall be conducted at the annual meeting of stockholders except business brought before the annual meeting in accordance with the procedures set forth in this Section 2.7(a), provided, however, that once business has been properly brought before the annual meeting in accordance with such procedures, nothing in this Section 2.7(a) shall be deemed to preclude discussion by any stockholder of any such business. If the Board or the chairperson of the annual meeting determines that any stockholder proposal was not made in accordance with the provisions of this Section 2.7(a) or the Exchange Act or that the information provided in a stockholder's notice does not satisfy the information requirements of this Section 2.7(a) or the Exchange Act, such proposal shall not be presented for action at the annual meeting. Notwithstanding the foregoing provisions of this Section 2.7(a), if the stockholder (or a qualified representative of the stockholder) does not appear at the annual meeting of stockholders of the Corporation to present the proposed business, such proposed business shall not be transacted, notwithstanding that proxies in respect of such matter may have been received by the Corporation.

(iv) In addition to the provisions of this Section 2.7(a), a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth herein. Nothing in this Section 2.7(a) shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

(b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board may be made only at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting pursuant to Section 3.2.

(c) Public Announcement. For purposes of these Bylaws, "***public announcement***" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed or furnished by the Corporation with the Securities and Exchange Commission (the "***Commission***") pursuant to Section 13, 14 or 15(d) of the Exchange Act.

Section 2.8 Conduct of Meetings. The chairperson of each annual and special meeting of stockholders shall be the Chairperson of the Board, if any, or, in the absence (or inability or refusal to act) of the Chairperson of the Board, the Chief Executive Officer (if he or she shall be a director), if any, or, in the absence (or inability or refusal to act) of the Chief Executive Officer or if the Chief Executive Officer is not a director, the President (if he or she shall be a director), if any, or, in the absence (or inability or refusal to act) of the President or if the President is not a director, such other person as shall be appointed by the Board. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the chairperson of the meeting. The Board may adopt such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with these Bylaws or such rules and regulations as adopted by the Board, the chairperson of any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairperson, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the chairperson of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairperson of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board or the chairperson of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. The secretary of each annual and special meeting of stockholders shall be the Secretary, if any, or, in the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary so appointed to act by the chairperson of the meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairperson of the meeting may appoint any person to act as secretary of the meeting.

ARTICLE III
DIRECTORS

Section 3.1 Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these Bylaws required to be exercised or done by the stockholders. Directors need not be stockholders or residents of the State of Delaware.

Section 3.2 Advance Notice for Nomination of Directors.

(a) Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation, except as may be otherwise provided by the terms of one or more series of Preferred Stock with respect to the rights of holders of one or more series of Preferred Stock to elect directors. Nominations of persons for election to the Board at any annual meeting of stockholders, or at any special meeting of stockholders called for the purpose of electing directors as set forth in the Corporation's notice of such special meeting, may be made (i) by or at the direction of the Board or (ii) by any stockholder of the Corporation (x) who is a stockholder of record entitled to vote in the election of directors on the date of the giving of the notice provided for in this Section 3.2 and on the record date for the determination of stockholders entitled to vote at such meeting and (y) who complies with the notice procedures set forth in this Section 3.2.

(b) In addition to any other applicable requirements, for a nomination to be made by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation. To be timely, a stockholder's notice to the Secretary must be received by the Secretary at the principal executive offices of the Corporation (i) in the case of an annual meeting, not later than the close of business on the 120th day nor earlier than the close of business on the 150th day before the first

anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that in the event that the annual meeting is advanced more than 30 days prior to such anniversary date or delayed more than 70 days after such anniversary date, notice by the stockholder to be timely must be so received not earlier than the close of business on the 150th day before the meeting and not later than the later of (x) the close of business on the 120th day before the meeting or (y) the close of business on the 10th day following the day on which public announcement of the date of the annual meeting was first made by the Corporation; and (ii) in the case of a special meeting of stockholders called for the purpose of electing directors, not later than the close of business on the 10th day following the day on which public announcement of the date of the special meeting is first made by the Corporation. In no event shall the public announcement of an adjournment or postponement of an annual meeting or special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described in this Section 3.2.

(c) Notwithstanding anything in paragraph (b) of this Section 3.2 to the contrary, in the event that the number of directors to be elected to the Board at an annual meeting is greater than the number of directors whose terms expire on the date of the annual meeting and there is no public announcement by the Corporation naming all of the nominees for the additional directors to be elected or specifying the size of the increased Board before the close of business on the 120th day prior to the anniversary date of the immediately preceding annual meeting of stockholders, a stockholder's notice required by this Section 3.2 shall also be considered timely, but only with respect to nominees for the additional directorships created by such increase that are to be filled by election at such annual meeting, if it shall be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the date on which such public announcement was first made by the Corporation.

(d) To be in proper written form, a stockholder's notice to the Secretary must set forth (i) as to each person whom the stockholder proposes to nominate for election as a director (A) the name, age, business address and residence address of the person, (B) the principal occupation or employment of the person, (C) the class or series and number of shares of any capital stock of the Corporation that are owned beneficially or of record by the person, (D) the person's written consent (x) to being named in the proxy statement, proxy card and ballot as a nominee and to serving as a director of the Corporation if elected and (y) the Corporation's engaging in a background check of such person (including through a third party investigation firm), in a manner consistent with background checks customarily engaged in by the Corporation for prospective new members of the Board, (E) the information reasonably necessary to complete such background check, (F) all other information relating to the person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder, including, without limitation, the requirements of Rule 14a-19, and (G) such other information regarding the person as may reasonably be requested by the Board in writing prior to the meeting of stockholders at which such candidate's nomination is to be acted upon in order for the Board to determine the eligibility of such candidate for nomination to be an independent director of the Corporation in accordance with listing requirements and applicable stock exchange rules; (ii) with respect to each nominee for election to the Board, the completed and signed questionnaire, representation and agreement required by Section 3.3 of these Bylaws; and (iii) as to the stockholder giving the notice (A) the name and record address of such stockholder as they appear in the Corporation's books and the name and address of the beneficial owner, if any, on whose behalf the nomination is made, (B) the class or series and number of shares of capital stock of the Corporation that are owned beneficially and of record by such stockholder and the beneficial owner, if any, on whose behalf the nomination is made, (C) a description of all agreements, arrangements or understandings relating to the nomination to be made by such stockholder among such stockholder, the beneficial owner, if any, on whose behalf the nomination is made, any of such stockholder's and/or beneficial owner's respective affiliates or associates, each proposed nominee and any other person or persons (including their names), (D) a description of any agreements, arrangements or understandings (including any derivative or short positions, profit interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares) that have been entered into as of the date of such stockholder's notice by, or on behalf of, such stockholder and the beneficial owner, if any, on whose behalf the nomination is made, whether or not such instrument or right shall be subject to settlement in

underlying shares of stock, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or such beneficial owner, if any, with respect to securities of the Corporation, (E) a representation that such stockholder is a holder of record of stock entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to nominate the persons named in its notice, (F) a representation whether such stockholder or the beneficial owner, if any, on whose behalf the nomination is made intends or is part of a group which intends to (x) solicit proxies or votes from stockholders in support of such proposed nomination and/or (y) solicit proxies in support of such proposed nomination of persons for election to the Board other than the Corporation's nominees for election to the Board from the holders of capital stock of the Corporation representing at least 66 2/3% of the voting power of the capital stock entitled to vote generally in the election of directors in accordance with Rule 14a-19 of the Exchange Act, (G) a representation as to whether such stockholder or the beneficial owner, if any, on whose behalf the nomination is made has complied with all state and other legal requirements in connection with the stockholder's and/or beneficial owner's acquisition of shares of capital stock or other securities of the Corporation and/or the stockholder's and/or beneficial owner's acts or omissions as a stockholder of the Corporation, (H) any direct or indirect material interest or any material contract or agreement between such stockholder or beneficial owner, if any, on whose behalf the nomination is made with the Corporation, any affiliate of the Corporation or any Competitor (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement), (I) any material pending or threatened legal proceeding in which such stockholder or the beneficial owner, if any, on whose behalf the nomination is made is a party or material participant involving the Corporation or any of its officers or directors, or any affiliate of the Corporation, (J) any other material relationship between such stockholder or the beneficial owner, if any, on whose behalf the nomination is made, on the one hand, and the Corporation, or any affiliate of the Corporation or any Competitor, on the other hand, (K) any other information relating to (i) such stockholder and the beneficial owner, if any, on whose behalf the nomination is made, and (ii) each person whom the stockholder proposes to nominate for election as a director that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder and (L) the written consent of such stockholder and the beneficial owner, if any, on whose behalf the nomination is made to the Corporation's public disclosure of information provided to the Corporation pursuant to this Section 3.2.

(e) If the Board or the chairperson of the meeting of stockholders determines that any nomination was not made in accordance with the provisions of this Section 3.2 or the Exchange Act, including, without limitation, Rule 14a-19 thereunder, then such nomination shall not be considered at the meeting in question. Notwithstanding the foregoing provisions of this Section 3.2, if the stockholder (or a qualified representative of the stockholder) (i) fails to comply with the requirements of Rule 14a-19(a)(2) or Rule 14a-19(a)(3) under the Exchange Act or (ii) does not appear at the meeting of stockholders of the Corporation to present the nomination, such nomination shall be disregarded, notwithstanding that proxies in respect of such nomination may have been received by the Corporation.

(f) In addition to the provisions of this Section 3.2, a stockholder shall also comply with all of the applicable requirements of the Exchange Act and the rules and regulations thereunder, including, without limitation, Rule 14a-19 thereunder, with respect to the matters set forth herein, and if any stockholder provides notice pursuant to Rule 14a-19(b) under the Exchange Act, such stockholder shall deliver to the Corporation, no later than five (5) business days prior to the applicable meeting, reasonable evidence that it has met the requirements of Rule 14a-19(a)(3) under the Exchange Act. Nothing in this Section 3.2 shall be deemed to affect any rights of the holders of Preferred Stock to elect directors pursuant to the Certificate of Incorporation.

Section 3.3 Submission of Questionnaire, Representation and Agreement. To be eligible to be a nominee for election as a director of the Corporation, the candidate for nomination must have previously delivered (in accordance with the time periods prescribed for delivery of notice under Section 3.2 of these Bylaws), to the Secretary at the principal executive offices of the Corporation, (a) a completed written questionnaire (in a form provided by the Corporation) with respect to the background, qualifications, stock ownership and independence of such proposed nominee, (b) a written representation and agreement (in the form provided by the Corporation) that such candidate for

nomination (i) unless previously disclosed to the Corporation, the nominee is not and will not become a party to any voting agreement, arrangement or understanding with any person or entity as to how such nominee, if elected as a director, will vote on any issue or that could interfere with such person's ability to comply, if elected as a director, with his/her fiduciary duties under applicable law, (ii) is not, and will not become a party to, any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation or reimbursement for service as a director, and (iii) if elected as a director of the Corporation, will comply with all applicable corporate governance, conflict of interest, confidentiality, stock ownership and trading and other policies and guidelines of the Corporation applicable to directors and in effect during such person's term in office as a director of the Corporation (and, if requested by any candidate for nomination, the Secretary of the Corporation shall provide to such candidate for nomination all such policies and guidelines then in effect). At the request of the Board, any person nominated by the Board for election as a director shall furnish to the Secretary of the Corporation the information that is required to be set forth in a stockholder's notice of nomination that pertains to the nominee (as if such nominee were the stockholder), as set forth in Section 3.2(d).

Section 3.4. Proxy Card. Any stockholder directly or indirectly soliciting proxies from other stockholders (other than on behalf the Corporation) must use a proxy card color other than white, which shall be reserved for exclusive use by the Corporation.

Section 3.5 Compensation. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board shall have the authority to fix the compensation of directors. The directors may be reimbursed their expenses, if any, of attendance at each meeting of the Board and may be paid either a fixed sum for attendance at each meeting of the Board or other compensation as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of committees of the Board may be allowed like compensation and reimbursement of expenses for service on the committee.

Section 3.6 Chairperson of the Board. The Chairperson of the Board shall be a member of the Board and may or may not be an officer and/or employee of the Corporation. The Chairperson of the Board, if any, shall preside when present at all meetings of the stockholders and the Board. The Chairperson of the Board shall have general supervision and control of the acquisition activities of the Corporation subject to the ultimate authority of the Board, and shall be responsible for the execution of the policies of the Board with respect to such matters. In the absence (or inability or refusal to act) of the Chairperson of the Board, the Chief Executive Officer (if he or she shall be a director) shall preside when present at all meetings of the stockholders and the Board. The powers and duties of the Chairperson of the Board shall not include supervision or control of the preparation of the financial statements of the Corporation (other than through participation as a member of the Board). The position of Chairperson of the Board and Chief Executive Officer may be held by the same person.

Section 3.7. Lead Independent Director. If at any time the Chairperson of the Board is not independent as that term is defined under the then applicable rules and regulations of each national securities exchange upon which shares of the stock of the Corporation are listed for trading and of the Commission, the independent directors may designate from among them a lead independent director (a "***Lead Independent Director***") having the duties and responsibilities determined by the Board from time to time.

ARTICLE IV
BOARD MEETINGS

Section 4.1 Annual Meetings. The Board shall meet as soon as practicable after the adjournment of each annual stockholders meeting at the place of the annual stockholders meeting or, if such meeting is held solely by means of remote communication, then by means of remote communication, unless the Board shall fix another time and place and give notice thereof in the manner required herein for special meetings of the Board. No notice to the directors shall be necessary to legally convene this meeting, except as provided in this Section 4.1.

Section 4.2 Regular Meetings. Regularly scheduled, periodic meetings of the Board may be held without notice at such times, dates and places (within or without the State of Delaware) as shall from time to time be determined by the Board, provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 9.5(b).

Section 4.3 Special Meetings. Special meetings of the Board (a) may be called by the Chairperson of the Board, Lead Independent Director, Chief Executive Officer or President and (b) shall be called by the Chairperson of the Board, Lead Independent Director, Chief Executive Officer, President or Secretary on the written request of at least a majority of directors then in office and shall be held at such time, date and place (within or without the State of Delaware) as may be determined by the person calling the meeting or, if called upon the request of directors or the sole director, as specified in such written request. Notice of each special meeting of the Board shall be given to each director: (i) at least 24 hours before the meeting if such notice is oral notice given personally or by telephone or written notice given by hand delivery or by means of a form of electronic transmission and delivery; (ii) at least two days before the meeting if such notice is sent by a nationally recognized overnight delivery service; and (iii) at least five days before the meeting if such notice is sent through the United States mail. If the Secretary shall fail or refuse to give such notice, then the notice may be given by the officer who called the meeting or the directors who requested the meeting. Any and all business that may be transacted at a regular meeting of the Board may be transacted at a special meeting. Except as may be otherwise expressly provided by applicable law, the Certificate of Incorporation, or these Bylaws, neither the business to be transacted at, nor the purpose of, any special meeting need be specified in the notice or waiver of notice of such meeting. A special meeting may be held at any time without notice if all the directors are present or if those not present waive notice of the meeting in accordance with Section 9.4.

Section 4.4 Quorum; Required Vote. A majority of the Board shall constitute a quorum for the transaction of business at any meeting of the Board, and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board, except as may be otherwise specifically provided by applicable law, the Certificate of Incorporation or these Bylaws. If a quorum shall not be present at any meeting, a majority of the directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

Section 4.5 Consent In Lieu of Meeting Unless otherwise provided in the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting, if all the members of the Board or such committee, as the case may be, consent thereto in writing or by electronic transmission. Any person, whether or not then a director, may provide, through instruction to an agent or otherwise, that a consent to action will be effective at a future time (including a time determined upon the happening of an event) no later than sixty (60) days after such instruction is given or such provision is made and such consent shall be deemed to have been given at such effective time so long as such person is then a director and did not revoke the consent prior to such time. Any such consent shall be revocable prior to its becoming effective. After an action is taken, the consent or consents relating thereto shall be filed with the minutes of the proceedings of the Board, or the committee thereof, in the same paper or electronic form as the minutes are maintained.

Section 4.6 Organization. The chairperson of each meeting of the Board shall be the Chairperson of the Board, if any, or, in the absence (or inability or refusal to act) of the Chairperson of the Board, the Lead Independent Director, if any, or, in the absence (or inability or refusal to act) of the Lead Independent Director, the Chief Executive Officer, if any (if he or she shall be a director), or, in the absence (or inability or refusal to act) of the Chief Executive Officer or if the Chief Executive Officer is not a director, the President, if any (if he or she shall be a director), or in the absence (or inability or refusal to act) of the President or if the President is not a director, a chairperson elected from the directors present. The Secretary, if any, shall act as secretary of all meetings of the Board. In the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary, if any, shall perform the duties of the Secretary at such meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairperson of the meeting may appoint any person to act as secretary of the meeting.

ARTICLE V
COMMITTEES OF DIRECTORS

Section 5.1 Establishment. The Board may by resolution passed by a majority of the Board designate one or more committees, each committee to consist of one or more of the directors of the Corporation. Each committee shall keep regular minutes of its meetings and report the same to the Board when required. The Board shall have the power at any time to fill vacancies in, to change the membership of, or to dissolve any such committee.

Section 5.2 Available Powers. Any committee established pursuant to Section 5.1 hereof, to the extent permitted by applicable law and by resolution of the Board, shall have and may exercise all of the powers and authority of the Board in the management of the business and affairs of the Corporation.

Section 5.3 Alternate Members. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee.

Section 5.4 Procedures. Unless the Board otherwise provides, the time, date, place, if any, and notice of meetings of a committee shall be determined by such committee. At meetings of a committee, a majority of the number of members of the committee (but not including any alternate member, unless such alternate member has replaced any absent or disqualified member at the time of, or in connection with, such meeting) shall constitute a quorum for the transaction of business. The act of a majority of the members present at any meeting at which a quorum is present shall be the act of the committee, except as otherwise specifically provided by applicable law, the Certificate of Incorporation, these Bylaws or the Board. If a quorum is not present at a meeting of a committee, the members present may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present. Unless the Board otherwise provides and except as provided in these Bylaws, each committee designated by the Board may make, alter, amend and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board is authorized to conduct its business pursuant to Article III and Article IV of these Bylaws.

ARTICLE VI
OFFICERS

Section 6.1 Officers. The officers of the Corporation elected by the Board shall be a Chief Executive Officer and such other officers (which may include, without limitation, a Chief Financial Officer, a Secretary, a President, Vice Presidents, Assistant Secretaries and a Treasurer) as the Board from time to time may determine. Officers elected by the Board shall each have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this Article VI. Such officers shall also have such powers and duties as from time to time may be conferred by the Board. The Chief Executive Officer or President may also appoint such other officers (which may include, without limitation, one or more Vice Presidents and Controllers) as may be necessary or desirable for the conduct of the business of the Corporation. Such other officers shall have such powers and duties and shall hold their offices for such terms as may be provided in these Bylaws or as may be prescribed by the Board or, if such officer has been appointed by the Chief Executive Officer or President, as may be prescribed by the appointing officer.

(a) Chief Executive Officer. The Chief Executive Officer shall be the chief executive officer of the Corporation, shall have general supervision of the affairs of the Corporation and general control of all of its business subject to the ultimate authority of the Board, and shall be responsible for the execution of the policies of the Board with respect to such matters, except to the extent any such powers and duties have been prescribed to the Chairperson of the Board pursuant to Section 3.7 above. In the absence (or inability or refusal to act) of both the Chairperson of the Board and the Lead Independent Director, the Chief Executive Officer (if he or she shall be a director) shall preside when present at all meetings of the stockholders and the Board. The position of Chief Executive Officer and President may be held by the same person.

(b) President. The President, if any, shall make recommendations to the Chief Executive Officer on all operational matters that would normally be reserved for the final executive responsibility of the Chief Executive Officer. In the absence (or inability or refusal to act) of the Chairperson of the Board and Chief Executive Officer, the President (if he or she shall be a director) shall preside when present at all meetings of the stockholders and the Board. The President shall also perform such duties and have such powers as shall be designated by the Board. The position of President and Chief Executive Officer may be held by the same person.

(c) Vice Presidents. In the absence (or inability or refusal to act) of the President, the Vice President, if any (or in the event there be more than one Vice President, the Vice Presidents in the order designated by the Board), shall perform the duties and have the powers of the President. Any one or more of the Vice Presidents may be given an additional designation of rank or function.

(d) Secretary.

(i) The Secretary, if any, shall attend all meetings of the stockholders, the Board and (as required) committees of the Board and shall record the proceedings of such meetings in books to be kept for that purpose. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board and shall perform such other duties as may be prescribed by the Board, the Chairperson of the Board, Chief Executive Officer or President.

(ii) The Secretary, if any, shall keep, or cause to be kept, at the principal executive office of the Corporation or at the office of the Corporation's transfer agent or registrar, if one has been appointed, a stock ledger, or duplicate stock ledger, showing the names of the stockholders and their addresses, and the number and classes of shares held by each.

(e) Assistant Secretaries. The Assistant Secretary, if any, or, if there be more than one, the Assistant Secretaries in the order determined by the Board shall, in the absence (or inability or refusal to act) of the Secretary, perform the duties and have the powers of the Secretary.

(f) Chief Financial Officer. The Chief Financial Officer, if any, shall perform all duties commonly incident to that office (including, without limitation, in respect of the care and custody of the funds and securities of the Corporation, including the deposit of the funds of the Corporation in such banks or trust companies as the Board, the Chief Executive Officer or the President may authorize).

(g) Treasurer. The Treasurer, if any, shall, in the absence (or inability or refusal to act) of the Chief Financial Officer, perform the duties and exercise the powers of the Chief Financial Officer.

Section 6.2 Term of Office; Removal; Vacancies. The elected officers of the Corporation shall be appointed by the Board and shall hold office until their successors are duly elected and qualified by the Board or until their earlier death, resignation, retirement, disqualification or removal from office. Any officer may be removed, with or without cause, at any time by the Board. Any officer appointed by the Chief Executive Officer or President may also be removed, with or without cause, by the Chief Executive Officer or President, as the case may be, unless the Board otherwise provides. Any vacancy occurring in any elected office of the Corporation may be filled by the Board. Any vacancy occurring in any office appointed by the Chief Executive Officer or President may be filled by the Chief Executive Officer, or President, as the case may be, unless the Board then determines that such office shall thereupon be elected by the Board, in which case the Board shall elect such officer.

Section 6.3 Other Officers. The Board may delegate the power to appoint such other officers and agents, and may also remove such officers and agents or delegate the power to remove same, as it shall from time to time deem necessary or desirable.

Section 6.4 Multiple Officeholders; Stockholder and Director Officers. Any number of offices may be held by the same person unless the Certificate of Incorporation or these Bylaws otherwise provide. Officers need not be stockholders or residents of the State of Delaware.

ARTICLE VII
SHARES

Section 7.1 Uncertificated Shares. The shares of any class or series of capital stock of the Corporation may be uncertificated and registered in book-entry form.

Section 7.2 Multiple Classes of Stock. If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the Corporation shall, within a reasonable time after the issuance or transfer of such shares, send to the registered owner thereof a written notice containing a summary of the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights; provided, however, that,

except as otherwise provided by applicable law, in lieu of the foregoing requirements, there may be set forth on such written notice a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights.

Section 7.3 Consideration and Payment for Shares.

(a) Subject to applicable law and the Certificate of Incorporation, shares of stock may be issued for such consideration, having in the case of shares with par value a value not less than the par value thereof, and to such persons, as determined from time to time by the Board. The consideration may consist of any tangible or intangible property or any benefit to the Corporation including cash, promissory notes, services performed, contracts for services to be performed or other securities, or any combination thereof.

(b) Subject to applicable law and the Certificate of Incorporation, shares may not be issued until the full amount of the consideration has been paid, unless upon the books and records of the Corporation there shall have been set forth the total amount of the consideration to be paid therefor and the amount paid thereon up to and including the time said shares are issued.

Section 7.4 Transfer of Stock.

(a) Subject to the restrictions set forth in Section 7.6, all transfers of shares shall be made on the books of the Corporation, by the holder of the shares, in person or by his or her attorney, in such manner as the Board or any officer of the Corporation may prescribe and subject to any applicable law, rule or regulation. The Corporation shall be entitled to treat the holder of record of any shares of its capital stock as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Delaware.

(b) Whenever any transfer of shares shall be made for collateral security and not absolutely, the Corporation shall so record such fact in the entry of transfer if, when the instruction for registration of transfer thereof is presented to the Corporation, both the transferor and transferee request the Corporation to do so.

Section 7.5 Registered Stockholders. Before due presentment of an instruction requesting registration of transfer of uncertificated shares, the Corporation may treat the registered owner as the person exclusively entitled to inspect for any proper purpose the stock ledger and the other books and records of the Corporation, vote such shares, receive dividends or notifications with respect to such shares and otherwise exercise all the rights and powers of the owner of such shares, except that a person who is the beneficial owner of such shares (if held in a voting trust or by a nominee on behalf of such person) may, upon providing documentary evidence of beneficial ownership of such shares and satisfying such other conditions as are provided under applicable law, may also so inspect the books and records of the Corporation.

Section 7.6 Effect of the Corporation's Restriction on Transfer.

(a) A written restriction on the transfer or registration of transfer of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, if permitted by the DGCL and contained in the Certificate of Incorporation or a notice, offering circular or prospectus sent by the Corporation to the registered owner of such shares within a reasonable time prior to or after the issuance or transfer of such shares, may be enforced against the holder of such shares or any successor or transferee of the holder, including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder.

(b) A restriction imposed by the Corporation on the transfer or the registration of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, even if otherwise lawful, is ineffective against a person without actual knowledge of such restriction unless such restriction was contained in the Certificate of Incorporation or a notice, offering circular or

prospectus sent by the Corporation to the registered owner of such shares prior to or within a reasonable time after the issuance or transfer of such shares.

Section 7.7 Regulations. The Board shall have power and authority to make such additional rules and regulations, subject to any applicable requirement of law, as the Board may deem necessary and appropriate with respect to the issue, transfer or registration of transfer of shares of stock or certificates representing shares. The Board may appoint one or more transfer agents or registrars.

ARTICLE VIII
INDEMNIFICATION

Section 8.1 Right to Indemnification. To the fullest extent permitted by applicable law, as the same exists or may hereafter be amended, the Corporation shall indemnify and hold harmless each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "***Proceeding***"), by reason of the fact that he or she is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan (hereinafter an "***Indemnitee***"), whether the basis of such Proceeding is alleged action in an official capacity as a director, officer, employee or agent, or in any other capacity while serving as a director, officer, employee or agent, against all liability and loss suffered and expenses (including, without limitation, attorneys' fees, judgments, fines, Employment Retirement Income Security Act of 1974 excise taxes and penalties and amounts paid in settlement) reasonably incurred by such Indemnitee in connection with such Proceeding; provided, however, that, except as provided in Section 8.3 with respect to Proceedings to enforce rights to indemnification, the Corporation shall indemnify an Indemnitee in connection with a Proceeding (or part thereof) initiated by such Indemnitee only if such Proceeding (or part thereof) was authorized by the Board.

Section 8.2 Right to Advancement of Expenses. In addition to the right to indemnification conferred in Section 8.1, an Indemnitee shall also have the right to be paid by the Corporation to the fullest extent not prohibited by applicable law the expenses (including, without limitation, attorneys' fees) incurred in defending or otherwise participating in any such Proceeding in advance of its final disposition (hereinafter an "advancement of expenses"); provided, however, that, if the DGCL requires, an advancement of expenses incurred by an Indemnitee in his or her capacity as a director or officer of the Corporation (and not in any other capacity in which service was or is rendered by such Indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon the Corporation's receipt of an undertaking (hereinafter an "undertaking"), by or on behalf of such Indemnitee, to repay all amounts so advanced if it shall ultimately be determined that such Indemnitee is not entitled to be indemnified under this Article VIII or otherwise.

Section 8.3 Right of Indemnitee to Bring Suit. If a claim under Section 8.1 or Section 8.2 is not paid in full by the Corporation within 60 days after a written claim therefor has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the Indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Indemnitee shall also be entitled to be paid the expense of prosecuting or defending such suit. In (a) any suit brought by the Indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by an Indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (b) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final judicial decision from which there is no further right to appeal that, the Indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the Indemnitee is proper in the circumstances because the Indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including a determination by its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the Indemnitee has not met such applicable standard of conduct, shall create a presumption that the Indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought

by the Indemnitee, shall be a defense to such suit. In any suit brought by the Indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article VIII or otherwise shall be on the Corporation.

Section 8.4 Non-Exclusivity of Rights. The rights provided to any Indemnitee pursuant to this Article VIII shall not be exclusive of any other right, which such Indemnitee may have or hereafter acquire under applicable law, the Certificate of Incorporation, these Bylaws, an agreement, a vote of stockholders or disinterested directors, or otherwise.

Section 8.5 Insurance. The Corporation may maintain insurance, at its expense, to protect itself and/or any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 8.6 Indemnification of Other Persons. This Article VIII shall not limit the right of the Corporation to the extent and in the manner authorized or permitted by law to indemnify and to advance expenses to persons other than Indemnitees. Without limiting the foregoing, the Corporation may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation and to any other person who is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan, to the fullest extent of the provisions of this Article VIII with respect to the indemnification and advancement of expenses of Indemnitees under this Article VIII.

Section 8.7 Amendments. Any repeal or amendment of this Article VIII by the Board or the stockholders of the Corporation or by changes in applicable law, or the adoption of any other provision of these Bylaws inconsistent with this Article VIII, will, to the extent permitted by applicable law, be prospective only (except to the extent such amendment or change in applicable law permits the Corporation to provide broader indemnification rights to Indemnitees on a retroactive basis than permitted prior thereto), and will not in any way diminish or adversely affect any right or protection existing hereunder in respect of any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

Section 8.8 Certain Definitions. For purposes of this Article VIII, (a) references to “other enterprise” shall include any employee benefit plan; (b) references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; (c) references to “serving at the request of the Corporation” shall include any service that imposes duties on, or involves services by, a person with respect to any employee benefit plan, its participants, or beneficiaries; and (d) a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interest of the Corporation” for purposes of Section 145 of the DGCL.

Section 8.9 Contract Rights. The rights provided to Indemnitees pursuant to this Article VIII shall be contract rights and such rights shall continue as to an Indemnitee who has ceased to be a director, officer, agent or employee and shall inure to the benefit of the Indemnitee’s heirs, executors and administrators.

Section 8.10 Severability. If any provision or provisions of this Article VIII shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Article VIII shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Article VIII (including, without limitation, each such portion of this Article VIII containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

ARTICLE IX
MISCELLANEOUS

Section 9.1 Place of Meetings. If the place of any meeting of stockholders, the Board or committee of the Board for which notice is required under these Bylaws is not designated in the notice of such meeting, such meeting

shall be held at the principal business office of the Corporation; provided, however, if the Board has, in its sole discretion, determined that a meeting shall not be held at any place, but instead shall be held by means of remote communication pursuant to Section 9.5 hereof, then such meeting shall not be held at any place.

Section 9.2 Fixing Record Dates

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the business day next preceding the day on which notice is given. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

Section 9.3 Means of Giving Notice.

(a) Notice to Stockholders. Whenever under applicable law, the Certificate of Incorporation or these Bylaws notice is required to be given to any stockholder, such notice may be given (i) in writing and sent either by hand delivery, through the United States mail, or by a nationally recognized overnight delivery service for next day delivery, or (ii) by means of a form of electronic transmission consented to by the stockholder, to the extent permitted by, and subject to the conditions set forth in Section 232 of the DGCL. A notice to a stockholder shall be deemed given as follows: (i) if given by hand delivery, when actually received by the stockholder, (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the stockholder at the stockholder's address appearing on the stock ledger of the Corporation, (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the stockholder at the stockholder's address appearing on the stock ledger of the Corporation, and (iv) if given by a form of electronic transmission consented to by the stockholder to whom the notice is given and otherwise meeting the requirements set forth above, (A) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice, (B) if by a posting on an electronic network together with separate notice to the stockholder of such specified posting, upon the later of (1) such posting and (2) the giving of such separate notice, and (C) if by any other form of electronic transmission, when directed to the stockholder. A stockholder may revoke such stockholder's consent to receiving notice by means of electronic communication by giving written notice of such revocation to the Corporation. Any such consent shall be deemed revoked if (1) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent and (2) such inability becomes known to the Secretary or an Assistant Secretary or to the Corporation's transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(b) Electronic Transmission. "***Electronic transmission***" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process, including but not limited to transmission by facsimile telecommunication, electronic mail, virtual dataroom or electronic portal.

(c) Notice to Stockholders Sharing Same Address. Without limiting the manner by which notice otherwise may be given effectively by the Corporation to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. A stockholder may revoke such stockholder's consent by delivering written notice of such revocation to the Corporation. Any stockholder who fails to object in writing to the Corporation within 60 days of having been given written notice by the Corporation of its intention to send such a single written notice shall be deemed to have consented to receiving such single written notice.

(d) Exceptions to Notice Requirements. Whenever notice is required to be given, under the DGCL, the Certificate of Incorporation or these Bylaws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting that shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

Whenever notice is required to be given by the Corporation, under any provision of the DGCL, the Certificate of Incorporation or these Bylaws, to any stockholder to whom (1) notice of two consecutive annual meetings of stockholders and all notices of stockholder meetings or of the taking of action by written consent of stockholders without a meeting to such stockholder during the period between such two consecutive annual meetings, or (2) all, and at least two payments (if sent by first-class mail) of dividends or interest on securities during a 12-month period, have been mailed addressed to such stockholder at such stockholder's address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such stockholder shall not be required. Any action or meeting that shall be taken or held without notice to such stockholder shall have the same force and effect as if such notice had been duly given. If any such stockholder shall deliver to the Corporation a written notice setting forth such stockholder's then current address, the requirement that notice be given to such stockholder shall be reinstated. In the event that the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to Section 230(b) of the DGCL. The exception in subsection (1) of the first sentence of this paragraph to the requirement that notice be given shall not be applicable to any notice returned as undeliverable if the notice was given by electronic transmission.

Section 9.4 Waiver of Notice. Whenever any notice is required to be given under applicable law, the Certificate of Incorporation, or these Bylaws, a written waiver of such notice, signed before or after the date of such meeting by the person or persons entitled to said notice, or a waiver by electronic transmission by the person entitled to said notice, shall be deemed equivalent to such required notice. All such waivers shall be kept with the books of the Corporation. Attendance at a meeting shall constitute a waiver of notice of such meeting, except where a person attends for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened.

Section 9.5 Meeting Attendance via Remote Communication Equipment

(a) Stockholder Meetings. If authorized by the Board in its sole discretion, and subject to such guidelines and procedures as the Board may adopt, stockholders entitled to vote at such meeting and proxy holders not physically present at a meeting of stockholders may, by means of remote communication:

(i) participate in a meeting of stockholders; and

(ii) be deemed present in person and vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by means of remote communication; provided that (A) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxy holder, (B) the Corporation shall implement reasonable measures to provide such stockholders and proxy holders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (C) if any stockholder or proxy holder votes or takes other action at the meeting by means of remote communication, a record of such votes or other action shall be maintained by the Corporation.

(b) Board Meetings. Unless otherwise restricted by applicable law, the Certificate of Incorporation or these Bylaws, members of the Board or any committee thereof may participate in a meeting of the Board or any committee thereof by means of conference telephone, videoconference or other communications equipment by means of which all persons participating in the meeting can hear each other. Such participation in a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened.

Section 9.6 Dividends. The Board may from time to time declare, and the Corporation may pay, dividends (payable in cash, property or shares of the Corporation's capital stock) on the Corporation's outstanding shares of capital stock, subject to applicable law and the Certificate of Incorporation.

Section 9.7 Reserves. The Board may set apart out of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

Section 9.8 Contracts and Negotiable Instruments. Except as otherwise provided by applicable law, the Certificate of Incorporation or these Bylaws, any contract, bond, deed, lease, mortgage or other instrument may be executed and delivered in the name and on behalf of the Corporation by such officer or officers or other employee or employees of the Corporation as the Board may from time to time authorize. Such authority may be general or confined to specific instances as the Board may determine. The Chairperson of the Board, the Chief Executive Officer, the President, the Chief Financial Officer, the Treasurer or any Vice President may execute and deliver any contract, bond, deed, lease, mortgage or other instrument in the name and on behalf of the Corporation. Subject to any restrictions imposed by the Board, the Chairperson of the Board, the Chief Executive Officer, President, the Chief Financial Officer, the Treasurer or any Vice President may delegate powers to execute and deliver any contract, bond, deed, lease, mortgage or other instrument in the name and on behalf of the Corporation to other officers or employees of the Corporation under such person's supervision and authority, it being understood, however, that any such delegation of power shall not relieve such officer of responsibility with respect to the exercise of such delegated power.

Section 9.9 Fiscal Year. The fiscal year of the Corporation shall be fixed by the Board.

Section 9.10 Books and Records. The books and records of the Corporation may be kept within or outside the State of Delaware at such place or places as may from time to time be designated by the Board.

Section 9.11 Resignation. Any director, committee member or officer may resign by giving notice thereof in writing or by electronic transmission to the Chairperson of the Board, the Chief Executive Officer, the President or the Secretary. The resignation shall take effect at the time specified therein, or at the time of receipt of such notice if no time is specified or the specified time is earlier than the time of such receipt. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 9.12 Surety Bonds. Such officers, employees and agents of the Corporation (if any) as the Chairperson of the Board, Chief Executive Officer, President or the Board may direct, from time to time, shall be bonded for the faithful performance of their duties and for the restoration to the Corporation, in case of their death, resignation, retirement, disqualification or removal from office, of all books, papers, vouchers, money and other property of whatever kind in their possession or under their control belonging to the Corporation, in such amounts and by such surety companies as the Chairperson of the Board, Chief Executive Officer, President or the Board may

determine. The premiums on such bonds shall be paid by the Corporation and the bonds so furnished shall be in the custody of the Secretary.

Section 9.13 Securities of Other Corporations. Powers of attorney, proxies, waivers of notice of meeting, consents in writing and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the Chairperson of the Board, Chief Executive Officer, President or any Vice President or any other officer authorized by the Board. Any such officer, may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities, or to consent in writing, in the name of the Corporation as such holder, to any action by such corporation, and at any such meeting or with respect to any such consent shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed. The Board may from time to time confer like powers upon any other person or persons.

Section 9.14 Amendments. These Bylaws shall be adopted, amended, altered or repealed in accordance with Article VI of the Certificate of Incorporation.

****

EXHIBIT 4.1

NOTE PURCHASE AGREEMENT

dated as of December 7, 2023

among

CAPSTONE GREEN ENERGY LLC,
as Company,

and
CAPSTONE GREEN ENERGY HOLDINGS, INC. and CAPSTONE TURBINE FINANCIAL SERVICES, LLC

as Guarantors,

VARIOUS PURCHASERS,

GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P.,
as Collateral Agent

$ 28,090,857.69 Senior Secured Notes

TABLE OF CONTENTS

		Page
SECTION 1	DEFINITIONS AND INTERPRETATION	2
1.1	Definitions	2
1.2	Accounting Terms, Financials Statements, Calculations, Etc	41
1.3	Interpretation, Etc	42
SECTION 2	NOTES	43
2.1	Issuance and Purchase of the Notes	43
2.2	Issuance of the Notes	45
2.3	[Reserved].	45
2.4	[Reserved].	45
2.5	Use of Proceeds	45
2.6	Evidence of Debt; Register	45
2.7	Interest on Notes	46
2.8	Conversion.	48
2.9	Default Interest	49
2.10	[Reserved]	49
2.11	Scheduled Payments	49
2.12	Voluntary Prepayments	49
2.13	Mandatory Prepayments	50
2.14	Application of Prepayments/Reductions	52
2.15	General Provisions Regarding Payments	53
2.16	Ratable Sharing	54
2.17	Making or Maintaining SOFR Rate Notes.	55
2.18	Increased Costs; Capital Adequacy	59
2.19	Taxes; Withholding, Etc.	60
2.20	Obligation to Mitigate	63
2.21	[Reserved].	63
2.22	[Reserved].	63
2.23	Representations and Warranties by the Purchasers	63
2.24	Incremental New Money Purchase Commitments.	64
SECTION 3	CONDITIONS PRECEDENT	66
3.1	Closing Date	66
3.2	Conditions to Credit Date	69
3.3	Credit Date	70
3.4	Conditions Subsequent to the Closing Date	71
SECTION 4	REPRESENTATIONS AND WARRANTIES	71
4.1	Organization; Requisite Power and Authority; Qualification	71
4.2	Capital Stock and Ownership	72

4.3 Due Authorization ... 72
4.4 No Conflict ... 72
4.5 Governmental Consents ... 72
4.6 Binding Obligation ... 73
4.8 Projections ... 73
4.9 No Material Adverse Change ... 73
4.10 [Reserved]. ... 73
4.11 Adverse Proceedings, etc ... 73
4.12 Payment of Taxes ... 73
4.13 Properties ... 74
4.14 Environmental Matters ... 74
4.15 No Defaults ... 75
4.16 Material Contracts ... 75
4.17 Governmental Regulation ... 75
4.18 Federal Reserve Regulations; Exchange Act ... 75
4.19 Employee Matters ... 76
4.20 Employee Benefit Plans ... 76
4.21 Certain Fees ... 77
4.22 Plan Assets; Prohibited Transactions ... 77
4.23 Solvency ... 77
4.24 [Reserved]. ... 77
4.25 Compliance with Statutes, Etc ... 77
4.26 Disclosure ... 77
4.27 Sanctions; Anti-Corruption and Anti-Bribery Laws; Anti-Terrorism and Anti-Money Laundering Laws; Etc. ... 78
4.28 Private Offering ... 78

SECTION 5 AFFIRMATIVE COVENANTS ... 78

5.1 Financial Statements and Other Reports ... 79
5.2 Existence ... 83
5.3 Payment of Taxes and Claims ... 83
5.4 Maintenance of Properties ... 83
5.5 Insurance ... 83
5.6 Books and Records; Inspections ... 84
5.7 Meetings ... 84
5.8 Compliance with Laws ... 84
5.9 Environmental ... 85
5.10 Additional Guarantors ... 86
5.11 Additional Locations and Material Real Estate Assets ... 86
5.12 [Reserved] ... 87
5.13 Further Assurances ... 87
5.14 Miscellaneous Covenants ... 88
5.15 Post Closing Matters ... 88
5.16 Distributor Agreements ... 88
5.17 Distributer Compliance Policy ... 88

5.18 Professional Fees. On the first Business Day of each month, Company shall make the payments indicated on Schedule 5.18 to each of counsel for Collateral Agent and financial advisor for Collateral Agent, as provided therein. 88
5.19 [Reserved]. 88
5.20 [Reserved]. 88
5.21 Board Observation Rights 88

SECTION 6 NEGATIVE COVENANTS 89

6.1 Indebtedness 89
6.2 Liens 91
6.3 Equitable Lien 93
6.4 No Further Negative Pledges 93
6.5 Restricted Junior Payments 93
6.6 Restrictions on Subsidiary Distributions 94
6.7 Investments 94
6.8 Financial Covenants 95
6.9 Fundamental Changes; Disposition of Assets; Acquisitions 96
6.10 Disposal of Subsidiary Interests 97
6.11 Sales and LeaseBacks 97
6.12 Transactions with Shareholders and Affiliates 97
6.13 Conduct of Business 98
6.14 [Reserved]. 98
6.15 Compliance with Reporting Requirements 98
6.16 Fiscal Year; Accounting Policies 98
6.17 Deposit Accounts and Securities Accounts 98
6.18 Amendments to Organizational Agreements and Material Contracts 98
6.19 Prepayments of Certain Indebtedness 98
6.20 Use of Proceeds 99
6.21 Additional Matters 99
6.22 Holdings Covenant 99

SECTION 7 GUARANTY 100

7.1 Guaranty of the Obligations 100
7.2 Contribution by Guarantors 101
7.3 Payment by Guarantors 101
7.4 Liability of Guarantors Absolute 102
7.5 Waivers by Guarantors 103
7.6 Guarantors' Rights of Subrogation, Contribution, Etc 104
7.7 Subordination of Other Obligations 105
7.8 Continuing Guaranty 105
7.9 Authority of Guarantors or Company 105
7.10 Financial Condition of Company 105
7.11 Bankruptcy, etc 105
7.12 Discharge of Guaranty Upon Sale of Subsidiary Guarantor 106

SECTION 8 EVENTS OF DEFAULT 106

8.1 Events of Default 106
8.2 Company's Right to Cure 109

SECTION 9 COLLATERAL AGENT 110

9.1 Appointment of Collateral Agent 110
9.2 Powers and Duties 110
9.3 General Immunity 111
9.4 Collateral Agent Entitled to Act as Purchaser 112
9.5 [Reserved]. 113
9.6 Right to Indemnity 113
9.7 Successor Collateral Agent 113
9.8 Collateral Documents and Guaranty 114
9.9 [Reserved]. 116
9.10 Collateral Agent May File Bankruptcy Disclosure and Proofs of Claim 116

SECTION 10 MISCELLANEOUS 117

10.1 Notices 117
10.2 Expenses 118
10.3 Indemnity and Related Reimbursement. 119
10.4 SetOff 120
10.5 Amendments and Waivers 121
10.6 Successors and Assigns; Transferees 123
10.7 Independence of Covenants 125
10.8 Survival of Representations, Warranties and Agreements 125
10.9 No Waiver; Remedies Cumulative 125
10.10 Marshalling; Payments Set Aside 126
10.11 Severability 126
10.12 Obligations Several; Actions in Concert 126
10.13 Headings 126
10.14 APPLICABLE LAW 126
10.15 CONSENT TO JURISDICTION 127
10.16 WAIVER OF JURY TRIAL 127
10.17 Confidentiality 128
10.18 Usury Savings Clause 129
10.19 Effectiveness; Counterparts 129
10.20 Entire Agreement 130
10.21 PATRIOT Act 130
10.22 Electronic Execution of Transfers and Note Documents 130
10.23 No Fiduciary Duty 130

APPENDICES:	A	Purchase Commitments
	B	Notice Addresses
SCHEDULES:	1.1(b)	Certain Material Real Estate Assets
	4.1	Jurisdictions of Organization and Qualification
	4.2	Capital Stock and Ownership
	4.13	Real Estate Assets
	4.16	Material Contracts
	5.15	Certain Post Closing Matters
	5.18	Professional Fees
	6.1	Certain Indebtedness
	6.2	Certain Liens
	6.7	Certain Investments
	6.12	Certain Affiliate Transactions
EXHIBITS:	A-1	Funding Notice
	A-2	Conversion/Continuation Notice
	B	Letter of Direction
	C	Compliance Certificate
	D	Transfer Agreement
	E-1	U.S. Tax Compliance Certificate
	E-2	[Reserved]
	E-3	[Reserved]
	E-4	U.S. Tax Compliance Certificate
	F-1	Closing Date Certificate
	F-2	Solvency Certificate
	G	Counterpart Agreement
	H	Landlord Collateral Access Agreement
	I	Intercompany Note
	J-1	New Money Note
	J-2	Roll Up Note

NOTE PURCHASE AGREEMENT

This **NOTE PURCHASE AGREEMENT**, dated as of December 7, 2023, is entered into by and among **CAPSTONE GREEN ENERGY LLC** (**"Company"**), as issuer , **CAPSTONE GREEN ENERGY HOLDINGS, INC.** ("**Holdings**") and **CAPSTONE TURBINE FINANCIAL SERVICES, LLC**, as guarantors, the Purchasers party hereto from time to time, and **GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P.**, ("**GSSLG**") as collateral agent (in such capacity, **"Collateral Agent"**).

RECITALS:

WHEREAS, on September 28, 2023 (the "**Petition Date**"), Capstone Distributor Support Services Corporation f/k/a Capstone Green Energy Corporation ("**Capstone**") and the Guarantors (collectively with Capstone, the "**Debtors**") each filed voluntary petitions and initiated proceedings under Chapter 11 of the Bankruptcy Code (collectively, the "**Chapter 11 Cases**") with the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**");

WHEREAS, during the Chapter 11 Cases, Capstone, as issuer and the Guarantors, as guarantors, entered into that certain *Super-Priority Senior Secured Debtor-in-possession Note Purchase Agreement* dated October 2, 2023 (the "**DIP Agreement**");

WHEREAS, on November 14, 2023, the Bankruptcy Court entered an order (the "Confirmation Order") confirming the Debtors' Plan (as defined below), which Plan went effective on December 7, 2023 (the "**Effective Date**");

WHEREAS, on the Effective Date, pursuant to the Plan and the Confirmation Order, the obligations under $12,600,000 (plus any accrued interest) of the DIP New Money Notes (as defined below), $5,000,000 (plus any accrued interest) of the DIP Pre-Petition Roll Up Notes (as defined in the below) and $3,000,000 (plus any accrued interest) of the DIP Pre-Funding Roll Up Notes (as defined below) (collectively, the "**DIP Roll-Up Obligations**") are to be deemed senior secured notes issued under this Agreement;

WHEREAS, Purchasers have agreed to purchase senior secured notes from Company in the amounts and upon the terms and conditions more particularly set forth herein, the proceeds of which will be used, among other things, for the purposes set forth in Section 2.5, in each case to the extent permitted hereunder;

WHEREAS, Company and the Guarantors have agreed to guarantee the Obligations of the other Note Parties hereunder and to secure all such Persons' respective Obligations by granting to Collateral Agent, for the benefit of Secured Parties, a First Priority Lien on all of their respective assets, including a pledge of all of the Capital Stock issued by any Subsidiary of Company, in each case, other than Excluded Property and subject to the limitations set forth herein and in the Collateral Documents;

NOW, THEREFORE, to induce Purchasers to purchase the Notes from Company and in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

SECTION 1 DEFINITIONS AND INTERPRETATION

1.1 **Definitions.** The following terms used herein, including in the preamble, recitals, exhibits and schedules hereto, shall have the following meanings:

"ABL Facility" as defined in Section 6.1(c) hereto.

"ABL Priority Collateral" as defined in Section 6.1(c) hereto.

"Acceptable Auditor" means (i) Marcum LLP, (ii) a "Big Four" accounting firm, (iii) an independent certified public accountant of recognized national standing, (iv) a regional "mid-tier" firm of good public standing approved by the Public Company Accounting Oversight Board selected by Company or (v) any other independent certified public accountant reasonably satisfactory to Requisite Purchasers.

"Acquisition" means the acquisition of, by purchase or otherwise (other than purchases or other acquisitions of inventory, materials and equipment and capital expenditures, in each case in the ordinary course of business), the business, a substantial portion of the property or assets of, or a substantial portion of the Capital Stock or other evidence of beneficial ownership of, any Person, any division or line of business, or any other business unit of any Person.

"Acquisition Consideration" means, with respect to any Permitted Acquisition or any other acquisition of any property or assets by any Person (including in connection with an Asset Sale consummated by a Note Party), the aggregate purchase consideration for such Permitted Acquisition or other Acquisition and all other payments by Holdings, Company or any of its Subsidiaries in exchange for, or as part of, or in connection with, such Permitted Acquisition or other Acquisition, whether paid in cash, by issuance of a note, or by exchange of Capital Stock or of other assets or otherwise, and, in each case, whether payable at or prior to the consummation of such Permitted Acquisition or other Acquisition or deferred for payment at any future time, and whether or not any such future payment is subject to the occurrence of any contingency, and includes any and all payments representing the purchase price and any assumptions of Indebtedness, Earn Out Obligations, Seller Financing Indebtedness, and agreements to make any payment the amount of which is, or the terms of payment of which are, in any respect subject to or contingent upon the revenues, income, cash flow, profits or other performance (or the like) of any Person or business. For purposes of this Agreement, any such consideration not consisting of Cash paid or payable upon the closing of any such Permitted Acquisition or other Acquisition shall be valued at the principal amount thereof in the case of notes or other debt Securities, the stated amount thereof in the case of fixed post-closing installments or similar Seller Financing Indebtedness obligations, the maximum payout amount in the case of any capped Earn Out Obligations or similar deferred contingent payment obligations, and reasonably estimable fair market value in the case of any other non-Cash consideration; provided that, for the avoidance of doubt, Acquisition Consideration shall not include any Earn Out Obligations or similar consideration to the extent such amounts are no longer payable due to any failure to satisfy the conditions to payment of such Earn Out Obligations or similar consideration.

"**Adjusted Term SOFR**" means, for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation plus (b) the Term SOFR Adjustment;

provided; that, if Adjusted Term SOFR as so determined shall ever be less than the Floor, then Adjusted Term SOFR shall be deemed to be the Floor.

"Adverse Proceeding" means any action, suit, proceeding, hearing (in each case, whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of Holdings, Company or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claims), whether pending or, to the knowledge of Holdings, Company or any of its Subsidiaries, threatened in writing against or affecting Holdings, Company or any of its Subsidiaries or any property of Holdings, Company or any of its Subsidiaries.

"Affected Notes" as defined in Section 2.17(b)(v).

"Affected Purchaser" as defined in Section 2.17(b)(v) .

"Affiliate" means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power (i) to vote 10% or more of the Capital Stock having ordinary voting power for the election of members of the Board of Directors of such Person, or (ii) to direct or cause the direction of the management and policies of that Person, whether through the ability to exercise voting power, by contract or otherwise. Notwithstanding anything in this definition to the contrary, neither Capstone Distributor Support Services Corporation as an equity holder of Company nor any of Capstone Distributor Support Services Corporation's affiliates shall be considered an "Affiliate" of any Note Party or of any Subsidiary of any Note Party.

"Agent Affiliates" as defined in Section 10.1(b)(iii).

"Aggregate Amounts Due" as defined in Section 2.16.

"Aggregate Payments" as defined in Section 7.2.

"Agreement" means this Note Purchase Agreement , as amended, restated, amended and restated, or otherwise modified from time to time.

"Anti-Corruption and Anti-Bribery Laws" means any and all requirements of law related to anti-bribery or anti-corruption matters, including the United States Foreign Corrupt Practices Act of 1977.

"Anti-Terrorism and Anti-Money Laundering Laws" means any and all requirements of law related to engaging in, financing, or facilitating terrorism or money laundering, including the PATRIOT Act, The Currency and Foreign Transactions Reporting Act (also known as the "Bank Secrecy Act", 31 U.S.C. §§5311-5330 and 12 U.S.C. §§1818(s), 1820(b) and 1951-1959), Trading With the Enemy Act (50 U.S.C. §1 et seq.), Executive Order 13224 (effective September 24, 2001) and each of the laws, regulations, and executive orders administered by OFAC (31 C.F.R., Subtitle B, Chapter V).

“Applicable Margin” means (i) in the case of SOFR Rate Notes, a percentage, per annum, equal to 7.00% and (ii) in the case of Notes bearing interest at the Base Rate, a percentage, per annum, equal to 6.00%.

“Approved Electronic Communications” means any notice, demand, communication, information, document or other material that any Note Party provides to Purchasers pursuant to any Note Document or the transactions contemplated therein that is distributed to Collateral Agent or Purchasers by means of electronic communications pursuant to Section 10.1(b).

“Asset Sale” means a sale, lease or sub lease (as lessor or sublessor), sale and leaseback, assignment, conveyance, transfer (including through a plan of division), exclusive license (as licensor or sublicensor), or other disposition to, or any exchange of property with, any Person (other than to or with Company or any other Note Party), in one transaction or a series of transactions, of all or any part of Holdings’s, Company’s or any of its Subsidiaries’ respective businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, leased, or licensed, including the Capital Stock of Company or any of its Subsidiaries, other than inventory sold or leased to unaffiliated customers in the ordinary course of business**.** For purposes of clarification, “Asset Sale” shall (x) include (A) the sale or other disposition for value of any contracts and (B) the early termination or modification of any contract resulting in the receipt by Holdings, Company or any of its Subsidiaries of a cash payment or other consideration in exchange for such event (other than payments in the ordinary course for accrued and unpaid amounts that would have been due through the date of termination or modification without giving effect thereto) and (y) exclude a sale or issuance by Holdings of its own common stock (including, for the avoidance of doubt, in connection with any at the market offering of Holdings’s Capital Stock).

“Asset Sale Reinvestment Amounts” as defined in Section 2.13(a).

“Authorized Officer” means, as applied to any Person that is an entity, any duly authorized individual natural Person holding the position of chairman of the Board of Directors (if an officer), chief executive officer, president, vice president, Chief Financial Officer, or, if approved by Requisite Purchasers, any other officer position with similar authority; provided, that the secretary or assistant secretary of such Person, or another officer of such Person satisfactory to Requisite Purchasers, shall have delivered an incumbency certificate to Purchasers verifying the authority of such Authorized Officer.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of the term **“Interest Period”** pursuant to Section 2.17.

"Bankruptcy Code" means Title 11 of the United States Code.

"**Bankruptcy Court**" as defined in the Recitals hereto.

"Base Rate" means, for any day, a rate per annum equal to the greatest of (i) the Prime Rate in effect on such day, (ii) the Federal Funds Effective Rate in effect on such day plus ½ of 1.00%, (iii) the sum of (a) Adjusted Term SOFR (after giving effect to the Floor) for a one month tenor in effect on such day plus (b) the difference between the Applicable Margin for SOFR Rate Notes and the Applicable Margin for Base Rate Notes, and (iv) the Floor. Any change in the Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or Adjusted Term SOFR shall be effective on the effective day of such change in the Prime Rate, the Federal Funds Effective Rate or Adjusted Term SOFR, respectively.

"Base Rate Notes" means a Note bearing interest at a rate determined by reference to the Base Rate.

"**Base Rate Term SOFR Determination Day**" as defined in the definition of "Term SOFR".

"Benchmark" means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.17.

"Benchmark Replacement" means with respect to any Benchmark Transition Event, the first alternative set forth in the order below that can be determined by Collateral Agent for the applicable Benchmark Replacement Date:

a. The sum of (i) Daily Simple SOFR and (ii) 0.10% (10.0 basis points); or

b. the sum of: (i) the alternate benchmark rate that has been selected by the Collateral Agent and Company giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (ii) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than the interest rate specified in clause (a) of the definition of **"Floor"**, the Benchmark Replacement will be deemed to be the interest rate specified in clause (a) of the definition of **"Floor"** for the purposes of this Agreement and the other Note Documents.

"Benchmark Replacement Adjustment" means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Collateral Agent and Company

giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.

"Benchmark Replacement Date" means a date and time determined by the Collateral Agent, which date shall be no later than the earliest to occur of the following events with respect to the then-current Benchmark:

a. in the case of clause (a) or (b) of the definition of "Benchmark Transition Event", the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

b. in the case of clause (c) of the definition of "Benchmark Transition Event", the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Transition Event" means the occurrence of one or more of the following events with respect to the then-current Benchmark:

a. a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

b. a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the

administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

c. a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Unavailability Period" means, the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Note Document in accordance with Section 2.17 and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Note Document in accordance with Section 2.17.

"**Beneficial Ownership Certification**" means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation in form and substance reasonably acceptable to the Purchasers.

"**Beneficial Ownership Regulation**" means 31 C.F.R. § 1010.230.

"Beneficiary" means Collateral Agent and each Purchaser.

"Board of Directors" means, (a) with respect to any corporation or company, the board of directors of the corporation or company or any committee thereof duly authorized to act on behalf of such board, (b) with respect to a partnership, the board of directors or equivalent governing body of the general partner of the partnership, (c) with respect to a limited liability company, the manager, the managing member or members or any controlling committee or board of managers (or equivalent governing body) of such company or the sole member or the managing member thereof, and (d) with respect to any other Person, the entity, individual, board or committee of such Person serving a similar function.

"Board of Governors" means the Board of Governors of the United States Federal Reserve System, or any successor Governmental Authority.

"Business Day" means any day excluding Saturday, Sunday and any day that is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in any such state are authorized or required by law or other governmental action to close.

"Capital Lease" means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person (i) as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person or (ii) as lessee which is a transaction of a type commonly known as a "synthetic lease" (i.e., a transaction that is treated as an operating lease for accounting purposes but with respect to which payments of rent are intended to be treated as payments of principal and interest on a loan for Federal income tax purposes) provided that "Capital Lease" shall in no event include Operating Lease Liabilities.

"Capital Lease Obligation" means, as applied to any Person that is a lessee under any Capital Lease, that portion of obligations under such Capital Lease that is properly classified as a liability on a balance sheet in conformity with GAAP.

"Capital Stock" means any and all shares, stock, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership or profits interests in a Person that is another type of entity, including partnership interests, membership interests, voting trust certificates, certificates of interest, and profits interests, participations, or similar arrangements, and any and all warrants, rights or options to purchase, or other arrangements or rights to acquire, subscribe, convert to or otherwise receive or participate in the economic or other rights associated with any of the foregoing.

"**Capstone**" as defined in the Recitals hereto.

"Cash" means money, currency or a credit balance in any demand or Deposit Account.

"Cash Equivalents" means, as at any date of determination, (i) marketable securities (a) issued or directly and unconditionally guaranteed as to interest and principal by the U.S. Federal Government, or (b) issued by any agency of the U.S., in each case of sub-clauses (a) and (b), the obligations of which are backed by the full faith and credit of the U.S., mature within one year after such date, and have, at the time of the acquisition thereof, a rating of at least A-1 from S&P and at least P-1 from Moody's; (ii) marketable direct obligations issued by any state of the U.S. or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one year after such date and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (iii) certificates of deposit or bankers' acceptances maturing within three months after such date and issued or accepted by any Purchaser or by any commercial bank organized under the laws of the U.S. or any state thereof or the District of Columbia that (a) is at least "adequately capitalized" (as defined in the regulations of its primary federal banking regulator), and (b) has Tier 1 capital (as defined in such regulations) of not less than $250,000,000; and (iv) shares of any money market mutual fund that (a) has at least 95% of its assets invested continuously in the types of investments referred to in clauses (i) and (ii) above, (b) has net assets of not less than $500,000,000, and (c) has the highest rating obtainable from either S&P or Moody's.

"Change in Law" means the occurrence, after the date hereof, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request,

rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the U.S. or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"**Change of Control**" means, at any time: (i) any Person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) (a) shall have acquired beneficial ownership or control of 25% or more on a fully diluted basis of (1) the voting interests in the Capital Stock of Holdings and/or (2) the economic interests in the Capital Stock of Holdings, or (b) shall have obtained the power (whether or not exercised) to elect a majority of the members of the Board of Directors of Holdings; (ii) the majority of the seats (other than vacant seats) on the Board of Directors of Company cease to be occupied by Persons who either (a) were members of the Board of Directors of Holdings on the Closing Date, or (b) were nominated for election by the Board of Directors of Holdings, a majority of whom were directors on the Closing Date or whose election or nomination for election was previously approved by a majority of such directors; or (iii) Holdings ceases to hold 100% of the Common Units (as such term is defined in the Company LLCA, as in effect on the date hereof) other than as a result of the any Preferred Member exercising its option to convert its Preferred Units (as such term is defined in the Company LLCA, as in effect on the date hereof) to Common Units under the Company LLCA, as in effect on the date hereof.

"**Chapter 11 Cases**" as defined in the Recitals hereto.

"Chief Financial Officer" means, as applied to any Person that is an entity, any duly authorized individual natural Person holding the position of chief financial officer or, if approved by Requisite Purchasers, any other officer position with similar financial responsibility; provided; that the secretary or assistant secretary of such Person, or another officer of such Person satisfactory to Requisite Purchasers, shall have delivered an incumbency certificate to the Purchasers verifying the authority of such Authorized Officer.

"Closing Date" means the date this Agreement was executed and certain Notes were issued and purchased by Purchasers hereunder, which occurred on December 7, 2023.

"Closing Date Certificate" means a certificate dated as of the Closing Date or the New Money Additional Notes Closing Date, as applicable, and substantially in the form of Exhibit F-1.

" Code" means the Internal Revenue Code of 1986 , as amended, and any Treasury regulations promulgated thereunder. For the avoidance of doubt, references to specific sections of the Code shall include references to Treasury regulations interpreting such sections.

"Collateral" means, collectively, all of the real, personal and mixed property (including Capital Stock) in which Liens are granted and/or purported to be granted pursuant to

the Collateral Documents as security for the Obligations , but excluding, for the avoidance of doubt, Excluded Property.

"Collateral Agent" as defined in the preamble hereto.

"Collateral Documents" means the Pledge and Security Agreement, any intellectual property security agreements, any Mortgages, any Deposit Account Control Agreements, any Securities Account Control Agreements, any Landlord Collateral Access Agreements, and all other instruments, documents and agreements that are expressly designated pursuant to their terms to be "Collateral Documents" or are otherwise executed and delivered by or on behalf of any Note Party or any other Person pursuant to this Agreement or any of the other Note Documents in order to grant to, or perfect in favor of, Collateral Agent, for the benefit of Secured Parties, a Lien on any real, personal or mixed property of that Note Party as security for the Obligations, in each case, as the same may be amended, restated, amended and restated or otherwise modified from time to time.

"Collateral Questionnaire" means the Perfection Certificate dated as of the date hereof or a collateral questionnaire and/or perfection certificate in form satisfactory to Collateral Agent, in each case, that provides information with respect to the personal or mixed property of each Note Party and their respective Subsidiaries and Controlled Entities.

"Commitment" means any Roll Up Notes Purchase Commitment or New Money Purchase Commitment and "**Commitments**" means all of the Roll Up Notes Purchase Commitments and New Money Purchase Commitments of all Purchasers.

"Company" as defined in the preamble hereto.

"**Company LLCA**" means that certain Amended and Restated Limited Liability Company Agreement of Company, dated as of the Effective Date, as amended, restated, supplemented or otherwise modified from time to time.

"Compliance Certificate" means a certificate of the Chief Financial Officer of Company substantially in the form of Exhibit C.

"Confirmation Order" means an order of the Bankruptcy Court confirming the Plan.

"Conforming Changes" means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate," the definition of "Business Day," the definition of "U.S. Government Securities Business Day," the definition of "Interest Period" or any similar or analogous definition (or the addition of a concept of "interest period"), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.17(d) and other technical, administrative or operational matters) that the Collateral Agent reasonably decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Collateral Agent in a manner

substantially consistent with market practice (or, if the Collateral Agent reasonably decides that adoption of any portion of such market practice is not administratively feasible or if the Collateral Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Collateral Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Note Documents).

"Consolidated Adjusted EBITDA" means, for any period, an amount determined for Holdings, Company and its Subsidiaries on a consolidated basis equal to (i) Consolidated Net Income plus (ii) in each case to the extent reducing Consolidated Net Income, the sum, without duplication, of the amounts for such period of (a) Consolidated Interest Expense, plus (b) provisions for taxes based on income and the amount of any Restricted Junior Payments made in reliance on Section 6.5(b), plus (c) total depreciation expense, plus (d) total amortization expense, plus (e) other non-Cash charges reducing Consolidated Net Income (excluding any such non-Cash charge to the extent that it represents an accrual or reserve for potential Cash charges in any future period or amortization of a prepaid Cash charge that was paid in a prior period), plus (f) restructuring charges and similar charges, fees, costs, expenses, and reserves related to severance, relocation, integration, the opening, closing or consolidation of facilities or lines of business (including contract and/or lease termination), subject to a cap of $500,000 for any Fiscal Year following Fiscal Year 2024, plus (g) the amount of non-controlling or minority interest expense consisting of income attributable to third parties in non-wholly owned Subsidiaries, plus (h) fees, costs and expenses associated with (x) the negotiation of this Agreement and the other Note Documents and the consummation of the transactions contemplated herein and therein (including any Transaction Costs), and (y) all amendments, waivers, consents and other modifications hereto and thereto undertaken from time to time after the Closing Date, plus (i) non-ordinary course losses and extraordinary, unusual, or non-recurring charges, costs, expenses losses, or other items, subject to a cap of $250,000 for any Fiscal Year, plus (j) third-party out-of-pocket fees, charges, costs, losses, expenses (including financial advisory, accounting, auditor, legal and other consulting and advisory fees) or reserves related to litigation (including threatened litigation), any investigation or proceeding (or any threatened investigation or proceeding) by a regulatory, governmental or law enforcement body, or any shareholder litigation (including threatened litigation), subject to a cap equal to the sum of (x) $250,000 during such period, plus (y) solely with respect to such third-party out-of-pocket fees, charges, costs, losses, expenses or reserves related to shareholder litigation (including threatened litigation), an additional aggregate amount not to exceed $1,250,000 during the term of this Agreement plus (k) for the period beginning on the Closing Date and ending at the end of the first Fiscal Quarter of 2024, fees, charges, costs, losses, expenses (including financial advisory, accounting, auditor, legal and other consulting and advisory fees) related to the restatement of, or other adjustments to, the financial statements of any Note Party or of Capstone, minus (iii) in each case to the extent increasing Consolidated Net Income, the sum, without duplication, of the amounts for such period of (a) non-Cash gains increasing Consolidated Net Income for such period (excluding any such non-Cash gain to the extent it represents the reversal of an accrual or reserve for potential Cash gain in any prior period), plus (b) interest income, plus (c) other non-ordinary course income plus (d) any Restricted Junior Payments by Holdings in the form of Cash distributions and/or dividends; provided that, to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated Adjusted EBITDA currency translation gains and losses related to currency remeasurements of

Indebtedness (including the net loss or gain resulting from Hedge Agreements for currency exchange risk) and any other foreign currency transaction or translation gains and losses, to the extent such gain or losses are non-Cash items.

Notwithstanding the foregoing or anything to the contrary in this Agreement, with respect to any period during which a Permitted Acquisition or an Asset Sale has occurred (each, a **"Subject Transaction"**), for purposes of determining compliance with the financial covenants set forth in Section 6.8 or any other calculation herein using Consolidated Adjusted EBITDA, Consolidated Adjusted EBITDA shall be calculated with respect to such period on a pro forma basis (which pro forma adjustments shall be certified by a Chief Financial Officer of Company) using the historical audited financial statements of any business so acquired or to be acquired or sold or to be sold and the consolidated financial statements of Holdings, Company and its Subsidiaries, which shall be reformulated as if such Subject Transaction, and any Indebtedness incurred or repaid in connection therewith, had been consummated or incurred or repaid at the beginning of such period (and assuming that such Indebtedness bears interest during any portion of the applicable measurement period prior to the relevant acquisition at the weighted average of the interest rates applicable to outstanding Notes incurred during such period); provided that, notwithstanding anything to the contrary in this Agreement, the foregoing adjustments shall be subject to the approval of Requisite Purchasers in their sole discretion for all purposes of this Agreement.

"Consolidated Capital Expenditures" means, for any period, the aggregate of all expenditures of Holdings, Company and its Subsidiaries during such period determined on a consolidated basis that, in accordance with GAAP, are or should be included in "purchase of property and equipment or similar items", or that should otherwise be capitalized, as reflected in the consolidated statement of cash flows of Holdings, Company and its Subsidiaries.

"Consolidated Current Assets" means, as at any date of determination, the total assets of Holdings, Company and its Subsidiaries on a consolidated basis that are properly classified as current assets in conformity with GAAP, excluding Cash and Cash Equivalents.

"Consolidated Current Liabilities" means, as at any date of determination, the total liabilities of Holdings, Company and its Subsidiaries on a consolidated basis that are properly classified as current liabilities in conformity with GAAP, excluding the current portion of long term debt.

"Consolidated Interest Expense" means, for any period, total interest expense (including that portion attributable to Capital Leases in accordance with GAAP and capitalized interest) of Holdings, Company and its Subsidiaries determined on a consolidated basis with respect to all outstanding Indebtedness, including all commissions, discounts and other fees and charges owed with respect to letters of credit and net costs under Interest Rate Agreements. Notwithstanding anything to the contrary contained herein, for purposes of determining Consolidated Interest Expense for any period that would otherwise start before the Closing Date, such period shall instead start on the Closing Date and Consolidated Interest Expense shall be an amount equal to Consolidated Interest Expense from the Closing Date through the last day of such period multiplied by a fraction the numerator of which is 365 and the denominator of which is the number of days from the Closing Date through the last day of such period.

"Consolidated Liquidity" means, at any time of determination, an amount determined for Holdings, Company and its Subsidiaries on a consolidated basis equal to the sum of (a) Qualified Cash of Holdings, Company and its Subsidiaries, (b) undrawn commitments under the New Money Additional Notes Purchase Commitments to the extent that such New Money Additional Notes would be able to be issued on such date and (c) so long as no event is occurring that would constitute an Event of Default or a Default, any amounts due and payable by Capstone to Company under the DSS Services Agreement, including without limitation, any Service Fees (as such term is defined in the DSS Services Agreement).

"Consolidated Net Income" means, for any period, (i) the net income (or loss) of Holdings, Company and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP, minus (ii) in each case to the extent otherwise included in such net income (or loss) and without duplication, (a) the income (or loss) of any Person that is not a Wholly-Owned Subsidiary (other than Holdings, the Company or any of its Wholly-Owned Subsidiaries), (b) the income (or loss) of any Person accrued prior to the date it becomes a Note Party or is merged into or consolidated with any Note Party or that Person's assets are acquired by any Note Party, (c) the income of any Subsidiary of Company to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary, (d) any after-tax gains or losses attributable to Asset Sales or returned surplus assets of any Pension Plan, and (e) (to the extent not included in clauses (a) through (d) above) any net extraordinary gains or net extraordinary losses.

"Consolidated Working Capital" means, as at any date of determination, the difference of Consolidated Current Assets minus Consolidated Current Liabilities.

"Consolidated Working Capital Adjustment" means, for any period of determination on a consolidated basis, the amount (which may be a negative number) equal to the difference of (i) Consolidated Working Capital as of the beginning of such period minus (ii) Consolidated Working Capital as of the end of such period. In calculating the Consolidated Working Capital Adjustment there shall be excluded the effect of reclassification during such period of current assets to long term assets and current liabilities to long term liabilities and the effect of any Permitted Acquisition during such period; provided that there shall be included with respect to any Permitted Acquisition during such period an amount (which may be a negative amount) equal to the difference of (a) the Consolidated Working Capital acquired in such Permitted Acquisition as at the time of such acquisition minus (b) Consolidated Working Capital at the end of such period.

"Contractual Obligation" means, as applied to any Person, any provision of any Security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

"Contributing Guarantors" as defined in Section 7.2.

“**Controlled Account**” means (a) any Deposit Account of a Note Party that is subject to a Deposit Account Control Agreement, and (b) any Securities Account of a Note Party that is subject to a Securities Account Control Agreement.

“Controlled Entity” means any Note Party’s Controlled Affiliates. As used in this definition, “Control” means the power, directly or indirectly, 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.

“**Conversion/Continuation Date**” means the effective date of a continuation or conversion, as the case may be, as set forth in the applicable Conversion/Continuation Notice.

“**Conversion/Continuation Notice**” means a Conversion/Continuation Notice substantially in the form of Exhibit A-2.

“Counterpart Agreement” means a Counterpart Agreement substantially in the form of Exhibit G delivered by a Note Party pursuant to Section 5.10.

“Credit Date” means the date of the issuance and purchase of Notes.

“Currency Agreement” means any foreign exchange contract, currency swap agreement, futures contract, option contract, synthetic cap or other similar agreement or arrangement, each of which is for the purpose of hedging the foreign currency risk associated with Company’s and its Subsidiaries’ operations and not for speculative purposes.

“Daily Simple SOFR” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Collateral Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; provided that, if the Collateral Agent reasonably decides that any such convention is not administratively feasible for the Collateral Agent, then the Collateral Agent may establish another convention in its reasonable discretion.

“Debtor Relief Laws” means the Bankruptcy Code and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the U.S., any state or territory thereof, the District of Columbia or any other applicable jurisdictions.

“Default” means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

“Default Rate” means any interest payable pursuant to Section 2.9.

“Deposit Account” means any “deposit account” as defined in Article 9 of the UCC.

“Deposit Account Control Agreement” means, with respect to a Deposit Account, an agreement in form and substance reasonably satisfactory to Collateral Agent that (i)

is entered into among Collateral Agent, the financial institution or other Person at which such Deposit Account is maintained, and the Note Party maintaining such Deposit Account, and (ii) is effective for Collateral Agent to obtain "control" (within the meaning of Articles 8 and 9 of the UCC) of such Deposit Account.

"DIP Agreement" as defined in the Recitals hereto.

"**DIP New Money Notes**" has the meaning ascribed to such term in the Plan.

"DIP Note Documents" has the meaning ascribed to such term in the DIP Agreement.

"DIP Note Party" means each of Capstone, Capstone Turbine International, Inc, and Capstone Turbine Financial Services.

"DIP Obligations" means all obligations of every nature of each DIP Note Party under the DIP Note Documents.

"**DIP Pre-Funding Roll Up Notes**" has the meaning ascribed to such term in the Plan.

"**DIP Pre-Petition Roll Up Notes**" has the meaning ascribed to such term in the Plan.

"**DIP Roll-Up Obligations**" as defined in the Recitals hereto.

"Director" means any natural Person constituting the Board of Directors or an individual member thereof.

"Dispose" means, with respect to any Person, any conveyance, sale, lease (as lessor), license (as licensor), exchange, assignment, transfer or other disposition by such Person of any property or assets (whether now owned or hereafter acquired) to any other Person, in each case, whether or not the consideration therefor consists of Cash, Cash Equivalents, Securities or any other property or assets. For purposes of clarification, "Dispose" shall (a) include (i) the sale or other disposition for value of any contracts, (ii) the early termination or modification of any contract by any Person resulting in the receipt by such Person of a Cash payment or other consideration in exchange for such event (other than payments in the ordinary course for previously accrued and unpaid amounts due through the date of termination or modification) or (iii) any sale of merchant accounts (or any rights thereto (including any rights to any residual payment stream with respect thereto)) and (b) exclude a sale or issuance by Holdings of its own common stock (including, for the avoidance of doubt, in connection with any at the market offering of Holdings' Capital Stock).

"Disqualified Capital Stock" means any Capital Stock, that, by its terms (or by the terms of any other instrument, agreement or Capital Stock into which it is convertible or for which it is exchangeable), or upon the occurrence of any event or condition (i) matures or is mandatorily redeemable (other than solely for Qualified Capital Stock), pursuant to a sinking fund obligation or otherwise, (ii) is redeemable at the option of the holder or beneficial owner

thereof (other than solely for Capital Stock that is not otherwise Disqualified Capital Stock), in whole or in part, (iii) provides for the scheduled payments of dividends, distributions or other Restricted Junior Payments in cash, or (iv) is or becomes convertible into or exchangeable for Indebtedness or any other obligation, instrument, agreement, or Capital Stock that would meet any of the conditions in clauses (i), (ii), or (iii) of this definition, in each case, prior to the date that is one hundred eighty (180) days after the Latest Maturity Date, except, in the case of clauses (i) and (ii), if as a result of a change of control or asset sale, so long as any rights of the holders thereof upon the occurrence of such a change of control or asset sale event are subject to the prior Payment in Full of all Obligations.

"Distribution" as defined in Section 7.7.

"Dollars" and the sign **"$"** mean the lawful money of the U.S.

"Domestic Subsidiary" means any Subsidiary organized under the laws of the U.S., any state thereof or the District of Columbia other than any CFC Holdco (as such term is defined in the Pledge and Security Agreement).

"**DSS Services Agreement**" means that certain Reorganized PrivateCo Services Agreement, dated as of the date hereof, by and between Company and Capstone, as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms therein.

"Earn Out Obligations" means any obligation or liability consisting of an earnout or similar deferred purchase price that is issued or otherwise incurred as consideration for any acquisition of any property.

"**EDGAR System**" means the Electronic Data Gathering Analysis and Retrieval System owned and operated by the SEC or any replacement system.

"Effective Date" as defined in the Recitals hereto.

"Eligible Transferee" means (i) (a) any Purchaser, any Affiliate of any Purchaser and any Related Fund (any two or more Related Funds being treated as a single Eligible Transferee for all purposes hereof) (in each case, other than a Natural Person), and (b) any commercial bank, insurance company, investment or mutual fund or other entity that is an "accredited investor" (as defined in Regulation D under the Securities Act) and extends credit or buys notes as one of its businesses provided that with respect to subclause (b), Requisite Purchasers' consent shall be required for any such Person to become a Purchaser, and (ii) any other Person (other than a Natural Person) approved by Company (so long as no Default or Event of Default has occurred and is continuing, it being understood that Company shall be deemed to have approved such Person if Company fails to either approve or reject such Person within five (5) Business Days after any request for such approval by any Purchaser); provided, (x) neither Company nor any Affiliate of Company shall, in any event, be an Eligible Transferee and (y) no Person owning or controlling any trade obligations or Indebtedness of any Note Party (other than the Obligations) or any Capital Stock of any Note Party (in each case, other than any other Person approved by Requisite Purchasers) shall, in any event, be an Eligible Transferee.

“Employee Benefit Plan” means any “employee benefit plan” as defined in Section 3(3) of ERISA that is or was sponsored, maintained or contributed to by, or required to be contributed by, Company, any of its Subsidiaries or any of their respective ERISA Affiliates.

“Environmental Claim” means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (ii) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

“Environmental Laws” means any and all current or future foreign or domestic, federal or state (or any subdivision of either of them), statutes, ordinances, orders, rules, regulations, judgments, Governmental Authorizations, or any other requirements of Governmental Authorities relating to (i) environmental matters, including those relating to any Hazardous Materials Activity; (ii) the generation, use, storage, transportation or disposal of Hazardous Materials; or (iii) occupational safety and health, industrial hygiene, land use or the protection of human, plant or animal health or welfare, in any manner applicable to Holdings, Company or any of its Subsidiaries or any Facility.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means, as applied to any Person, (i) any corporation that is a member of a controlled group of corporations within the meaning of Section 414(b) of the Code of which that Person is a member; (ii) any trade or business (whether or not incorporated) that is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Code of which that Person is a member; and (iii) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Code of which that Person, any corporation described in clause (i) above or any trade or business described in clause (ii) above is a member. Any former ERISA Affiliate of Holdings, Company or any of its Subsidiaries shall continue to be considered an ERISA Affiliate of Company or any such Subsidiary within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of Company or such Subsidiary and with respect to liabilities arising after such period for which Company or such Subsidiary could be liable under the Code or ERISA.

“ERISA Event” means (i) a “reportable event” within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for thirty day notice to the PBGC has been waived by regulation); (ii) the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Code) or the failure to make by its due date a required installment under Section 430(j) of the Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (iii) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (iv) the withdrawal by Holdings, Company, any of its Subsidiaries or any of their respective ERISA Affiliates from any Pension Plan with two or more

contributing sponsors or the termination of any such Pension Plan resulting in liability to Holdings, Company, any of its Subsidiaries or any of their respective Affiliates pursuant to Section 4063 or 4064 of ERISA; (v) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition that might constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (vi) the imposition of liability on Holdings, Company, any of its Subsidiaries or any of their respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the withdrawal of Holdings, Company, any of its Subsidiaries or any of their respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by Holdings, Company, any of its Subsidiaries or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (viii) the occurrence of an act or omission that could give rise to the imposition on Holdings, Company, any of its Subsidiaries or any of their respective ERISA Affiliates of fines, penalties, taxes or related charges under Chapter 43 of the Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Employee Benefit Plan; (ix) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan other than a Multiemployer Plan or the assets thereof, or against Holdings, Company, any of its Subsidiaries or any of their respective ERISA Affiliates in connection with any Employee Benefit Plan; (x) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Benefit Plan intended to be qualified under Section 401(a) of the Code) to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Pension Plan to qualify for exemption from taxation under Section 501(a) of the Code; or (xi) the imposition of a Lien pursuant to Section 430(k) of the Code or pursuant to Section 303(k) of ERISA with respect to any Pension Plan.

"Event of Default" means each of the conditions or events set forth in Section 8.1.

"Exchange Act" means the Securities Exchange Act of 1934.

"Excluded Accounts" means (i) payroll accounts or employee benefits accounts as long as in the case of payroll accounts, the total amount on deposit at any time does not exceed the current expected amount of payroll obligations of the Note Parties, (ii) zero balance accounts maintained by the Note Parties, as long as any deposits or funds in any such accounts are transferred at least once each Business Day into a Controlled Account (including, for the avoidance of doubt, at any time following the exercise of exclusive control by Collateral Agent under the applicable control agreement with respect to such Controlled Account), (iii) accounts, the amounts on deposit in which do not exceed an average monthly balance of $50,000 for all such accounts in the aggregate at any one time, (iv) any segregated accounts holding solely Cash collateral for a third party to the extent such Lien is permitted under Section 6.2(n) hereof, the aggregate balance of which shall not at any time exceed 105% of the face value of such obligations and (v) an account maintained at Wells Fargo Bank, National Association for so long as the aggregate balance in such account does not exceed $50,000 for any two (2) consecutive

Business Day period; provided that, promptly after opening such account, the Company shall deliver written notice of the account number to the Collateral Agent.

“Excluded Property” has the meaning set forth in the Pledge and Security Agreement.

“Extraordinary Receipts” means any net Cash proceeds received by or paid for the account of Holdings, Company or any of its Subsidiaries outside of the ordinary course of such Person’s business and any such payments in respect of purchase price adjustments (excluding working capital adjustments), tax refunds, judgments, settlements for actual or potential litigation or similar c laims, pension plan reversions, indemnity payments, payments in respect of Earn Out Obligations or Seller Financing Indebtedness, and similar payments; provided, however, that “Extraordinary Receipts” shall not include (i) proceeds of any indemnity payment to the extent that no Event of Default exists at the time of receipt of such proceeds and such proceeds are promptly (and in any event within five Business Days) used to pay related third party claims and expenses, (ii) proceeds otherwise subject to Sections 2.13(a) through 2.13(g) or (iii) to the extent any such amounts are (A) immediately payable to a Person that is not an Affiliate of the Note Parties pursuant to an arrangement permitted under this Agreement or (B) received by the Note Party or any of its Subsidiaries as reimbursement for any costs previously incurred or any payment previously made by a Note Party.

“**Extraordinary Receipts Reinvestment Amounts**” as defined in Section 2.13(h).

“**Extraordinary Receipts Reinvestment Period**” as defined in Section 2.13(h).

“Facility” means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by Holdings, Company or any of its Subsidiaries.

“Fair Share” as defined in Section 7.2.

“Fair Share Contribution Amount” as defined in Section 7.2.

“FATCA” means (a) Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations promulgated thereunder or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code, (b) any treaty, law, regulation or other official guidance enacted in any jurisdiction, or relating to an intergovernmental agreement between the United States and any other jurisdiction, with the purpose (in either case) of facilitating the implementation of clause (a) above, or (c) any agreement pursuant to the implementation of clauses (a) or (b) above with the United States Internal Revenue Service, the United States government or any governmental or taxation authority.

“Federal Funds Effective Rate” means for any day, the rate per annum (expressed, as a decimal, rounded upwards, if necessary, to the next higher 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the

Federal Reserve System on such day, as published by the Federal Reserve Bank of New York on the next Business Day; provided, (i) if such day is not a Business Day, the Federal Funds Effective Rate for such day shall be such rate on such transactions on the preceding Business Day as so published on the next Business Day, and (ii) if no such rate is so published on such next Business Day, the Federal Funds Effective Rate for such day shall be the average rate charged to GSSLG.

"**Financial Advisor**" means Riveron Consulting, LLC or another advisor acceptable to Collateral Agent in its sole discretion.

"Financial Officer Certification" means, with respect to the financial statements for which such certification is required, the certification of the Chief Financial Officer of Company that, as of the date of such certification, such financial statements fairly present, in all material respects, the financial condition of Holdings, Company and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments and to the absence of footnotes.

"Financial Plan" as defined in Section 5.1(i).

"First Priority" means, (i) with respect to any Lien purported to be created in any Collateral not consisting of Capital Stock pursuant to any Collateral Document, that such Lien is the only Lien to which such Collateral is subject, other than any Permitted Lien, and (ii) with respect to any Lien purported to be created in any Collateral consisting of Capital Stock, that such Lien is the highest priority Lien to which such Collateral is subject, other than any non-consensual Permitted Liens for Taxes, statutory obligations, or other obligations that arise and have higher priority by operation of law.

"Fiscal Quarter" means a fiscal quarter of any Fiscal Year.

"Fiscal Year" means the fiscal year of Holdings, Company and its Subsidiaries ending on March 31 of each calendar year.

"Flood Certificate" means a "Standard Flood Hazard Determination Form" of the Federal Emergency Management Agency and any successor Governmental Authority performing a similar function.

"Flood Hazard Property" means any Real Estate Asset subject to a mortgage in favor of Collateral Agent, for the benefit of Secured Parties, and located in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards.

"Flood Program" means the National Flood Insurance Program created by the U.S. Congress pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, the National Flood Insurance Reform Act of 1994 and the Flood Insurance Reform Act of 2004.

"Flood Zone" means areas having special flood hazards as described in the National Flood Insurance Act of 1968.

“Floor” means (a) with respect to Adjusted Term SOFR and any Benchmark Replacement, 1.00% per annum and (b) with respect to the Base Rate, 4.00% per annum.

“Fund” means any Person (other than a Natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in notes, bonds and similar extensions of credit in the ordinary course of its activities.

“Funding Guarantor” as defined in Section 7.2.

“Funding Notice” means a notice substantially in the form of Exhibit A-1.

“GAAP” means, subject to Section 1.2, U.S. generally accepted accounting principles in effect as of the date of determination thereof.

“Goldman Sachs” means Goldman Sachs & Co. LLC.

“Governmental Authority” means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the U.S., the U.S., or a foreign entity or government.

“Governmental Authorization” means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

“Grantor” as defined in the Pledge and Security Agreement.

“**GSSLG**” as defined in the preamble hereto.

“Guaranteed Obligations” as defined in Section 7.1.

“Guarantor” means (a) Company, to the extent that Company is not already the primary obligor in respect of any Obligations, (b) Holdings, (c) each Subsidiary of Company that executes this Agreement on the Closing Date, and (d) each other Person that guarantees, pursuant to Section 5.10, Section 7.1 or otherwise, all or any part of the Obligations.

“Guarantor Subsidiary” means each Guarantor (other than Holdings or Company).

“Guaranty” means (a) the guaranty of each Guarantor set forth in Section 7, and (b) each other guaranty of the Obligations that is made by any other Guarantor in favor of Collateral Agent for the benefit of Secured Parties.

“Hazardous Materials” means any chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority or that may or could pose a hazard to the health and safety of the owners, occupants or any Persons in the vicinity of any Facility or to the indoor or outdoor environment.

"Hazardous Materials Activity" means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

"Hedge Agreement" means any Interest Rate Agreement, any Currency Agreement, and any other derivative or hedging contract, agreement, confirmation, or other similar transaction or arrangement that is entered into by Holdings, Company or any of its Subsidiaries, including any commodity or equity exchange, swap, collar, cap, floor, adjustable strike cap, adjustable strike corridor, cross-currency swap or forward rate agreement, spot or forward foreign currency or commodity purchase or sale, listed or over-the-counter option or similar derivative right related to any of the foregoing, non-deliverable forward or option, foreign currency swap agreement, currency exchange rate price hedging arrangement, or other arrangement designed to protect against fluctuations in interest rates or currency exchange rates, commodity, currency, or Securities values, or any combination of the foregoing agreements or arrangements.

"Highest Lawful Rate" means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to any Purchaser that are in effect as of the Closing Date or, to the extent allowed by law, under such applicable laws that may be in effect after the Closing Date and allow a higher maximum nonusurious interest rate than applicable laws in effect as of the Closing Date.

"**Home Page**" means Company's corporate home page on the World Wide Web accessible through the Internet via the universal resource locator (URL) identified as http://www.capstoneturbine.com or such other universal resource locator that it shall designate in writing to the Purchasers as its corporate home page on the World Wide Web.

"Immaterial Fee-Owned Properties" means, as of any date of determination, any individual fee-owned Real Estate Asset having a fair market value less than $1,000,000; provided that, notwithstanding the foregoing, (a) if at any time Holdings, Company and its Subsidiaries own, in the aggregate, multiple fee-owned Real Estate Assets that, in the aggregate, have a fair market value in excess of $2,500,000, then Company shall notify Purchasers thereof and Requisite Purchasers shall have the option, exercisable in its sole discretion, to designate any such Real Estate Assets as Material Real Estate Assets, and (b) any fee-owned Real Estate Asset designated as a Material Real Estate Asset pursuant to clause (iii) of the definition thereof and any fee-owned Real Estate Asset set forth on Schedule 1.1(b) shall not constitute "Immaterial Fee-Owned Properties".

"**Incremental New Money Effective Date**" as defined in Section 2.24(a).

"**Incremental New Money Notes**" means any note purchased by a Purchaser pursuant to Section 2.24.

"**Incremental New Money Purchase Commitment**" as defined in Section 2.24(a).

"**Incremental New Money Purchase Commitment Supplement**" as defined in Section 2.24(b).

"**Incremental New Money Purchaser"** as defined in Section 2.24(a)

"Indebtedness," as applied to any Person, means, without duplication, (i) all indebtedness for borrowed money; (ii) Capital Lease Obligations; (iii) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money; (iv) any obligation owed for all or any part of the deferred purchase price of property or services (excluding any such obligations incurred under ERISA or any trade payable incurred in the ordinary course of business unless (a) more than one hundred twenty (120) days past due, or (b) such obligation is evidenced by a note or a similar written instrument), including any Earn Out Obligations and Seller Financing Indebtedness; (v) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person; (vi) the face amount of any letter of credit or similar instrument issued for the account of (or similar credit transaction entered into for the benefit of) that Person or as to which that Person is otherwise liable for reimbursement of drawings or is otherwise an obligor; (vii) Disqualified Capital Stock, with the amount of Indebtedness represented by such Disqualified Capital Stock being equal to the greater of its voluntary or involuntary liquidation preference and its maximum fixed repurchase price (for purposes hereof, the "maximum fixed repurchase price" of any Disqualified Capital Stock that does not have a fixed repurchase price shall be calculated in accordance with the terms of such Disqualified Capital Stock as if such Disqualified Capital Stock were purchased on any date on which Indebtedness shall be required to be determined pursuant to this Agreement, and as if such price were based upon, or measured by, the fair market value of such Disqualified Capital Stock); (viii) the direct or indirect guaranty, endorsement (otherwise than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of another; (ix) any obligation of such Person the primary purpose or intent of which is to provide assurance to an obligee that the obligation of the obligor thereof will be paid or discharged, or any agreement relating thereto will be complied with, or the holders thereof will be protected (in whole or in part) against loss in respect thereof; (x) any liability of such Person for an obligation of another through any agreement (contingent or otherwise) (a) to purchase, repurchase or otherwise acquire such obligation or provide any security therefor, or to provide funds for the payment or discharge of such obligation (whether in the form of loans, advances, stock purchases, capital contributions or otherwise) or (b) to maintain the solvency or any balance sheet item, level of income or financial condition of another if, in the case of any agreement described under subclauses (a) or (b) of this clause (x), the primary purpose or intent thereof is as described in clause (ix) above; and (xi) all obligations of such Person in respect of any exchange traded or over the counter derivative transaction, including under any Hedge Agreement, in each case whether entered into for hedging or speculative purposes or otherwise, provided, the "principal" amount of obligations under any Hedge Agreement that has not been terminated shall be deemed to be the Net Mark-to-Market Exposure of Company and its Subsidiaries thereunder.

"Indemnified Liabilities" means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, claims (including Environmental Claims), actions, judgments, suits, costs (including the costs of any investigation,

study, sampling, testing, abatement, cleanup, removal, remediation or other response action necessary to remove, remediate, clean up or abate any Hazardous Materials Activity), Taxes, expenses and disbursements of any kind or nature whatsoever (including attorneys' fees and any fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect, special, or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and Environmental Laws), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee, in any manner relating to or arising out of (i) this Agreement or the other Note Documents or the transactions contemplated hereby or thereby (including the Purchasers' agreement to purchase any Notes or the use or intended use of the proceeds thereof, or any enforcement of any of the Note Documents (including any sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty)); or (ii) any Environmental Claim or Hazardous Materials Activity relating to or arising from, directly or indirectly, any past or present activity, operation, land ownership, or practice of Holdings, Company or any of its Subsidiaries.

"Indemnitee" means, each of Collateral Agent and any Purchaser, and each of their respective shareholders, principals, advisors, subsidiaries, affiliates, officers, partners, members, Directors, trustees, employees, agents and sub-agents.

"Indemnitee Agent Party" as defined in Section 9.6.

"**Initial Notes**" means the New Money Initial Notes and the Roll Up Notes.

"Initial Notes Purchase Commitments" means the New Money Initial Notes Purchase Commitments and the Roll Up Notes Purchase Commitments.

"**Insolvency Proceeding**" means, with respect to any Note Party, any (a) case, action or proceeding before any court of Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, (b) general assignment for the benefits of creditors, composition, marshaling of assets for creditors, or (c) similar arrangement in respect of creditors generally or any substantial portion of applicable creditors, in any case , under taken under U.S. federal, state or foreign law.

"**Institutional Investor**" means (a) any Purchaser of a Note, (b) any holder of a Note holding (together with one or more of its affiliates) more than 5% of the aggregate principal amount of the Notes then outstanding, (c) any bank, trust company, savings and loan association or other financial institution, any pension plan, any investment company, any insurance company, any broker or dealer, or any other similar financial institution or entity, regardless of legal form, and (d) any related fund of any holder of any Note.

"**Insurance/Condemnation Reinvestment Amounts**" as defined in Section 2.13(b).

"**Insurance/Condemnation Reinvestment Period**" as defined in Section 2.13(b).

"Intellectual Property" as defined in the Pledge and Security Agreement.

"Intercompany Note" means a "global" intercompany promissory note and subordination that evidences and subordinates certain Indebtedness and other monetary liabilities owed among Note Parties and their Subsidiaries, substantially in the form of Exhibit I.

"Interest Payment Date" means with respect to (i) any Base Rate Note (a) the last day of each month and (b) the final maturity date of such Notes; and (ii) any SOFR Rate Note, the last day of each Interest Period applicable to such Note; provided, in the case of each Interest Period of longer than six months "Interest Payment Date" shall also include each date that is three months, or an integral multiple thereof, after the commencement of such Interest Period.

"Interest Period" means, in connection with any SOFR Rate Note an interest period of one-, three- or six-months, (in each case, subject to the availability thereof) as selected by Company in the applicable Funding Notice or Conversion/Continuation Notice, commencing on December 7, 2023; and thereafter, commencing on (and including) the day on which the immediately preceding Interest Period expires; provided, (a) if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next Business Day unless no further Business Day occurs in such month, in which case such Interest Period shall expire on the immediately preceding Business Day; (b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month and (c) no tenor that has been removed from this definition pursuant to Section 2.17 shall be available for specification in such Funding Notice or Conversion/Continuation Notice.

"Interest Rate Agreement" means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement, each of which is (i) for the purpose of hedging the interest rate exposure associated with Company's and its Subsidiaries' operations, (ii) approved by Requisite Purchasers, and (iii) not for speculative purposes.

"Interest Rate Determination Date" means, with respect to any Interest Period, the date that is two U.S. Government Securities Business Days prior to the first day of such Interest Period.

"Investment" means (i) any direct or indirect purchase or other acquisition by Holdings, Company or any of its Subsidiaries of, or of a beneficial interest in, any of the Securities of any other Person, including the establishment or other creation of a Subsidiary or any other interest in the Securities of any Person; (ii) any direct or indirect redemption, retirement, purchase or other acquisition for value, by any Subsidiary of Company from any Person, of any Capital Stock of such Person; and (iii) any direct or indirect loan, advance (other than advances to employees for customary moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business and consistent with past practice) or capital contributions by Holdings, Company or any of its Subsidiaries to any other Person, including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales of inventory to that other Person in the ordinary course of business. The amount of any Investment shall be the original cost of such Investment plus the

cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment.

"Joint Venture" means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form; provided, in no event shall any Wholly-Owned Subsidiary of any Person be considered to be a "Joint Venture" to which such Person is a party.

"Landlord Collateral Access Agreement" means a Landlord Waiver and Consent Agreement substantially in the form of Exhibit H (or such other form as agreed to by Collateral Agent).

"Latest Maturity Date" means, as of any time of determination, the latest possible maturity or expiration date applicable to any Note or Commitment hereunder at such time, in each case as extended in accordance with this Agreement from time to time, as the case may be.

"Leasehold Property" means any leasehold interest of any Note Party as lessee under any lease of real property, other than any such leasehold interest designated from time to time by Collateral Agent in its sole discretion as not being required to be included in the Collateral.

"Lien" means (i) any lien, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing, and (ii) in the case of Securities, any purchase option, call or similar right of a third party with respect to such Securities.

"**Liquidation Event**" means any voluntary or involuntary dissolution, liquidation or winding up of Company.

"**Majority-in-Interest**" means holders of Holdings's Capital Stock accounting for 50% or more of the voting power of all of the Capital Stock of Company.

"Margin Stock" as defined in Regulation U.

"Material Adverse Effect" means a material adverse effect on (i) the business operations, properties, assets or financial condition of Holdings, Company and its Subsidiaries taken as a whole; (ii) the ability of any Note Party to fully and timely perform its Obligations; (iii) the legality, validity, binding effect, or enforceability against a Note Party of a Note Document to which it is a party; (iv) the validity, perfection or priority of a Lien in favor of Collateral Agent for the benefit of Secured Parties on the Collateral, taken as a whole, or (vi) the rights, remedies and benefits available to, or conferred upon, Collateral Agent, any Purchaser or any other Secured Party under any Note Document.

"Material Contract" means any and all contracts or other arrangements to which Company or any of its Subsidiaries is a party (other than the Note Documents) for which breach,

nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect together with those contracts and arrangements that are otherwise listed on Schedule 4.16.

"Material Indebtedness" means (i) Indebtedness (other than the Obligations) of any one or more of Holdings, Company and its Subsidiaries with an individual principal amount or Swap Termination value of $250,000 or more or, solely for purposes of Section 8.1(b), that, collectively with any other Indebtedness in respect of which any relevant default or other specified event has occurred, has an aggregate principal amount (or Swap Termination Value) of $500,000 or more.

"Material Real Estate Asset" means any and all of the following: (i) all fee-owned Real Estate Assets other than any Immaterial Fee-Owned Properties, (ii) any Real Estate Asset that Requisite Purchasers determine after the Closing Date, in their sole discretion, to be material to the business, operations, properties, assets, condition (financial or otherwise) or prospects of any of Holdings, Company and its Subsidiaries and designate in writing to be a "Material Real Estate Asset", and (iii) any Real Estate Asset listed on Schedule 1.1(b).

"Moody's" means Moody's Investors Service, Inc.

"Mortgage" means a mortgage, deed of trust, or similar instrument in form and substance reasonably acceptable to Collateral Agent.

"Mortgaged Real Estate Documents" means, with respect to each Material Real Estate Asset that is required to be subject to a Mortgage pursuant to this Agreement:

(i) one or more fully executed and notarized Mortgages encumbering such Material Real Estate Asset, in each case in proper form for recording in all appropriate places in all applicable jurisdictions;

(ii) (a) ALTA mortgagee title insurance policies or, solely to the extent that Collateral Agent in its sole discretion waives the requirement for a policy to be issued, unconditional commitments therefor, in each case issued by one or more title companies reasonably satisfactory to Collateral Agent with respect to each Material Real Estate Asset (each, a "**Title Policy**"), each such Title Policy to be in amounts not less than the fair market value of each Material Real Estate Asset, together with a title report issued by a title company with respect thereto and dated not more than thirty days prior to the date of the applicable Mortgage, (b) copies of all documents listed as exceptions to title or otherwise referred to therein, each in form and substance reasonably satisfactory to Collateral Agent, and (c) evidence satisfactory to Collateral Agent that such Note Party has paid to the title company or to the appropriate Governmental Authorities all expenses and premiums of the title company and all other sums required in connection with the issuance of each Title Policy and all recording and stamp taxes (including mortgage recording and intangible taxes) payable in connection with recording the Mortgages for each such Material Real Estate Asset in the appropriate real estate records;

(iii) (A) a completed Flood Certificate with respect to each such Material Real Estate Asset, which Flood Certificate shall (x) be addressed to Collateral Agent and (y) otherwise comply with the Flood Program and be in form and substance satisfactory to Collateral Agent in

its sole discretion; (B) if the Flood Certificate indicates that such Material Real Estate Asset is located in a Flood Zone, Company's written acknowledgment of receipt of written notification from Collateral Agent (x) as to the existence of such Material Real Estate Asset in a Flood Zone and (y) as to whether the community in which such Material Real Estate Asset is located is participating in the Flood Program; and (C) if such Material Real Estate Asset is located in a Flood Zone and is located in a community that participates in the Flood Program, evidence that Company has obtained a policy of flood insurance that is in compliance with all applicable requirements of the Flood Program or, solely to the extent agreed to by Collateral Agent in its sole discretion, excluded any structures existing in such Flood Zone from any such Mortgage in a manner satisfactory to Collateral Agent in its sole discretion;

(iv) ALTA surveys of such Material Real Estate Asset (other than any Leasehold Property), certified to Collateral Agent and dated not more than thirty days prior to the date of the applicable Mortgage and otherwise in form and substance satisfactory to Collateral Agent in its sole discretion;

(v) an opinion of counsel (which counsel shall be reasonably satisfactory to Collateral Agent) in the state in which such Material Real Estate Asset is located with respect to the enforceability of the form(s) of Mortgage to be recorded in such state and such other matters as Collateral Agent may reasonably request, in form and substance reasonably satisfactory to Collateral Agent; and

(vi) reports and other information, in each case in form, scope and substance satisfactory to Requisite Purchasers in their sole discretion, regarding environmental matters relating to such Material Real Estate Asset.

"Multiemployer Plan" means any Employee Benefit Plan that is a "multiemployer plan" as defined in Section 3(37) of ERISA.

"NAIC" means The National Association of Insurance Commissioners, and any successor thereto.

"Natural Person" means a natural Person or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person.

"Net Asset Sale Proceeds" means, with respect to any Asset Sale, an amount equal to: (i) Cash payments received by Company or any of its Subsidiaries from such Asset Sale (including any Cash received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise (including by way of a milestone payment, as applicable), but only as and when so received), minus (ii) any bona fide costs and expenses incurred in connection with such Asset Sale to the extent paid or payable to non-Affiliates, including (a) any income or gains taxes payable by Company or any of its Subsidiaries as a result of any gain recognized in connection with such Asset Sale during the tax period in which the sale occurs and sales, transfer and other similar taxes payable in connection with such Asset Sale, (b) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than the Notes) that is secured by a Lien on the stock or assets in question and that is required to be repaid under the terms thereof as a result of such Asset Sale, (c) amounts deposited in escrow pursuant to

the terms of the agreement governing such Asset Sale (only to the extent such proceeds remain in escrow) and (d) a reasonable reserve for any indemnification payments (fixed or contingent) attributable to seller's indemnities and representations and warranties to purchaser in respect of such Asset Sale undertaken by Company or any of its Subsidiaries in connection with such Asset Sale; provided that, upon release of any such reserve, the amount released shall be considered Net Asset Sale Proceeds.

"Net Insurance/Condemnation Proceeds" means an amount equal to: (i) any Cash payments or proceeds received by Company or any of its Subsidiaries (a) under any casualty, business interruption or "key man" insurance policies in respect of any covered loss thereunder, less any applicable taxes payable with respect thereto or (b) as a result of the taking of any assets of Company or any of its Subsidiaries by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, minus (ii) (a) any actual and reasonable costs incurred by Company or any of its Subsidiaries in connection with the adjustment or settlement of any claims of Company or such Subsidiary in respect thereof, and (b) any bona fide costs and expenses incurred in connection with any sale of such assets as referred to in clause (i)(b) of this definition to the extent paid or payable to non-Affiliates, including any income or gains taxes payable by Company or any of its Subsidiaries as a result of any gain recognized in connection therewith during the tax period the Cash payments or proceeds are received.

"Net Mark-to-Market Exposure" of a Person means, as of any time of determination, the excess (if any) of all unrealized losses over all unrealized profits of such Person arising from Hedge Agreements or other Indebtedness of the type described in clause (xi) of the definition thereof. As used in this definition, "unrealized losses" means the fair market value of the cost to such Person of replacing such Hedge Agreement or such other Indebtedness as of the date of determination (assuming the Hedge Agreement or such other Indebtedness were to be terminated as of that date), and "unrealized profits" means the fair market value of the gain to such Person of replacing such Hedge Agreement or such other Indebtedness as of the time of determination (assuming such Hedge Agreement or such other Indebtedness were to be terminated as of that time).

"**New Money Additional Notes**" means a New Money Additional Note purchased by a Purchaser pursuant to Section 2.1(b)(ii).

"**New Money Additional Notes Closing Date**" means any date Company issues any **New Money Additional Notes** and such **New Money Additional Notes** are purchased by Purchasers in accordance with Section 2.1.

"New Money Additional Notes Purchase Commitment" means the commitment of a Purchaser to purchase New Money Additional Notes and **"New Money Additional Notes Purchase Commitments"** means such commitments of all Purchasers in the aggregate. The amount of each Purchaser's New Money Additional Notes Purchase Commitment, if any, is set forth on Appendix A-2 or in the applicable assignment agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the New Money Additional Notes Purchase Commitments as of the New Money Additional Notes Closing Date is $4,000,000

“**New Money Notes**” means the New Money Initial Notes, the New Money Additional Notes and (if an increase has been made pursuant to Section 2.24) the Incremental New Money Notes.

“**New Money Initial Notes**” as defined in Section 2.1(b)(i).

“**New Money Initial Notes Purchase Commitment**” means the commitment of a Purchaser to make or otherwise purchase the New Money Initial Notes and **“New Money Initial Notes Purchase Commitments”** means such commitments of all Purchasers in the aggregate. The amount of each Purchaser’s New Money Initial Notes Purchase Commitment, if any, is set forth on Appendix A-1, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the New Money Initial Notes Purchase Commitments as of the Closing Date immediately prior to giving effect to the purchasing of the Initial Notes was $3,000,000.

“**New Money Purchase Commitments**” means any New Money Initial Notes Purchase Commitment, New Money Additional Notes Purchase Commitment or (if an increase has been made pursuant to Section 2.24) any Incremental New Money Purchase Commitment and “**New Money Purchase Commitments**” means all of the New Money Initial Notes Purchase Commitment, New Money Additional Notes Purchase Commitment and (if an increase has been made pursuant to Section 2.24) the Incremental New Money Purchase Commitment of all Purchasers.

“Non-U.S. Purchaser” as defined in Section 2.19(e).

“Note Document” means any of this Agreement, the Collateral Documents, the Notes, any intercreditor agreement and all other documents, certificates, instruments or agreements that are expressly designated pursuant to their terms to be “Note Documents” or are otherwise executed and delivered by or on behalf of a Note Party or any other Person for the benefit of Collateral Agent or any Purchaser in connection herewith.

“Note Party” means Company, as issuer, and each Guarantor.

“Notes” means the New Money Notes and Roll Up Notes.

“Notes Maturity Date” means (x) with respect to the New Money Notes, the earlier of (i) December 7, 2025 and (ii) the date that all Notes shall become due and payable in full hereunder, whether by acceleration or otherwise and (y) with respect to the Roll Up Notes, the earlier of (i) December 7, 2026 and (ii) the date that all Notes shall become due and payable in full hereunder, whether by acceleration or otherwise; provided, however, the Company shall use best efforts to refinance the New Money Notes in full in cash on or before the date that is one (1) year after the Closing Date through either (i) a sale or issuance by Holdings of its own common stock or (ii) Indebtedness incurred in accordance with Section 6.1(c).

“Notice” means a Funding Notice.

“Obligations” means all obligations (whether now existing or hereafter arising, absolute or contingent, joint, several, or independent), including for the avoidance of doubt, the

Guaranteed Obligations of every nature of each Note Party from time to time owed to Collateral Agent, the Purchasers or any of them, under any Note Document, whether for principal, interest (including interest that, but for the filing of an Insolvency Proceeding with respect to such Note Party, would have accrued on any Obligation, whether or not a claim is allowed against such Note Party for such interest in the related Insolvency Proceeding), fees, expenses, indemnification or otherwise.

"Obligee Guarantor" as defined in Section 7.7.

"OFAC" means the Office of Foreign Assets Control of the U.S. Department of the Treasury and any successor Governmental Authority.

"**Operating Lease Liabilities**" means (i) prior to the effectiveness of FASB ASC 842 as applied to any Person, all obligations of such Person that are or would be characterized as operating lease obligations of such Person in accordance with GAAP without giving effect to FASB ASC 842, and (ii) after the effective date of FASB ASC 842 as applied to any Person, all operating lease liabilities (within the meaning of FASB ASC 842) of such Person, whether or not such liabilities are required to be capitalized and reflected as a liability on a balance sheet of such Person prepared in accordance with GAAP.

"Organizational Documents" means (i) with respect to any corporation or company, its certificate, memorandum, or articles of incorporation or organization, and its by-laws, (ii) with respect to any limited partnership, its certificate or declaration of limited partnership and its partnership agreement, (iii) with respect to any general partnership, its partnership agreement, and (iv) with respect to any limited liability company, its articles of organization and its operating agreement. In the event any term or condition of this Agreement or any other Note Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such "Organizational Document" shall only be to a document of a type customarily certified by such governmental official.

"Other Taxes" means any and all present or future stamp, court, intangible, recording, filing or documentary, excise, property or similar Taxes arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Note Document.

"Paid in Full" and **"Payment in Full"** mean, with respect to any or all of the Obligations or Guaranteed Obligations, as the context requires, that each of the following events has occurred, as applicable: (a) the payment or repayment in full in immediately available funds of (i) the principal amount of all outstanding Notes, (ii) all accrued and unpaid interest, fees, premiums or other charges owing in respect of any Note or Commitment or otherwise under any Note Document, and (iii) all accrued and unpaid costs and expenses payable by any Note Party to Collateral Agent or Purchasers pursuant to any Note Document, whether or not demand has been made therefor (limited, in the case of indemnification and reimbursement claims to those claims that have been asserted by any such Person prior to such time), (b) the payment or repayment in full in immediately available funds or all other outstanding Obligations or Guaranteed Obligations other than unasserted contingent indemnification and contingent reimbursement obligations and (c) the termination in writing of all of the Commitments.

“PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

“PBGC” means the Pension Benefit Guaranty Corporation or any successor thereto.

“Pension Plan” means any Employee Benefit Plan, other than a Multiemployer Plan, that is subject to Section 412 of the Code or Section 302 of ERISA.

“Periodic Term SOFR Determination Day” has the meaning specified in the definition of “Term SOFR”.

“Permitted Acquisition” means any Acquisition by Company or any of its Wholly-Owned Guarantor Subsidiaries, whether by purchase, merger or otherwise, of all or substantially all of the assets of, all of the Capital Stock of, or a business line or unit or a division of, any Person; provided, the Requisite Purchasers have provided prior written consent to such Acquisition; and

(i) immediately prior to, and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom;

(ii) all transactions in connection therewith shall be consummated, in all material respects, in accordance with all applicable laws and in conformity with all applicable Governmental Authorizations;

(iii) in the case of the Acquisition of Capital Stock, all of the Capital Stock (except for any such Capital Stock in the nature of directors’ qualifying shares required pursuant to applicable law) acquired or otherwise issued by such Person or any newly formed Guarantor Subsidiary of Company in connection with such Acquisition shall be owned 100% by Company or a Wholly-Owned Guarantor Subsidiary thereof, and Company shall have taken, or caused to be taken, as of the date such Person becomes a Subsidiary of Company, each of the actions set forth in Sections 5.10, 5.11 and/or 5.13, as applicable, when required pursuant to the terms thereof;

(iv) Holdings, Company and its Subsidiaries shall be in compliance with the financial covenants set forth in Section 6.8 on a Pro Forma Basis after giving effect to such Acquisition as of the last day of the Fiscal Quarter most recently ended;

(v) Company shall have delivered to Purchasers (A) at least ten (10) Business Days prior to such proposed Acquisition (or such shorter period as may be agreed by Requisite Purchasers in their sole discretion), (1) a Compliance Certificate evidencing compliance with Section 6.8 as required under clause (iv) above, and (2) all relevant financial information with respect to such acquired assets, including the aggregate consideration for such Acquisition and any other information required to demonstrate compliance with Section 6.8, and (B) promptly upon request by Requisite Purchasers and in any event at least five (5) Business Days prior to closing such Acquisition (or such shorter period as may be agreed by Requisite Purchasers in their sole discretion) (1) a copy of the purchase agreement related to the proposed Acquisition (and any related documents reasonably requested by Requisite Purchasers), (2) quarterly and annual

financial statements of the Person whose Capital Stock or assets are being acquired for the most recent twelve month period ending no more than forty-five (45) days prior to such Acquisition, including any audited financial statements that are available to Company and (3) to the extent available, a quality of earnings report (including cash proof analysis) with respect to the Person or assets or division to be acquired in accordance herewith;

(vi) any Person or assets or division as acquired in accordance herewith (x) shall be in same, similar or related business or lines of business in which Company and/or its Subsidiaries are engaged as of the Closing Date and (u) unless otherwise consented to by the Requisite Purchasers, for the four quarter period most recently ended prior to the date of such Acquisition, shall have generated earnings before income taxes, depreciation, and amortization during such period that shall exceed the amount of capital expenditures related to such Person or assets or division during such period (calculated in substantially the same manner as Consolidated Adjusted EBITDA and Consolidated Capital Expenditures are calculated);

(vii) the Acquisition shall be non-hostile and shall have been approved by the Board of Directors of the Person acquired or the Person from whom such assets or division is acquired, as applicable; and

(viii) Company and its Subsidiaries comply with Sections 5.10 and 5.11 with respect to such Acquisition.

"Permitted Liens" means each of the Liens permitted pursuant to Section 6.2.

"Person" means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

"Petition Date" as defined in the Recitals hereto.

"Plan" means the Debtors' Joint Prepackaged Chapter 11 Plan of Reorganization of Capstone Green Energy Corporation and Its Debtor Affiliates, ECF No. 70, as it may be altered, amended, modified, or supplemented from time to time in accordance with the Bankruptcy Code and otherwise in form and substance satisfactory to Collateral Agent and Purchasers.

"Platform" as defined in Section 10.1(b).

"Pledge and Security Agreement" means the Pledge and Security Agreement dated as of the Closing Date , executed by Company and each Guarantor in favor of the Collateral Agent for the benefit of the Secured Parties, as it may be amended, restated, supplemented or otherwise modified from time to time.

"Prime Rate" means the rate of interest quoted in the print edition of *The Wall Street Journal*, Money Rates Section as the Prime Rate (currently defined as the base rate on corporate loans posted by at least 75% of the nation's thirty largest banks), as in effect from time to time, or, if such source or rate is unavailable, any replacement or successor source or rate as determined by Requisite Purchasers. The Prime Rate is a reference rate and does not necessarily

represent the lowest or best rate actually charged to any customer. Purchasers may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

"**Pro Forma Basis**" means a calculation giving pro forma effect to (i) the adjustments related to Subject Transactions described in "Consolidated Adjusted EBITDA" and (ii) when used with respect to determining the permissibility of any specific transaction hereunder, such specific transaction as if it were a Subject Transaction.

"Pro Rata Share" means with respect to all payments, computations and other matters relating to the Initial Notes of any Purchaser, the percentage obtained by dividing (a) the outstanding principal amount of the Notes held by such Purchaser by (b) the aggregate outstanding principal amount of the Notes held by all Purchasers.

"Projections" as defined in Section 4.8.

"Property" means any interest (including any leasehold or similar interest) in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, including, without limitation, Cash, securities, accounts and contract rights.

"Purchaser" means each financial institution listed on the signature pages hereto as a Purchaser, and any other Person that becomes a party hereto pursuant to a Transfer Agreement.

"Qualified Cash" means, at any time of determination, the aggregate balance sheet amount of unrestricted Cash (which, solely for purposes of this definition, shall be deemed to include (x) deposits in transit up to an aggregate amount of $1,000,000.00 at any one time and (y) during the period from and after the Closing Date through and including that date that is 90 days after the Closing Date (or such later date as may be agreed to by Collateral Agent), all cash in the deposit account of Capstone maintained with Scotiabank Inverlat, S.A. with the account number ending in 8823 (the "**Specified Account**")) and, to the extent readily monetized, Cash Equivalents included in the consolidated balance sheet of Holdings, Company and its Subsidiaries as of such time that (i) is free and clear of all Liens other than Liens in favor of Collateral Agent for the benefit of Secured Parties and non-consensual Permitted Liens, (ii) may be applied to payment of the Obligations without violating any law, contract, or other agreement, (iii) is (a) in Controlled Accounts, (b) in the Specified Account or (c) not in a Controlled Account, provided that, the aggregate amount of Cash included in Qualified Cash pursuant to this clause (iii)(c) may not exceed $250,000.00 at any one time, and (iv) is not Net Asset Sale Proceeds or Net Insurance/Condemnation Proceeds.

"**Qualified Capital Stock**" means any Capital Stock that is not Disqualified Capital Stock.

"**Qualified Institutional Buyer**" means any Person who is a "qualified institutional buyer" within the meaning of such term as set forth in Rule 144A(a)(1) under the Securities Act.

"Real Estate Asset" means, at any time of determination, any interest (fee, leasehold or otherwise) then owned by any Note Party in any real property.

"Register" as defined in Section 2.6(b).

“Regulation D” means Regulation D of the Board of Governors and all official rulings and interpretations thereunder or thereof.

“Regulation T” means Regulation T of the Board of Governors and all official rulings and interpretations thereunder or thereof.

“Regulation U” means Regulation U of the Board of Governors and all official rulings and interpretations thereunder or thereof.

“Regulation X” means Regulation X of the Board of Governors and all official rulings and interpretations thereunder or thereof.

“Related Fund” means any Fund that is managed, advised, or administered by (a) a Purchaser, (b) an Affiliate of a Purchaser, or (c) an entity or affiliate of an entity that manages, administers, or advises a Purchaser.

“Related Parties” means any of the officers, directors, employees, agents, attorneys, representatives, subsidiaries, Affiliates or shareholders of a Person.

“Release” means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater.

“Relevant Governmental Body” means the Federal Reserve Board or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board or the Federal Reserve Bank of New York, or any successor thereto.

“**Rental Fleet**” means turbine assets owned by any Note Party or its Subsidiaries that are available to rent, or already on rent, to end-use customers for on-site power generation.

“Required Prepayment Date” as defined in Section 2.14(c).

“Requisite Purchasers” means one or more Purchasers holding more than 50% of the aggregate outstanding principal amount of the Notes held by all Purchasers at such time.

“Restricted Junior Payment” means (i) any dividend, other distribution, or liquidation preference, direct or indirect, on account of any shares of any class of Capital Stock of Holdings, Company or any of its Subsidiaries now or hereafter outstanding, except a dividend payable solely in common shares of Holdings or shares of that class of Capital Stock (other than any Disqualified Capital Stock) to the holders of that class; (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of Capital Stock of Holdings, Company or any of its Subsidiaries (or any direct or indirect parent thereof) now or hereafter outstanding, except any such redemption, retirement or similar payment, purchase or other acquisition for value payable solely in common shares of Holdings or in shares of such class of Capital Stock (other than any Disqualified Capital Stock) to the holders of such class; (iii) any payment made to retire, or to obtain the surrender of, any

outstanding warrants, options or other rights to acquire shares of any class of Capital Stock of Holdings, Company or any of its Subsidiaries (or any direct or indirect parent thereof) now or hereafter outstanding, except a payment payable solely in in common shares of Holdings or shares of that class of Capital Stock (other than any Disqualified Capital Stock) to the holders of that class and (iv) any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to, any Subordinated Indebtedness or any Earn Out Obligations or Seller Financing Indebtedness.

"**Roll Up Notes**" as defined in Section 2.1(a)(ii).

"**Roll Up Notes Purchase Commitment**" means the commitment of a Purchaser to make or otherwise purchase the Roll Up Notes and **"Roll Up Notes Purchase Commitments"** means such commitments of all Purchasers in the aggregate. The amount of each Purchaser's Roll Up Notes Purchase Commitment, if any, is set forth on Appendix A-1, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Roll Up Notes Purchase Commitments as of the Closing Date immediately prior to giving effect to the purchasing of the Roll Up Notes was $21,090,857.69.

"S&P" means S&P Global Ratings, or any successor to its rating agency business.

"**Sale Transaction**" means any transaction pursuant to which (a) Holdings and/or Company sells or disposes (in one or a series of related sales or dispositions) of all or substantially all of the assets of Holdings and/or Company on a consolidated basis (other than inventory in the ordinary course of business), including any sale or disposition of the securities or assets of Company or the Subsidiaries of Company, (b) Holdings engages in any merger, consolidation, combination or similar transaction, (in one or a series of related transactions), such that the Majority-in-Interest immediately prior to the transaction or transactions will, immediately after such transaction or transactions, no longer constitute the Majority-in-Interest, (c) Holdings engages in any transaction or series of related transactions that results in any change of control of Holdings (as the term "control" is defined in Rule 405 the Securities Act), whether such change of control occurs through the sale of assets, Capital Stock or otherwise or (d) any other transaction constituting a Change of Control.

"Sanctioned Country" means, at any time, a country, territory or region that is, or whose government is, the subject or target of any Sanctions, including, as of the Closing Date, Cuba, Iran, North Korea, Syria, and the Crimea, Donetsk, Kherson, Luhansk, and Zaporizhzhia regions of Ukraine.

"Sanctioned Person" means, at any time, any Person with whom dealings are restricted or prohibited under Sanctions, including (i) any Person listed in any Sanctions-related list of designated Persons maintained by the U.S. (including by OFAC, the U.S. Department of the Treasury, or the U.S. Department of State), or by the United Nations Security Council, the European Union or any EU member state, His Majesty's Treasury of the United Kingdom or any other relevant sanctions authority, (ii) any Person located, operating, organized or resident in a Sanctioned Country or (iii) any Person owned or controlled, directly or indirectly, by any such Person described in clause (i) or (ii) of this definition.

“Sanctions” means sanctions or trade embargoes enacted, imposed, administered or enforced from time to time by (i) the U.S. government, including those administered by OFAC, U.S. Department of State, or U.S. Department of Commerce, (ii) the United Nations Security Council, the European Union or any of its member states, His Majesty’s Treasury of the United Kingdom, or (iii) any other relevant sanctions authority.

“Secured Parties” as defined in the Pledge and Security Agreement.

“Securities” means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as “securities” or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing, including any Capital Stock and any Hedge Agreements or other derivatives.

“Securities Account” means any “securities account” as defined in Article 8 of the UCC and any “commodity account” as defined in Article 9 of the UCC.

“Securities Account Control Agreement” means, with respect to a Securities Account, an agreement in form and substance reasonably satisfactory to Collateral Agent that (i) is entered into among Collateral Agent, the Securities Intermediary at which the applicable Securities Account is maintained, and the Note Party having rights in or to the underlying financial assets credited to or maintained in such Securities Account, and (ii) is effective for Collateral Agent to obtain “control” (within the meaning of Articles 8 and 9 of the UCC) of such Securities Account.

“Securities Act” means the Securities Act of 1933, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

“Securities Intermediary” means any “securities intermediary” or “commodity intermediary” as such terms are defined in the UCC.

“Seller Financing Indebtedness” means any obligation or liability consisting of fixed deferred purchase price, installment payments, or promissory notes that, in each case, is issued or otherwise incurred as consideration for any acquisition of any property.

“**Services Agreement**” means that Reorganized PublicCo Services Agreement dated as of December 7, 2023 among Holdings and Company, as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms therein.

“SOFR” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"SOFR Rate Note" means a Note that bears interest at a rate determined by reference to Adjusted Term SOFR, other than pursuant to clause (iii) of the definition of "Base Rate."

"Solvency Certificate" means a certificate of the Chief Financial Officer of Company substantially in the form of Exhibit F-2.

"Solvent" means, with respect to any Person, that as of the date of determination, both (i) (a) the sum of such Person's and its Subsidiaries' debt (including contingent liabilities) does not exceed the present fair saleable value of such Person's and its Subsidiaries' present assets; (b) such Person's and its Subsidiaries' capital is not unreasonably small in relation to its business as contemplated on such date of determination and, with respect to the determination made on the Closing Date, reflected in the Projections provided on or prior to the Closing Date, or with respect to any transaction contemplated or to be undertaken after such date of determination; and (c) such Person has not incurred and does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise); and (ii) such Person is "solvent" within the meaning given that term and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under FASB Accounting Standards Codification Topic 450-20).

"Specified Lease Agreement" means that certain Equipment Lease Agreement, dated as of December 13, 2021, by and between Capstone Green Energy Corporation and Hilmobay Resort Limited dba Hiltyon Rose Hall Resort & Spa.

"Subordinated Indebtedness" means any Indebtedness that is contractually or structurally subordinated in payment or lien ranking to the Obligations or related Liens.

"Subsidiary" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election or appointment of the Person or Persons (whether Directors, trustees, or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies 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; provided, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a "qualifying share" of the former Person shall be deemed to be outstanding.

"**Swap Termination Value**" means, in respect of any one or more Hedge Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedge Agreements, (a) for any date on or after the date such Hedge Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s)

determined as the mark-to-market value(s) for such Hedge Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedge Agreements (which may include a Purchaser or any Affiliate).

"Tax" means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding (together with interest, penalties and other additions thereto) of any nature and whatever called, imposed, levied, collected, withheld or assessed by any Governmental Authority; provided, "Tax on the overall net income" of a Person shall be construed as a reference to a tax imposed on all or part of the overall net income (whether worldwide, or only insofar as such overall net income is considered to arise in or to relate to a particular jurisdiction, or otherwise), a franchise Tax, and a branch profits Tax of that Person (and/or, in the case of a Purchaser, its applicable investment office) by the jurisdiction in which that Person is organized or in which that Person's applicable principal office (and/or, in the case of a Purchaser, its investment office) is located.

"**Term SOFR**" means,

a) for any calculation with respect to a SOFR Rate Note, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the "**Periodic Term SOFR Determination Day**") that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if, as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day, the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

b) for any calculation with respect to a Base Rate Note on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the "**Base Rate Term SOFR Determination Day**") that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if, as of 5:00 p.m. (New York City time) on any Base Rate Term SOFR Determination Day, the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Base Rate Term SOFR Determination Day;

provided further, that if Term SOFR determined as provided above (including pursuant to the proviso under clause (a) or clause (b) above) shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

"Term SOFR Adjustment" means, for any calculation with respect to a Base Rate Note or SOFR Rate Note, a percentage per annum as set forth below for the applicable type of such Note and (if applicable) Interest Period therefor:

Base Rate Notes:

0.10%

SOFR Rate Notes:

Interest Period	**Percentage**
One Month	0.10%
Three Months	0.15%
Six Months	0.25%

"Term SOFR Administrator" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by GSSLG in its reasonable discretion).

"Term SOFR Reference Rate" means the forward-looking term rate based on SOFR.

"Title Policy" as defined in the definition of Mortgaged Real Estate Documents.

"Transaction Costs" means the fees, costs and expenses payable by Holdings or any of Holdings' Subsidiaries to the extent paid or payable to non-Affiliates on or before the Closing Date or the New Money Additional Notes Closing Date (as applicable) in connection with the transactions contemplated by the Note Documents, the DIP Agreement, the Plan, the Confirmation Order or the Chapter 11 Cases.

"**Transactions**" means the transactions contemplated by the Note Documents.

"Transfer Agreement" means a Transfer Agreement substantially in the form of Exhibit D.

"Transfer Effective Date" as defined in Section 10.6(b).

"Type of Note" means a Base Rate Note or a SOFR Rate Note.

"UCC" means the Uniform Commercial Code (or any similar or equivalent statute or law) as in effect in any applicable jurisdiction.

"Unadjusted Benchmark Replacement" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"U.S." means the United States of America.

"U.S. Government Securities Business Day" means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"U.S. Purchaser" as defined in Section 2.19(c).

"U.S. Tax Compliance Certificate" means a certificate substantially in the form of one of Exhibits E-1, E-2, E-3 or E-4, as applicable.

"Waivable Mandatory Prepayment" as defined in Section 2.14(c).

"WARN" as defined in Section 4.19.

"Wholly-Owned" means, in reference to any Subsidiary of a specified Person, that 100% of the Capital Stock of such Subsidiary (other than (x) Directors' qualifying shares and (y) shares issued to foreign nationals to the extent required by applicable law) is owned, directly or indirectly, by such Person and/or one or more of such specified Person's other Subsidiaries that also qualify as Wholly-Owned Subsidiaries under this definition.

1.2 **Accounting Terms, Financials Statements, Calculations, Etc**. Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by Company to Purchasers pursuant to Section 5.1(a), 5.1(b) and 5.1(c) shall be prepared in accordance with GAAP as in effect at the time of such preparation. Subject to the foregoing, calculations in connection with the definitions, covenants and other provisions hereof shall utilize accounting principles and policies in conformity with those used to prepare the financial statements of Capstone and its Subsidiaries delivered to collateral agent under the Pre-Petition Note Purchase Agreement (as defined in the DIP Agreement) prior to the Closing Date. For purposes of determining pro forma compliance with any financial covenant as of any date prior to the initial test date on which such financial covenant is to be tested hereunder, the level of any such financial covenant shall be deemed to be the covenant level for such initial test date. Notwithstanding anything to the contrary in this Agreement, for purposes of determining compliance with any basket, test, or condition under any provision of this Agreement or any other Note Document, no Note Party may retroactively divide, classify, re-classify or deem or otherwise treat a historical transaction as having occurred in reliance on a basket or exception that was not available at the time of such historical transaction or if and to the extent that such basket or exception was relied upon for any later transaction. Notwithstanding any other provision contained herein and any change in GAAP after the date hereof, any lease that would be treated as an operating lease for purposes of GAAP

as of the Closing Date (whether such lease is entered into before or after the Closing Date) shall continue to be treated as an operating lease and shall not constitute Indebtedness or a Capital Lease Obligation of Company or any Subsidiary under this Agreement and the other Note Documents. When used herein, the term "financial statements" shall be construed to include all notes and schedules thereto. Whenever the term "Company" is used in respect of a financial covenant or a related definition, it shall be construed to mean "Holdings, Company and its Subsidiaries on a consolidated basis" unless the context clearly requires otherwise. Except as otherwise provided therein, this Section 1.2 shall apply equally to each other Note Document as if fully set forth therein, *mutatis mutandis*.

1.3 **Interpretation, Etc**. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References herein to any Section, Appendix, Schedule or Exhibit shall be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. Any requirement for a referenced agreement, instrument, certificate or other document to be in "substantially" the form of an Appendix, Schedule, or Exhibit hereto means that such referenced document shall be in the form of such Appendix, Schedule, or Exhibit with such modifications to such form as are approved by Requisite Purchasers, and, in the case of any Collateral Document, Collateral Agent, in each case in Collateral Agent's sole discretion. The words "hereof", "hereunder", "hereby", and words of similar import used in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The use herein of the words "include" or "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. The use herein of the words "continuing", "continuance", "existing", or any words of similar import or derivatives of any such words in reference to any Event of Default means that such Event of Default has not been expressly waived or, solely with respect to any Event of Default with respect to the financial covenant set forth in Section 6.8(a), deemed cured in accordance with the terms of Section 8.2. The word "will" shall be construed as having the same meaning and effect as the word "shall". The words "assets" and "property" shall be construed as having the same meaning and effect and to refer to any and all tangible and intangible assets and properties of any relevant Person or Persons. The terms lease and license shall be construed to include sub-lease and sub-license. Whenever the context may require, any pronoun shall be construed to include the corresponding masculine, feminine, and neuter forms. References to Persons include their respective permitted successors and assigns. Except as otherwise expressly provided herein, references to statutes, legislative acts, laws, regulations, and rules shall be deemed to refer to such statutes, acts, laws, regulations, and rules as in effect from time to time, including any amendments of the same and any successor statutes, acts, laws, regulations, and rules, unless any such reference is expressly limited to refer to any statute, act, law, regulation, or rule "as in effect on" a specified date. Except as otherwise expressly provided herein, any reference in or to this Agreement (including any Appendix, Schedule, or Exhibit hereto), any other Note Document, or any other agreement, instrument, or other document shall be construed to refer to the referenced agreement, instrument, or document as assigned, amended, restated, supplemented, or otherwise modified from time to time, in each

case in accordance with the express terms of this Agreement and any other relevant Note Document unless such reference is expressly limited to refer to such agreement, instrument, or other document "as in effect on" a specified date. Unless otherwise expressly stated, if a Person may not take an action under this Agreement, then it may not take that action indirectly, or take any action assisting or supporting any other Person in taking that action directly or indirectly. "Taking an action indirectly" means taking an action that is not expressly prohibited for the Person but is intended to have substantially the same effects as the prohibited action. Except as otherwise provided therein, this Section 1.3 shall apply equally to each other Note Document as if fully set forth therein, *mutatis mutandis*.

1.4 Rates. Collateral Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. Collateral Agent and its Affiliates or other related entities may engage in transactions that affect the calculation of the Base Rate, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Note Parties. Collateral Agent may select information sources or services in its reasonable discretion to ascertain the Base Rate, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR or any other Benchmark, in each case, pursuant to the terms of this Agreement, and shall have no liability to any Note Party, any Purchaser or any other Person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

SECTION 2 NOTES

2.1 **Issuance and Purchase of the Notes**.

(a) Authorization of Notes.

(i) Company will authorize the issue and sale of $ 28,090,857.69 Senior Secured Notes due on the Notes Maturity Date, as applicable.

(ii) On the Closing Date, subject to the terms and conditions hereof (including the satisfaction of the applicable conditions precedent set forth in Section 3), (x) DIP Pre-Funding Roll Up Notes in an aggregate principal amount of $3,000,000 (plus any accrued and unpaid interest) owed to the DIP Purchaser shall be automatically converted to Notes in an aggregate principal amount equal to $3,079,235.37, (y) DIP

New Money Notes in an aggregate principal amount of $12,600,000 (plus any accrued and unpaid interest) owed to the DIP Purchaser shall be shall be automatically converted to Notes in an aggregate principal amount equal to $12,879,563.38 and (z) DIP Pre-Petition Roll Up Notes in an aggregate principal amount of $5,000,000 (plus accrued and unpaid interest) owed to the DIP Purchaser shall be automatically converted to Notes in an aggregate principal amount equal to $5,132,058.94, in each case issued by Company to the Purchasers, and purchased by the Purchasers hereunder in respect of the Purchasers' Roll Up Commitment (all Notes issued under this subsection collectively, the "**Roll Up Notes**"). For the avoidance of doubt, the parties hereto hereby agree that the Roll Up Notes shall be issued to the Purchasers in full and final satisfaction, settlement, release, and discharge, and in exchange for release, of all of the Purchasers' DIP Obligations.

(b) Commitments; Purchase and Sale of the Notes. Subject to the terms and conditions hereof(including the satisfaction of the applicable conditions precedent set forth in Section 3),

(i) on the Closing Date, Company agrees that it will issue and sell to Purchasers, and Purchasers agree that they will purchase from Company, Notes in an aggregate original principal amount equal to Purchasers' Roll Up Notes Purchase Commitment and New Money Initial Notes Purchase Commitment; and

(ii) on any New Money Additional Notes Closing Date, Company agrees that it will issue and sell to Purchasers, and each Purchaser severally agrees that it will purchase from Company, one or more New Money Additional Notes in an aggregate original principal amount not to exceed to such Purchaser's New Money Additional Notes Purchase Commitment immediately prior to giving effect to the purchase of any such New Money Additional Notes; provided, that Company will issue New Money Additional Notes no more than two (2) times in any twelve (12) month consecutive period and no more than three (3) times during the term of this Agreement. Each issuance of New Money Additional Notes shall be in an aggregate minimum amount of $2,000,000 and integral multiples of $50,000 in excess of that amount; provided that, if the New Money Additional Notes Commitment at the time of such issuance is less than $2,000,000, such issuance shall be in the amount of the New Money Additional Notes Commitment.

(c) Each Note shall be in substantially the form of the Note attached hereto as Exhibit J-1 or Exhibit J-2, as applicable, appropriately completed in conformity herewith, the purchase price for which shall be such original principal amount.

Subject to Section 2.13, all amounts owed hereunder shall be Paid in Full no later than the Notes Maturity Date, as applicable. Each Purchaser's Initial Notes Purchase Commitment shall terminate immediately and fully without further action by any Person upon the issuance by Company of such Notes and purchase pursuant to such Purchaser's Initial Notes Purchase Commitment on the Closing Date. Each Purchaser's New Money Additional Notes Purchase Commitment shall terminate immediately and fully without further action by any Person upon the issuance by Company of the related New Money Additional Notes and purchase pursuant to such Purchaser's

New Money Additional Notes Purchase Commitment on each New Money Additional Notes Closing Date.

(d) Funding Mechanics. For the Roll Up Notes and the New Money Initial Notes, Company shall deliver to Purchasers a fully executed Funding Notice no later than 10:00 a.m. (New York City time) at least one Business Day prior to the Closing Date (or such later time as may be consented to by Purchasers). For the New Money Additional Notes, Company shall deliver to Purchasers a fully executed Funding Notice no later than 10:00 a.m. (New York City time) at least three (3) Business Days prior to each New Money Additional Notes Closing Date (or such later time as may be consented to by Purchasers) in the case of A SOFR Rate Note and at least one Business Day prior to each New Money Additional Notes Closing Date (or such later time as may be consented to by Purchasers) in the case of a Base Rate Note.

2.2 **Issuance of the Notes**. The Notes will be delivered to each Purchaser in physical form and shall be issued in its name or the name of its nominee on the Closing Date, each New Money Additional Notes Closing Date, Incremental New Money Effective Date or date of purchase, as applicable. Each of Purchaser's Initial Note Purchase Commitment and New Money Additional Notes Purchase Commitment shall terminate immediately and without further action on the Closing Date and each New Money Additional Notes Closing Date, respectively, after giving effect to the purchase by such Purchaser of the relevant Notes on the Closing Date or New Money Additional Notes Closing Date, respectively. Subject to Section 2.13, all amounts owed hereunder with respect to the Notes shall be Paid in Full no later than the Notes Maturity Date.

2.3 **[Reserved]** **.**

2.4 **[Reserved].**

2.5 **Use of Proceeds**. Company shall use the proceeds of the Notes for only the following purposes: (a) for working capital and general corporate purposes, (b) to pay interest, premiums, fees and expenses payable hereunder and under the other Note Documents, (c) to pay the Transaction Costs, including but not limited to the costs and expenses pursuant to Section 10.2, (d) solely with respect to the Roll Up Notes, to effectuate the conversion of the DIP Obligations as provided in Section 2.1(a)(ii).

2.6 **Evidence of Debt; Register; Replacement of Notes**.

(a) Purchasers' Evidence of Debt. Each Purchaser shall maintain on its internal records an account or accounts evidencing the Obligations of Company to such Purchaser, including the amounts of the Notes held by it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on Company, absent manifest error; provided, that the failure to make any such recordation, or any error in such recordation, shall not affect Company's Obligations in respect of any applicable Notes; and provided further, in the event of any inconsistency between the Register and any Purchaser's records, the recordations in the Register shall govern.

(b) Register. Company (or an agent or sub-agent appointed by it) shall maintain at its principal executive office a register for the recordation of the names and addresses of

Purchasers and principal amounts (and stated interest) of the Notes owing to, each Purchaser pursuant to the terms hereof from time to time (the **"Register"**). The Register shall be available for inspection by any Purchaser (with respect to (i) any entry relating to such Purchaser's Notes, and (ii) the identity of the other Purchasers (but not any information with respect to such other Purchasers' Notes)) at any reasonable time and from time to time upon reasonable prior notice. Company shall record, or shall cause to be recorded, in the Register the Notes in accordance with the provisions of Section 10.6, and each repayment or prepayment in respect of the principal amount of the Notes; provided, failure to make any such recordation, or any error in such recordation, shall not affect Company's Obligations in respect of any Note. Company shall give to any holder of a Note that is an Institutional Investor promptly upon request therefor, a complete and correct copy of the names and addresses of all registered holders of Notes.

(c) Replacement of Notes. Upon receipt by Company of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any Note (which evidence shall be, in the case of any Institutional Investor, notice from such Institutional Investor of such ownership and such loss, theft, destruction or mutilation), and (x) in the case of loss, theft or destruction, of indemnity reasonably satisfactory to it (provided, that if the holder of such Note is, or is a nominee for, a Purchaser party hereto on the Closing Date or another holder of a Note with a minimum net worth of at least $10,000,000 in excess of the amount of such Note or a Qualified Institutional Buyer, such Person's own unsecured agreement of indemnity shall be deemed to be satisfactory), or (y) in the case of mutilation, upon surrender and cancellation thereof, within ten Business Days thereafter Company at its own expense shall execute and deliver, in lieu thereof, a new Note to such Purchaser, dated and bearing interest from the date to which interest shall have been paid on such lost, stolen, destroyed or mutilated Note or dated the date of such lost, stolen, destroyed or mutilated Note if no interest shall have been paid thereon.

2.7 **Interest on Notes**.

(a) Except as otherwise set forth herein, each Note shall bear interest on the unpaid principal amount thereof from the date issued and sold through the date of repayment (whether by acceleration or otherwise) thereof as follows:

(i) if a Base Rate Note, at the Base Rate plus the Applicable Margin; or

(ii) if a SOFR Rate Note, at the Adjusted Term SOFR for the Interest Period therefor plus the Applicable Margin;

(b) The basis for determining the rate of interest with respect to any Note, and the Interest Period with respect to any SOFR Rate Note shall be selected by Company and notified to Collateral Agent and Purchasers pursuant to the applicable Funding Notice or Conversion/Continuation Notice, as the case may be.

(c) In connection with SOFR Rate Notes, there shall be no more than five Interest Periods outstanding at any time. In the event Company fails to specify between a Base Rate Note or a SOFR Rate Note in the applicable Funding Notice or Conversion/Continuation Notice, such Note (if outstanding as a SOFR Rate Note) will be automatically continued as a SOFR Rate Note with a one-month Interest Period on the last day of the then current Interest Period for

such Note (or if outstanding as a Base Rate Note will remain as, or (if not then outstanding) will be made as, a SOFR Rate Note with a one-month Interest Period). In the event Company fails to specify an Interest Period for any SOFR Rate Note in the applicable Funding Notice or Conversion/Continuation Notice, (or fails to deliver a Funding Notice at the end of an Interest Period), Company shall be deemed to have selected an Interest Period of one month. As soon as practicable after 10:00 a.m. (New York City time) on each Interest Rate Determination Date, Collateral Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to the SOFR Rate Notes for which an interest rate is then being determined for the applicable Interest Period and will promptly give notice thereof to Company and each Purchaser.

(d) Interest payable pursuant to Section 2.7(a) shall be computed on the basis of a three hundred sixty-day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Note, the date of the issuance and sale of such Note or the Interest Payment Date, or with respect to a Base Rate Note being converted from a SOFR Rate Note, the date of conversion of such SOFR Rate Note to such Base Rate Note, as the case may be shall be included, and the date of payment of such Note or the expiration date of an Interest Period applicable to such Note or, with respect to a Base Rate Note being converted to a SOFR Rate Note, the date of conversion of such Base Rate Note to such SOFR Rate Note, as the case may be, shall be excluded; provided, if a Note is repaid on the same day on which it is made, one day's interest shall be paid on that Note.

(e) Except as otherwise set forth herein, interest on each SOFR Rate Note (i) shall accrue on a daily basis and shall be payable as follows: (x) from the Closing Date to the date that is 12 months following the Closing Date, interest on each SOFR Rate Note shall be paid in kind, (y) from the date that is 12 months following the Closing Date to the date that is 24 months following the Closing Date, all interest on each SOFR Rate Note shall be paid in Cash, except for 600 basis points of the Applicable Margin, which shall be paid in kind and (z) from the date that is 24 months following the Closing Date to the date that is 36 months following the Closing Date interest on each SOFR Rate Note shall be paid in Cash. Except as otherwise set forth herein, interest on each Base Rate Note shall accrue on a daily basis and shall be payable as follows: (x) from the Closing Date to the date that is 12 months following the Closing Date, interest on each Base Rate Note shall be paid in kind, (y) from the date that is 12 months following the Closing Date to the date that is 24 months following the Closing Date, all interest on each Base Rate Note shall be paid in Cash, except for 500 basis points of the Applicable Margin, which shall be paid in kind and (z) from the date that is 24 months following the Closing Date to the date that is 36 months following the Closing Date interest on each Base Rate Note shall be paid in Cash.

(f) Except as otherwise set forth herein, interest on each Note (i) shall accrue on a daily basis and shall be paid in kind by capitalizing the amount of such interest accrued and adding such accrued amounts to the principal balance of the Notes (ratably among the Notes held by Purchasers) (the principal amount of the Notes arising as a result of the capitalization of interest pursuant to this sentence, being referred to herein as "**PIK Principal**") or in Cash in arears, as required by Section 2.7(e), on each Interest Payment Date with respect to interest accrued on and to each such Interest Payment Date; (ii) shall accrue on a daily basis and shall be payable in Cash in arrears upon any prepayment of that Note, whether voluntary or mandatory, to the extent accrued on the amount being prepaid; and (iii) shall accrue on a daily basis and shall be payable in Cash in

arrears at maturity of the Notes, including final maturity of the Notes. For the avoidance of doubt, PIK Principal shall thereafter constitute principal and bear interest in accordance with Section 2.7(a) and otherwise be treated as Notes for purposes of this Agreement. Any reference in this Agreement or any Note Document to the Notes or the outstanding principal balance of the Notes shall include all PIK Principal that has not been repaid or prepaid in accordance with the terms of this Agreement. For the avoidance of doubt, PIK Principal shall be *pari passu* with and shall constitute a portion of the Notes for all purposes hereunder or under any other Note Document, and the outstanding principal balance of PIK Principal shall be due and payable in Cash on the Note Maturity Date (unless otherwise agreed to in writing by Requisite Purchasers).

(g) Term SOFR Conforming Changes. In connection with the use or administration of Term SOFR, the Collateral Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Note Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Note Document. The Collateral Agent will promptly notify Company and the Purchasers of the effectiveness of any Conforming Changes in connection with the use or administration of Term SOFR.

2.8 **Conversion.**

(a) Subject to Section 2.17 and so long as no Default or Event of Default shall have occurred and then be continuing, Company shall have the option:

(i) to convert at any time all or any part of any Note equal to $500,000.00 and integral multiples of $100,000.00 in excess of that amount from one Type of Note to another Type of Note; provided, a SOFR Rate Note may only be converted on the expiration of the Interest Period applicable to such SOFR Rate Note unless Company shall pay all amounts due under Section 2.17 in connection with any such conversion;

(ii) upon the expiration of any Interest Period applicable to any SOFR Rate Note, to continue all or any portion of such Note equal to $500,000.00 and integral multiples of $100,000.00 in excess of that amount as a SOFR Rate Note.

(a) Subject to Section 3.2(b), Company shall deliver a Conversion/Continuation Notice to Collateral Agent no later than 10:00 a.m. (New York City time) at least one Business Day in advance of the proposed conversion date (in the case of a conversion to a Base Rate Note) and at least three U.S. Government Securities Business Days in advance of the proposed Conversion/Continuation Date (in the case of a conversion to, or a continuation of, a SOFR Rate Note). Except as otherwise provided herein, a Conversion/Continuation Notice for conversion to, or continuation of, any SOFR Rate Note shall be irrevocable on and after the related Interest Rate Determination Date, and Company shall be bound to effect a conversion or continuation in accordance therewith. If on any day a Note is outstanding with respect to which a Funding Notice or Conversion/Continuation Notice has not been delivered to Collateral Agent in accordance with the terms hereof specifying the applicable basis for determining the rate of interest,

then, for that day, such Note shall be a SOFR Rate Note with an Interest Period of one month.

2.9 **Default Interest.** Upon the occurrence and during the continuance of an Event of Default, (a) the principal amount of all Base Rate Notes outstanding and, to the extent permitted by applicable law, any interest payments on such Base Rate Notes, and any fees or other amounts (other than the principal amount of the SOFR Rate Notes or any interest accrued thereon) owed hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under any Debtor Relief Laws) payable on demand at a rate that is 2.00% per annum in excess of the interest rate otherwise payable hereunder for Base Rate Notes and (b) at the revocable election of the Collateral Agent or the Requisite Purchasers any time after the occurrence of such Event of Default, either (i) all Notes that constitute SOFR Rate Notes shall be converted to Base Rate Notes (irrespective of whether the Interest Period in effect at the time of such conversion has expired) and thereupon shall become Base Rate Notes, or (ii) the principal amount of such SOFR Rate Notes outstanding and, to the extent permitted by applicable law, any interest payments on such SOFR Rate Notes, shall thereafter bear interest (including post-petition interest in any proceeding under any Debtor Relief Laws) payable on demand at a rate that is 2.00% per annum in excess of the interest rate otherwise payable hereunder with respect to the applicable SOFR Rate Notes. Payment or acceptance of (x) the increased rates of interest provided for in this Section 2.9 or (y) any amount of interest that is less than the amount due, in each case is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of any Purchaser.

2.10 **[Reserved]**.

2.11 **Scheduled Payments**. To the extent not previously paid, the Notes, together with all other amounts owed hereunder with respect thereto, shall, be Paid in Full in cash (or as otherwise agreed to in writing by Requisite Purchasers) no later than the Notes Maturity Date.

2.12 **Voluntary Prepayments**.

(a) Any time and from time to time, Company may prepay (i) Roll Up Notes on any Business Day in whole or in part, in an aggregate minimum amount of $250,000 and integral multiples of $50,000 in excess of that amount; (ii) New Money Notes on any Business Day in whole; provided, that the New Money Notes may only be voluntarily prepaid in reliance on this clause (ii) twice in any consecutive twelve (12) month period and (iii) in the case of prepayments made in accordance with Section 8.2, the Notes on any Business Day in whole or in part, in an aggregate amount equal to the Cure Cap.

(b) All such prepayments shall be made (i) upon not less than one Business Day's prior written or telephone notice in the case of Base Rate Notes and (ii) upon not less than three Business Days' prior written or telephonic notice, in the case of SOFR Rate Notes, in each case, given to Purchasers by 12:00 p.m. (New York City time) and, if given by telephone, promptly confirmed in writing to Purchasers. Upon the giving of any such notice, the principal amount of

the Notes specified in such notice shall become due and payable on the prepayment date specified therein. Any such voluntary prepayment shall be applied as specified in Section 2.14(b).

2.13 **Mandatory Prepayments**.

(a) Asset Sales. No later than the third Business Day following the date of receipt by any Note Party or any of its Subsidiaries of any Net Asset Sale Proceeds (it being understood that such Net Asset Sale Proceeds shall be deposited into a Controlled Account within one Business Day following receipt thereof), Company shall prepay the Notes as set forth in Section 2.14(b) in an aggregate amount equal to such Net Asset Sale Proceeds; provided, that so long as no Event of Default shall have occurred and be continuing, upon delivery of a written notice to Purchasers, Company shall have the option, directly or through one or more Subsidiaries, to invest up to $250,000 of such Net Asset Sale Proceeds (the "**Asset Sale Reinvestment Amounts**") in assets of the general type used in the business of Company or Permitted Acquisitions within two hundred seventy (270) days following receipt of such Net Asset Sale Proceeds (or within three hundred sixty (360) days following receipt of such Net Asset Sale Proceeds if Company or Subsidiaries shall have entered into a binding commitment to invest within such initial two hundred seventy (270) day period); provided further, pending any such reinvestment all Asset Sale Reinvestment Amounts shall, if requested by Requisite Purchasers, be held at all times prior to such reinvestment, in a Controlled Account. In the event that the Asset Sale Reinvestment Amounts are not reinvested by Company in accordance with the immediately preceding sentence, Company shall apply such Asset Sale Reinvestment Amounts to the Obligations as set forth in Section 2.14(b).

(b) Insurance/Condemnation Proceeds. No later than the third Business Day following the date of receipt by any Note Party or any of its Subsidiaries, or Collateral Agent as loss payee, of any Net Insurance/Condemnation Proceeds (it being understood that such Net Insurance/Condemnation Proceeds shall be deposited into a Controlled Account within one Business Day following receipt thereof), Company shall prepay the Notes as set forth in Section 2.14(b) in an aggregate amount equal to such Net Insurance/Condemnation Proceeds; provided, so long as no Event of Default shall have occurred and be continuing, (such amounts, the **"Insurance/Condemnation Reinvestments Amounts"**), Company shall have the option, directly or through one or more of its Subsidiaries to invest such Insurance/Condemnation Reinvestment Amounts within one hundred eighty days of receipt thereof (the **"Insurance/Condemnation Reinvestment Period"**) in assets of the general type used in the business of Holdings, Company and its Subsidiaries (which investment may include the repair, restoration or replacement of the relevant assets in respect of which such Net Insurance/Condemnation Proceeds were received) within two hundred seventy (270) days following receipt thereof (or within three hundred sixty (360) days following receipt thereof if Company or Subsidiaries shall have entered into a binding commitment to invest within such initial two hundred seventy (270) day period); provided further, pending any such investment, all such Insurance/Condemnation Reinvestment Amounts shall, if requested by Requisite Purchasers, be held at all times prior to such reinvestment, in a Controlled Account. In the event that such Insurance/Condemnation Reinvestment Amounts are not reinvested by Company in accordance with the immediately preceding sentence, Company shall apply such Insurance/Condemnation Reinvestment Amounts to the Obligations as set forth in Section 2.14(b).

(c) [Reserved].

(d) Issuance of Debt. On the date of receipt by any Note Party or any of its Subsidiaries of any Cash proceeds (it being understood that any such Cash proceeds shall be deposited into a Controlled Account within one Business Day following receipt thereof) from the incurrence of any Indebtedness of any Note Party or any of its Subsidiaries, excluding any Cash proceeds received with respect to any Indebtedness permitted to be incurred pursuant to Section 6.1 (except for Indebtedness incurred pursuant to Section 6.1(i)), Company shall prepay the Notes as set forth in Section 2.14(b) in an aggregate amount equal to 100% of such proceeds, net of underwriting discounts and commissions and other reasonable costs and expenses associated therewith, in each case, paid to non-Affiliates, including reasonable legal fees and expenses; provided, however, that any Cash proceeds from the incurrence of Indebtedness pursuant to Section 6.1(c) shall be applied first to repay in full the New Money Notes on the closing date of such ABL Facility, and any remainder shall be released to Company for any purpose not prohibited hereunder.

(e) Sale of Holdings Common Stock. If any Event of Default has occurred and is continuing, no later than the third Business Day following the date of receipt by any Note Party or any of its Subsidiaries, or Collateral Agent as loss payee, of any proceeds if any sale or issuance by Holdings of its own common stock (including, for the avoidance of doubt, in connection with any market offering of Holdings' Capital Stock (it being understood that such proceeds shall be deposited into a Controlled Account within one Business Day following receipt thereof), Company shall prepay the Notes as set forth in Section 2.14(b) in an aggregate amount equal to such proceeds;

(f) [Reserved].

(g) [Reserved].

(h) Extraordinary Receipts. No later than three (3) Business Days following receipt by Holdings, Company or any of its Subsidiaries of any Extraordinary Receipts (it being understood that such Extraordinary Receipts shall be deposited in a Controlled Account within on e (1) Business Day following the receipt thereof) in excess of $250,000 in the aggregate in any trailing twelve month period, Company shall prepay Notes as set forth in Section 2.14(b) in the amount of such excess Extraordinary Receipts; provided, so long as no Event of Default shall have occurred and be continuing, (such amounts, the **"Extraordinary Receipts Reinvestments Amounts"**), Company shall have the option, directly or through one or more of its Subsidiaries to use such Extraordinary Receipts Reinvestment Amounts within one hundred eighty days of receipt thereof (the **"Extraordinary Receipts Reinvestment Period"**) in assets of the general type used in the business of Holdings, Company and its Subsidiaries within two hundred seventy (270) days following receipt thereof (or within three hundred sixty (360) days following receipt thereof if Company or Subsidiaries shall have entered into a binding commitment to invest within such initial two hundred seventy (270) day period); provided further, pending any such investment, all such Extraordinary Receipts Reinvestment Amounts shall, if requested by Requisite Purchasers, be held at all times prior to such reinvestment, in a Controlled Account. In the event that such Extraordinary Receipts Reinvestment Amounts are not reinvested by Company in accordance with

the immediately preceding sentence, Company shall apply such Extraordinary Receipts Reinvestment Amounts to the Obligations as set forth in Section 2.14(b).

(i) Reserved.

(j) Prepayment Certificate. Concurrently with any prepayment of the Notes pursuant to Sections 2.13(a) through 2.13(h), Company shall deliver to Purchasers a certificate of a Chief Financial Officer demonstrating the calculation of the amount of the applicable net proceeds and compensation owing to Purchasers under any of the Note Documents, if any, as the case may be. In the event that Company shall subsequently determine that the actual amount received exceeded the amount set forth in such certificate, Company shall promptly make an additional prepayment of the Notes in an amount equal to such excess, and Company shall concurrently therewith deliver to Purchasers a certificate of a Chief Financial Officer demonstrating the derivation of such excess.

2.14 **Application of Prepayments/Reductions**.

(a) [Reserved].

(b) Application of Prepayments. Any voluntary prepayments of Notes pursuant to Section 2.12 and any mandatory prepayment of any Notes pursuant to Section 2.13 shall be applied as follows:

first, to the payment of all fees other than any premium, and all expenses specified in Section 10.2, in each case to the full extent thereof;

second, to the payment of any accrued interest on any New Money Notes at the Default Rate, if any;

third, to the payment of any accrued interest (other than Default Rate interest) on New Money Notes;

fourth, except in connection with any Waivable Mandatory Prepayment as provided in Section 2.14(c), to prepay the New Money Notes on a pro rata basis (in accordance with the respective outstanding principal amounts thereof);

fifth, to payment of any remaining New Money Note Obligations then due and payable;

sixth, to the payment of any accrued interest on any Roll Up Notes at the Default Rate, if any;

seventh, to the payment of any accrued interest (other than Default Rate interest) on Roll Up Notes;

eighth, except in connection with any Waivable Mandatory Prepayment as provided in Section 2.14(c), to prepay the Roll Up Notes on a pro rata basis (in accordance with the respective outstanding principal amounts thereof);

ninth, to payment of any remaining Roll Up Note Obligations then due and payable; and

tenth, to the extent of any excess, to Company for any purpose not prohibited hereunder.

(c) Waivable Mandatory Prepayment. Anything contained herein to the contrary notwithstanding, in the event Company is required to make any mandatory prepayment (a **"Waivable Mandatory Prepayment"**) of the Notes, not less than three Business Days prior to the date (the **"Required Prepayment Date"**) on which Company is required to make such Waivable Mandatory Prepayment, Company shall notify Purchasers of the amount of such prepayment and each Purchaser's option to elect not to receive its Pro Rata Share of such Waivable Mandatory Prepayment. Each such Purchaser may exercise such option by giving written notice to Company of its election to do so on or before the first Business Day prior to the Required Prepayment Date (it being understood that any Purchaser that does not notify Company of its election to exercise such option on or before the first Business Day prior to the Required Prepayment Date shall be deemed to have elected, as of such date, not to exercise such option). On the Required Prepayment Date, Company shall pay to Purchasers of the New Money Notes or Roll Up Notes, as relevant, the amount of the Waivable Mandatory Prepayment, which amount shall be applied (i) in an amount equal to that portion of the Waivable Mandatory Prepayment payable to those Purchasers of such New Money Notes or Roll Up Notes, as relevant that have elected not to exercise such option, to prepay the applicable Notes of such Purchaser, (ii) to the extent of any excess, as otherwise required under section 2.14(b).

2.15 **General Provisions Regarding Payments**.

(a) All payments by Company of principal, interest, fees and other Obligations shall be made in Dollars in immediately available funds, without defense, recoupment, setoff or counterclaim, free of any restriction or condition, and delivered to Purchasers not later than 12:00 p.m. (New York City time) on the date due by wire transfer to an account designated by such Purchaser in writing (as may be updated by Purchasers from time to time). For purposes of computing interest and fees, funds received by Purchasers after that time on such due date shall be deemed to have been paid by Company on the next Business Day.

(b) All payments in respect of the principal amount of any Note shall be accompanied by payment of accrued interest on the principal amount being repaid or prepaid, and all such payments (and, in any event, any payment received in respect of any Note on a date when interest or premium is due and payable with respect to such Note) shall be applied to the payment of interest and premium then due and payable before application to principal.

(c) [Reserved].

(d) [Reserved].

(e) Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next Business Day and such extension of time shall be included in the computation of the payment of interest hereunder.

(f) [Reserved].

(g) Purchasers shall deem any payment by or on behalf of Company hereunder that is not made in same day funds prior to 12:00 p.m. (New York City time) to be a non-conforming payment. Any such payment shall not be deemed to have been received by Purchasers until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. Any non-conforming payment may constitute or become a Default or Event of Default in accordance with the terms of Section 8.1(a). Interest shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment to the next Business Day) at the Default Rate from the date such amount was due and payable until the date such amount is Paid in Full.

(h) If an Event of Default shall have occurred and not otherwise been waived, and the Obligations have become due and payable in full hereunder, whether by acceleration, maturity or otherwise, all payments or proceeds received by Collateral Agent hereunder or under any Collateral Document in respect of any of the Obligations, including all proceeds received by Collateral Agent in respect of any sale, any collection from, or other realization upon all or any part of the Collateral, shall be applied in full or in part as follows: first, to the payment of all costs and expenses of such sale, collection or other realization, including reasonable compensation to Collateral Agent and its agents and counsel, and all other expenses, liabilities and advances made or incurred by Collateral Agent in connection therewith, and all amounts for which Collateral Agent is entitled to indemnification hereunder or under any Collateral Document (in its capacity as Collateral Agent and not as a Purchaser) and all advances made by Collateral Agent under any Collateral Document for the account of the applicable Grantor, and to the payment of all costs and expenses paid or incurred by Collateral Agent in connection with the exercise of any right or remedy hereunder or under any Collateral Document, all in accordance with the terms hereof or thereof; second, to the extent of any excess of such proceeds, to the payment of all other Obligations for the ratable benefit of the Purchasers; and third, to the extent of any excess of such proceeds, to the payment to or upon the order of such Grantor or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

2.16 **Ratable Sharing.** Purchasers hereby agree among themselves that, if any of them shall, whether by voluntary payment (other than a voluntary prepayment of Notes made and applied in accordance with the terms hereof), through the exercise of any right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Note Documents or otherwise, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code, receive payment or reduction of a proportion of the aggregate amount of principal, interest, fees and other amounts then due and owing to such Purchaser hereunder or under the other Note Documents (collectively, the **"Aggregate Amounts Due"** to such Purchaser) that is greater than the proportion received by any other Purchaser in respect of the Aggregate Amounts Due to such other Purchaser, then the Purchaser receiving such proportionately greater payment shall (a) notify each other Purchaser of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Purchasers so that all such recoveries of Aggregate Amounts Due shall be shared by all

Purchasers in proportion to the Aggregate Amounts Due to them; provided, if all or part of such proportionately greater payment received by such purchasing Purchaser is thereafter recovered from such Purchaser upon the bankruptcy or reorganization of Company or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Purchaser ratably to the extent of such recovery, but without interest. Company expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may exercise any and all rights of banker's lien, consolidation, set-off or counterclaim with respect to any and all monies owing by Company to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder. The provisions of this Section 2.16 shall not be construed to apply to (a) any payment made by any Note Party pursuant to and in accordance with the express terms of any Note Document or (b) any payment obtained by any Purchaser as consideration for the transfer in any of its Notes or other Obligations owed to it.

2.17 **Making or Maintaining SOFR Rate Notes.**

(a) Changed Circumstances/Temporary Adjusted Term SOFR Unavailability. Subject to clause (b) below, if, on or prior to the first day of any Interest Period for any SOFR Rate Note:

(i) Collateral Agent determines (which determination shall be conclusive and binding absent manifest error) that "Adjusted Term SOFR" cannot be determined pursuant to the definition thereof, or

(ii) the Requisite Purchasers determine that for any reason in connection with any request for a SOFR Rate Note or a conversion thereto or a continuation thereof that Adjusted Term SOFR for any requested Interest Period with respect to a proposed SOFR Rate Note does not adequately and fairly reflect the cost to such Purchasers of making and maintaining such Note, and the Requisite Purchasers have provided notice of such determination to Collateral Agent,

Collateral Agent will promptly so notify Company and each Purchaser.

Upon notice thereof by Collateral Agent to Company, any obligation of the Purchasers to make SOFR Rate Notes, and any right of Company to continue SOFR Rate Notes or to convert Base Rate Notes to SOFR Rate Notes, shall be suspended (to the extent of the affected SOFR Rate Notes or affected Interest Periods) until Collateral Agent (with respect to clause (ii), at the instruction of the Requisite Purchasers) revokes such notice. Upon receipt of such notice, (i) Company may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Rate Notes (to the extent of the affected SOFR Rate Notes or affected Interest Periods) or, failing that, Company will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Notes in the amount specified therein pursuant to Section 2.8 and (ii) any outstanding affected SOFR Rate Notes will be deemed to have been converted into Base Rate Notes at the end of the applicable Interest Period pursuant to Section 2.8. Upon any such conversion, the Note Parties shall also pay accrued interest on the amount so converted, together with any additional amounts required pursuant to this Section 2.17. Subject to clause (b), if Collateral Agent determines (which determination shall be conclusive and binding absent manifest error) that "Adjusted Term SOFR" cannot be determined pursuant to the definition thereof on any

given day, the interest rate on Base Rate Notes shall be determined by Collateral Agent without reference to clause (iii) of the definition of "Base Rate" until Collateral Agent revokes such determination.

(b) Benchmark Replacement

(i) Notwithstanding anything to the contrary herein or in any other Note Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (a) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Note Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Note Document and (y) if a Benchmark Replacement is determined in accordance with clause (b) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Note Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Purchasers without any amendment to, or further action or consent of any other party to, this Agreement or any other Note Document so long as the Collateral Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Purchasers comprising the Requisite Purchasers. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis.

(ii) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Collateral Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Note Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Note Document.

(iii) Notices; Standards for Decisions and Determinations. Collateral Agent will promptly notify Company and the Purchasers of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. Collateral Agent will promptly notify Company and the Purchasers of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to this Section 2.17 and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by Collateral Agent or, if applicable, any Purchaser pursuant to this Section 2.17, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and

without consent from any other party to this Agreement or any other Note Document, except, in each case, as expressly required pursuant to this Section 2.17.

(iv) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Note Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Collateral Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Collateral Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable, non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Collateral Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) Benchmark Unavailability Period. Upon Company's receipt of notice of the commencement of a Benchmark Unavailability Period, Company may revoke any pending request for a SOFR Rate Note or, conversion to or continuation of SOFR Rate Notes to be made, converted or continued during any Benchmark Unavailability Period and, failing that, Company will be deemed to have converted any such request into a request for a Base Rate Note or a conversion to a Base Rate Note. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Base Rate.

(c) Illegality or Impracticability of SOFR Rate Notes. In the event that on any date any Purchaser shall have determined (which determination shall be final and conclusive and binding upon all parties hereto but shall be made only after consultation with Collateral Agent) that the issuing, maintaining, converting to or continuation of its SOFR Rate Notes (i) has become unlawful as a result of compliance by such Purchaser in good faith with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any such treaty, governmental rule, regulation, guideline or order not having the force of law even though the failure to comply therewith would not be unlawful), or (ii) has become impracticable, as a result of contingencies occurring after the date hereof that materially and adversely affect the ability of such Purchaser to issue, maintain, convert to or continue its SOFR Rate Notes, then, and in any such event, such Purchaser shall be an **"Affected Purchaser"** and such Affected Purchaser shall on that day give written or telephonic (promptly confirmed in writing) notice to Company and Collateral Agent of such determination (which notice Collateral Agent shall promptly transmit to each other Purchaser). Thereafter (1) the obligation of the Affected Purchaser to make Notes as

or convert Notes to SOFR Rate Notes shall be suspended until such notice shall be withdrawn by the Affected Purchaser, (2) to the extent such determination by the Affected Purchaser relates to a SOFR Rate Note then being requested by Company pursuant to a Funding Notice or a Conversion/Continuation Notice, the Affected Purchaser shall make such Note as (or continue or maintain such Note as or convert such Note to, as the case may be) a Base Rate Note, (3) the Affected Purchaser's obligation to maintain its outstanding SOFR Rate Notes (the **"Affected Notes"**) shall be terminated at the earlier to occur of the expiration of the Interest Period then in effect with respect to the Affected Notes or when required by law, and (4) the Affected Notes shall automatically convert into Base Rate Notes on the date of such termination. Notwithstanding the foregoing, to the extent a determination by an Affected Purchaser as described above relates to a SOFR Rate Note then being requested by Company pursuant to a Funding Notice or Conversion/Continuation Notice, Company shall have the option, subject to the provisions of Section 2.17(c), to rescind such Funding Notice or Conversion/Continuation Notice as to all Purchasers by giving written or telephonic (promptly confirmed in writing) notice to Collateral Agent of such rescission on the date on which the Affected Purchaser gives notice of its determination as described above (which notice of rescission Collateral Agent shall promptly transmit to each other Purchaser). Except as provided in the immediately preceding sentence, nothing in this Section 2.17(c) shall affect the obligation of any Purchaser other than an Affected Purchaser to issue or maintain the Notes as SOFR Rate Notes in accordance with the terms hereof. For the avoidance of doubt, the interest rate on which Base Rate Notes shall, if necessary to avoid such illegality, be determined by Collateral Agent without reference to clause (iii) of the definition of "Base Rate", in each case, until such Affected Purchaser notifies Collateral Agent and Company that the circumstances giving rise to such determination no longer exist.

(d) Compensation for Breakage or Non-Commencement of Interest Periods. Company shall compensate each Purchaser, upon written request by such Purchaser (which request shall set forth the basis for requesting such amounts), for all reasonable losses, expenses and liabilities (including any interest paid or calculated to be due and payable by such Purchaser to lenders of funds borrowed by it to make or carry its SOFR Rate Notes and any loss, expense or liability sustained by such Purchaser in connection with the liquidation or re-employment of such funds but excluding loss of anticipated profits) which such Purchaser may sustain: (i) if for any reason (other than a default by such Purchaser) a borrowing of any SOFR Rate Note does not occur on a date specified therefor in a Funding Notice or a telephonic request for borrowing or a conversion to or continuation of any SOFR Rate Note does not occur on a date specified therefor in a Conversion/Continuation Notice or a telephonic request for conversion or continuation; (ii) if any prepayment or other principal payment of, or any conversion of, any of its SOFR Rate Note occurs on any day other than the last day of an Interest Period applicable to that Note (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise); or (iii) if any prepayment of any of its SOFR Rate Note is not made on any date specified in a notice of prepayment given by Company.

(e) Booking of SOFR Rate Notes. Any Purchaser may make, carry or transfer SOFR Rate Notes at, to or for the account of any of its branch offices or the office of an Affiliate of such Purchaser.

2.18 **Increased Costs; Capital Adequacy**.

(a) Compensation For Increased Costs and Taxes. Subject to and without duplication of the provisions of Section 2.19 (which shall be controlling with respect to the matters covered thereby), in the event that any Purchaser shall determine (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that any Change in Law: (i) subjects such Purchaser (or its applicable investment office) or any company controlling such Purchaser to any additional Tax (other than any Tax on the overall net income of such Person or any other Tax for which additional amounts are specifically not payable under Section 2.19 below) with respect to this Agreement or any of the other Note Documents or any of its obligations hereunder or thereunder, any payments to such Purchaser (or its applicable investment office) of principal, interest, fees or any other amount payable hereunder, or its deposits, reserves, other liabilities or capital attributable thereto; (ii) imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, liquidity, compulsory loan, FDIC insurance or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Purchaser or any company controlling such Purchaser; or (iii) imposes any other condition (other than with respect to a Tax matter) on or affecting such Purchaser (or its applicable investment office) or any company controlling such Purchaser or such Purchaser's obligations hereunder or the ability of such Purchaser to make or maintain its SOFR Rate Notes; and the result of any of the foregoing is to increase the cost to such Purchaser of agreeing to purchasing, holding or maintaining Notes hereunder or to reduce any amount received or receivable by such Purchaser (or its applicable investment office) with respect thereto; then, in any such case, Company shall promptly pay to such Purchaser, upon receipt of the statement referred to in the next sentence, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Person in its sole discretion shall determine) as may be necessary to compensate such Person for any such increased cost or reduction in amounts received or receivable hereunder. Such Purchaser shall deliver to Company a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Person under this Section 2.18(a), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(b) Capital Adequacy and Liquidity Adjustment. In the event that any Purchaser shall have determined (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that (A) any Change in Law regarding capital adequacy or liquidity, or (B) compliance by any Purchaser (or its applicable investment office) or any company controlling such Purchaser with any Change in Law regarding capital adequacy or liquidity, has or would have the effect of reducing the rate of return on the capital of such Purchaser or any company controlling such Purchaser as a consequence of, or with reference to, such Purchaser's Notes or other obligations hereunder with respect to the Notes to a level below that which such Purchaser or such controlling company could have achieved but for such Change in Law (taking into consideration the policies of such Purchaser or such controlling company with regard to capital adequacy and liquidity), then from time to time, within five Business Days after receipt by Company from such Purchaser of the statement referred to in the next sentence, Company shall pay to such Purchaser such additional amount or amounts as will compensate such Purchaser or such controlling company on an after-tax basis for such reduction. Such Purchaser

shall deliver to Company a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Purchaser under this Section 2.18(b), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(c) Delay in Requests. Failure or delay on the part of any Purchaser to demand compensation pursuant to this Section 2.18 shall not constitute a waiver of such Purchaser's right to demand such compensation; provided, that Company shall not be required to compensate a Purchaser pursuant to this Section 2.18 for any increased costs incurred or reductions suffered more than nine months prior to the date that such Purchaser notifies Company of the Change in Law giving rise to such increased costs or reductions, and of such Purchaser's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

2.19 **Taxes; Withholding, Etc.**

(a) Payments to Be Free and Clear. All sums payable by or on behalf of any Note Party hereunder and under the other Note Documents shall (except to the extent required by law) be paid free and clear of, and without any deduction or withholding on account of, any Tax (other than a Tax on the overall net income of any Purchaser).

(b) Withholding of Taxes. If any Note Party or any other Person (acting as a withholding agent) is (in such withholding agent's reasonable good faith discretion) required by law to make any deduction or withholding on account of any Tax from any sum paid or payable by any Note Party to any Purchaser under any of the Note Documents: (i) Company shall notify Purchasers of any such requirement or any change in any such requirement as soon as Company becomes aware of it; (ii) Company or any other Person (acting as a withholding agent) shall pay or cause to be paid any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on any Note Party) for its own account or (if that liability is imposed on such Purchaser, as the case may be) on behalf of and in the name of such Purchaser; (iii) unless otherwise provided in this Section 2.19 (other than a Tax on the "overall net income" of any Purchaser) the sum payable by such Note Party in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment (including any such withholding Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.19), such Purchaser, as the case may be, receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment been required or made; and (iv) within thirty days after the due date of payment of any such Tax that it is required by clause (ii) above to pay, Company shall deliver to such Purchaser evidence satisfactory to the other affected parties of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority; provided, with respect to any U.S. federal withholding tax (including any withholding tax imposed under FATCA), no such additional amount shall be required to be paid to any Purchaser under clause (iii) above except to the extent that any change after the date hereof (in the case of each Purchaser listed on the signature pages hereof on the Closing Date) or after the effective date of the Transfer Agreement pursuant to which such Purchaser became a Purchaser (in the case of each other Purchaser) in any such requirement for a deduction, withholding or payment as is mentioned therein shall result in an increase in the rate of such

deduction, withholding or payment from that in effect at the date hereof or at the date of such Transfer Agreement, as the case may be, in respect of payments to such Purchaser; provided that additional amounts shall be payable to a Purchaser to the extent that such Purchaser's transferor was entitled to receive such additional amounts.

(c) Evidence of Exemption From U.S. Withholding Tax. Each Purchaser that is not a "United States person" (as such term is defined in Section 7701(a)(30) of the Code) for U.S. federal income tax purposes (a **"Non-U.S. Purchaser"**) shall, to the extent such Purchaser is legally entitled to do so, deliver to Company, on or prior to the Closing Date (in the case of each Purchaser listed on the signature pages hereof on the Closing Date) or on or prior to the date of the Transfer Agreement pursuant to which it becomes a Purchaser (in the case of each other Purchaser), and at such other times as may be necessary in the determination of Company (in the reasonable exercise of its discretion), (i) two copies of Internal Revenue Service Form W-8BEN, W-8BEN-E, W-8ECI, W-8EXP and/or W-8IMY (or, in each case, any successor forms), properly completed and duly executed by such Purchaser, and such other documentation required under the Code and reasonably requested by Company to establish that such Purchaser is not subject to (or is subject to a reduced rate of) deduction or withholding of U.S. federal income tax with respect to any payments to such Purchaser of principal, interest, fees or other amounts payable under any of the Note Documents, or (ii) if such Purchaser is not a "bank" or other Person described in Section 881(c)(3) of the Code, a U.S. Tax Compliance Certificate together with two copies of Internal Revenue Service Form W-8BEN, W-8BEN-E or W-8IMY (or, in each case, any successor form), properly completed and duly executed by such Purchaser, and such other documentation required under the Code and reasonably requested by Company to establish that such Purchaser is not subject to (or is subject to a reduced rate of) deduction or withholding of U.S. federal income tax with respect to any payments to such Purchaser of interest payable under any of the Note Documents. Each Purchaser that is a "United States person" (as such term is defined in Section 7701(a)(30) of the Code) for U.S. federal income tax purposes (a **"U.S. Purchaser"**) shall deliver to Company on or prior to the Closing Date (or, if later, on or prior to the date on which such Purchaser becomes a party to this Agreement) two copies of Internal Revenue Service Form W-9 (or any successor form), properly completed and duly executed by such Purchaser, certifying that such U.S. Purchaser is entitled to an exemption from U.S. backup withholding tax, or otherwise prove that it is entitled to such an exemption. Each Purchaser required to deliver any forms, certificates or other evidence with respect to U.S. federal income tax withholding matters pursuant to this Section 2.19(c) hereby agrees, from time to time after the initial delivery by such Purchaser of such forms, certificates or other evidence, whenever a lapse in time or change in circumstances renders such forms, certificates or other evidence obsolete or inaccurate in any material respect, that such Purchaser shall promptly deliver to Company two new copies of Internal Revenue Service Form W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, W-8IMY, and/or W-9 (or, in any case, any successor form), or a U.S. Tax Compliance Certificate and two copies of Internal Revenue Service Form W-8BEN, W-8BEN-E, or W-8IMY (or, in each case, any successor form), as the case may be, properly completed and duly executed by such Purchaser, and such other documentation required under the Code and reasonably requested by Company to confirm or establish that such Purchaser is not subject to deduction or withholding of U.S. federal income tax with respect to payments to such Purchaser under the Note Documents, or notify Company of its inability to deliver any such forms, certificates or other evidence. Notwithstanding anything to the contrary, Company shall not be required to pay any additional amount to any Purchaser under

Section 2.19(b) if such Purchaser shall have failed to deliver the forms, certificates or other evidence required by this Section 2.19(c).

(d) FATCA. Notwithstanding anything to the contrary therein, Company shall not be required to pay any additional amount pursuant to Section 2.19(b) with respect to any U.S. federal withholding tax imposed under FATCA. If a payment made to a Purchaser under any Note Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Purchaser were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Purchaser shall deliver to Company at the time or times prescribed by law and at such time or times reasonably requested by Company such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Company as may be necessary for Company to comply with their obligations under FATCA and to determine that such Purchaser has complied with such Purchaser's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of the preceding sentence of this clause (d), "FATCA" shall include any amendments made to FATCA after the date hereof.

(e) Payment of Other Taxes by Company. Without limiting the provisions of Section 2.19(b), Company shall timely pay to the relevant Governmental Authorities in accordance with applicable law or, at the option of such Purchaser timely reimburse it for the payment of, all Other Taxes.

(f) Indemnification by Note Parties. Note Parties shall jointly and severally indemnify any Purchaser for the full amount of Taxes for which additional amounts are required to be paid pursuant to Section 2.19(b) arising in connection with payments made under this Agreement or any other Note Document and Other Taxes (including any such Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.19) paid or payable by any Purchaser or any of their respective Affiliates and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Note Party shall be conclusive absent manifest error. Such payment shall be due within ten days of such Note Party's receipt of such certificate.

(g) [Reserved].

(h) Evidence of Payments. As soon as practicable after any payment of Taxes by any Note Party to a Governmental Authority pursuant to this Section 2.19, such Note Party shall deliver to Purchasers the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to such Purchaser.

(i) Survival. Each party's obligations under this Section 2.19 shall survive any assignment of rights by, or the replacement of, a Purchaser, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Note Document.

2.20 **Obligation to Mitigate**. Each Purchaser agrees that, if such Purchaser requests payment under Section 2.18 or 2.19, then such Purchaser will , to the extent not inconsistent with any applicable legal or regulatory restrictions, use reasonable efforts to hold or maintain its Notes, through another office of such Purchaser if, as a result thereof, the additional amounts payable to such Purchaser pursuant to Section 2.18 or 2.19, as the case may be, in the future would be eliminated or reduced and if, as determined by such Purchaser in its sole discretion, the purchasing, holding or maintaining of such Notes through such other office or in accordance with such other measures, as the case may be, would not otherwise materially adversely affect such Notes or the interests of such Purchaser; provided, such Purchaser will not be obligated to utilize such other office pursuant to this Section 2.20 unless Company agrees to pay all incremental expenses incurred by such Purchaser as a result of utilizing such other office as described above. A certificate as to the amount of any such expenses payable by Company pursuant to this Section 2.20 (setting forth in reasonable detail the basis for requesting such amount) submitted by such Purchaser to shall be conclusive absent manifest error.

2.21 **[Reserved].**

2.22 **[Reserved].**

2.23 **Representations and Warranties by the Purchasers**. Each Purchaser hereby represents and warrants to Company as follows:

(a) Organization and Qualification. Such Purchaser is a corporation, limited partnership or limited liability company, in either case duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. Such Purchaser has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder and to consummate the transactions contemplated hereby, and all action required on the part of such Purchaser for such execution, delivery and performance has been duly and validly taken. Assuming due execution and delivery by the Note Parties, this Agreement constitutes the legal, valid and binding obligation of such Purchaser enforceable against such Purchaser in accordance with its terms, except as enforceability thereof may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting creditors' rights generally and by general equitable principles.

(b) Investor Status. It (i) is an "accredited investor", as that term is defined in Regulation D under the Securities Act, (ii) has such knowledge, skill, sophistication and experience in business and financial matters, based on actual participation, that it is capable of evaluating the merits and risks of the purchase of the Notes from Company and the suitability thereof for such Purchaser, (iii) is a sophisticated purchaser with respect to the purchase of the Notes, (iv) is able to bear the economic risk associated with the purchase of the Notes, (v) has had an opportunity to ask questions of the principal officers and representatives of Company and to obtain any additional information necessary to permit an evaluation of the benefits and risks associated with the investment made hereby, (vi) has been provided adequate information concerning the business and financial condition of Company to make an informed decision regarding the purchase of the Notes, (vii) has such knowledge and experience, and has made investments of a similar nature, so as to be aware of the risks and uncertainties inherent in the purchase of rights and assumption of liabilities of the type contemplated in this Agreement, (viii) has independently and without reliance upon Company, and based on such information as such

Purchaser has deemed appropriate, made its own analysis and decision to enter into this Agreement, except that such Purchaser has relied upon Company's express representations and warranties in this Agreement and other Note Documents, and (ix) is not an "affiliate" (as that term is defined in Rule 405 promulgated under the Securities Act) of Company or any of the Guarantors.

(c) Investment for Own Account. Such Purchaser is purchasing the Notes for investment for its own account, not as a nominee or agent, and not with a view towards the sale or distribution or public offering of any part thereof in violation of applicable securities laws of the United States or any state thereof. Such Purchaser acknowledges there are restrictions on its ability to resell the Notes under applicable securities laws.

(d) Transfer Restrictions. Such Purchaser understands that the offering and sale of the Notes by Company will not be registered under the Securities Act or any state securities laws, by reason of their issuance in a transaction exempt from the registration requirements of the Securities Act and such laws and that the Notes may only be resold if they are subsequently registered under the Securities Act and such laws or a disposition or transfer thereof is exempt from registration; and there is no existing public or other market for the Notes. Such Purchaser understands that any certificate representing the Notes that are issued to such Purchaser may bear, in Company's discretion, the following restrictive legend and will be restricted from transfer in accordance with such legend:

"The sale of this Senior Secured Note has not been and will not be registered under the United States Securities Act 1933 (the "Securities Act") or with any securities regulatory authority of any state or other jurisdiction of the United States. The holder hereof, by purchasing or otherwise acquiring this security, acknowledges that the sale of this security has not been registered under the Securities Act. The holder agrees for the benefit of Company, any distributors or dealers and any such persons' affiliates that this security may be offered, resold, pledged or otherwise transferred only in compliance with the Securities Act and any applicable state securities laws and only (1) pursuant to Rule 144 under the Securities Act or (2) pursuant to another exemption from registration under the Securities Act, and in each case in accordance with any applicable securities laws of the states of the United States and other jurisdictions."

2.24 **Incremental New Money Purchase Commitments.**

(a) Company may, from time to time request that the aggregate amount of the New Money Purchase Commitments be increased by having an existing Purchaser agree in its sole discretion to increase its then existing New Money Purchase Commitment (an " **Incremental New Money Purchaser**") (each such proposed increase being an "**Incremental New Money Purchase Commitment**"), in each case, by notice to the Collateral Agent specifying the amount of the relevant Incremental New Money Purchase Commitment, the Incremental New Money Purchaser(s) providing such Incremental New Money Purchase Commitment and the date on which such Incremental New Money Purchase Commitment is to be effective (the " **Incremental New Money Effective Date**"), which shall be a Business Day at least three (3) Business Days after delivery of such notice; provided, however, that:

(i) the minimum amount of each Incremental New Money Purchase Commitment shall be $5,000,000;

(ii) the aggregate amount of all Incremental New Money Purchase Commitments hereunder shall not be greater than $10,000,000;

(iii) both at the time of any such request and upon the effectiveness of any Incremental New Money Purchase Commitment, no Default or Event of Default shall have occurred and be continuing or would result from such proposed Incremental New Money Purchase Commitment;

(iv) the representations and warranties set forth in Section 4 and in the other Note Documents shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) immediately prior to, and after giving effect to, such Incremental New Money Purchase Commitment as if made on and as of such date (or, if any such representation or warranty is expressly stated to have been made as of a specific date, as of such specific date); and

(v) any Incremental New Money Purchase Commitment shall be on terms that are identical to the existing New Money Purchase Commitments, or otherwise as acceptable to the Incremental New Money Purchasers.

Each notice by the Company under this paragraph shall be deemed to constitute a representation and warranty by the Company as to the matters specified in clauses (iii) and (iv) above. Notwithstanding anything herein to the contrary, no Purchaser shall have any obligation hereunder to become an Incremental New Money Purchase Commitment and any election to do so shall be in the sole discretion of each Purchaser.

(b) Each Incremental New Money Purchase Commitment (and the increase of the Commitment of each Incremental New Money Purchaser) shall become effective as of the relevant Incremental New Money Effective Date upon receipt by the Collateral Agent, on or prior to 12:00 noon, New York City time, on such Incremental New Money Effective Date, of (i) a certificate of a Chief Financial Officer of Company stating that the conditions with respect to such Incremental New Money Purchase Commitment under this Section 2.24 have been satisfied and (ii) an agreement (an " **Incremental New Money Purchase Commitment Supplement**"), in form and substance reasonably satisfactory to Company, each Incremental New Money Purchaser and the Collateral Agent, pursuant to which, effective as of such Incremental New Money Effective Date, as applicable, the Commitment of each such Incremental New Money Purchaser shall be increased, in each case duly executed by such Incremental New Money Purchaser and Company and acknowledged by the Collateral Agent. Upon the Collateral Agent's receipt of a fully executed Incremental New Money Purchase Commitment Supplement from each Incremental New Money Purchaser referred to in clause (ii) above, together with the certificate referred to in clause (i) above, the Collateral Agent shall record the information contained in each such agreement in the Register and give prompt notice of the relevant Incremental New Money Purchase Commitment to Company and the Purchasers. At the election of the Collateral Agent in its sole discretion, any Notes outstanding on such Incremental New Money Effective Date shall be reallocated among the Purchasers (with Purchasers making any required payments to each other) to the extent necessary to keep the outstanding Notes ratable with any revised pro rata shares of such Purchasers arising from any nonratable increase in the New Money Purchase Commitments under this Section 2.24.

SECTION 3 CONDITIONS PRECEDENT

3.1 **Closing Date**. The obligation of each Purchaser to enter into this Agreement and to purchase the Initial Notes on the Closing Date is subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions on or before the Closing Date (in each case, except to the extent required to be satisfied as a condition subsequent in accordance with Section 5.15):

(a) Note Documents. The Collateral Agent and the Purchasers shall have received sufficient copies of this Agreement, its Note in the form of Exhibit J-1 and Exhibit J-2, as applicable, the Pledge and Security Agreement and each other Note Document to be dated as of the Closing Date, in each case as Purchasers shall request, in form and substance satisfactory to Purchasers, and executed and delivered by each applicable Note Party and each other Person party thereto.

(b) Organizational Documents; Incumbency. The Collateral Agent and Purchasers shall have received in respect of each Note Party (i) copies of each Organizational Document as Purchasers shall request, in each case certified by an Authorized Officer of such Note Party and, to the extent applicable, certified as of the Closing Date or a recent date prior thereto by the appropriate Governmental Authority; (ii) signature and incumbency certificates of the officers of such Note Party executing any Note Documents to which it is a party; (iii) resolutions of the Board of Directors of each Note Party approving and authorizing the execution, delivery and performance of this Agreement and the other Note Documents, in each case, to which it is a party or by which it or its assets may be bound as of the Closing Date, certified as of the Closing Date by an appropriate Authorized Officer as being in full force and effect without modification or amendment; (iv) a good standing certificate from the applicable Governmental Authority of such Note Party's jurisdiction of incorporation, organization or formation and in each jurisdiction in which it is qualified as a foreign corporation or other entity to do business to the extent the failure to be so qualified could reasonably be expected to result in a Material Adverse Effect, each dated a recent date prior to the Closing Date; and (v) such other documents as Purchasers may reasonably request.

(c) Organizational and Capital Structure. The organizational structure and capital structure of Holdings, Company and its Subsidiaries, shall be as set forth on Schedule 4.1.

(d) [Reserved].

(e) Confirmation Order. (i) The Confirmation Order shall have been entered by the Bankruptcy Court, shall be in full force and effect and shall not have been vacated, stayed, modified or amended in any respect without the prior written consent of Requisite Purchasers, and (ii) the Note Parties shall be in compliance with the terms of the Confirmation Order in all respects.

(f) Plan in Effect. The Effective Date (as such term is defined in the Plan) shall have occurred prior to, or substantially concurrently with, the Closing Date and the purchase of the Initial Notes hereunder.

(g) Existing Indebtedness. The Debtors shall have , or substantially concurrently with the Closing Date and the purchase of the Initial Notes hereunder, (i) terminated

any commitments to lend or make other extensions of credit under the DIP Agreement and (ii) delivered to Purchasers all documents or instruments necessary to release all Liens securing DIP Obligations or other obligations of the Debtors thereunder being repaid on the Closing Date.

(h) [Reserved].

(i) Governmental Authorizations and Consents. Each Note Party shall have obtained all Governmental Authorizations and all consents of other Persons, in each case that are necessary or advisable in connection with the transactions contemplated by the Note Documents to occur on or prior to the Closing Date (including the entering into of the Note Documents to be delivered on the Closing Date) and each of the foregoing shall be in full force and effect and in form and substance reasonably satisfactory to Purchasers. All applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain, prevent or otherwise impose adverse conditions on the transactions contemplated by the Note Documents to occur on or prior to the Closing Date or the financing thereof and no action, request for stay, petition for review or rehearing, reconsideration, or appeal with respect to any of the foregoing shall be pending, and the time for any applicable agency to take action to set aside its consent on its own motion shall have expired.

(j) [Reserved].

(k) Personal Property Collateral. In order to create in favor of Collateral Agent, for the benefit of Secured Parties, a valid, perfected First Priority security interest in the personal property Collateral, each Note Party shall have delivered to Collateral Agent:

(i) evidence satisfactory to Collateral Agent of the compliance by each Note Party of their obligations under the Pledge and Security Agreement and the other Collateral Documents (including their obligations to authorize or execute, as the case may be, and deliver UCC financing statements, originals of securities, instruments and chattel paper and any agreements governing deposit and/or securities accounts, in each case, to the extent provided therein);

(ii) a completed Collateral Questionnaire dated as of the Closing Date, together with all attachments contemplated thereby;

(iii) fully executed intellectual property security agreements, in proper form for filing or recording in all appropriate places in all applicable jurisdictions; and

(iv) evidence that each Note Party shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument (including an Intercompany Note) and made or caused to be made any other filing and recording (other than as set forth herein) reasonably required by Collateral Agent.

(l) [Reserved].

(m) Financial Statements; Projections. Purchasers shall have received from Company (i) pro forma consolidated balance sheets of Holdings, Company and its Subsidiaries as

at the Closing Date, and reflecting the consummation of the transactions contemplated by the Note Documents to occur on or prior to the Closing Date, which pro forma financial statements shall be in form and substance satisfactory to Purchasers, (ii) pro forma consolidated income statements of Holdings, Company and its Subsidiaries as at the Closing Date, and reflecting the consummation of the transactions contemplated by the Note Documents to occur on or prior to the Closing Date, and (iii) the Projections.

(n) Evidence of Insurance. Collateral Agent shall have received a certificate from each applicable Note Party's insurance broker or other evidence satisfactory to it that all insurance required to be maintained pursuant to Section 5.5 is in full force and effect, for the benefit of Secured Parties, as additional insured and loss payee thereunder to the extent required under Section 5.5.

(o) Opinions of Counsel to Note Parties. Collateral Agent, Purchasers and their respective counsel shall have received executed copies of a customary favorable written opinion of Katten Muchin Rosenman LLP, as counsel for the Note Parties, dated as of the Closing Date and in form and substance reasonably satisfactory to Purchasers (and each Note Party hereby instructs such counsel to deliver such opinion to Collateral Agent and Purchasers).

(p) Fees. Company shall have paid to Collateral Agent and all expenses payable pursuant to Section 10.2 or otherwise required to be paid or reimbursed to the Collateral Agent and Purchasers, including all reasonable and documented out-of-pocket fees or legal counsel, financial advisors and other professionals to the Collateral Agent and Purchasers that have accrued to the Closing Date (to the extent invoiced prior to the Closing Date).

(q) Solvency Certificate. On the Closing Date, Purchasers shall have received a Solvency Certificate from Company dated as of the Closing Date and addressed to Purchasers.

(r) Closing Date Certificate. Company shall have delivered to Purchasers an originally executed Closing Date Certificate, together with all attachments thereto.

(s) No Litigation. There shall not exist any action, suit, investigation, litigation or proceeding, hearing, or other legal or regulatory developments, pending or threatened in any court or before any arbitrator or Governmental Authority that, in the reasonable opinion of Purchasers, singly or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(t) Due Diligence. Each Purchaser shall have completed, to its satisfaction, all legal, tax, environmental, business and other due diligence with respect to the business, assets, liabilities, operations and condition (financial or otherwise) of the Note Parties in scope and determination satisfactory to Purchasers in their respective discretion (including satisfactory review of all Material Contracts), and, other than changes occurring in the ordinary course of business, no information or materials are or should have been available to the Note Parties as of the Closing Date that are materially inconsistent with the material previously provided to Purchasers for their respective due diligence review of the Note Parties.

(u) Minimum Liquidity. Company shall demonstrate in form and substance reasonably satisfactory to Purchasers that on the Closing Date and immediately after giving effect

to the issuance and sale of the Notes on the Closing Date, including the payment of all Transaction Costs required to be paid in Cash on the Closing Date, Holdings and its Subsidiaries shall have at least $2,000,000 of Cash.

(v) [Reserved].

(w) Completion of Transactions. All restructuring transactions taken or to be taken in connection with the Plan and all documents incidental thereto shall be satisfactory in form and substance to Purchasers and such counsel, and Purchasers and such counsel shall have received all such counterpart originals or certified copies of such documents as Purchasers may reasonably request.

(x) Cash Management Structure. The cash management structure of the Note Parties shall be satisfactory to Purchasers and, to the extent requested by Purchasers, shall include controlled account and sweep arrangements satisfactory to Collateral Agent in its sole discretion.

(y) Letter of Direction. Purchasers shall have received a duly executed letter of direction from Company addressed to Purchasers, on behalf of itself and Purchasers, directing the disbursement on the Closing Date of the proceeds of the Notes made on such date substantially in the form of Exhibit B hereto.

(z) KYC Documentation. (i) At least five (5) days prior to the Closing Date, the Purchasers shall have received all documentation and other information required by bank regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations, including the PATRIOT Act to the extent requested by the Purchasers at least ten days prior to the Closing Date.

(ii) At least five (5) days prior to the Closing Date, the Note Parties shall deliver a Beneficial Ownership Certification in relation to such Note Party.

Each Purchaser, by delivering its signature page to this Agreement and purchasing a Note on the Closing Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Note Document and each other document required to be approved by Collateral Agent or Purchasers, as applicable on the Closing Date.

3.2 **Conditions to Credit Date**.

(a) Conditions Precedent. The obligation of each Purchaser to purchase the Notes on the Closing Date and each New Money Additional Notes Closing Date, as applicable, and the effectiveness of any Incremental New Money Purchase Commitment pursuant to Section 2.24 on an Incremental New Money Effective Date are subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions precedent:

(i) Collateral Agent and Purchasers shall have received a fully executed and delivered Funding Notice;

(ii) As of such Credit Date, the representations and warranties contained herein and in the other Note Documents shall be true and correct in all material respects

on and as of that Credit Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date; provided that, in each case, such materiality qualifier shall not apply to any representations and warranties to the extent already qualified or modified by materiality or similar concept in the text thereof; and

(iii) As of such Credit Date, no event shall have occurred and be continuing or would result from the issuance and sale of the Notes that would constitute an Event of Default or a Default.

(b) Each request for the sale and purchase of a Note by Company hereunder shall constitute a representation and warranty by Company as of the applicable Credit Date that the conditions contained in Section 3.2(a) have been satisfied.

3.3 **Credit Date Deliverables**. The obligation of each Purchaser to purchase New Money Additional Notes on an Additional Notes Closing Date and the effectiveness of any Incremental New Money Purchase Commitment pursuant to Section 2.24 on an Incremental New Money Effective Date are subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions on or before such Credit Date:

(a) Notes. Purchasers shall have received sufficient copies of its Note in the form of Exhibit J-1and each other Note Document to be dated as of the Credit Date, in each case, as Purchasers shall request, in form and substance satisfactory to Purchasers, and executed and delivered by each applicable Note Party and each other Person party thereto.

(b) Organizational Documents; Incumbency. Solely with respect to the effectiveness of any Incremental New Money Purchase Commitment, Purchasers shall have received in respect of each Note Party (i) copies of each Organizational Document as Purchasers shall request, in each case certified by an Authorized Officer of such Note Party and, to the extent applicable, certified as of the Credit Date or a recent date prior thereto by the appropriate Governmental Authority; (ii) signature and incumbency certificates of the officers of such Note Party executing any Note Documents to which it is a party; (iii) resolutions of the Board of Directors of each Note Party approving and authorizing the execution, delivery and performance of this Agreement and the other Note Documents, in each case, to which it is a party or by which it or its assets may be bound as of the Credit Date, certified as of the Credit Date by an appropriate Authorized Officer as being in full force and effect without modification or amendment; and (iv) a good standing certificate from the applicable Governmental Authority of such Note Party's jurisdiction of incorporation, organization or formation and in each jurisdiction in which it is qualified as a foreign corporation or other entity to do business to the extent the failure to be so qualified could reasonably be expected to result in a Material Adverse Effect, each dated a recent date prior to the Credit Date.

(c) Organizational and Capital Structure. Solely with respect to the effectiveness of any Incremental New Money Purchase Commitment, the organizational structure and capital structure of Holdings, Company and its Subsidiaries, as set forth on Schedule 4.1 on the Closing Date remains true and correct in all respects.

(d) Evidence of Insurance. Solely with respect to the effectiveness of any Incremental New Money Purchase Commitment, Collateral Agent shall have received a certificate from each applicable Note Party's insurance broker or other evidence satisfactory to it that all insurance required to be maintained pursuant to Section 5.5 is in full force and effect, for the benefit of Secured Parties, as additional insured and loss payee thereunder to the extent required under Section 5.5.

(e) Opinions of Counsel to Note Parties. Solely with respect to the effectiveness of any Incremental New Money Purchase Commitment, Collateral Agent, Purchasers and their respective counsel shall have received an executed copy of a customary favorable written opinion of Katten Muchin Rosenman LLP, as counsel for the Note Parties, dated as of the Credit Date and in form and substance reasonably satisfactory to Purchasers (and each Note Party hereby instructs such counsel to deliver such opinion to Collateral Agent and Purchasers).

(f) Fees. Company shall have paid to Collateral Agent and Purchasers any fees payable on or before the Credit Date and all expenses payable pursuant to Section 10.2 that have accrued to the Credit Date (to the extent invoiced prior to the Credit Date).

(g) Closing Date Certificate. Company shall have delivered to Purchasers an executed Closing Date Certificate.

(h) Letter of Direction. Purchasers shall have received a duly executed letter of direction from Company addressed to Purchasers, on behalf of itself and Purchasers, directing the disbursement on such Credit Date of the proceeds of the Notes made on such date substantially in the form of Exhibit B hereto.

Each Purchaser, by purchasing a Note on a Credit Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Note Document and each other document required to be approved by, or item or other matter required to be satisfactory to, the Collateral Agent or Purchasers, as applicable, on such Credit Date.

3.4 **Conditions Subsequent to the Closing Date**. Company shall fulfill, on or before the date applicable thereto (which date can be extended in writing by Requisite Purchasers in their sole discretion), each of the conditions subsequent specified in Section 5.15.

SECTION 4 REPRESENTATIONS AND WARRANTIES

In order to induce Collateral Agent and Purchasers to enter into this Agreement and to purchase the Notes, each Note Party represents and warrants to Collateral Agent and Purchasers, on the Closing Date and on each Credit Date, that the following statements are true and correct:

4.1 **Organization; Requisite Power and Authority; Qualification**. Each of Holdings, Company and its Subsidiaries (a) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization as identified in Schedule 4.1, (b) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Note Documents to which it is a party and to carry out the transactions contemplated thereby, and (c) is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever

necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and could not be reasonably expected to have, a Material Adverse Effect.

4.2 **Capital Stock and Ownership.** The Capital Stock of each of Holdings, Company and its Subsidiaries has been duly authorized and validly issued and is fully paid and non-assessable. Except as set forth on Schedule 4.2, as of the date hereof, there is no existing option, warrant, call, right, commitment or other agreement to which Holdings, Company or any of its Subsidiaries is a party requiring, and there is no membership interest or other Capital Stock of Holdings, Company or any of its Subsidiaries outstanding that upon conversion or exchange would require, the issuance by Holdings, Company or any of its Subsidiaries of any additional Capital Stock of Holdings, Company or any of its Subsidiaries or other Securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, additional Capital Stock of Holdings, Company or any of its Subsidiaries. Schedule 4.2 correctly sets forth the ownership interest of Holdings, Company and each of its Subsidiaries in their respective Subsidiaries as of the Closing Date.

4.3 **Due Authorization.** The execution, delivery and performance of the Note Documents have been duly authorized by all necessary action on the part of each Note Party that is a party thereto.

4.4 **No Conflict.** The execution, delivery and performance by Note Parties of the Note Documents to which they are parties and the consummation of the transactions contemplated by the Note Documents do not and will not (a) violate any provision of any law or any governmental rule or regulation applicable to Holdings, Company or any of its Subsidiaries, any of the Organizational Documents of Holdings, Company or any of its Subsidiaries, or any order, judgment or decree of any court or other agency of government binding on Holdings, Company or any of its Subsidiaries; (b) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Material Contract or any other material Contractual Obligation of Holdings, Company or any of its Subsidiaries; (c) result in or require the creation or imposition of any Lien upon any of the properties or assets of Holdings, Company or any of its Subsidiaries (other than Permitted Liens); or (d) require any approval of stockholders, members or partners or any approval or consent of any Person under any Material Contract or any other material Contractual Obligation of Holdings, Company or any of its Subsidiaries, except for such approvals or consents that have been obtained on or before the Closing Date and have been disclosed in writing to Purchasers and except, in the case of Material Contracts or any other material Contractual Obligation, for any such consents and approvals the failure of which to obtain could not individually or in the aggregate reasonably be expected to have a Material Adverse Effect.

4.5 **Governmental Consents.** The execution, delivery and performance by Note Parties of the Note Documents to which they are parties and the consummation of the transactions contemplated by the Note Documents do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority, except for (a) such approvals or consents which have been obtained and are in full force and effect, (b) filings and recordings with respect to the Collateral to be made, or otherwise

delivered to Collateral Agent for filing and/or recordation, as of the Closing Date and (c) any required EDGAR filings.

4.6 **Binding Obligation.** Each Note Document required to be delivered hereunder has been duly executed and delivered by each Note Party that is a party thereto and is the legally valid and binding obligation of such Note Party, enforceable against such Note Party in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

Reserved.

4.8 **Projections.** On and as of the Closing Date, the projections of Holdings, Company and its Subsidiaries for the remainder of Fiscal Year 2023 and the period of Fiscal Year 2024 through and including Fiscal Year 2027, (the **"Projections"**) are based on good faith estimates and assumptions made by the management of Company; provided, the Projections are not to be viewed as facts and that actual results during the period or periods covered by the Projections may differ from such Projections and that the differences may be material.

4.9 **No Material Adverse Change.** Since the Closing Date, no event, circumstance or change has occurred that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect.

4.10 **[Reserved].**

4.11 **Adverse Proceedings, etc**. There are no Adverse Proceedings that could reasonably be expected to result in a Material Adverse Effect or liability (except to the extent covered by insurance as to which a solvent and unaffiliated insurance company has not denied coverage) of Holdings, Company, any of its Subsidiaries or any of their respective Affiliates in excess of $250,000, individually, or $500,000, in the aggregate for all such Adverse Proceedings, in each case during the term of this Agreement. Neither Holdings, Company nor any of its Subsidiaries (a) is in violation of any applicable laws (including Environmental Laws) that could reasonably be expected to result in a Material Adverse Effect, or (b) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that could reasonably be expected to result in a Material Adverse Effect or liability (except to the extent covered by insurance as to which a solvent and unaffiliated insurance company has not denied coverage) of Holdings, Company, any of its Subsidiaries or any of their respective Affiliates in excess of $250,000, individually, or $500,000, in the aggregate for all such defaults, in each case during the term of this Agreement.

4.12 **Payment of Taxes**. Except as otherwise permitted under Section 5.3, all income tax returns and other material tax returns and reports of Holdings, Company and its Subsidiaries required to be filed by any of them have been timely filed, and all Taxes due and payable and all assessments, fees and other governmental charges upon Holdings, Company and its Subsidiaries and upon their respective properties, assets, income, businesses and franchises that

are due and payable have been paid when due and payable (other than any Taxes the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of Holdings, Company and/or its applicable Subsidiary, as the case may be). There is no proposed tax assessment against Holdings, Company or any of its Subsidiaries that is not being actively contested by Company or such Subsidiary in good faith and by appropriate proceedings; provided, such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

4.13 **Properties**.

(a) Title. Each of Holdings, Company and its Subsidiaries has (i) good, sufficient and legal title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), (iii) valid licensed rights in (in the case of licensed interests in Intellectual Property), and (iv) good title to (in the case of all other personal property), all of their respective properties and assets and such title is reflected in the most recent financial statements delivered pursuant to Section 5.1, in each case except for assets disposed of since the date of such financial statements in the ordinary course of business or as otherwise permitted under Section 6.9. Except as permitted by this Agreement, all such properties and assets are free and clear of Liens.

(b) Real Estate. As of the Closing Date, Schedule 4.13 contains a true, accurate and complete list of (i) all Real Estate Assets and (ii) all leases, subleases or assignments of leases (together with all amendments, modifications, supplements, renewals or extensions of any thereof) affecting each Real Estate Asset of any Note Party, regardless of whether such Note Party is the landlord or tenant (whether directly or as an assignee or successor in interest) under such lease, sublease or assignment. Each agreement listed in clause (ii) of the immediately preceding sentence is in full force and effect and Company does not have knowledge of any default that has occurred and is continuing thereunder, and each such agreement constitutes the legally valid and binding obligation of each applicable Note Party, enforceable against such Note Party in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles.

4.14 **Environmental Matters.** None of Holdings, Company or any of its Subsidiaries nor any of their respective Facilities or operations are subject to any outstanding written order, consent decree or settlement agreement with any Person relating to any Environmental Law, any Environmental Claim, or any Hazardous Materials Activity that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. None of Holdings, Company or any of its Subsidiaries has received any letter or request for information under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9604) or any comparable state law. There are and, to each of Holdings', Company's and its Subsidiaries' knowledge, have been, no conditions, occurrences, or Hazardous Materials Activities that could reasonably be expected to form the basis of an Environmental Claim against Holdings, Company or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. None of Holdings, Company or any of its Subsidiaries nor, to any Note Party's knowledge, any

predecessor of Holdings, Company or any of its Subsidiaries has filed any notice under any Environmental Law indicating past or present treatment of Hazardous Materials at any Facility, and none of Holdings', Company's or any of its Subsidiaries' operations involves the generation, transportation, treatment, storage or disposal of hazardous waste, as defined under 40 C.F.R. Parts 260-270 or any state equivalent. Compliance with all current or reasonably foreseeable future requirements pursuant to or under Environmental Laws could not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect. No event or condition has occurred or is occurring with respect to Holdings, Company or any of its Subsidiaries relating to any Environmental Law, any Release of Hazardous Materials, or any Hazardous Materials Activity that individually or in the aggregate has had, or could reasonably be expected to have, a Material Adverse Effect.

4.15 **No Defaults.** None of Holdings, Company or any of its Subsidiaries is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and no condition exists that, with the giving of notice or the lapse of time or both, could constitute such a default, except , in each case, where the consequences, direct or indirect, of such default or defaults, if any, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

4.16 **Material Contracts.** Schedule 4.16 contains a true, correct and complete list of all the Material Contracts in effect on the Closing Date, and, together with any updates provided pursuant to Section 5.1(l), (a) all such Material Contracts are in full force and effect, (b) no defaults currently exist thereunder, and (c) each such Material Contract has not been amended, waived, or otherwise modified except as permitted under this Agreement. Upon Collateral Agent's request, the Note Parties shall deliver true, correct and complete copies of any Material Contract listed on Schedule 4.16 requested by Collateral Agent.

4.17 **Governmental Regulation.** None of Holdings, Company of any of its Subsidiaries is subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation that may limit its ability to incur Indebtedness or that may otherwise render all or any portion of the Obligations unenforceable. None of Holdings, Company or any of its Subsidiaries is a "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

4.18 **Federal Reserve Regulations; Exchange Act**.

(a) None of Holdings, Company or any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock.

(b) No portion of the proceeds of issuance and sale of Notes has or will be used in any manner, whether directly or indirectly, that causes or could reasonably be expected to cause, such issuance and sale of Notes or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors or any other regulation thereof or to violate the Exchange Act.

4.19 **Employee Matters.** None of Holdings, Company or any of its Subsidiaries is engaged in any unfair labor practice that could reasonably be expected to result in a Material Adverse Effect. There is (a) no unfair labor practice complaint pending against Holdings, Company or any of its Subsidiaries, or to the best knowledge of Company, threatened against any of them before the National Labor Relations Board and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is so pending against Holdings, Company or any of its Subsidiaries or to the best knowledge of Company, threatened against any of them, (b) no strike or work stoppage in existence or threatened involving Holdings, Company or any of its Subsidiaries, and (c) to the best knowledge of Company, no union representation question existing with respect to the employees of Holdings, Company or any of its Subsidiaries and, to the best knowledge of Company, no union organization activity that is taking place, except (with respect to any matter specified in clause (a), (b) or (c) above, either individually or in the aggregate) such as is not reasonably likely to have a Material Adverse Effect. No Note Party has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act (" WARN") or any similar federal or state law that remains unpaid or unsatisfied and could reasonably be expected to result in a Material Adverse Effect.

4.20 **Employee Benefit Plans.** Except as, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, Holdings, Company, each of its Subsidiaries and each of their respective ERISA Affiliates are in compliance with all applicable provisions and requirements of ERISA and the Code and the regulations and published interpretations thereunder with respect to each Employee Benefit Plan, and have performed all their obligations under each Employee Benefit Plan. Each Employee Benefit Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service indicating that such Employee Benefit Plan is so qualified and nothing has occurred subsequent to the issuance of such determination letter that would cause such Employee Benefit Plan to lose its qualified status. No liability to the PBGC (other than required premium payments), the Internal Revenue Service, any Employee Benefit Plan or any trust established under Title IV of ERISA has been or is expected to be incurred by Company, any of its Subsidiaries or any of their ERISA Affiliates. No ERISA Event has occurred or is reasonably expected to occur. Except to the extent required under Section 4980B of the Code or similar state laws, no Employee Benefit Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of Holdings, Company, any of its Subsidiaries or any of their respective ERISA Affiliates. The present value of the aggregate benefit liabilities under each Pension Plan sponsored, maintained or contributed to by Holdings, Company, any of its Subsidiaries or any of their ERISA Affiliates (determined as of the end of the most recent plan year on the basis of the actuarial assumptions specified for funding purposes in the most recent actuarial valuation for such Pension Plan), did not exceed the aggregate current value of the assets of such Pension Plan. As of the most recent valuation date for each Multiemployer Plan for which the actuarial report is available, the potential liability of Holdings, Company, its Subsidiaries and their respective ERISA Affiliates for a complete withdrawal from such Multiemployer Plan (within the meaning of Section 4203 of ERISA), when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, based on information available pursuant to Section 4221(e) of ERISA is zero. Holdings, Company, each of its Subsidiaries and each of their ERISA Affiliates have complied with the requirements of Section 515 of ERISA with respect to each Multiemployer

Plan and are not in material "default" (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan.

4.21 **Certain Fees.** No broker's or finder's fee or commission will be payable with respect to the transactions contemplated by this Agreement, except as payable to Collateral Agent and Purchasers.

4.22 **Plan Assets; Prohibited Transactions.** No Note Party is an entity deemed to hold "plan assets" within the meaning of Section 3(42) of ERISA. The execution and delivery of this Agreement and any other Note Document will not involve any transaction that is subject to the prohibitions of Section 406 of ERISA or in connection with which a tax could be imposed pursuant to Sections 4975(c)(1)(A)-(D) of the Internal Revenue Code.

4.23 **Solvency.** On the Closing Date and on each Credit Date, the Note Parties are Solvent on a consolidated basis.

4.24 **[Reserved].**

4.25 **Compliance with Statutes, Etc**. Each of Holdings, Company and its Subsidiaries is in compliance in all material respects with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities, in respect of the conduct of its business and the ownership of its property, including compliance with all applicable Environmental Laws with respect to any Real Estate Asset or governing its business and the requirements of any permits issued under such Environmental Laws with respect to any such Real Estate Asset or the operations of Holdings, Company or any of its Subsidiaries (it being understood, in the case of any statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities that are specifically referred to in any other provision of this Agreement, the Note Parties shall also be required to represent and/or comply with, as applicable, the express terms of such provision). Each Note Party possesses all franchises, licenses and permits, patents, copyrights, trademarks and trade names, and rights in respect of the foregoing, material and necessary to the conduct of its business without known conflict with any rights of others. Without limiting the foregoing, on or prior to the Closing Date, each of Holdings and Company has made all filings with the Securities and Exchange Commission required under the Securities Act, Exchange Act or the rules and regulations thereunder with respect to the Transactions to have occurred on or prior to the Closing Date, in each case, on or prior to the date required thereunder (without giving effect to any extension or possible extension of such dates permitted thereunder).

4.26 **Disclosure.** (a) Other than with respect to projections, estimates and other forward looking information and general economic and industry information, no representation or warranty of any Note Party contained in any Note Document or in any other documents, certificates or written statements furnished to Collateral Agent or any Purchaser by or on behalf of Holdings, Company or any of its Subsidiaries for use in connection with the transactions contemplated hereby contains any untrue statement of a material fact or omits to state a material fact (known to Company, in the case of any document not furnished by either of them) necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made. Any projections and pro forma financial

information contained in such materials are based upon good faith estimates and assumptions believed by Company to be reasonable at the time made, it being recognized by Purchasers that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results. There are no facts known (or that should upon the reasonable exercise of diligence be known) to Company (other than matters of a general economic nature) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect and that have not been disclosed herein or in such other documents, certificates and statements furnished to Purchasers for use in connection with the transactions contemplated hereby.

(b) As of the Closing Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

4.27 **Sanctions; Anti-Corruption and Anti-Bribery Laws; Anti-Terrorism and Anti-Money Laundering Laws; Etc.**

(a) None of the Note Parties, any of their Subsidiaries, any Affiliate of any such Person, or any of their respective Directors, officers or, to the knowledge of any Note Party, employees, agents, advisors or other Affiliates is a Sanctioned Person. Each Note Party and its Subsidiaries and their respective Directors, officers and, to the knowledge of any Note Party, employees, agents, advisors and Affiliates is in compliance with and has not violated (i) Sanctions, (ii) Anti-Corruption and Anti-Bribery Laws, and (iii) Anti-Terrorism and Anti-Money Laundering Laws. No part of the proceeds of any issuance and sale of Notes has or will be used, directly or indirectly, (A) to finance or facilitate any activities or business of, with or relating to any Sanctioned Person or in any Sanctioned Country, (B) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value to any Person in violation of any Anti-Corruption and Anti-Bribery Laws, or (C) otherwise in any manner that would result in a violation of Sanctions, Anti-Terrorism and Anti-Money Laundering Laws, or Anti-Corruption and Anti-Bribery Laws by any Person.

(b) Holdings, Company and its Subsidiaries have established and currently maintain policies, procedures and controls that are reasonably designed (and otherwise comply with applicable law) to ensure that each of Holdings, Company, its Subsidiaries, and each Controlled Entity, and each of their respective Directors, officers, employees and agents, is and will continue to be in compliance with all applicable current and future Sanctions, Anti-Terrorism and Anti-Money Laundering Laws, and Anti-Corruption and Anti-Bribery Laws.

4.28 **Private Offering**. Subject to the accuracy of the representations and warranties of the Purchasers, the offer, sale, issuance and delivery of the Notes in accordance with the terms herein will be exempt from the registration provisions of the Securities Act and the registration requirements of any securities or blue sky laws of any applicable jurisdiction.

SECTION 5 AFFIRMATIVE COVENANTS

Each Note Party covenants and agrees that until Payment in Full of all Obligations, each Note Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Section 5.

5.1 **Financial Statements and Other Reports.** Unless otherwise provided below, Company will deliver to Purchasers:

(a) Monthly Reports. Solely in the event any Purchaser makes a written request therefor after the Closing Date, as soon as practicable and in any event within thirty (30) days following the end of each month, the consolidated balance sheet of Holdings, Company and its Subsidiaries as at the end of such month and the related consolidated statements of income, and consolidated statements of cash flows of Holdings, Company and its Subsidiaries for such month and for the period from the beginning of the then current Fiscal Year to the end of such month, all in reasonable detail, together with a Financial Officer Certification with respect thereto;

(b) Quarterly Financial Statements. As soon as practicable and in any event within forty-five (45) days after the end of each Fiscal Quarter of each Fiscal Year (commencing with the Fiscal Quarter ending December 31, 2023), the consolidated balance sheets of Holdings, Company and its Subsidiaries as at the end of such Fiscal Quarter and the related consolidated statements of income and cash flows of Holdings, 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 in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year and the corresponding figures from the Financial Plan for the current Fiscal Year, all in reasonable detail, together with a Financial Officer Certification with respect thereto;

(c) Annual Financial Statements. As soon as practicable and in any event within ninety (90) days after the end of each Fiscal Year, commencing with the Fiscal Year ending March 31, 2024, (i) the consolidated balance sheets of Holdings, Company and its Subsidiaries as at the end of such Fiscal Year and the related consolidated statements of income, and cash flows of Holdings, Company and its Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year and the corresponding figures from the Financial Plan for the Fiscal Year covered by such financial statements, in reasonable detail, together with a Financial Officer Certification with respect thereto; and (ii) with respect to such consolidated financial statements a report thereon of an Acceptable Auditor (which report and accompanying financial statements shall be unqualified as to going concern and scope of audit (other than a going concern or like qualification resulting solely from an upcoming maturity date for the Notes occurring within one year from the time such opinion is delivered), and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Holdings, Company and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards);

(d) Compliance Certificate. Together with each delivery of financial statements of Holdings, Company and its Subsidiaries pursuant to Sections 5.1(b) and 5.1(c), a duly executed and completed Compliance Certificate;

(e) Hiring/Search Process. Promptly after commencing any hiring or search process with respect to any executive officers or executive vice presidents of Company, written notice thereof, together with the biographies and proposed compensation for the applicable candidates and any documents or other information furnished to the Board of Directors of Company in connection therewith;

(f) Notice of Default. Promptly and in any event within one (1) Business Day after any officer of Company obtaining knowledge (i) of any condition or event that constitutes a Default or an Event of Default or that notice has been given to Company with respect thereto; (ii) that any Person has given any notice to Company or any of its Subsidiaries or taken any other action with respect to any event or condition set forth in Section 8.1(b); or (iii) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect, a certificate of an Authorized Officer specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, default, event or condition, and what action Company has taken, is taking and proposes to take with respect thereto;

(g) Notice of Adverse Proceedings. Promptly and in any event within two (2) Business Days after any officer of Company obtaining knowledge of (i) the institution of, or non-frivolous threat of, any Adverse Proceeding not previously disclosed in writing by Company to the Purchasers, or (ii) any development in any Adverse Proceeding that, in the case of either clause (i) or (ii) if adversely determined, could be reasonably expected to result in a Material Adverse Effect or liability of Company or any of its Subsidiaries in excess of $1,000,000, individually, or $2,000,000, in the aggregate for all such Adverse Proceedings or seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, written notice thereof together with such other information as may be reasonably available to Company to enable the Purchasers and their counsel to evaluate such matters;

(h) ERISA and Employment Matters. (i) Promptly and in any event within two (2) Business Days after becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event that could be reasonably expected to result in a Material Adverse Effect or liability of Company, any of its Subsidiaries in excess of $1,000,000, individually, or $2,000,000, in the aggregate for all such ERISA Events, a written notice specifying the nature thereof, what action Company, any of its Subsidiaries or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto; (ii) promptly and in any event within one (1) day after the same is available to any Note Party, copies of (1) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by Company, any of its Subsidiaries or any of their respective ERISA Affiliates with the Internal Revenue Service with respect to each Pension Plan; (2) all notices received by Company, any of its Subsidiaries or any of their respective ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event; and (3) copies of such other documents or governmental reports or filings relating to any Employee Benefit Plan as Requisite Purchasers shall reasonably request, and (iii) promptly and in any event within one day after any Note Party sends notice of a plant closing or mass layoff (as defined in WARN) to employees, copies of each such notice sent by such Note Party;

(i) Financial Plan. As soon as practicable and in any event no later than thirty (30) days after the end of each Fiscal Year, a consolidated plan and financial forecast and updated model prepared for Company's Board of Directors for such Fiscal Year and each Fiscal Year (or portion thereof) through the final maturity date of the Notes (a **"Financial Plan"**);

(j) Insurance Report. Solely in the event any Purchaser makes a written request therefor after the Closing Date, as soon as practicable and in any event no later than thirty (30) days after such request is made, one or more certificates from the Note Parties' insurance broker(s) together with accompanying endorsements, in each case in form and substance satisfactory to Requisite Purchasers, and a summary outlining all material insurance coverage maintained as of the date of such summary by Holdings, Company and its Subsidiaries and all material insurance coverage planned to be maintained by Holdings, Company and its Subsidiaries in the immediately succeeding Fiscal Year;

(k) Organization and Capital Structure. Promptly, and in any event within three (3) Business Days after any changes to the information on Schedule 4.1, Company shall provide an updated Schedule 4.1 to Collateral Agent.

(l) Notice Regarding Material Contracts or Material Indebtedness. Promptly, and in any event within five (5) Business Days after (i) (A) any Material Contract of Holdings, Company or any of its Subsidiaries is terminated or amended in a manner that is materially adverse to Holdings, Company or such Subsidiary, as the case may be, or (B) any new Material Contract is entered into, or (ii) after any officer of any Note Party or any of its Subsidiaries obtaining knowledge of any condition or event that constitutes an event of default under any Material Contract or Material Indebtedness, a notice specifying the nature and period of existence of such condition or event and, in the case of clause (i), including copies of such material amendments or new contracts, delivered to Purchasers (to the extent such delivery is permitted by the terms of any such Material Contract, provided, no such prohibition on delivery shall be effective if it were bargained for by Holdings, Company or its applicable Subsidiary with the intent of avoiding compliance with this Section 5.1(l)) and, in the case of clause (ii), as applicable, explaining the nature of such claimed event of default, and including an explanation of any actions being taken or proposed to be taken by such Note Party or Company with respect thereto;

(m) Environmental Reports and Audits. As soon as practicable and in any event within ten (10) Business Days following receipt thereof, copies of all environmental audits, reports, and notices with respect to environmental matters at any Facility or that relate to any environmental liabilities of Company or its Subsidiaries that, in any such case, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect or in liabilities that exceed $250,000, individually, or $500,000, in the aggregate for all such liabilities, in each case, during the term of this Agreement;

(n) Information Regarding Collateral. (a) Company will furnish to Collateral Agent prior written notice of any change (i) in any Note Party's corporate name, (ii) in any Note Party's identity or corporate structure, (iii) in any Note Party's jurisdiction of organization or formation, or (iv) in any Note Party's Federal Taxpayer Identification Number or state organizational identification number. Company agrees not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the UCC or otherwise that are

required in order for Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral and for the Collateral at all times following such change to have a valid, legal and perfected security interest as contemplated in the Collateral Documents. Company also agrees promptly to notify Collateral Agent if any material portion of the Collateral is lost, stolen, damaged or destroyed;

(o) Affiliate Transactions. Holdings shall disclose in writing each transaction, the value of which or the payments in connection therewith exceed $25,000 in the aggregate, with any holder of 10% or more of any class of Capital Stock of Holdings, Company or any of its Subsidiaries to Purchasers.

(p) Reserved.

(q) Tax Information. Any tax information of Holdings and Company that is reasonably requested by Collateral Agent.

(r) KYC Documentation. (i) As soon as practicable and in any event within ten (10) Business Days following any Purchaser's request therefor after the Closing Date, all documentation and other information required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including the PATRIOT Act.

(ii) As soon as practicable and in any event within five (5) Business Days following any Purchaser's request therefor after the Closing Date in connection with any Permitted Acquisition or change in ownership of any Note Party, such Note Party shall deliver a Beneficial Ownership Certification in relation to such Note Party.

(s) Other Information. (A) Promptly and in any event within ten (10) days of their becoming available, notice of (i) all periodic reports filed by Holdings, Company or any of its Subsidiaries with any securities exchange or with the Securities and Exchange Commission or any Governmental Authority and (ii) all press releases and other statements made available generally by Holdings, Company or any of its Subsidiaries to the public concerning material developments in the business of Holdings, Company or any of its Subsidiaries, and (B) promptly after any request, such other information and data with respect to Holdings, Company or any of its Subsidiaries as from time to time may be reasonably requested by any Purchaser.

(t) Specified Account. After the Closing Date, Company shall not deposit any funds into the Specified Account.

(u) Weekly Cash Flow Forecasts. Company shall deliver to Collateral Agent an updated 13-week cash flow forecast of Holdings, Company and its Subsidiaries in a form reasonably satisfactory to Collateral Agent no later than each Friday of each week, commencing on December 8, 2023.

(v) Notwithstanding anything to the contrary, financial information required to be delivered pursuant to Section 5.1(b) and (c) shall be deemed to have been delivered to the Purchasers on the date on which such information has been posted on the Home Page or is available via the EDGAR System (in each case, solely to the extent such financial information is included

in materials filed via the EDGAR System or posted on the Home Page, as the case may be); provided, that, to the extent such information is in lieu of information required to be provided under Section 5.1(c), such materials are accompanied by the report of an Acceptable Auditor required pursuant to Section 5.1(c)(ii).

5.2 **Existence.** Except as otherwise permitted under Section 6.9, each Note Party will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect its existence and all rights and franchises, licenses and permits material to its business; provided, no Note Party (other than Company with respect to its existence) or any of its Subsidiaries shall be required to preserve any such existence, right or franchise, licenses and permits if such Person's Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of the business of such Person, and that the loss thereof is not disadvantageous in any material respect to such Person or to Purchasers.

5.3 **Payment of Taxes and Claims**. Each Note Party will, and will cause each of its Subsidiaries to, pay all federal and state income and other material Taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon, and all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto; provided, that no such Tax or claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as (a) adequate reserve or other appropriate provision, as shall be required in conformity with GAAP shall have been made therefor, and (b) in the case of a Tax or claim that has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such Tax or claim. No Note Party will, nor will it permit any of its Subsidiaries to, file or consent to the filing of any consolidated income tax return with any Person (other than Company or any of its Subsidiaries).

5.4 **Maintenance of Properties.** Each Note Party will, and will cause each of its Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all material properties used or useful in the business of Holdings, Company and its Subsidiaries and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof.

5.5 **Insurance.** Company will maintain or cause to be maintained, with financially sound and reputable insurers, (i) business interruption insurance and directors and officers insurance reasonably satisfactory to Requisite Purchasers (it being agreed that the business interruption insurance maintained on the Closing Date is reasonably satisfactory to the Requisite Purchasers), and (ii) such casualty insurance, public liability insurance, third party property damage insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of Holdings, Company and its Subsidiaries as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons. Without limiting the generality of the foregoing, Company will maintain or cause to

be maintained (a) flood insurance with respect to each Flood Hazard Property that is located in a community that participates in the National Flood Program, in each case in compliance with any applicable regulations of the Board of Governors, and (b) replacement value casualty insurance on the Collateral under such policies of insurance, with such insurance companies, in such amounts, with such deductibles, and covering such risks as are at all times carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses. Each such policy of insurance shall (i) in the case of each liability insurance policy, name Collateral Agent, for the benefit of Secured Parties, as an additional insured thereunder as its interests may appear, (ii) in the case of each casualty insurance policy, contain a loss payable clause or endorsement, satisfactory in form and substance to Collateral Agent, that names Collateral Agent, for the benefit of Secured Parties as the loss payee thereunder, and (iii) in each case, provide for at least thirty days' prior written notice to Collateral Agent of any modification or cancellation of such policy.

5.6 **Books and Records; Inspections.** Each Note Party will, and will cause each of its Subsidiaries to, keep proper books of record and accounts in which full, true, and correct entries in conformity in all material respects with GAAP shall be made of all dealings and transactions in relation to its business and activities. Each Note Party will, and will cause each of its Subsidiaries to, permit any authorized representatives designated by Collateral Agent or any Purchaser to visit and inspect any of the properties of any Note Party and any of its respective Subsidiaries, to inspect, copy and take extracts from its and their financial and accounting records, and to discuss its and their affairs, finances and accounts with its and their officers and independent public accountants, all upon reasonable advance notice and at such reasonable times during normal business hours ; provided that, so long as no Event of Default has occurred and is continuing, the foregoing shall be limited to two (2) visits per Fiscal Year and that an Authorized Officer of Company shall be afforded a reasonable opportunity to be present during all such meetings, inspections and discussions.

5.7 **Meetings.** Company will, upon the request of Requisite Purchasers, participate in a meeting of the Purchasers once during each Fiscal Year to be held at Company's corporate offices (or at such other location as may be agreed to by Company and Requisite Purchasers or, if agreed to by Requisite Purchasers in their sole discretion, via a conference call or other teleconference) at such time as may be agreed to by Company and Requisite Purchasers.

5.8 **Compliance with Laws.** Each Note Party will comply, and shall cause each of its Subsidiaries to comply, with (i) the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including all Environmental Laws) in all material respects (it being understood, in the case of any laws, rules, regulations, and orders specifically referred to any other provision of this Agreement, the Note Parties shall also be required to represent and/or comply with, as applicable, the express terms of such provision) except, in each case, where such noncompliance could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and (ii) all Sanctions, Anti-Corruption and Anti-Bribery Laws, and Anti-Terrorism and Anti-Money Laundering Laws in accordance with Section 4.26(a). Each Note Party shall, and shall cause each of its Subsidiaries to, maintain the policies and procedures described in Section 4.26(b).

5.9 **Environmental**.

(a) Environmental Disclosure. Company will deliver to Purchasers:

(i) as soon as practicable following receipt thereof, copies of all environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of Holdings, Company or any of its Subsidiaries or by independent consultants, Governmental Authorities or any other Persons, with respect to significant environmental matters at any Facility or with respect to any Environmental Claims;

(ii) promptly upon the occurrence thereof, written notice describing in reasonable detail (1) any Release required to be reported to any Governmental Authority under any applicable Environmental Laws, (2) any remedial action taken by Holdings, Company or any other Person in response to (A) any Hazardous Materials Activities the existence of which has a reasonable possibility of resulting in one or more Environmental Claims having, individually or in the aggregate, a Material Adverse Effect or resulting in liabilities that exceed $250,000, individually, or $500,000, in the aggregate for all such liabilities, or (B) any Environmental Claims that, individually or in the aggregate, have a reasonable possibility of resulting in a Material Adverse Effect or in liabilities that exceed $250,000, individually, or $500,000, in the aggregate for all such liabilities, and (3) Holdings', Company's or any of its Subsidiaries' discovery of any occurrence or condition on any real property adjoining or in the vicinity of any Facility that could cause such Facility or any part thereof to be subject to any material restrictions on the ownership, occupancy, transferability or use thereof under any Environmental Laws;

(iii) as soon as practicable following the sending or receipt thereof by Holdings, Company or any of its Subsidiaries, a copy of any and all written communications with respect to (1) any Environmental Claims that, individually or in the aggregate, have a reasonable possibility of giving rise to a Material Adverse Effect or to liabilities that exceed $250,000, individually, or $500,000, in the aggregate for all such liabilities, (2) any Release required to be reported to any Governmental Authority, and (3) any request for information from any Governmental Authority that suggests such Governmental Authority is investigating whether Holdings, Company or any of its Subsidiaries may be potentially responsible for any Hazardous Materials Activity;

(iv) prompt written notice describing in reasonable detail (1) any proposed acquisition of stock, assets, or property by Holdings, Company or any of its Subsidiaries that could reasonably be expected to (A) expose Holdings, Company or any of its Subsidiaries to, or result in, Environmental Claims that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or result in liabilities that exceed $250,000, individually, or $500,000, in the aggregate for all such liabilities or (B) adversely affect the ability of Holdings, Company or any of its Subsidiaries to maintain in full force and effect all material Governmental Authorizations required under any Environmental Laws for their respective operations and (2) any proposed action to be taken by Holdings, Company or any of its Subsidiaries to modify current operations in a manner that could reasonably be expected to subject Holdings,

Company or any of its Subsidiaries to any additional material obligations or requirements under any Environmental Laws; and

(v) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by Purchasers in relation to any matters disclosed pursuant to this Section 5.9(a).

(b) Hazardous Materials Activities, Etc. Each Note Party shall promptly take, and shall cause each of its Subsidiaries promptly to take, any and all actions necessary to (i) cure any violation of applicable Environmental Laws by such Note Party or its Subsidiaries that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or result in liabilities that exceed $250,000, individually, or $500,000, in the aggregate for all such liabilities, and (ii) make an appropriate response to any Environmental Claim against such Note Party or any of its Subsidiaries and discharge any obligations it may have to any Person thereunder where failure to do so could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or result in liabilities that exceed $250,000, individually, or $500,000, in the aggregate for all such liabilities.

5.10 **Additional Guarantors**. In the event that any Person becomes a Domestic Subsidiary of any Note Party, such Note Party shall, with in ten (10) Business Days following such Person becoming a Domestic Subsidiary, (a) cause such Subsidiary to become a Guarantor hereunder and a Grantor under the Pledge and Security Agreement by executing and delivering to Purchasers and Collateral Agent a Counterpart Agreement, and (b) subject to the terms, provisions and limitations set forth in the Note Documents, take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, agreements, and certificates as are reasonably requested by Collateral Agent in connection therewith, including such documents, instruments, agreements, and certificates as are similar to those described in Sections 3.1(b), 3.1(i), 3.1(j), 3.1(k) and 3.1(n). In addition, such Note Party shall deliver, or cause such Subsidiary to deliver, as applicable, all such documents, instruments, agreements, and certificates as are reasonably requested by Collateral Agent in order to grant and to perfect a First Priority Lien in favor of Collateral Agent, for the benefit of Secured Parties, in 100% of the Capital Stock (other than Capital Stock which is Excluded Property) of such Subsidiary under the Pledge and Security Agreement (including, as applicable, original certificates evidencing such Capital Stock and related powers or instruments of transfer executed in blank, as applicable). With respect to each such Subsidiary, Company shall send to Collateral Agent prior written notice setting forth with respect to such Person (i) the date on which such Person is intended to become a Subsidiary of Company, and (ii) all of the data required to be set forth in Schedules 4.1 and 4.2 with respect to all Subsidiaries of Company; provided, such written notice shall be deemed to supplement Schedule 4.1 and 4.2 for all purposes hereof automatically upon such Person becoming a Subsidiary.

5.11 **Additional Locations and Material Real Estate Assets.**

(a) Fee-Owned Real Estate Assets. In the event that any Note Party acquires a fee-owned Material Real Estate Asset or a fee-owned Real Estate Asset owned on the Closing Date becomes a fee-owned Material Real Estate Asset and such interest has not otherwise been made subject to the Lien of the Collateral Documents in favor of Collateral Agent, for the benefit

of Secured Parties, then such Note Party shall promptly notify Collateral Agent thereof, and on the same date as acquiring or leasing such fee-owned Material Real Estate Asset, or within thirty days after any Real Estate Asset owned or leased on the Closing Date becomes a fee-owned Material Real Estate Asset (or at such later time as is approved by Collateral Agent in its sole discretion), shall take all such actions and execute and deliver, or cause to be executed and delivered, all such Mortgaged Real Estate Documents with respect to each such fee-owned Material Real Estate Asset that Collateral Agent shall reasonably request to create in favor of Collateral Agent, for the benefit of Secured Parties, a valid and, subject to any filing and/or recording referred to herein, perfected First Priority security interest in such fee-owned Material Real Estate Asset.

(b) [Reserved]

(c) Appraisals. In addition to the foregoing, Company shall, at the request of Collateral Agent, deliver, from time to time, to Collateral Agent such appraisals as are required by law or regulation of Real Estate Assets with respect to which Collateral Agent has been granted a Mortgage.

(d) Other New Locations. In the event that any Note Party leases a new location where more than $100,000 in Collateral is located or enters into an arrangement with a third party for physical or electronic storage of any books and records or other information related to its business or operations (in each case, which cannot be obtained at another location of Company that is subject to a Landlord Collateral Access Agreement), such Note Party shall promptly commence using its commercially reasonably efforts for a period of no more than sixty (60) days to obtain a Landlord Collateral Access Agreement or a similar instrument executed by the relevant lessor or other counterparty in favor of Collateral Agent for the benefit of the Secured Parties with respect to such location.

5.12 **[Reserved].**

5.13 **Further Assurances.** At any time or from time to time upon the request of Collateral Agent or Requisite Purchasers, each Note Party will, at its expense, promptly execute, acknowledge and deliver such further documents and do such other acts and things as Collateral Agent may reasonably request in order to effect fully the purposes of the Note Documents or to perfect, achieve better perfection of, or renew the rights of Collateral Agent for the benefit of Secured Parties with respect to the Collateral (or with respect to any additions thereto or replacements or proceeds thereof or with respect to any other property or assets hereafter acquired by Holdings, Company or any Subsidiary that may be deemed to be part of the Collateral). In furtherance and not in limitation of the foregoing, each Note Party shall take such actions as Requisite Purchasers or Collateral Agent may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors and are secured by a First Priority Lien on substantially all of the assets of each Note Party that would constitute Collateral, and all of the outstanding Capital Stock of Company and each of its Subsidiaries (subject to limitations contained in the Note Documents with respect to Subsidiaries that are not Domestic Subsidiaries). Notwithstanding anything to the contrary contained herein, (A) in no event shall Mortgages be required to be delivered in respect of any leasehold interest held by Holdings, Company or any of its Subsidiaries in any Real Estate Asset and (B) in no event shall

actions (including any filings or registrations) outside of the United States or security or pledge agreements governed by any foreign law be required.

5.14 **Miscellaneous Covenants**

. Unless otherwise consented to by Requisite Purchasers. each of Holdings and Company will and will cause each of its Subsidiaries to: (a) maintain entity records and books of account separate from those of any other entity that is an Affiliate of such entity and (b) not commingle its funds or assets with those of any other entity that is an Affiliate of such entity, in each case, other than an Affiliate that is a Subsidiary of Company.

5.15 **Post Closing Matters**. Each Note Party shall, and shall cause each of its Subsidiaries to, as applicable, satisfy the requirements set forth on Schedule 5.15 on or before the respective date specified for each such requirement or such later date as is agreed to by the Collateral Agent in its sole discretion. Company shall deliver to GSSLG the original of the Note containing Company's "wet ink" signature issued pursuant to Section 2.1(a) hereto on any New Money Additional Notes Closing Date no later than three (3) Business Days after such New Money Additional Notes Closing Date.

5.16 **Distributor Agreements and Compliance Policy**. Company shall use commercially reasonable efforts to cause any distributor or rental customer that distributes or purchases, as applicable, any product or service from Company or its Affiliates, to enter into a revised distributor agreement and/or a revised rental agreement, as applicable, within ninety (90) days of the Closing Date and which agreements shall be acceptable to Requisite Purchasers in their sole discretion.

5.17 **Distributer Compliance Policy**. Within ninety (90) days of the Closing Date, Company shall adopt a policy regarding distributor diligence and oversight, which policy shall be acceptable to Requisite Purchasers in their sole discretion, and Company shall designate an executive to oversee compliance with such policy. Such policy shall, without limitation, include with respect to distributors, "know your customer" processes, standards for monitoring compliance with law (including, without limitation, licensing, litigation and regulatory actions), and anti-bribery and sanctions compliance.

5.18 **Professional Fees.** On the first Business Day of each month, Company shall make the payments indicated on Schedule 5.18 to each of counsel for Collateral Agent and financial advisor for Collateral Agent, as provided therein.

5.19 [**Reserved**].

5.20 [**Reserved**].

5.21 **Board Observation Rights**. So long as any Obligations under this Note Purchase Agreement remain outstanding, the Purchasers shall be entitled to appoint one board observer (the "Observer") to the Board of Directors for Holdings (the "Board"); provided that the Observer shall not have any voting rights with respect to any actions taken or elected not to be taken by the Board. Holdings shall, subject to customary confidentiality procedures, provide to the Observer prior written notice of any meeting or reunion of the Board, which shall be delivered substantially simultaneously with the delivery of notice of such meeting or reunion to

the Board. Notwithstanding anything herein to the contrary, Holdings reserves the right to exclude the Observer from access to any Board meetings or reunions (including any executive sessions of the Board) or any material or portion thereof and/or withhold from the Board Observer any notices, documents or other information furnished to the other participants of such meeting or reunion if and only if (A) the Board is discussing strategy with respect to the Notes and/or the Purchasers or matters of conflict of interest to any Purchaser or (B) to the extent Holdings believes that such exclusion or withholding is reasonably necessary (w) to preserve the attorney-client privilege of Holdings, Company or its Subsidiaries or to avoid a conflict of interest, (x) to discharge its directors' or managers' fiduciary duties, (y) to protect proprietary or confidential information of third parties, or (z) to avoid any circumstance where such access could reasonably be deemed to violate applicable law. Company shall reimburse the Observer for all reasonable and documented out-of-pocket costs and expenses incurred in connection with this Section 5.21.

SECTION 6 NEGATIVE COVENANTS

Each Note Party covenants and agrees that until Payment in Full of all Obligations, such Note Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Section 6.

6.1 **Indebtedness.** No Note Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, except:

(a) the Obligations.

(b) Indebtedness of any Guarantor Subsidiary or Company to any other Guarantor Subsidiary, or of Company to any Guarantor Subsidiary; provided, (i) all such Indebtedness shall be evidenced by the Intercompany Note, and shall be subject to a First Priority Lien pursuant to the Pledge and Security Agreement, (ii) all such Indebtedness shall be unsecured and subordinated in right of payment to the Payment in Full of all Obligations pursuant to the terms of the Intercompany Note and (iii) any payment by any such Guarantor Subsidiary under any guaranty of the Obligations shall result in a *pro tanto* reduction of the amount of any Indebtedness owed by such Guarantor Subsidiary to Company or to any of its Subsidiaries for whose benefit such payment is made;

(c) Indebtedness up to $15,000,000 incurred by Company, provided, that such Indebtedness (i) is structured as an asset-based revolver facility ("***ABL Facility*** ") on terms and conditions acceptable to Company and Requisite Purchasers (including that the terms of the ABL Facility must be no more favorable to the lenders under the ABL Facility than the terms of this Agreement are to the Purchasers); (ii) the net Cash proceeds shall be sufficient to, and shall be applied to, repay in full the New Money Notes, and the New Money Purchase Commitments shall be terminated, in each case on the closing date of the ABL Facility, (iii) is secured only by (x) priming Liens on raw materials, WIP, finished goods, inventory, receivables, and any proceeds of any of the foregoing (the "***ABL Priority Collateral***"), which Liens shall be senior to the Liens on the ABL Priority Collateral securing the Obligations, and (y) junior Liens on all other Collateral

and (iv) shall be subject to an intercreditor agreement on terms reasonably acceptable to the Requisite Purchasers;

(d) Indebtedness incurred by Holdings or any of its Subsidiaries arising from agreements providing for customary indemnification or from customary guaranties or letters of credit, surety bonds or performance bonds securing the performance of Holdings or any such Subsidiary pursuant to such agreements in connection with Permitted Acquisitions or permitted dispositions of any business, assets or Subsidiary of Holdings or any of its Subsidiaries;

(e) Indebtedness that may be deemed to exist pursuant to any performance, surety, appeal or similar bonds or statutory obligations incurred in the ordinary course of business, and guarantee obligations in respect of any such Indebtedness;

(f) Indebtedness in respect of treasury, depositary, cash management and netting services, automatic clearinghouse arrangements, overdraft protections , employee credit card programs and similar arrangements or otherwise arising in connection with securities accounts and deposit accounts , in each case, in the ordinary course of business;

(g) guaranties in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of Company and its Subsidiaries;

(h) guaranties by Holdings or Company of Indebtedness of Company or a Guarantor Subsidiary or guaranties by a Subsidiary of Company of Indebtedness of Company or a Guarantor Subsidiary with respect, in each case, to Indebtedness otherwise permitted to be incurred pursuant to this Section 6.1; provided, that if the Indebtedness that is being guaranteed is unsecured and/or subordinate to the Obligations (in payment or Lien priority), then such guaranties shall also be unsecured and/or subordinated to the Obligations to the same extent as such guaranteed Indebtedness;

(i) Indebtedness described in Schedule 6.1, but not any extensions, renewals or replacements of such Indebtedness except (i) renewals and extensions expressly provided for in the agreements evidencing any such Indebtedness as the same are in effect on the date of this Agreement, and (ii) refinancings and extensions of any such Indebtedness if the terms and conditions thereof are not less favorable to the obligor thereon or to the Purchasers than the Indebtedness being refinanced or extended, and the average life to maturity thereof is greater than or equal to that of the Indebtedness being refinanced or extended; provided, such Indebtedness permitted under the immediately preceding clause (i) or (ii) above shall not (A) include Indebtedness of an obligor that was not an obligor with respect to the Indebtedness being extended, renewed or refinanced, (B) exceed in a principal amount the Indebtedness being renewed, extended or refinanced, except by an amount equal to unpaid accrued interest and premium thereon, or (C) be incurred, created or assumed if any Default or Event of Default has occurred and is continuing or would result therefrom;

(j) Indebtedness of Holdings or any of its Subsidiaries in an aggregate amount (taken together with the amount of any other Indebtedness secured by Liens pursuant to Section 6.2(p)) not to exceed at any time outstanding an aggregate principal amount equal to $500,000.

(k) Obligations of Company or any of its Subsidiaries under Hedge Agreements which are not for speculative purposes;

(l) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business;

(m) bankers' acceptances, bank guarantees, letters of credit, warehouse receipt or similar facilities, in each case incurred or issued, as applicable, in the ordinary course of business ;

(n) Indebtedness owed to (including obligations in respect of letters of credit for the benefit of) any Person providing worker's compensation, health, disability or other employee benefits or property, casualty or liability insurance to Holdings, Company and its Subsidiaries, pursuant to reimbursement or indemnification obligations to such Person

(o) Indebtedness not to exceed $7,500,000 secured by Liens permitted by Section 6.2(o); and

(p) prepaid or deferred revenue, deferred tax liabilities, liabilities associated with customer prepayments and deposits and other similar accrued obligations (including accruals for payroll and other operating expenses accrued in the ordinary course of business) and customary obligations under employment agreements and deferred compensation, in each case, incurred in the ordinary course of business.

6.2 **Liens.** No Note Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of Holdings, Company or any of its Subsidiaries, whether now owned or hereafter acquired, leased (as lessee), or licensed (as licensee), or any income, profits, or royalties therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income, profits, or royalties under the UCC of any State or under any similar recording or notice statute or under any applicable intellectual property laws, rules or procedures, except:

(a) (i) Liens in favor of Collateral Agent for the benefit of Secured Parties granted pursuant to any Note Document;

(b) Liens for Taxes if obligations with respect to such Taxes are not yet due or are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted and adequate reserves have been made in accordance with GAAP so long as the aggregate amount of such Taxes does not exceed $250,000 at any time outstanding;

(c) statutory Liens of landlords, banks (and rights of set-off), of carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law (other than any such Lien imposed pursuant to Section 430(k) of the Code or ERISA or a violation of Section 436 of the Code), in each case incurred in the ordinary course of business (i) for amounts not yet overdue, or (ii) for amounts that are overdue and that (in the case of any such amounts overdue for a period in excess of five days) are being contested in good faith by

appropriate proceedings, so long as such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts;

(d) Liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money or other Indebtedness), so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof;

(e) easements, rights-of-way, restrictions, encroachments, and other minor defects or irregularities in title, in each case that do not and will not interfere in any material respect with the ordinary conduct of the business of Holdings, Company or any of its Subsidiaries and that, in the aggregate for any parcel of real property subject thereto, do not materially detract from the value of such parcel

(f) any interest or title of a lessor or sublessor under any lease of real estate permitted hereunder;

(g) Liens solely on any customary cash earnest money deposits made by Company or any of its Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder;

(h) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business;

(i) Liens incurred by Company or any of its Subsidiaries in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(j) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;

(k) non-exclusive outbound licenses of patents, copyrights, trademarks and other intellectual property rights granted by Company or any of its Subsidiaries in the ordinary course of business and not interfering in any respect with the ordinary conduct of or materially detracting from the value of the business of Company or such Subsidiary;

(l) Liens described in Schedule 6.2;

(m) Liens securing Indebtedness permitted pursuant to Sections 6.1(c) and 6.1(j);

(n) Liens on Cash collateral supporting letters of credit, banking products and other credit support obligations not to exceed $250,000 in the aggregate at any time outstanding;

(o) (i) Liens on any Property acquired or held by any Note Party or any Subsidiary of any Note Party securing Indebtedness incurred or assumed for the purpose of financing (or refinancing) all or any part of the cost of acquiring such Property and permitted under Section 6.1(o); provided that (x) such Lien attaches solely to the Property so acquired in such transaction and the proceeds thereof (y) the principal amount of the Indebtedness secured thereby does not exceed 100% of the cost of such Property and (z) such Property is not Collateral and (ii) Liens securing Capital Lease Obligations permitted under Section 6.1(o); provided that such Liens are not on Collateral; and

(p) other Liens incurred by Holdings or its Subsidiaries on assets that secure Indebtedness in an aggregate amount (taken together with the amount of any Indebtedness incurred pursuant to Section 6.1(j) that is not secured by a Lien) not to exceed $500,000 at any time.

Notwithstanding anything in this Section 6.2 to the contrary, in no event shall any obligations of any Note Party under any Hedge Agreement be secured by any Lien.

6.3 **Equitable Lien.** If any Note Party or any of its Subsidiaries shall create or assume any Lien upon any of its properties or assets, whether now owned or hereafter acquired, other than Permitted Liens, it shall make or cause to be made effective provisions whereby the Obligations will be secured by such Lien equally and ratably with any and all other Indebtedness secured thereby as long as any such Indebtedness shall be so secured; provided, notwithstanding the foregoing, this covenant shall not be construed as a consent by Requisite Purchasers to the creation or assumption of any such Lien not otherwise permitted hereby.

6.4 **No Further Negative Pledges.** Except with respect to (a) specific property encumbered to secure payment of particular Indebtedness or to be sold pursuant to an executed agreement with respect to a permitted Asset Sale or other disposition permitted under Section 6.9, (b) restrictions by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses and similar agreements entered into in the ordinary course of business (provided, that such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, licenses or similar agreements, as the case may be) and (c) agreements with respect to Liens permitted pursuant to Section 6.2 (m) or (o) (provided, that such restrictions are limited to the property or assets secured by such Liens), no Note Party shall enter into or permit any of its Subsidiaries to enter into any agreement prohibiting, or triggering any requirement for equitable and ratable sharing of Liens or any similar obligations upon, the creation or assumption of any Lien upon any Note Party's properties or assets, whether now owned or hereafter acquired, to secure the Obligations.

6.5 **Restricted Junior Payments.** No Note Party shall, nor shall it permit any of its Subsidiaries through any manner or means or through any other Person to, directly or indirectly, declare, order, pay, make or set apart, or agree to declare, order, pay, make or set apart, any sum for any Restricted Junior Payment except that (a) any Subsidiary of Company may declare and pay dividends or make other distributions to Company or any Note Party that is a Wholly-Owned Guarantor Subsidiary, (b) to the extent the Company is treated as a partnership or disregarded entity for United States federal income tax purposes, cash distributions by the Company and its Subsidiaries to their direct or indirect equity holders, at the time and to the

extent required to make tax distributions under Section 7.03 of the Company LLCA, as in effect on the date of this Agreement, or as otherwise amended with the Collateral Agent's consent.

For the avoidance of doubt, no amount shall be permitted to be distributed by any Note Party to pay, or otherwise in connection with, any Tax resulting from the cancellation or discharge of Indebtedness.

6.6 **Restrictions on Subsidiary Distributions.** Except as provided herein, no Note Party shall, nor shall it permit any of its Subsidiaries to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary of Company to (a) pay dividends or make any other distributions on any of such Subsidiary's Capital Stock owned by Company or any other Subsidiary of Company, (b) repay or prepay any Indebtedness owed by such Subsidiary to Company or any other Subsidiary of Company, (c) make Note or advances to Company or any other Subsidiary of Company, or (d) transfer any of its property or assets to Company or any other Subsidiary of Company, in each case, other than restrictions (i) in agreements evidencing any Indebtedness permitted by Section 6.1(o) or any purchase money Indebtedness permitted by Section 6.1(j), in each case, that impose restrictions on the property so acquired, (ii) by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements and similar agreements entered into in the ordinary course of business, and (iii) that are or were created by virtue of any transfer of, agreement to transfer or option or right with respect to any property, assets or Capital Stock not otherwise prohibited under this Agreement.

6.7 **Investments.** No Note Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, make or own any Investment (including if made as an Acquisition) in any Person, including any Joint Venture, except:

(a) Investments in Cash and Cash Equivalents;

(b) equity Investments owned as of the Closing Date in any Subsidiary and Investments made after the Closing Date in the Company or any Wholly-Owned Guarantor Subsidiaries of Company;

(c) Investments made by the Company or any of its Subsidiaries (i) in any Securities voluntarily accepted in satisfaction or partial satisfaction thereof from financially troubled account debtors, and (ii) deposits, prepayments and other credits to suppliers made in the ordinary course of business consistent with the past practices of Company and its Subsidiaries;

(d) intercompany loans to the extent permitted under Section 6.1(b);

(e) Investments in Company or any of its Guarantor Subsidiaries for purposes of making capital expenditures in respect of fixed assets directly owned by Company or any of its Guarantor Subsidiaries in an aggregate amount not to exceed $3,000,000 (or such higher amount agreed to by Collateral Agent in its sole discretion) in any Fiscal Year; provided that immediately before and immediately after giving effect to such Investment, Consolidated Liquidity is not less than $15,000,000.

(f) Permitted Acquisitions, the aggregate Acquisition Consideration for which constitutes less than $2,500,000 in the aggregate from the Closing Date to the date of determination; and

(g) Investments described in Schedule 6.7.

Notwithstanding anything in this Section 6.7 to the contrary, in no event shall any Note Party make any Investment that results in or facilitates in any manner any Restricted Junior Payment not otherwise permitted under the terms of Section 6.5.

6.8 **Financial Covenants**.

(a) Consolidated Adjusted EBITDA. Company shall not permit Consolidated Adjusted EBITDA as at the end of any Fiscal Quarter (i) from the Closing Date until September 30, 2024, for the period of the Fiscal Quarters then ended in such calendar year and (ii) from October 1, 2024, for the four Fiscal Quarter period then ended, to be less than the correlative amount indicated below (with corresponding calendar quarters also included as reference):

Fiscal Quarter Ending	Consolidated Adjusted EBITDA
March 31, 2024	$1,000,000
June 30, 2024	$1,500,000
September 30, 2024	$2,500,000
December 31, 2024	$4,000,000
March 31, 2025	$5,000,000
June 30, 2025	$5,500,000
September 30, 2025	$6,000,000
December 31, 2025	$6,500,000
March 31, 2026	$8,000,000
June 30, 2026	$8,000,000
September 30, 2026	$8,000,000

(b) Minimum Consolidated Liquidity. Company shall not permit the average Consolidated Liquidity over any consecutive seven day period of Holdings, to be less than:

(i) from June 30, 2024 to March 30, 2025, $2,000,000;

(ii) from March 31, 2025 to June 29, 2025, $2,500,000;

(iii) from June 30, 2025 to September 29, 2025, $3,000,000;

(iv) from September 30, 2025 to March 30, 2026, $3,500,000; and

(v) from March 31 2026 to December 7, 2026, $4,000,000.

6.9 **Fundamental Changes; Disposition of Assets; Acquisitions.** No Note Party shall, nor shall it permit any of its Subsidiaries to, enter into any transaction of merger or consolidation (including through a plan of division), or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of, in one transaction or a series of transactions, all or any part of its business, assets or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired, leased (as lessee), or licensed (as licensee), or make any Acquisition, except:

(a) any Subsidiary of Company may be merged with or into Company or any Guarantor Subsidiary of Company, or be liquidated, wound up or dissolved, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to Company or any Guarantor Subsidiary; provided, in the case of such a merger involving Company, Company shall be the continuing or surviving Person, and in the case of any other such merger, a Wholly-Owned Guarantor Subsidiary shall be the continuing or surviving Person;

(b) sales or other dispositions of assets that do not constitute Asset Sales;

(c) Asset Sales of the Company or any Guarantor Subsidiary, the proceeds of which (i) are less than $1,000,000 with respect to any single Asset Sale or series of related Asset Sales, and (ii) when aggregated with the proceeds of all other Asset Sales made within the trailing twelve month period, are less than $2,500,000; provided (1) the proceeds received for such assets shall be in an amount at least equal to the fair market value thereof (determined in good faith by the Board of Directors of Company), (2) no less than 90% thereof shall consist of Cash paid upon the closing of each applicable Asset Sale, and (3) the Net Asset Sale Proceeds thereof shall be applied as required by Section 2.13(a);

(d) sales and other disposals of used, surplus, obsolete or worn out property;

(e) Acquisitions consisting of Investments made in accordance with Section 6.7;

(f) the granting of Permitted Liens;

(g) the licensing or sublicensing, on intellectual property in the ordinary course of business to the extent that they do not materially interfere with the ordinary conduct of business of Holdings, Company or any of its Subsidiary;

(h) dispositions of Cash and Cash Equivalents in the ordinary course of business in a manner not otherwise prohibited by this Agreement or the other Note Documents;

(i) the lapse or abandonment of any registrations or applications for registration of any immaterial intellectual property, so long as such lapse or abandonment is not adverse to the interests of Collateral Agent and the Purchasers;

(j) the surrender or waiver of litigation rights or settlement, release or surrender of tort or other litigation claims of any kind in the ordinary course of business

(k) the Disposition of the Specified Lease Agreement and any assets of the Company subject thereto; and

(l) the discount of accounts receivable by Company or any of its Subsidiaries in connection with the compromise or collection thereof in the ordinary course of business;

6.10 **Disposal of Subsidiary Interests.** Except for any sale of all of its interests in the Capital Stock of any of its Subsidiaries in compliance with the provisions of Section 6.9, no Note Party shall, nor shall it permit any of its Subsidiaries to, (a) directly or indirectly sell, assign, pledge or otherwise encumber or dispose of any Capital Stock of any of its Subsidiaries, except to qualify Directors if required by applicable law; or (b) permit any of its Subsidiaries directly or indirectly to sell, assign, pledge or otherwise encumber or dispose of any Capital Stock of any of its Subsidiaries, except to another Note Party (subject to the restrictions on such disposition otherwise imposed hereunder), or to qualify Directors if required by applicable law.

6.11 **Sales and Lease-Backs.** No Note Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, that such Note Party (a) has sold or transferred or is to sell or to transfer to any other Person (other than Company or any of its Subsidiaries), or (b) intends to use for substantially the same purpose as any other property that has been or is to be sold or transferred by such Note Party to any Person (other than Company or any of its Subsidiaries) in connection with such lease, in each case, other than any turbine assets manufactured by Company or Capstone which such Note Party or Subsidiary has leased or subleased, or intends to lease or sublease, to any third-party in the ordinary course of business of Company's Rental Fleet business in connection with such lease.

6.12 **Transactions with Shareholders and Affiliates**. No Note Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any holder of 10% or more of any class of Capital Stock of Holdings, Company or any of its Subsidiaries (or any Affiliate of such holder) or with any Affiliate of Holdings or Company or of any such holder; provided, however, that the Note Parties and their Subsidiaries may enter into or permit to exist any such transaction if either (i) Requisite Purchasers have consented thereto in writing prior to the consummation thereof or (ii) the terms of such transaction are not less favorable to Holdings, Company or that Subsidiary, as the case may be, than those that might be obtained at the time from a Person who is not such a holder or Affiliate; provided further, that the foregoing restrictions shall not apply to (a) any transaction among Company and any Wholly-Owned Guarantor Subsidiary or any of them; (b) reasonable and customary fees paid to members of the Board of Directors of Holdings, Company or any of its Subsidiaries; (c) reasonable and customary compensation arrangements for officers and other employees of Holdings, Company or any of its Subsidiaries entered into in the ordinary course of business; and (d) transactions described in Schedule 6.12.

6.13 **Conduct of Business.** From and after the Closing Date, no Note Party shall, nor shall it permit any of its Subsidiaries to, engage in (i) any business other than (A) the businesses engaged in by such Note Party on the Closing Date or any other businesses that is reasonably related, complementary or ancillary thereto, and (B) such other lines of business as may be consented to by Requisite Purchasers, or (ii) any business or activities that conflict with Section 4.27(a).

6.14 **[Reserved].**

6.15 **Compliance with Reporting Requirements.** Holdings shall comply with the Securities Act, Exchange Act, the rules and regulations promulgated thereunder and each other law, rule and regulation applicable to Holdings due to its status as a publicly traded company. Holdings shall and shall cause its Subsidiaries to, at all times maintain systems of internal controls and corporate governance standards consistent with best practices for a publicly traded company of its size. Without limiting the foregoing, Holdings shall ensure that all filings with the Securities and Exchange Commission required under the Securities Act, Exchange Act or the rules and regulations thereunder are made on or prior to the date required thereunder.

6.16 **Fiscal Year; Accounting Policies.** No Note Party shall, nor shall it permit any of its Subsidiaries to change its Fiscal Year-end from March 31 or make any change in its accounting policies that is not required under GAAP.

6.17 **Deposit Accounts and Securities Accounts.** No Note Party will establish or maintain a Deposit Account or a Securities Account that is not a Controlled Account, deposit proceeds in a Deposit Account that is not a Controlled Account or deposit, acquire, or otherwise carry any security entitlement or commodity contract in a Securities Account that is not a Controlled Account , in each case, (a) on or after the 30th day following the Closing Date, or solely in the case of any such account that is acquired pursuant to a Permitted Acquisition or other permitted Investment, the 30th day following the acquisition of such Deposit Account or Securities Account and (b) other than with respect to Excluded Accounts.

6.18 **Amendments to Organizational Agreements and Material Contracts.** No Note Party shall (a) amend or permit any amendments to any Note Party's or any of its Subsidiaries' Organizational Documents if such amendments could be adverse to the Purchasers; or (b) amend, terminate, or waive or permit any amendment, termination, or waiver of any provision of, any Material Contract or Material Indebtedness if such amendment, termination, or waiver would be adverse to the Purchasers.

6.19 **Prepayments of Certain Indebtedness**. No Note Party shall, directly or indirectly, voluntarily purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Indebtedness of any Note Party or any of its Subsidiaries for borrowed money prior to its scheduled maturity (or the date when such payments are due), other than (i) the Obligations, (ii) Capital Leases permitted hereunder and (iii) Indebtedness secured by a Permitted Lien if the asset securing such Indebtedness has been sold or otherwise disposed of in accordance with Section 6.9.

6.20 **Use of Proceeds**. No Note Party shall use the proceeds from the issuance and sale of the Notes except as set forth in Section 2.5.

6.21 **Additional Matters.** Except as otherwise expressly permitted by this Agreement, no Note Party shall, nor shall it permit any of its Subsidiaries to, do any of the following actions without Requisite Purchasers' prior written consent (in their sole discretion): (i) permit the occurrence of any Sale Transaction, (ii) permit the occurrence of any Liquidation Event, (iii) select or change Holdings' independent auditor to any entity other than an Acceptable Auditor, or (iv) reclassify any debt securities or Capital Stock or undertake any other corporate restructuring or reorganization, including any alteration of the rights, preferences or privileges of Capital Stock (excluding any stock splits).

6.22 **Holdings Covenant**.

(a) Holdings will not conduct, transact or otherwise engage in any business or operations other than the following (and activities incidental thereto):

(i) the ownership or acquisition of the Capital Stock (other than Disqualified Capital Stock) of Company,

(ii) the maintenance of its legal existence, including the ability to incur fees, costs and expenses relating to such maintenance,

(iii) to the extent applicable, participating in tax, accounting and other administrative matters as a member of the combined group of Holdings, the Company and its Subsidiaries,

(iv) the performance of its obligations under and in connection with, and payments with respect to, the Note Documents, any definitive documentation with respect to the ABL Facility and any related documentation in respect of the foregoing,

(v) any public offering of its common stock or any other issuance or registration of its Capital Stock for sale or resale, including the costs, fees and expenses related thereto; provided that the proceeds of such public offering, issuance or registration are applied to prepay the Notes to the extent required under Section 2.13(3),

(vi) any transaction between or among Holdings and Company or any one of its Subsidiaries permitted under this Section 6.22, including:

(1) making any payment(s) or Restricted Junior Payments permitted under Section 6.5 with any amounts received from Company pursuant to Section 6.5 or holding any cash received in connection therewith pending application thereof by Holdings;

(2) incurring fees, costs and expenses relating to overhead and general operating including professional fees for legal, tax and accounting issues and paying taxes,

(3) providing indemnification to officers and directors,

(4) making contributions to the capital of Company,

(5) making Investments in cash and Cash Equivalents,

(6) entering into the Services Agreement, or

(7) to the extent required by the Services Agreement, receiving payments from Company in an aggregate annual amount not to exceed $2,500,000 per Fiscal year (which, solely for the Fiscal Year ending March 31, 2024, shall be prorated based on the number of days remaining in such Fiscal Year following the Closing Date), to be increased on April 1 of each Fiscal Year by an amount equal to (A) in the case of such increase on April 1, 2024, 1.75% and (B) in the case of any such increase thereafter, the greater of (1) 3.50% and (2) the Consumer Price Index, as set by the U.S. Bureau of Labor Statistics and available on March 31 of each calendar year, for payment of Holdings' reasonable and documented audit, board and executive compensation expenses which amounts shall be applied by Holdings for such expenses.

(vii) activities incidental to the businesses or activities described in clauses (a)(i) through (vi) of this Section 6.22.

(b) Holdings shall not, directly or indirectly, incur any Indebtedness or issue any shares of Disqualified Stock or Preferred Stock other than Indebtedness of Holdings under the Note Documents or the ABL Facility or as otherwise expressly permitted under Section 6.1;

(c) Holdings shall not, directly or indirectly, create, incur or assume any Lien on any asset or property of Holdings, or any income or profits therefrom other than:

(i) Liens created pursuant to any Note Document or any definitive documentation with respect to the ABL Facility and

(ii) Liens permitted under Section 6.2(b), (c), (d), (e), (i), (j), (m) or (p).

(d) Holdings shall have no other Subsidiaries other than Company.

SECTION 7 GUARANTY

7.1 **Guaranty of the Obligations.** Subject to the provisions of Section 7.2 and any limitations set forth in the definition of the term Guarantor, Guarantors jointly and severally hereby irrevocably and unconditionally guaranty to each Beneficiary the due and punctual Payment in Full of all Obligations when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)) (collectively, the **"Guaranteed Obligations"**).

7.2 **Contribution by Guarantors.** All Guarantors desire to allocate among themselves (collectively, the **"Contributing Guarantors"**), in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Guarantor (a **"Funding Guarantor"**) under this Guaranty such that its Aggregate Payments exceeds its Fair Share as of such date, such Funding Guarantor shall be entitled to a contribution from each of the other Contributing Guarantors in an amount sufficient to cause each Contributing Guarantor's Aggregate Payments to equal its Fair Share as of such date. **"Fair Share"** means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Contributing Guarantor, to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Contributing Guarantors multiplied by, (b) the aggregate amount paid or distributed on or before such date by all Funding Guarantors under this Guaranty in respect of the Guaranteed Obligations. **"Fair Share Contribution Amount"** means, with respect to a Contributing Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Contributing Guarantor under this Guaranty that would not render its obligations hereunder or thereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; provided, solely for purposes of calculating the "Fair Share Contribution Amount" with respect to any Contributing Guarantor for purposes of this Section 7.2, any assets or liabilities of such Contributing Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Contributing Guarantor. **"Aggregate Payments"** means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (1) the aggregate amount of all payments and distributions made on or before such date by such Contributing Guarantor in respect of this Guaranty (including in respect of this Section 7.2), minus (2) the aggregate amount of all payments received on or before such date by such Contributing Guarantor from the other Contributing Guarantors as contributions under this Section 7.2. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Guarantor. The allocation among Contributing Guarantors of their obligations as set forth in this Section 7.2 shall not be construed in any way to limit the liability of any Contributing Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 7.2.

7.3 **Payment by Guarantors.** Subject to Section 7.2, Guarantors hereby jointly and severally agree, in furtherance of the foregoing and not in limitation of any other right that any Beneficiary may have at law or in equity against any Guarantor by virtue hereof, that upon the failure of Company to pay any of the Guaranteed Obligations when and as the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)), Guarantors will upon demand pay, or cause to be paid, in Cash, to Beneficiaries, an amount equal to the sum of the unpaid principal amount of all Guaranteed Obligations then due as aforesaid, accrued and unpaid interest on such Guaranteed Obligations (including interest that, but for Company's becoming the subject of a case under the Bankruptcy Code, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against Company for such interest

in the related bankruptcy case) and all other Guaranteed Obligations then owed to Beneficiaries as aforesaid.

7.4 **Liability of Guarantors Absolute.** Each Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than Payment in Full of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(a) this Guaranty is a guaranty of payment when due and not of collectability. This Guaranty is a primary obligation of each Guarantor and not merely a contract of surety;

(b) Collateral Agent may enforce this Guaranty upon the occurrence of an Event of Default notwithstanding the existence of any dispute between Company and any Beneficiary with respect to the existence of such Event of Default;

(c) the obligations of each Guarantor hereunder are independent of the obligations of Company and the obligations of any other guarantor (including any other Guarantor) of the obligations of Company, and a separate action or actions may be brought and prosecuted against such Guarantor whether or not any action is brought against Company or any of such other guarantors and whether or not Company is joined in any such action or actions;

(d) payment by any Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge any Guarantor's liability for any portion of the Guaranteed Obligations that has not been paid. Without limiting the generality of the foregoing, if any Beneficiary is awarded a judgment in any suit brought to enforce any Guarantor's covenant to pay a portion of the Guaranteed Obligations, such judgment shall not be deemed to release such Guarantor from its covenant to pay the portion of the Guaranteed Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Guarantor, limit, affect, modify or abridge any other Guarantor's liability hereunder in respect of the Guaranteed Obligations;

(e) any Beneficiary, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability hereof or giving rise to any reduction, limitation, impairment, discharge or termination of any Guarantor's liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of the Guaranteed Obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of the Guaranteed Obligations and take and hold security for the payment hereof or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment of the Guaranteed Obligations, any other guaranties of the Guaranteed Obligations, or any other obligation of any Person (including any other Guarantor) with respect to the Guaranteed Obligations; (v) enforce and apply any security now or hereafter held by or for the benefit of such Beneficiary in respect hereof or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise

any other right or remedy that such Beneficiary may have against any such security, in each case as such Beneficiary in its discretion may determine consistent herewith or any applicable security agreement, including foreclosure on any such security pursuant to one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against any other Note Party or any security for the Guaranteed Obligations; and (vi) exercise any other rights available to it under the Note Documents; and

(f) this Guaranty and the obligations of Guarantors hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than Payment in Full of the Guaranteed Obligations), including the occurrence of any of the following, whether or not any Guarantor shall have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Note Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Guaranteed Obligations; (ii) any rescission, waiver, amendment or modification of, or any consent to depart from, any of the terms or provisions (including provisions relating to events of default) hereof, any of the other Note Documents, or of any other guaranty or security for the Guaranteed Obligations, in each case whether or not in accordance with the terms hereof or such Note Document, or any agreement relating to such other guaranty or security; (iii) the Guaranteed Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the application of payments received from any source (other than payments received pursuant to the other Note Documents or from the proceeds of any security for the Guaranteed Obligations, except to the extent such security also serves as collateral for indebtedness other than the Guaranteed Obligations) to the payment of indebtedness other than the Guaranteed Obligations, even though any Beneficiary might have elected to apply such payment to any part or all of the Guaranteed Obligations; (v) any Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of Company or any of its Subsidiaries and to any corresponding restructuring of the Guaranteed Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral that secures any of the Guaranteed Obligations; (vii) any defenses, set-offs or counterclaims that Company may allege or assert against any Beneficiary in respect of the Guaranteed Obligations, including failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury; and (viii) any other act or thing or omission, or delay to do any other act or thing, that may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Guaranteed Obligations.

7.5 **Waivers by Guarantors.** Each Guarantor hereby waives, for the benefit of Beneficiaries: (a) any right to require any Beneficiary, as a condition of payment or performance by such Guarantor, to (i) proceed against Company, any other guarantor (including any other Guarantor) of the Guaranteed Obligations or any other Person, (ii) proceed against or exhaust any security held from Company, any such other guarantor or any other Person, (iii) proceed against or have resort to any balance of any Deposit Account or credit on the books of any Beneficiary in favor of Company or any other Person, or (iv) pursue any other remedy in the

power of any Beneficiary whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of Company or any other Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Company or any other Guarantor from any cause other than Payment in Full of all Obligations; (c) any defense based upon any statute or rule of law that provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon any Beneficiary's errors or omissions in the administration of the Guaranteed Obligations, except behavior that amounts to bad faith; (e) (i) any principles or provisions of law, statutory or otherwise, that are or might be in conflict with the terms hereof and any legal or equitable discharge of such Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to Company and notices of any of the matters referred to in Section 7.4 and any right to consent to any thereof; and (g) any defenses or benefits that may be derived from or afforded by law that limit the liability of or exonerate guarantors or sureties, or that may conflict with the terms hereof.

7.6 **Guarantors' Rights of Subrogation, Contribution, Etc**. Until the Guaranteed Obligations shall have been Paid in Full, each Guarantor hereby waives any claim, right or remedy, direct or indirect, that such Guarantor now has or may hereafter have against Company or any other Guarantor or any of its assets in connection with this Guaranty or the performance by such Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including (a) any right of subrogation, reimbursement or indemnification that such Guarantor now has or may hereafter have against any other Note Party with respect to the Guaranteed Obligations, (b) any right to enforce, or to participate in, any claim, right or remedy that any Beneficiary now has or may hereafter have against any other Note Party, and (c) any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Beneficiary. In addition, until the Guaranteed Obligations shall have been Paid in Full, each Guarantor shall withhold exercise of any right of contribution such Guarantor may have against any other guarantor (including any other Guarantor) of the Guaranteed Obligations, including any such right of contribution as contemplated by Section 7.2. Each Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification such Guarantor may have against Company or against any collateral or security, and any rights of contribution such Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights any Beneficiary may have against any Note Party, to all right, title and interest any Beneficiary may have in any such collateral or security, and to any right any Beneficiary may have against such other guarantor. If any amount shall be paid to any Guarantor on account of any such subrogation, reimbursement,

indemnification or contribution rights at any time when all Guaranteed Obligations shall not have been Paid in Full, such amount shall be held in trust for the benefit of Beneficiaries and shall forthwith be paid over to Beneficiaries to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof.

7.7 **Subordination of Other Obligations**. Any Indebtedness of Company or any Guarantor now or hereafter held by any Guarantor (the **"Obligee Guarantor"**) is hereby subordinated in right of payment to the Guaranteed Obligations, and any Distribution collected or received by the Obligee Guarantor after an Event of Default has occurred and is continuing shall be held in trust for the benefit of Beneficiaries and shall forthwith be paid over to Beneficiaries to be credited and applied against the Guaranteed Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision hereof. For purposes of this Section 7.7, "**Distribution**" means, with respect to any Indebtedness subordinated pursuant to this Section 7.7, (a) any payment or distribution by any Person of cash, securities or other property, by set-off or otherwise, on account of such Indebtedness, (b) any redemption of or purchase or other acquisition of such Indebtedness from the Obligee Guarantor by any other Person, and (c) the granting of any lien or security interest to or for the benefit of the Obligee Guarantor or any other Person in or upon any property of any Person to secure such Indebtedness.

7.8 **Continuing Guaranty.** This Guaranty is a continuing guaranty and shall remain in effect until all of the Guaranteed Obligations shall have been Paid in Full. Each Guarantor hereby irrevocably waives any right to revoke this Guaranty as to future transactions giving rise to any Guaranteed Obligations.

7.9 **Authority of Guarantors or Company**. It is not necessary for any Beneficiary to inquire into the capacity or powers of any Guarantor or Company or the officers, Directors or any agents acting or purporting to act on behalf of any of them.

7.10 **Financial Condition of Company**. Any credit extension by Purchasers to Company pursuant to this Agreement or continued from time to time, without notice to or authorization from any Guarantor regardless of the financial or other condition of Company at the time of any such grant or continuation. No Beneficiary shall have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor's assessment, of the financial condition of Company. Each Guarantor has adequate means to obtain information from Company on a continuing basis concerning the financial condition of Company and its ability to perform its obligations under the Note Documents, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of Company and of all circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of any Beneficiary to disclose any matter, fact or thing relating to the business, operations or conditions of Company now known or hereafter known by any Beneficiary.

7.11 **Bankruptcy, etc**.

(a) So long as any Guaranteed Obligations remain outstanding, no Guarantor shall, without the prior written consent of Requisite Purchasers, commence or join with any other

Person in commencing any bankruptcy, reorganization or insolvency case or proceeding of or against Company or any other Guarantor. The obligations of Guarantors hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Company or any other Guarantor or by any defense that Company or any other Guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Each Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations that accrues after the commencement of any case or proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of such case or proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if such case or proceeding had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of Guarantors and Beneficiaries that the Guaranteed Obligations that are guaranteed by Guarantors pursuant hereto should be determined without regard to any rule of law or order that may relieve any Note Party of any portion of such Guaranteed Obligations. Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar Person to pay Collateral Agent, or allow the claim of Collateral Agent in respect of, any such interest accruing after the date on which such case or proceeding is commenced.

(c) In the event that all or any portion of the Guaranteed Obligations are paid by any Note Party, the obligations of Guarantors hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from any Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments that are so rescinded or recovered shall constitute Guaranteed Obligations for all purposes hereunder.

7.12 **Discharge of Guaranty Upon Sale of Subsidiary Guarantor.** If all of the Capital Stock of any Subsidiary Guarantor or any of its successors in interest hereunder shall be sold or otherwise disposed of (including by merger or consolidation) in accordance with the terms and conditions hereof, the Guaranty of such Subsidiary Guarantor or such successor in interest, as the case may be, hereunder shall automatically be discharged and released without any further action by any Beneficiary or any other Person effective as of the time of such Asset Sale (provided that Collateral Agent may, after receipt of a written certificate of a Chief Financial Officer of Company certifying that such transaction is permitted pursuant to the Note Documents, execute and deliver any documentation reasonably requested by Company in writing to further evidence or reflect any such release, all at the expense of Company).

SECTION 8 EVENTS OF DEFAULT

8.1 **Events of Default.** If any one or more of the following conditions or events shall occur:

(a) Failure to Make Payments When Due. Failure by Company to pay (i) the principal of and premium, if any, on any Note when due whether at stated maturity, by acceleration or otherwise; (ii) when due any installment of principal of any Note, by notice of voluntary

prepayment, by mandatory prepayment or otherwise when due or (iii) any interest on any Note or any fee or any other amount due hereunder , in each case, within one (1) Business Day after the date when due hereunder.

(b) Default in Other Agreements. (i) Failure of any Note Party or any of their respective Subsidiaries to pay when due any principal of or interest on or any other amount, including any payment in settlement, payable in respect of one or more items of Material Indebtedness, including for the avoidance of doubt any ABL Facility Indebtedness, in each case beyond the grace period, if any, provided therefor; or (ii) breach or default by any Note Party or any of its Subsidiaries with respect to any other term of (1) one or more items of Material Indebtedness, or (2) any loan agreement, mortgage, note, indenture or other agreement relating to such item(s) of Material Indebtedness, in each case beyond the grace period, if any, provided therefor, if the effect of such breach or default is to cause, or to permit the holder or holders of that Material Indebtedness (or a trustee on behalf of such holder or holders), with or without the passage of time, to cause, that Material Indebtedness to become or be declared due and payable (or subject to a compulsory repurchase or other redemption) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; or

(c) Breach of Certain Covenants. (i) Failure of any Note Party to perform or comply with any term or condition contained in Section 5.1 (other than Section 5.1(b), (c) or (d) or (o)), Section 5.2, Section 5.3, Section 5.4, Section 5.5, Section 5.6, Section 5.8, Section 5.10, Section 5.11, Section 5.15, Section 5.16, Section 5.17 or Section 6, (ii) failure of any Note Party to perform or comply with any term or condition contained in Sections 5.1(b), (c), (d) or (o) within fifteen (15) Business Days after the date when due thereunder or (iii) failure of any Note Party to perform or comply with any term or condition contained in Section 5.18 within three (3) Business Days after the date when due thereunder; or

(d) Breach of Representations, etc. Any representation, warranty, certification or other statement made or deemed made by any Note Party in any Note Document or in any statement or certificate at any time given by any Note Party or any of its Subsidiaries in writing pursuant hereto or thereto or in connection herewith or therewith shall be false or misleading in any material respect as of the date made or deemed made; provided that such materiality qualifier shall not apply to any representations and warranties to the extent already qualified or modified by materiality or similar concept in the text thereof; or

(e) Other Defaults Under Note Documents. Any Note Party shall default in the performance of or compliance with any term contained herein or any of the other Note Documents, other than any such term referred to in any other paragraph of this Section 8.1 or consisting of a condition or status that is expressly required to exist or be satisfied at a specific time, and such term has not been fully and permanently performed or complied with within thirty days after the earlier of (i) an officer of such Note Party becoming aware of such default, or (ii) receipt by Company of notice from any Purchaser of such default; or

(f) Involuntary Bankruptcy; Appointment of Receiver, etc. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of Company or any of its Subsidiaries in an involuntary case under any Debtor Relief Law, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or

(ii) an involuntary case shall be commenced against Holdings, Company or any of its Subsidiaries under any Debtor Relief Law; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Holdings, Company or any of its Subsidiaries, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of Holdings, Company or any of its Subsidiaries for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of Holdings, Company or any of its Subsidiaries, and any such event described in this clause (ii) shall continue for sixty days without having been dismissed, bonded or discharged; or

(g) Voluntary Bankruptcy; Appointment of Receiver, Etc. (i) Holdings, Company or any of its Subsidiaries shall have an order for relief entered with respect to it or shall commence a voluntary case under any Debtor Relief Law, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or Holdings, Company or any of its Subsidiaries shall make any assignment for the benefit of creditors; or (ii) Holdings, Company or any of its Subsidiaries shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the Board of Directors of Holdings, Company or any of its Subsidiaries (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in Section 8.1(f); or

(h) Judgments and Attachments. Any money judgment, writ or warrant of attachment or similar process involving (i) in any individual case an amount in excess of $250,000 or (ii) in the aggregate at any time an amount in excess of $500,000 (in either case to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has not denied coverage) shall be entered or filed against Holdings, Company or any of its Subsidiaries or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty days (or in any event later than five days prior to the date of any proposed sale thereunder); or

(i) Dissolution. Any order, judgment or decree shall be entered against any Note Party or any of its Subsidiaries decreeing the dissolution or split up of such Note Party or any of its Subsidiaries and such order shall remain undischarged or unstayed for a period in excess of thirty days; or

(j) Employee Benefit Plans. (i) There shall occur one or more ERISA Events that individually or in the aggregate results in or might reasonably be expected to result in liability of Holdings, Company, any of its Subsidiaries or any of their respective ERISA Affiliates in excess of $500,000 during the term hereof; or (ii) there exists any fact or circumstance that reasonably could be expected to result in the imposition of a Lien or security interest under Section 430(k) of the Code or ERISA or a violation of Section 436 of the Code; or

(k) Change of Control. A Change of Control shall occur; or

(l) Guaranties, Collateral Documents and other Note Documents. At any time after the execution and delivery thereof, (i) the Guaranty for any reason, other than the Payment in Full of all Obligations, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void or any Guarantor shall repudiate its obligations thereunder, (ii) this Agreement or any Collateral Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the Payment in Full of the Obligations in accordance with the terms hereof) or shall be declared null and void, or Collateral Agent shall not have or shall cease to have a valid and perfected Lien in any Collateral with a value in excess of $50,000 in the aggregate purported to be covered by the Collateral Documents with the priority required by the relevant Collateral Document, in each case for any reason other than the failure of Collateral Agent or any Secured Party to take any action within its control, or (iii) any Note Party shall contest the validity or enforceability of any Note Document in writing or deny in writing that it has any further liability, including with respect to future advances by Purchasers, under any Note Document to which it is a party or shall contest the validity of or perfection of any Lien in any Collateral granted or purported to be granted pursuant to the Collateral Documents.

THEN, (1) upon the occurrence of any Event of Default described in Section 8.1(f) or 8.1(g), automatically, and (2) upon the occurrence of any other Event of Default, upon notice to Company by Requisite Purchasers, (A) each of the following shall immediately become due and payable, in each case without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by each Note Party: (I) the unpaid principal amount of and accrued interest and premium on the Notes and (II) all other Obligations; (B) Requisite Purchasers may cause Collateral Agent to enforce any and all Liens and security interests created pursuant to Collateral Documents; and (C) Collateral Agent may enforce any other rights and remedies available to it under any Note Document or under applicable law.

8.2 **Company's Right to Cure**. For purposes of determining whether an Event of Default has occurred under the financial covenant set forth in Section 6.8(a) for any Fiscal Quarter (the "Specified Financial Covenant"), Company may make a prepayment (such prepayment, the "Specified Debt Prepayment") of the Notes pursuant to Section 2.12 in an amount up to the amount that the required level for Consolidated Adjusted EBITDA for such Fiscal Quarter exceeds Consolidated Adjusted EBITDA for such Fiscal Quarter (the "Cure Cap") and Consolidated Adjusted EBITDA for such Fiscal Quarter shall be deemed to be increased by the amount of the Specified Debt Prepayment, which Specified Debt Prepayment may be made after the last Business Day of such Fiscal Quarter and on or prior to the date day that is fifteen (15) Business Days after the date on which financial statements are required to be delivered for such Fiscal Quarter under Section 5.1(b) (the "Specified Debt Cure Deadline"); provided that each of the following requirements are satisfied:

(a) no more than five Specified Debt Prepayments may be made during the term of this Agreement;

(b) Specified Debt Prepayments may not be made in any two consecutive Fiscal Quarters; and

(c) a Specified Debt Prepayment shall not be deemed to increase Consolidated Adjusted EBITDA for any purpose other than for purposes of determining compliance with the Specified Financial Covenant for such Fiscal Quarter for which the Specified Debt Prepayment was made and for subsequent periods that include such Fiscal Quarter in which the Specified Debt Prepayment was made.

Upon satisfying the requirements in the previous sentence, the Note Parties shall be deemed to have satisfied the requirements of such Specified Financial Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith on such date of determination.

Until the expiration of the Specified Debt Cure Deadline in respect of any prospective Default or Event of Default with respect to the Specified Financial Covenant, neither Collateral Agent nor any Purchaser shall be permitted to (and shall not) accelerate any Notes held by them or exercise any rights or remedies against any Note Party or any of the Collateral on the basis of a failure to comply with the requirements of the Specified Financial Covenant.

SECTION 9 COLLATERAL AGENT

9.1 **Appointment of Collateral Agent.** GSSLG is hereby appointed Collateral Agent hereunder and under the other Note Documents and each Purchaser hereby authorizes GSSLG, in such capacity, to act as Collateral Agent in accordance with the terms hereof and the other Note Documents. Collateral Agent hereby agrees to act in its capacity as such upon the express conditions contained herein and the other Note Documents, as applicable. The provisions of this Section 9 are solely for the benefit of Collateral Agent and Purchasers and no Note Party shall have any rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, Collateral Agent shall act solely as an agent of Purchasers and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for Company or any of its Subsidiaries. It is understood and agreed that the use of the term "agent" herein or in any other Note Documents (or any other similar term) with reference to Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

9.2 **Powers and Duties**. Each Purchaser irrevocably authorizes Collateral Agent to take such action on such Purchaser's behalf and to exercise such powers, rights and remedies hereunder and under the other Note Documents as are specifically delegated or granted to Collateral Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. In the event that any obligations are permitted to be incurred and subordinated in right of payment to the Obligations hereunder and/or are permitted to be secured by Liens on all or a portion of the Collateral, each Purchaser authorizes Collateral Agent, as applicable, to enter into intercreditor agreements, subordination agreements and amendments to the Collateral Documents to reflect such arrangements on terms that are acceptable to Collateral Agent, in its sole discretion. Collateral Agent shall have only those duties and responsibilities that are expressly specified herein and the other Note Documents.

Collateral Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. Collateral Agent shall not have, by reason hereof, in any of the other Note Documents, a fiduciary relationship in respect of any Purchaser or any other Person; and nothing herein or in any of the other Note Documents, expressed or implied, is intended to or shall be so construed as to impose upon Collateral Agent any obligations in respect hereof or any of the other Note Documents except as expressly set forth herein or therein.

9.3 **General Immunity**.

(a) No Responsibility for Certain Matters. Collateral Agent shall not be responsible to any Purchaser for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or any other Note Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by Collateral Agent to Purchasers or by or on behalf of any Note Party to Collateral Agent or any Purchaser in connection with the Note Documents and the transactions contemplated thereby or for the financial condition or business affairs of any Note Party or any other Person liable for the payment of any Obligations, nor shall Collateral Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Note Documents or as to the use of the proceeds of the Notes or as to the existence or possible existence of any Event of Default or Default or as to the value or sufficiency of any Collateral or as to the satisfaction of any condition set forth in Section 3 or elsewhere herein (other than confirm receipt of items expressly required to be delivered to Collateral Agent) or to inspect the properties, books or records of Company or any of its Subsidiaries or to make any disclosures with respect to the foregoing.

(b) Exculpatory Provisions. Neither Collateral Agent nor any of its officers, partners, Directors, employees or agents shall be liable to Purchasers for any action taken or omitted by Collateral Agent (i) under or in connection with any of the Note Documents or (ii) with the consent or at the request of Requisite Purchasers (or, if so specified by this Agreement, all Purchasers or any other instructing group of Purchasers specified by this Agreement), in each case except to the extent caused by Collateral Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. Collateral Agent shall not, except as expressly set forth herein and in the other Note Documents, have any duty to disclose or be liable for the failure to disclose, any information relating to Company or any of its Affiliates that is communicated to or obtained by Collateral Agent or any of its Affiliates in any capacity. Collateral Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Note Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until Collateral Agent shall have received instructions in respect thereof from Requisite Purchasers (or such other Purchasers as may be required to give such instructions under Section 10.5) and, upon receipt of such instructions from Requisite Purchasers (or such other Purchasers, as the case may be), Collateral Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions, including for the avoidance of doubt refraining from any action that, in its opinion or the opinion of its counsel, may expose Collateral Agent to liability, may be in violation of the automatic stay

under any Debtor Relief Law. Without prejudice to the generality of the foregoing, (i) Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for Holdings, Company and its Subsidiaries), accountants, experts and other professional advisors selected by it; and (ii) no Purchaser shall have any right of action whatsoever against Collateral Agent as a result of Collateral Agent acting or (where so instructed) refraining from acting hereunder or any of the other Note Documents in accordance with the instructions of Requisite Purchasers (or such other Purchasers as may be required to give such instructions under Section 10.5).

(c) Delegation of Duties. Collateral Agent may perform any and all of its duties and exercise its rights and powers under this Agreement or under any other Note Document by or through any one or more sub-agents appointed by Collateral Agent. Such appointing Collateral Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. The exculpatory, indemnification and other provisions of this Section 9.3 and of Section 9.6 shall apply to any Affiliates of Collateral Agent and shall apply to their respective activities in connection with activities as Collateral Agent. All of the rights, benefits, and privileges (including the exculpatory and indemnification provisions) of this Section 9.3 and of Section 9.6 shall apply to any such sub-agent and to the Affiliates of any such sub-agent, and shall apply to their respective activities as sub-agent as if such sub-agent and Affiliates were named herein. Notwithstanding anything herein to the contrary, with respect to each sub-agent appointed by Collateral Agent, (i) such sub-agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory rights and rights to indemnification) and shall have all of the rights and benefits of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of Note Parties and the Purchasers, (ii) such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub-agent, and (iii) such sub-agent shall only have obligations to the applicable agent and not to any Note Party, Purchaser or any other Person and no Note Party, Purchaser or any other Person shall have any rights, directly or indirectly, as a third party beneficiary or otherwise, against such sub-agent. Collateral Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that Collateral Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

(d) Notice of Default or Event of Default. Collateral Agent shall not be deemed to have knowledge of any Default or Event of Default unless and until written notice describing such Default or Event of Default is given to Collateral Agent by a Note Party or a Purchaser. In the event that Collateral Agent shall receive such a notice, Collateral Agent will endeavor to give notice thereof to the Purchasers; provided, that failure to give such notice shall not result in any liability on the part of Collateral Agent.

9.4 **Collateral Agent Entitled to Act as Purchaser.** The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, Collateral Agent in its individual capacity as a Purchaser hereunder. With respect to its

participation in the Notes, Collateral Agent shall have the same rights and powers hereunder as any other Purchaser and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term "Purchaser" shall, unless the context clearly otherwise indicates, include Collateral Agent in its individual capacity. Collateral Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with Company or any of its Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from Company for services in connection herewith and otherwise without having to account for the same to Purchasers. The Purchasers acknowledge that pursuant to such activities, Collateral Agent and its Affiliates may receive information regarding any Note Party or any Affiliate of any Note Party (including information that may be subject to confidentiality obligations in favor of such Note Party or such Affiliate) and acknowledge that Collateral Agent and its Affiliates shall be under no obligation to provide such information to them.

9.5 **[Re served].**

9.6 **Right to Indemnity.** Each Purchaser, in proportion to its Pro Rata Share, severally agrees to indemnify Collateral Agent, its Affiliates and their respective officers, partners, directors, trustees, employees and agents of Collateral Agent (each, an **"Indemnitee Agent Party"**), to the extent that such Indemnitee Agent Party shall not have been reimbursed by any Note Party, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Indemnitee Agent Party in exercising its powers, rights and remedies or performing its duties hereunder or under the other Note Documents or otherwise in its capacity as such Indemnitee Agent Party in any way relating to or arising out of this Agreement or the other Note Documents, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF SUCH INDEMNITEE AGENT PARTY**; provided, no Purchaser shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Indemnitee Agent Party's gross negligence or willful misconduct, as determined by a court of competent jurisdiction in a final, non-appealable order. If any indemnity furnished to any Indemnitee Agent Party for any purpose shall, in the opinion of such Indemnitee Agent Party, be insufficient or become impaired, such Indemnitee Agent Party may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided, in no event shall this sentence require any Purchaser to indemnify any Indemnitee Agent Party against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Purchaser's Pro Rata Share thereof; provided further, this sentence shall not be deemed to require any Purchaser to indemnify any Indemnitee Agent Party against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence

9.7 **Successor Collateral Agent**.

(a) [Reserved]

(b) Collateral Agent may resign at any time by giving prior written notice thereof to Purchasers and the Note Parties. Requisite Purchasers shall have the right to appoint a financial institution as Collateral Agent hereunder, subject to the reasonable satisfaction of Company and Collateral Agent's resignation shall become effective on the earliest of (i) thirty days after delivery of the notice of resignation, (ii) the acceptance of such successor Collateral Agent by Company and Requisite Purchasers or (iii) such other date, if any, agreed to by Requisite Purchasers. Until a successor Collateral Agent is so appointed by Requisite Purchasers, any collateral security held by Collateral Agent for the benefit of the Purchasers under any of the Note Documents shall continue to be held by the resigning Collateral Agent as nominee until such time as a successor Collateral Agent is appointed. Upon the acceptance of any appointment as Collateral Agent hereunder by a successor Collateral Agent, that successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the resigning or removed Collateral Agent under this Agreement and the Collateral Documents, and the resigning or removed Collateral Agent under this Agreement shall promptly (i) transfer to such successor Collateral Agent all sums, Securities and other items of Collateral held hereunder or under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Collateral Agent under this Agreement and the Collateral Documents, and (ii) execute and deliver to such successor Collateral Agent or otherwise authorize the filing of such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Collateral Agent of the security interests created under the Collateral Documents, whereupon such resigning or removed Collateral Agent shall be discharged from its duties and obligations under this Agreement and the Collateral Documents. After any resigning or removed Collateral Agent's resignation or removal hereunder as Collateral Agent, the provisions of this Agreement and the Collateral Documents shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement or the Collateral Documents while it was Collateral Agent hereunder.

(c) [Reserved].

(d) Notwithstanding anything herein to the contrary, Collateral Agent may assign its rights and duties as Collateral Agent hereunder to an Affiliate of GSSLG without the prior written consent of, or prior written notice to, Company or the Purchasers; provided, that Company and the Purchasers may deem and treat such assigning Collateral Agent as Collateral Agent for all purposes hereof, unless and until Collateral Agent provides written notice to Company and the Purchasers of such assignment. Upon such assignment such Affiliate shall succeed to and become vested with all rights, powers, privileges and duties as Collateral Agent hereunder and under the other Note Documents.

9.8 **Collateral Documents and Guaranty**.

(a) Agent under Collateral Documents and Guaranty. Each Purchaser hereby further authorizes Collateral Agent on behalf of and for the benefit of Secured Parties, to be the agent for and representative of Secured Parties with respect to the Guaranty, the Collateral and the Collateral Documents. Subject to Section 10.5, without further written consent or authorization from any Secured Party, Collateral Agent may execute any documents or instruments necessary to (i) in connection with a sale or disposition of assets permitted by this Agreement, release any Lien

encumbering any item of Collateral that is the subject of such sale or other disposition of assets or to which Requisite Purchasers (or such other Purchasers as may be required to give such consent under Section 10.5) have otherwise consented, or (ii) release any Guarantor from the Guaranty pursuant to Section 7.12 or with respect to which Requisite Purchasers (or such other Purchasers as may be required to give such consent under Section 10.5) have otherwise consented. Upon request by Collateral Agent at any time, the Purchasers will confirm in writing Collateral Agent's authority to release its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.8. Upon the reasonable request of Company and/or Collateral Agent may, after receipt of a written certificate of a Chief Financial Officer of Company certifying that such transaction is permitted pursuant to the Note Documents, execute and deliver any such release documentation reasonably requested by Company in connection with such permitted releases as described above, all at the expense of Company.

(b) Right to Realize on Collateral and Enforce Guaranty. Anything contained in any of the Note Documents to the contrary notwithstanding, Company, Collateral Agent and each Secured Party hereby agree that (i) no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty, it being understood and agreed that all powers, rights and remedies hereunder and under any of the other Note Documents may be exercised solely by Collateral Agent for the benefit of Secured Parties in accordance with the terms hereof and thereof and all powers, rights and remedies under the Collateral Documents may be exercised solely by Collateral Agent for the benefit of Secured Parties in accordance with the terms thereof, and (ii) in the event of a foreclosure or similar enforcement action by Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition (including pursuant to Section 363(k), Section 1129(b)(2)(a)(ii), or otherwise of the Bankruptcy Code), Collateral Agent or any Purchaser may be the purchaser of any or all of such Collateral at any such sale or disposition and Collateral Agent, as agent for and representative of Secured Parties (but not any Purchaser or Purchasers in its or their respective individual capacities unless Requisite Purchasers shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by Collateral Agent at such sale or other disposition.

(c) [Reserved].

(d) Release of Collateral and Guarantees, Termination of Note Documents. Notwithstanding anything to the contrary contained herein or any other Note Document, when all Obligations have been Paid in Full, upon request of Company, Collateral Agent shall take such actions as shall be required to release its security interest in all Collateral, and to release all guarantee obligations provided for in any Note Document. Any such release of guarantee obligations shall be deemed subject to the provision that such guarantee obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Company or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, Company or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

(e) No Duty. Collateral Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of Collateral Agent's Lien thereon, or any certificate prepared by any Note Party in connection therewith, nor shall Collateral Agent be responsible or liable to the Purchasers for any failure to monitor or maintain any portion of the Collateral.

(f) Agency for Perfection. Collateral Agent and each Purchaser hereby appoints Collateral Agent and each other Purchaser as agent and bailee for the purpose of perfecting the security interests in and liens upon the Collateral in assets that, in accordance with Article 9 of the UCC, can be perfected only by possession or control (or where the security interest of a Secured Party with possession or control has priority over the security interest of another Secured Party) and Collateral Agent and each Purchaser hereby acknowledges that it holds possession of or otherwise controls any such Collateral for the benefit of the other Secured Parties, except as otherwise expressly provided in this Agreement. Should any Purchaser obtain possession or control of any such Collateral, such Purchaser shall notify Collateral Agent thereof, and, promptly upon Collateral Agent's request therefor shall deliver such Collateral to Collateral Agent or in accordance with Collateral Agent's instructions. Each Note Party by its execution and delivery of this Agreement hereby consents to the foregoing.

9.9 [**Reserved**].

9.10 **Collateral Agent May File Bankruptcy Disclosure and Proofs of Claim**. In case of the pendency of any proceeding under any Debtor Relief Laws relative to any Note Party, Collateral Agent (irrespective of whether the principal of any Note shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether any demand shall have been made on Company) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file a verified statement pursuant to rule 2019 of the Federal Rules of Bankruptcy Procedure that, in its sole opinion, complies with such rule's disclosure requirements for entities representing more than one creditor;

(b) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Notes and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Purchasers and Collateral Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Collateral Agent and its respective agents and counsel and all other amounts due the Purchasers and Collateral Agent under Sections 10.2 and 10.3 allowed in such judicial proceeding); and

(c) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Purchaser to make such payments to Collateral Agent and, in the event that Collateral Agent shall consent to the making of such

payments directly to the Purchasers, to pay to Collateral Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Collateral Agent and its agents and counsel, and any other amounts due Collateral Agent under Sections 10.2 and 10.3. To the extent that the payment of any such compensation, expenses, disbursements and advances of Collateral Agent, its agents and counsel, and any other amounts due Collateral Agent under Sections 10.2 and 10.3 out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Purchasers may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing contained in this Section 9.10 shall be deemed to authorize Collateral Agent to authorize or consent to or accept or adopt on behalf of any Purchaser any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Purchaser or to authorize Collateral Agent to vote in respect of the claim of any Purchaser in any such proceeding.

SECTION 10 MISCELLANEOUS

10.1 **Notices**.

(a) Notices Generally**.** Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given to a Note Party or Collateral Agent, shall be sent to such Person's mailing address as set forth on Appendix B or in the other relevant Note Document, and in the case of any Purchaser, the mailing address as indicated on Appendix B or otherwise indicated to Company in writing. Each notice hereunder shall be in writing and may be personally served or sent by facsimile (excluding any notices to Collateral Agent in its capacity as such) or U.S. mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of facsimile, or three Business Days after depositing it in the U.S. mail with postage prepaid and properly addressed; provided, no notice to Collateral Agent in its capacity as such shall be effective until received by Collateral Agent; provided further, any such notice or other communication shall, at the request of Collateral Agent, be provided to any sub-agent appointed pursuant to Section 9.3(c) as designated by Collateral Agent from time to time.

(b) Electronic Communications.

(i) Notices and other communications to Collateral Agent, Purchasers and any Note Party hereunder may be delivered or furnished by other electronic communication (including e mail and Internet or intranet websites, including Debt Domain, Intralinks, SyndTrak or another relevant website or other information platform (the **"Platform"**)) pursuant to procedures approved by Requisite Purchasers in their sole discretion, provided that, notwithstanding the foregoing, in no event will notices by electronic communication be effective to Collateral Agent or any Purchaser pursuant to Section 2 if any such Person has notified Company that it is incapable of receiving notices under such Section 2 by electronic communication. Collateral Agent may, in its sole discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. In the case of any

notices by electronic communication permitted in accordance with this Agreement, unless any Purchaser otherwise prescribes, (A) any notices and other communications permitted to be sent to an e-mail address shall be delivered during normal business hours and deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment, but excluding any automatic reply to such e-mail), except that, if such notice or other communication is not sent prior to noon, local time at the location of the recipient, then such notice or communication shall be deemed not to have been received until the opening of business on the next Business Day for the recipient, at the earliest, and (B) notices or communications permitted to be posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (A) of notification that such notice or communication is available and clearly identifying an accessible website address therefor.

(ii) Each Note Party understands that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and agrees and assumes the risks associated with such electronic distribution.

(iii) The Platform and any Approved Electronic Communications are provided "as is" and "as available". None of Collateral Agent or any of its officers, Directors, employees, agents, advisors or representatives (the "Agent Affiliates") warrant the accuracy, adequacy, or completeness of the Approved Electronic Communications or the Platform and each expressly disclaims liability for errors or omissions in the Platform and the Approved Electronic Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects is made by the Agent Affiliates in connection with the Platform or the Approved Electronic Communications. In no event shall the Agent Affiliates have any liability to any of the Note Parties, any Purchaser or any other Person for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Note Party's or Collateral Agent's transmission of communications through the Platform. Each party hereto agrees that Collateral Agent has no responsibility for maintaining or providing any equipment, software, services or any testing required in connection with any Approved Electronic Communication or otherwise required for the Platform.

(iv) Any notice of Default or Event of Default may be provided by telephone if confirmed promptly thereafter by delivery of written notice thereof.

(c) Change of Address, Etc. Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

10.2 **Expenses**. Whether or not the transactions contemplated hereby shall be consummated, the Note Parties agree to pay promptly (a) all of Purchasers' actual and

reasonable costs and expenses incurred in connection with the negotiation, preparation and execution of the Note Documents and any consents, amendments, waivers or other modifications thereto; (b) all of Collateral Agent's costs of furnishing all opinions by counsel for Company and the other Note Parties; (c) all the reasonable and documented fees, expenses and disbursements of counsel to Collateral Agent in connection with the negotiation, preparation, execution and administration of the Note Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by Company; (d) all the actual costs and reasonable and documented expenses of creating, perfecting, recording, maintaining, and preserving Liens in favor of Collateral Agent, for the benefit of Secured Parties, including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, title insurance premiums and reasonable and documented fees, expenses and disbursements of counsel to Collateral Agent and of counsel providing any opinions that Collateral Agent or Requisite Purchasers may request in respect of the Collateral or the Liens created pursuant to the Collateral Documents; (e) Collateral Agent's actual costs and reasonable and documented fees, expenses, and disbursements of any auditors, accountants, consultants or appraisers'; (f) all the actual costs and reasonable and documented expenses (including the reasonable and documented fees, expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained by Collateral Agent and its counsel) in connection with the custody or preservation of any of the Collateral; (g) all other actual and reasonable and documented costs and expenses incurred by Agent in connection with the transactions contemplated by the Note Documents and any consents, amendments, waivers or other modifications thereto; and (h) after the occurrence of a Default or an Event of Default, all costs and expenses, including reasonable and documented attorneys' fees (including allocated costs of internal counsel) and costs of settlement, incurred by Collateral Agent and Purchasers in enforcing or preparing for enforcement of any Obligations of or in collecting or preparing to collect any payments due from any Note Party hereunder or under the other Note Documents by reason of such Default or Event of Default (including in connection with any actual or prospective sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty) or in connection with any actual or prospective refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work out" or pursuant to or in contemplation of any insolvency or bankruptcy cases or proceedings, including the engagement of a restructuring advisor or consultant satisfactory to Requisite Purchasers in their sole discretion.

10.3 **Indemnity and Related Reimbursement.**

(a) In the event that an Indemnitee becomes involved in any capacity in any action, proceeding or investigation brought by or against any Person relating to or arising out of any Indemnified Liabilities and whether or not the transactions contemplated hereby shall be consummated, each Note Party agrees that on demand it will reimburse such Indemnitee for its legal and other expenses (including the cost of any investigation and preparation) incurred in connection therewith.

(b) In addition to the payment of expenses pursuant to Section 10.2, whether or not the transactions contemplated hereby shall be consummated, each Note Party agrees to defend (subject to Indemnitees' selection of counsel), indemnify, pay and hold harmless, each Indemnitee, from and against any and all Indemnified Liabilities, **IN ALL CASES, WHETHER OR NOT**

CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF SUCH INDEMNITEE; provided, no Note Party shall have any obligation to any Indemnitee under this Section 10.3(b) with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise directly from the gross negligence or willful misconduct of such Indemnitee, in each case as determined by a final non-appealable judgment of a court of competent jurisdiction. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 10.3 may be unenforceable in whole or in part because they are violative of any law or public policy, the applicable Note Party shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them.

(c) To the fullest extent permitted by applicable law, no Note Party shall assert, and each Note Party hereby waives, any claim against any Indemnitee on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Note Document or any agreement or instrument contemplated hereby or thereby or referenced to herein or therein, the transactions contemplated hereby or thereby, any Note or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and Company hereby waives, releases and agrees not to sue upon any such claim or such damages whether or not accrued and whether or not known or suspected to exist in its favor.

(d) Each Note Party also agrees that no Indemnitee will have any liability to any Note Party or any person asserting claims on behalf of or in right of any Note Party or any other Person in connection with or as a result of this Agreement or any Note Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Note, or the use of the proceeds thereof, or any act or omission or event occurring in connection therewith, in each case, except in the case of any Note Party to the extent that any losses, claims, damages, liabilities or expenses incurred by such Note Party or its affiliates, shareholders, partners or other equity holders have been found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted directly from the gross negligence or willful misconduct of such Purchaser in performing its purchase obligations under this Agreement; provided, however, that in no event will any such Purchaser or Collateral Agent have any liability for any indirect, consequential, special or punitive damages in connection with or as a result of such Purchaser's, or Agent's, or their respective Affiliates', Directors', employees', attorneys', agents' or sub-agents' activities arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Note Document or any agreement or instrument contemplated hereby or thereby or referenced to herein or therein, the transactions contemplated hereby or thereby, any Note or the use of the proceeds thereof or any act or omission or event occurring in connection therewith.

10.4 **Set-Off**. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence of any Event of Default each Purchaser and its Affiliates are each hereby authorized by each Note Party at any time or from time to time subject to the consent of Requisite Purchasers (such consent not to be unreasonably withheld or delayed), without notice to any Note Party or to any other Person, any

such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) and any other obligations or Indebtedness at any time held or owing by such Purchaser to or for the credit or the account of any Note Party against and on account of the Obligations of any Note Party to such Purchaser hereunder and under the other Note Documents, including all claims of any nature or description arising out of or connected hereto and participations therein or with any other Note Document, irrespective of whether or not (a) such Purchaser shall have made any demand hereunder or (b) the principal of or the interest on the Notes or any other amounts due hereunder shall have become due and payable pursuant to Section 2 and although such obligations and liabilities, or any of them, may be contingent or unmatured. The rights of each Purchaser and its Affiliates under this Section 10.4 are in addition to other rights and remedies (including other rights of set off) that such Purchaser or its Affiliates may otherwise have.

10.5 **Amendments and Waivers**.

(a) Requisite Purchasers' Consent. Subject to the additional requirements of Sections 10.5(b) and 10.5(c), no amendment, modification, termination or waiver of any provision of the Note Documents or consent to any departure by any Note Party therefrom, shall in any event be effective without the written concurrence of Requisite Purchasers. Notwithstanding anything to the contrary herein, this Agreement may be amended to provide for an Incremental New Money Purchase Commitment pursuant to Section 2.24.

(b) Affected Purchasers' Consent. Without the written consent of each Purchaser that would be directly and adversely affected thereby, no amendment, modification, termination, waiver or consent shall be effective if the effect thereof would:

(i) extend the scheduled final maturity of any Note;

(ii) waive, reduce or postpone any scheduled repayment (but not prepayment);

(iii) reduce the rate of interest on any Note (other than any waiver of any increase in the interest rate applicable to any Note pursuant to Section 2.9) or any fee or premium payable under this Agreement;

(iv) waive or extend the time for payment of any such interest, fees, or premiums;

(v) reduce or forgive the principal amount of any Note;

(vi) amend, modify, terminate or waive any provision of this Section 10.5(b) or Section 10.5(c) or any other provision of this Agreement that expressly provides that the consent of all Purchasers or any specific Purchasers is required;

(vii) amend the definition of "Requisite Purchasers" or "Pro Rata Share"; provided, with the consent of Requisite Purchasers, additional issuances and purchases of notes pursuant to this Agreement (if any) may be included in the determination of "Requisite Purchasers" or "Pro Rata Share" on substantially the same basis as the

Commitments and the Notes are included on any New Money Additional Notes Closing Date;

(viii) release all or substantially all of the Collateral or all or substantially all of the Guarantors from the Guaranty except (A) as expressly provided in the Note Documents on the Closing Date, (B) in connection with a "credit bid" undertaken by Collateral Agent with the consent or at the direction of Requisite Purchasers pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or any other provision of the Bankruptcy Code or any other Debtor Relief Law, or (C) in connection with any other sale or disposition of assets in connection with an enforcement action with respect to the Collateral that is permitted pursuant to the Note Documents and consented to or directed by Requisite Purchasers; or

(ix) consent to the assignment or transfer by any Note Party of any of its rights and obligations under any Note Document, except as expressly provided in any Note Document.

(c) Other Consents. No amendment, modification, termination or waiver of any provision of the Note Documents, or consent to any departure by any Note Party therefrom, shall:

(i) amend, modify, or waive any provision of this Agreement or the Pledge and Security Agreement so as to alter the ratable treatment of Obligations arising under the Note Documents or the definitions of "Obligations" or "Secured Obligations" (as such term or any similar term is defined in any relevant Collateral Document) in each case in a manner adverse to any Purchaser with Obligations then outstanding without the written consent of any such Purchaser; or

(ii) amend, modify, terminate or waive any provision of Section 9 as the same directly or indirectly applies to Collateral Agent, or any other provision hereof as the same directly or indirectly applies to the rights or obligations of Collateral Agent, in each case in any manner adverse to Collateral Agent without the consent of Collateral Agent.

(d) [Reserved].

(e) Effect of Amendments, Etc. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Note Party in any case shall entitle any Note Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 10.5 shall be binding upon each Purchaser at the time outstanding, each future Purchaser, each Note Party, and each future Note Party.

(f) Compensation for Amendments. Notwithstanding anything to the contrary in any Note Document, unless otherwise agreed to by Requisite Purchasers in their sole discretion no Note Party may, nor may it permit any of its Subsidiaries to, directly or indirectly (including by being complicit in or otherwise facilitating any such action by any of their respective Affiliates or Subsidiaries or any direct or indirect holders or beneficial owners of any such Person's Capital

Stock) pay or otherwise transfer any consideration, whether by way of interest, fee, or otherwise, to or for the benefit of any current or prospective Purchaser or any of its Affiliates (other than customary upfront fees to be received by any new purchaser providing new commitments) for or as an inducement to any action or inaction by such Purchaser or any of its Affiliates, including any consent, waiver, approval, disapproval, or withholding of any of the foregoing in connection with any required or requested approval, amendment, waiver, consent, or other modification of or under any Note Document or any provision thereof unless such consideration is first offered to all then existing Purchasers in accordance with their respective Pro Rata Shares and is paid to any such Purchasers that act in accordance with such offer.

(g) Cashless Settlement. Notwithstanding anything to the contrary contained in this Agreement, any Purchaser may exchange, continue, or rollover all or a portion of its Notes in connection with any refinancing, extension, modification, or similar transaction permitted by the terms of this Agreement pursuant to a cashless settlement mechanism approved by Company and such Purchaser.

10.6 **Successors and Assigns; Transferees**.

(a) Generally. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of Purchasers. No Note Party's rights or obligations hereunder nor any interest therein may be assigned or delegated by any Note Party without the prior written consent of all Purchasers. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, Indemnitee Agent Parties, Affiliates of Collateral Agent, and Purchasers, and any other Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Register. Company and Purchasers shall deem and treat the Persons listed as Purchasers in the Register as the holders and owners of the corresponding Commitments and Notes (including principal and stated interest) listed therein for all purposes hereof, and no assignment or transfer of any such Commitment or Note shall be effective, in each case, unless and until recorded in the Register following Company's acceptance of a fully executed Transfer Agreement, together with the forms and certificates regarding tax matters and any fees payable in connection with such transfer, in each case, as provided in Section 10.6(e). Each transfer shall be recorded in the Register promptly following acceptance by Company of the fully executed Transfer Agreement and all other necessary documents and approvals, and a copy of such Transfer Agreement shall be maintained, as applicable. The date of such recordation of a transfer shall be referred to herein as the **"Transfer Effective Date"**. Any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Purchaser shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitments or Notes. It is intended that the Register be maintained such that the Notes are in "registered form" for the purposes of the Code.

(c) Right to Transfer. Subject to the transfer restrictions referred to in the legend therein and Section 2.23 hereof, each Purchaser shall have the right at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including all

or a portion of its Notes owing to it or other Obligations (provided, however, that pro rata transfers shall not be required and each transfer shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any applicable Note):

(i) to any Person meeting the criteria of clause (i)(a) or clause (ii) of the definition of the term of "Eligible Transferee" upon the giving of notice to Company; and

(ii) to any Person otherwise constituting an Eligible Transferee with the consent of Requisite Purchasers; provided, each such transfer pursuant to this Section 10.6(c)(ii) shall be in an aggregate amount of not less than $1,000,000 (or such lesser amount (x) as may be agreed to by Company, (y) as shall constitute the aggregate amount of the Notes of the transferring Purchaser or (z) as is transferred by a transferring Purchaser to an Affiliate or Related Fund of such Purchaser) with respect to the transfer of Notes.

(d) Mechanics. Transfers of the Notes by Purchasers shall be effected by execution and delivery to Company of a Transfer Agreement. Transfers made pursuant to the foregoing provision shall be effective as of the Transfer Effective Date. In connection with all transfers there shall be delivered to Company such forms, certificates or other evidence, if any, with respect to U.S. federal income tax withholding matters as the transferee under such Transfer Agreement may be required to deliver pursuant to Section 2.19(c).

(e) Notice of Transfer. Upon its receipt and acceptance of a duly executed and completed Transfer Agreement, any forms, certificates or other evidence required by this Agreement in connection therewith, Company shall record the information contained in such Transfer Agreement in the Register and shall maintain a copy of such Transfer Agreement.

(f) Representations and Warranties of Transferee. Each Purchaser, upon execution and delivery hereof or upon succeeding to an interest in the Notes, as the case may be, represents and warrants as of the Closing Date or as of the Transfer Effective Date that (i) it is an Eligible Transferee; (ii) it is making the representations and warranties set forth in Section 2.23; (iii) it will purchase or invest in, as the case may be, its Commitments or Notes for its own account in the ordinary course of its business and without a view to distribution of such Notes within the meaning of the Securities Act or the Exchange Act or other federal securities laws (it being understood that, subject to the provisions of this Section 10.6, the disposition of such Notes or any interests therein shall at all times remain within its exclusive control); (iv) it will not provide any information obtained by it in its capacity as a Purchaser to any Note Party or any of its Affiliates; and (v) neither such Purchaser nor any of its Affiliates owns or controls any trade obligations or Indebtedness of any Note Party or any Capital Stock of any Note Party.

(g) Effect of Transfer. Subject to the terms and conditions of this Section 10.6, as of the Transfer Effective Date: (i) the transferee thereunder shall have the rights and obligations of a "Purchaser" hereunder to the extent of its interest in the Notes as reflected in the Register and shall thereafter be a party hereto and a "Purchaser" for all purposes hereof; (ii) the transferring Purchaser thereunder shall, to the extent that rights and obligations hereunder have been transferred to the transferee, relinquish its rights (other than any rights that survive the termination

hereof under Section 10.8) and be released from its obligations hereunder (and, in the case of a transfer covering all or the remaining portion of an transferring Purchaser's rights and obligations hereunder, such Purchaser shall cease to be a party hereto on the Transfer Effective Date; provided, anything contained in any of the Note Documents to the contrary notwithstanding and (y) such transferring Purchaser shall continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising out of the prior involvement of such transferring Purchaser as a Purchaser hereunder); and (iii) the transferring Purchaser shall, upon the effectiveness of such transfer or as promptly thereafter as practicable, surrender its existing Note to Company for cancellation, and thereupon Company shall issue and deliver a new Note to such transferee and/or to such transferring Purchaser, with appropriate insertions, to reflect the outstanding Notes of the transferee and/or the transferring Purchaser.

(h) [Reserved].

(i) Certain Other Transfers. In addition to any other transfer permitted pursuant to this Section 10.6, but subject to the restrictions referred to in the legend therein and applicable securities laws, any Purchaser may assign, pledge and/or grant a security interest in, all or any portion of its Notes, the other Obligations owed by or to such Purchaser, and its Notes, to secure obligations of such Purchaser including to any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors and any operating circular issued by such Federal Reserve Bank; provided, that no Purchaser, as between Company and such Purchaser, shall be relieved of any of its obligations hereunder as a result of any such transfer and pledge, and provided further, that in no event shall the applicable Federal Reserve Bank, pledgee or trustee be considered to be a "Purchaser" or be entitled to require the transferring Purchaser to take or omit to take any action hereunder.

10.7 **Independence of Covenants.** All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

10.8 **Survival of Representations, Warranties and Agreements.** All representations, warranties and agreements made herein shall survive the execution and delivery hereof and the occurrence of any Credit Date. Notwithstanding anything herein or implied by law to the contrary, the agreements of each Note Party set forth in Sections 2.17(d), 2.18, 2.19, 10.2, 10.3, 10.4, and 10.10 and the agreements of Purchasers set forth in Sections 2.16, 9.3(b) and 9.6 shall survive the Payment in Full of the Obligations.

10.9 **No Waiver; Remedies Cumulative.** No failure or delay on the part of Collateral Agent or any Purchaser in the exercise of any power, right or privilege hereunder or under any other Note Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to Collateral Agent and each Purchaser hereby are cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Note Documents.

Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

10.10 **Marshalling; Payments Set Aside.** None of Collateral Agent nor any Purchaser shall be under any obligation to marshal any assets in favor of any Note Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Note Party makes a payment or payments to Purchasers, or Collateral Agent or Purchaser enforces any security interests or exercises any right of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

10.11 **Severability.** In case any provision in or obligation hereunder or under any Note Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby (it being understood that the invalidity, illegality or unenforceability of a particular provision in a particular jurisdiction shall not in and of itself affect the validity, legality or enforceability of such provision in any other jurisdiction). The parties hereto shall endeavor in good faith negotiations to replace any invalid, illegal or unenforceable provisions with valid, legal and enforceable provisions the economic effect of which comes as close as reasonably possible to that of the invalid, illegal or unenforceable provisions.

10.12 **Obligations Several; Actions in Concert.** The obligations of Purchasers hereunder are several and no Purchaser shall be responsible for the obligations or Commitment of any other Purchaser hereunder. Nothing contained herein or in any other Note Document, and no action taken by Purchasers pursuant hereto or thereto, shall be deemed to constitute Purchasers as a partnership, an association, a joint venture or any other kind of entity. Anything in this Agreement or any other Note Document to the contrary notwithstanding, each Purchaser hereby agrees with each other Purchaser that no Purchaser shall take any action to protect or enforce its rights arising out of this Agreement or any Note or otherwise with respect to the Obligations without first obtaining the prior written consent of Requisite Purchasers (as applicable), it being the intent of Purchasers that any such action to protect or enforce rights under this Agreement or any other Note Document with respect to the Obligations shall be taken in concert and at the direction or with the consent of Requisite Purchasers (as applicable).

10.13 **Headings.** Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

10.14 **APPLICABLE LAW**. **THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER (INCLUDING ANY CLAIMS**

SOUNDING IN CONTRACT LAW OR TORT LAW ARISING OUT OF THE SUBJECT MATTER HEREOF AND ANY DETERMINATIONS WITH RESPECT TO POST-JUDGMENT INTEREST) SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK.

10.15 **CONSENT TO JURISDICTION**. **SUBJECT TO CLAUSE (V) OF THE FOLLOWING SENTENCE, ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING HERETO OR ANY OTHER NOTE DOCUMENT, OR ANY OF THE OBLIGATIONS, SHALL BE BROUGHT IN ANY FEDERAL COURT OF THE U.S. SITTING IN THE BOROUGH OF MANHATTAN OR, IF THAT COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, IN ANY STATE COURT LOCATED IN THE CITY AND COUNTY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH NOTE PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (I) ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE (SUBJECT TO CLAUSE (V) BELOW) JURISDICTION AND VENUE OF SUCH COURTS; (II) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (III) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE NOTE PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 10.1; (IV) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (III) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE NOTE PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (V) AGREES THAT AGENTS, AND PURCHASERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY NOTE PARTY IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY NOTE DOCUMENT OR AGAINST ANY COLLATERAL OR THE ENFORCEMENT OF ANY JUDGMENT, AND HEREBY SUBMITS TO THE JURISDICTION OF, AND CONSENTS TO VENUE IN, ANY SUCH COURT.**

10.16 **WAIVER OF JURY TRIAL** . **EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER NOTE DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION OR THE PURCHASER/ISSUER RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS.**

EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 10.16 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER NOTE DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE NOTES MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

10.17 **Confidentiality.** Collateral Agent and each Purchaser shall hold all non-public information regarding Holdings, Company and its Subsidiaries and their businesses identified as such by Company and obtained by Collateral Agent or such Purchaser pursuant to the requirements hereof in accordance with Collateral Agent's or such Purchaser's customary procedures for handling confidential information of such nature, it being understood and agreed by each Note Party that, in any event, Collateral Agent and any Purchaser may make (i) disclosures of such information to Affiliates of such Purchaser or Collateral Agent and to their respective officers, Directors, partners, members, employees, legal counsel, independent auditors and other advisors, experts, or agents on a confidential basis (and to other Persons authorized by a Purchaser or Collateral Agent to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 10.17), (ii) disclosures of such information reasonably required by any potential or prospective assignee or transferee in connection with the contemplated assignment or transfer of any Notes or by any direct or indirect contractual counterparties (or the professional advisors thereto) to any swap or derivative transaction relating to any Note Party and its obligations (provided, such assignees, transferees, counterparties and advisors are advised of and agree to be bound by either the provisions of this Section 10.17 or other substantially similar confidentiality restrictions), (iii) disclosure on a confidential basis to any rating agency when required by it,(iv) disclosure on a confidential basis to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Notes, (v) disclosures in connection with the exercise of any remedies hereunder or under any other Note Document or any action or proceeding relating to this Agreement or any other Note Document or the enforcement of rights hereunder or thereunder, (vi) disclosures made pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding, or otherwise as required by applicable law or compulsory legal process (in which case such Person agrees to inform Company promptly thereof to the extent not prohibited by law), (vii) disclosures made upon the request or demand of any regulatory or quasi-regulatory authority (including the NAIC) purporting to have jurisdiction over such Person or any of its Affiliates, (viii) disclosure to any Purchasers' financing sources; provided that prior to any disclosure such

financing source is informed of the confidential nature of the information, (ix) disclosure to rating agencies and (x) disclosures with the consent of the relevant Note Party. Notwithstanding the foregoing, on or after the Closing Date, GSSLG may, at its own expense issue news releases and publish "tombstone" advertisements and other announcements relating to this transaction in newspapers, trade journals and other appropriate media (which may include use of logos of one or more of the Note Parties) (collectively, "**Trade Announcements**"). No Purchaser (other than GSSLG or its Affiliates) or Note Party shall (a) issue any Trade Announcement, (b) use or reference in advertising, publicity, or otherwise the name of Goldman Sachs, any Purchaser or any of their respective Affiliates, partners, or employees, or (c) represent that any product or any service provided has been approved or endorsed by Goldman Sachs, any Purchaser, or any of their respective Affiliates, except (i) disclosures required by applicable law, regulation, legal process or the rules of the Securities and Exchange Commission or (ii) with the prior approval of Requisite Purchasers.

10.18 **Usury Savings Clause.** Notwithstanding any other provision herein, the aggregate interest rate charged paid with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the outstanding amount of the Notes issued hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest that would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Notes issued hereunder are Paid in Full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest that would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, Company shall pay to Purchasers an amount equal to the difference between the amount of interest paid and the amount of interest that would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of Purchasers and Company to conform strictly to any applicable usury laws. Accordingly, if any Purchaser contracts for, charges, or receives any consideration that constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Purchaser's option be applied to the outstanding amount of the Notes issued hereunder or be refunded to Company. In determining whether the interest contracted for, charged, or received by a Purchaser exceeds the Highest Lawful Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest, throughout the contemplated term of the Obligations hereunder.

10.19 **Effectiveness; Counterparts.** This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto and receipt by Company and Collateral Agent of written notification of such execution and authorization of delivery thereof. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature

page of this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

10.20 **Entire Agreement.** This Agreement, together with the other Note Documents (including any such other Note Document entered into prior to the date hereof), reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, made prior to the date hereof.

10.21 **PATRIOT Act.** Each Purchaser hereby notifies each Note Party that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies each Note Party, which information includes the name and address of each Note Party and other information that will allow such Purchaser to identify such Note Party in accordance with the PATRIOT Act.

10.22 **Electronic Execution of Transfers and Note Documents**. The words "execution," "signed," "signature," and words of like import in this Agreement, in any Transfer Agreement or any other Note Document shall in each case be deemed to include electronic signatures, signatures exchanged by electronic transmission, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided, that Collateral Agent may request, and upon any such request the Note Parties shall be obligated to provide, manually executed "wet ink" signatures to any Note Document.

10.23 **No Fiduciary Duty**. Collateral Agent, each Purchaser, and their Affiliates (collectively, solely for purposes of this paragraph, the **"Purchasers"**), may have economic interests that conflict with those of the Note Parties, their equity holders and/or their affiliates. Each Note Party agrees that nothing in the Note Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Purchaser, on the one hand, and such Note Party, its equity holders or its affiliates, on the other. The Note Parties acknowledge and agree that (i) the transactions contemplated by the Note Documents (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Purchasers, on the one hand, and the Note Parties, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Purchaser has assumed an advisory or fiduciary responsibility in favor of any Note Party, its equity holders or its affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Purchaser has advised, is currently advising or will advise any Note Party, its equity holders or its Affiliates on other matters) or any other obligation to any Note Party except the obligations expressly set forth in the Note Documents and (y) each Purchaser is acting solely as principal and not as the agent or fiduciary of any Note Party, its management, stockholders, creditors or any other Person. Each Note Party acknowledges and agrees that it has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process

leading thereto. Each Note Party agrees that it will not claim that any Purchaser has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to such Note Party, in connection with such transaction or the process leading thereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

CAPSTONE GREEN ENERGY LLC

By: /s/ John Juric_______________
Name: John Juric
Title: Chief Financial Officer

CAPSTONE GREEN ENERGY HOLDINGS, INC.

By: /s/ John Juric_______________
Name: John Juric
Title: Chief Financial Officer

CAPSTONE TURBINE FINANCIAL SERVICES, LLC

By: /s/ John Juric_______________
Name: John Juric
Title: Chief Financial Officer

[*Signature Page to Capstone Note Purchase Agreement*]

GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P.,
as Collateral Agent

By: /s/ Greg Watts
Name: Greg Watts
Title: Authorized Signatory

BROAD STREET CREDIT HOLDINGS LLC,
as Purchaser

By: /s/ Greg Watts
Name: Greg Watts
Title: Authorized Signatory

[*Signature Page to Capstone Note Purchase Agreement*]

APPENDIX A-1
TO NOTE PURCHASE AGREEMENT

Initial Notes Purchase Commitments

Purchaser	Roll Up Notes Purchase Commitment	Pro Rata Share
BROAD STREET CREDIT HOLDINGS LLC	$21,090,857.69	100%
Total	**$21,090,857.69**	**100%**

Purchaser	New Money Initial Notes Purchase Commitment	Pro Rata Share
BROAD STREET CREDIT HOLDINGS LLC	$3,000,000	100%
Total	**$3,000,000**	**100%**

APPENDIX A-2
TO NOTE PURCHASE AGREEMENT

New Money Additional Notes Purchase Commitments

Purchaser	New Money Additional Notes Purchase Commitment	Pro Rata Share
BROAD STREET CREDIT HOLDINGS LLC	$4,000,000	100%
Total	**$4,000,000**	**100%**

APPENDIX B
TO NOTE PURCHASE AGREEMENT

Notice Addresses

CAPSTONE GREEN ENERGY LLC
16640 Stagg Street
Van Nuys, CA 91406
Attention: John Juric, Chief Financial Officer
Email: JJuric@CGRNenergy.com

CAPSTONE GREEN ENERGY HOLDINGS, INC.
16640 Stagg Street
Van Nuys, CA 91406
Attention: John Juric, Chief Financial Officer
Email: JJuric@CGRNenergy.com

CAPSTONE TURBINE FINANCIAL SERVICES, LLC
16640 Stagg Street
Van Nuys, CA 91406
Attention: John Juric, Chief Financial Officer
Email: JJuric@CGRNenergy.com

in each case, with a copy to:
Katten Muchin Rosenman LLP
525 W. Monroe Street
Chicago, IL 60661-3693
Attention: Mark D. Wood, Esq.; Jaime T. Willis, Esq. and Daniel Tola, Esq.
Email: mark.wood@katten.com; jaime.willis@katten.com and daniel.tola@katten.com

GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., as Collateral Agent, and Purchaser, to its address set forth below

Goldman Sachs Specialty Lending Group, L.P.
2001 Ross Ave
Suite 2800
Dallas, TX 75201
Attention: Capstone Green Energy LLC, Account Manager
Email: Matt.Carter@gs.com; and gs-slg-notices@gs.com

And, in any event, with a copy (which copy shall not constitute notice) to:

Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, NY 10006
Attention: Sean O'Neal; Kara A. Hailey
Email: soneal@cgsh.com; khailey@cgsh.com

SCHEDULE 1.1(b) Certain Material Real Estate Assets

SCHEDULE 4.1
Jurisdictions of Organization and Qualification

SCHEDULE 4.2
Capital Stock and
Ownership

SCHEDULE 4.13
Real Estate Assets

SCHEDULE 4.16
Material Contracts

SCHEDULE 5.15
Certain Post Closing Matters

SCHEDULE 5.18
Professional Fees

SCHEDULE 6.1
Certain
Indebtedness

SCHEDULE 6.2
Certain Liens

SCHEDULE 6.7
Certain Investments

SCHEDULE 6.12
Certain Affiliate
Transactions

EXHIBIT A-1 TO NOTE PURCHASE AGREEMENT

FUNDING NOTICE

EXHIBIT
A-2 TO NOTE
PURCHASE
AGREEMENT

CONVERSION/CONTINUATION NOTICE

EXHIBIT
B TO NOTE
PURCHASE
AGREEMENT

LETTER OF DIRECTION

Exhibit A

Disbursement

of Proceeds

EXHIBIT C TO NOTE PURCHASE AGREEMENT

COMPLIANCE CERTIFICATE

ANNEX
A TO
COMPLIANCE
CERTIFICATE

EXHIBIT D TO NOTE PURCHASE AGREEMENT

TRANSFER AGREEMENT

ANNEX 1

STANDARD TERMS AND CONDITIONS FOR TRANSFER AGREEMENT

ANNEX 2

SECURITIES ACT CERTIFICATIONS

EXHIBIT
E-1 TO NOTE
PURCHASE
AGREEMENT

U.S. TAX COMPLIANCE CERTIFICATE

[Reserved]

EXHIBIT
E-2 TO
NOTE
PURCHASE
AGREEMENT

EXHIBIT
E-3 TO NOTE
PURCHASE
AGREEMENT

[Reserved]

EXHIBIT
E-4 TO NOTE
PURCHASE
AGREEMENT

U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Person Recipients That Are Partnerships For U.S. Federal Income Tax Purposes)

EXHIBIT
F-1 TO NOTE
PURCHASE
AGREEMENT

[CLOSING DATE][NEW MONEY ADDITIONAL NOTES CLOSING DATE]
CERTIFICATE

EXHIBIT F-2 TO NOTE PURCHASE AGREEMENT

SOLVENCY CERTIFICATE

EXHIBIT G TO NOTE PURCHASE AGREEMENT

COUNTERPART AGREEMENT

EXHIBIT H TO NOTE PURCHASE AGREEMENT

LANDLORD COLLATERAL ACCESS AGREEMENT

Legal Description of Premises:

EXHIBIT A TO LANDLORD COLLATERAL ACCESS AGREEMENT

Description of Lease:

EXHIBIT B TO LANDLORD COLLATERAL ACCESS AGREEMENT

EXHIBIT
I TO NOTE PURCHASE
AGREEMENT

INTERCOMPANY NOTE

Schedule A

TRANSACTIONS UNDER PROMISSORY NOTE

ENDORSEMENT

EXHIBIT
J-1 TO NOTE
PURCHASE
AGREEMENT

SENIOR SECURED NEW MONEY NOTES

EXHIBIT J-2 TO NOTE PURCHASE AGREEMENT

SENIOR SECURED ROLL UP NOTE

EXHIBIT 10.1

AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT

among

CAPSTONE GREEN ENERGY LLC

and

THE MEMBERS NAMED HEREIN

dated as of

December 7, 2023

TABLE OF CONTENTS

ARTICLE I DEFINITIONS 6

Section 1.01 Definitions. 6

Section 1.02 Interpretation. 21

ARTICLE II ORGANIZATION 21

Section 2.01 Formation. 21

Section 2.02 Name. 22

Section 2.03 Principal Office. 22

Section 2.04 Registered Office; Registered Agent. 22

Section 2.05 Purpose; Powers. 22

Section 2.06 Term. 22

Section 2.07 No State-Law Partnership. 23

ARTICLE III UNITS 23

Section 3.01 Units Generally. 23

Section 3.02 Authorization and Issuance of Preferred Units. 23

Section 3.03 Authorization and Issuance of Common Units. 23

Section 3.04 Other Issuances. 23

Section 3.06 Conversion of Preferred Units. 24

Section 3.07 Redemption of Preferred Units. 25

ARTICLE IV MEMBERS 27

Section 4.01 Admission of New Members. 27

Section 4.02 Representations and Warranties of Members. 27

Section 4.03 No Personal Liability. 29

Section 4.04 No Withdrawal. 29

Section 4.05 Voting. 29

Section 4.06 Matters Requiring Approval of Preferred Requisite Members. 29

Section 4.07 Meetings of Members. 32

Section 4.08 Quorum; Required Vote. 33

Section 4.09 Action Without Meeting. 33

Section 4.10 Power of Members. 33

Section 4.11 Other Activities of Members; Business Opportunities. 34

Section 4.12 No Interest in Company Property. 34

ARTICLE V CAPITAL CONTRIBUTIONS; CAPITAL ACCOUNTS 34
Section 5.01 Initial Capital Contributions. 34
Section 5.02 Additional Capital Contributions. 34
Section 5.03 Maintenance of Capital Accounts. 34
Section 5.04 Succession Upon Transfer. 35
Section 5.05 Negative Capital Accounts. 35
Section 5.06 No Withdrawal. 35
Section 5.07 Treatment of Loans from Members. 36
Section 5.08 Modifications. 36
ARTICLE VI ALLOCATIONS 36
Section 6.01 Allocation of Net Income and Net Loss. 36
Section 6.02 Regulatory and Special Allocations. 36
Section 6.03 Tax Allocations. 37
Section 6.04 Allocations in Respect of Transferred Units. 38
Section 6.05 Curative Allocations. 38
ARTICLE VII DISTRIBUTIONS 39
Section 7.01 General. 39
Section 7.02 Distributions. 39
Section 7.03 Tax Advances. 39
Section 7.04 Distributions in Kind. 40
ARTICLE VIII MANAGEMENT 40
Section 8.01 Establishment and Authority of the Board. 40
Section 8.02 Board Composition. 41
Section 8.03 Board Observer Right. 41
Section 8.04 Removal; Resignation. 41
Section 8.05 Meetings of the Board. 42
Section 8.06 Quorum; Manner of Acting. 42
Section 8.07 Action By Written Consent. 43
Section 8.08 Officers. 43
Section 8.09 Compensation and Reimbursement of Managers; No Employment. 43
Section 8.10 Other Activities of Managers; Business Opportunities. 44
Section 8.11 No Personal Liability. 44
ARTICLE IX PREEMPTIVE RIGHTS 44

Section 9.01 Preemptive Right. 44
ARTICLE X TRANSFER 47
Section 10.01 General Restrictions on Transfer. 47
Section 10.02 Permitted Transfers. 49
Section 10.03 Right of First Refusal. 49
Section 10.04 Change of Control Repurchase Right. 51
Section 10.05 Tag-Along Rights. 51
Section 10.06 Right of First Offer. 54
ARTICLE XI ACCOUNTING; REPORTING; TAX MATTERS 54
Section 11.01 Financial Statements. 54
Section 11.02 Inspection Rights. 55
Section 11.03 Budget. 55
Section 11.04 Partnership Representative. 55
Section 11.05 Tax Returns. 57
Section 11.06 Company Funds. 57
ARTICLE XII DISSOLUTION AND LIQUIDATION 57
Section 12.01 Events of Dissolution. 57
Section 12.02 Effectiveness of Dissolution. 58
Section 12.03 Liquidation. 58
Section 12.04 Liquidation Preference. 59
Section 12.05 Cancellation of Certificate. 60
Section 12.06 Survival of Rights, Duties, and Obligations. 60
Section 12.07 Recourse for Claims. 60
ARTICLE XIII EXCULPATION AND INDEMNIFICATION 60
Section 13.01 Standard of Care; Duties; Reliance On Information. 60
Section 13.02 Indemnification. 61
Section 13.03 Survival. 64
ARTICLE XIV MISCELLANEOUS 64
Section 14.01 Confidentiality. 64
Section 14.02 Expenses. 65
Section 14.03 Further Assurances. 65
Section 14.04 Notices. 65
Section 14.05 Headings. 66

Section 14.06 Severability. 66
Section 14.07 Entire Agreement. 66
Section 14.08 Successors and Assigns 66
Section 14.09 No Third-Party Beneficiaries. 66
Section 14.10 Amendment. 67
Section 14.11 Waiver. 67
Section 14.12 Governing Law. 67
Section 14.13 Submission to Jurisdiction. 67
Section 14.14 Waiver of Jury Trial. 68
Section 14.15 Equitable Remedies. 68
Section 14.16 No Impairment of Rights. 68
Section 14.17 Attorneys' Fees. 68
Section 14.18 Remedies Cumulative. 68
Section 14.19 Counterparts. 68
Section 14.20 Independent Counsel. 68
Section 14.21 Representations and Warranties of the Company. 69
Section 14.22 Pledge of Membership Interests. 69

AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT

This Amended and Restated Limited Liability Company Agreement of Capstone Green Energy LLC, a Delaware limited liability company (the " **Company**"), is entered into as of December 7, 2023, by and among the Company, the Members executing this Agreement as of the date hereof (collectively, the " **Initial Members**"), and each other Person who after the date hereof becomes a Member of the Company and becomes a party to this Agreement by executing a Joinder Agreement.

RECITALS

WHEREAS, the Company was formed under the laws of the State of Delaware by the filing of a Certificate of Formation with the Secretary of State of the State of Delaware (the "**Secretary of State**") on October 16, 2023 (the "**Certificate of Formation**");

WHEREAS, Capstone Green Energy Corporation ("**Capstone**") entered into a Limited Liability Company Agreement of the Company on October 16, 2023 (the "**Original Agreement**");

WHEREAS, Capstone desires to amend and restate the Original Agreement in its entirety as set forth herein for the purposes of, and on the terms and conditions set forth in, this Agreement;

WHEREAS, pursuant to the steps described in the Plan (as defined below), (i) all liabilities and assets of Capstone (other than (x) the stock of Capstone Turbine International, Inc., (y) those liabilities and assets directly related to the Retained Assets (as defined in the Plan) and described in the Plan and (z) obligations under the DIP Financing Agreement (as defined below) and Pre-Petition Secured Debt (as defined in the Plan)) were transferred to the Company, and (ii) the Common Units (defined below) and Preferred Units (as defined below) were issued to Capstone.

WHEREAS, pursuant to the steps described in the Plan, Capstone contributed 100% of the Common Units to Capstone Turbine International, Inc., which was re-named Capstone Green Energy Holdings, Inc., and Capstone retained 100% of the Preferred Units.

WHEREAS, the Members wish to enter into this Agreement setting forth the terms and conditions governing the operation and management of the Company.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

Section 1.01 Definitions. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in this Section 1.01:

"**Acceptance Notice**" has the meaning set forth in Section 9.01(c).

"**Adjusted Capital Account Deficit**" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(a) crediting to such Capital Account any amount which such Member is obligated to restore or is deemed to be obligated to restore pursuant to Treasury Regulations Sections 1.704-1(b)(2)(ii)(c), 1.704-2(g)(1), and 1.704-2(i); and

(b) debiting to such Capital Account the items described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5), and (6).

"**Adjusted Taxable Income**" of a Member for a Fiscal Year (or portion thereof) with respect to Units held by such Member means the federal taxable income allocated by the Company to the Member with respect to such Units (as adjusted by any final determination in connection with any tax audit or other proceeding) for such Fiscal Year (or portion thereof); *provided*, that such taxable income shall be computed (a) minus any excess taxable loss or excess taxable credits of the Company for any prior period allocable to such Member with respect to such Units that were not previously taken into account for purposes of determining such Member's Adjusted Taxable Income in a prior Fiscal Year to the extent such loss or credit would be available under the Code to offset income of the Member (or, as appropriate, the direct or indirect members of the Member) determined as if the income, loss, and credits from the Company were the only income, loss, and credits of the Member (or, as appropriate, the direct or indirect members of the Member) in such Fiscal Year and all prior Fiscal Years; and (b) taking into account any special basis adjustment with respect to such Member resulting from an election by the Company under Code Section 754.

"**Affiliate**" means, with respect to any Person, any other Person who, directly or indirectly (including through one or more intermediaries), controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control," when used with respect to any specified Person, shall mean the power, direct or indirect, to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities or partnership or other ownership interests, by contract, or otherwise. Notwithstanding the foregoing, the term "Affiliate," (a) when used with respect to the Preferred Members and their Affiliates, shall not, for purposes of this Agreement, include the other Members, Reorganized PublicCo and its Subsidiaries, and their respective Affiliates and (b) when used with respect to Reorganized PublicCo and its Affiliates, shall not, for purposes of this Agreement, include the Preferred Members and the Preferred Members' Subsidiaries and respective Affiliates. Whenever a Subsidiary or controlled Affiliate of a Person agrees to take any action or omit to take any action hereunder, such Person shall cause such Subsidiary or controlled Affiliate to take such action or omit to take such action.

" **Aggregate Purchase Price**" means $10,449,863.

" **Agreement**" means this Amended and Restated Limited Liability Company Agreement, as executed and as it may be amended, modified, supplemented, or restated from time to time, as provided herein.

“**AML Laws**” means any and all applicable requirements of law related to engaging in, financing, or facilitating terrorism or money laundering, including the PATRIOT Act, The Currency and Foreign Transactions Reporting Act (also known as the “Bank Secrecy Act”, 31 U.S.C. §§5311-5330 and 12 U.S.C. §§1818(s), 1820(b) and 1951-1959), Trading With the Enemy Act (50 U.S.C. §1 et seq.), Executive Order 13224 (effective September 24, 2001) and each of the laws, regulations, and executive orders administered by OFAC (31 C.F.R., Subtitle B, Chapter V).

“**Anti-Corruption and Anti-Bribery Laws**” means any and all applicable requirements of law related to anti-corruption or anti-bribery matters, including the United States Foreign Corrupt Practices Act of 1977.

“**Applicable Law**” means all applicable provisions of (a) constitutions, treaties, statutes, laws (including the common law), rules, regulations, decrees, ordinances, codes, proclamations, declarations, or orders of any Governmental Authority; (b) any consents or approvals of any Governmental Authority; and (c) any orders, decisions, advisory, or interpretative opinions, injunctions, judgments, awards, decrees of, or agreements with, any Governmental Authority.

“**Appraiser**” means an independent nationally recognized third-party appraisal firm, mutually acceptable and designated by the Board and Preferred Requisite Members promptly following the date on which an appraisal or valuation by an Appraiser is required under this Agreement. The selected firm shall have the authority and responsibility to conduct an independent appraisal or valuation as required under this Agreement.

“**Assignee**” has the meaning set forth in Section 14.22.

“**Bankruptcy**” means, with respect to a Member, the occurrence of any of the following: (a) the filing of an application by such Member for, or a consent to, the appointment of a trustee of such Member’s assets; (b) the filing by such Member of a voluntary petition in bankruptcy or the filing of a pleading in any court of record admitting in writing such Member’s inability to pay their debts as they come due; (c) the making by such Member of a general assignment for the benefit of such Member’s creditors; (d) the filing by such Member of an answer admitting the material allegations of, or such Member’s consenting to, or defaulting in answering a bankruptcy petition filed against such Member in any bankruptcy proceeding; or (e) upon the entry of an order, judgment, or decree by any court of competent jurisdiction adjudicating such Member a bankrupt or appointing a trustee of such Member’s assets.

“**BBA**” means the Bipartisan Budget Act of 2015.

“**Board**” has the meaning set forth in Section 8.01.

“**Book Depreciation**” means, with respect to any Company asset for each Fiscal Year, the Company’s depreciation, amortization, or other cost recovery deductions determined for federal income tax purposes, except that if the Book Value of an asset differs from its adjusted tax basis at the beginning of such Fiscal Year, Book Depreciation shall be an amount which bears the same ratio to such beginning Book Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; *provided*, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero and the Book Value of the asset is positive, Book Depreciation shall be determined

with reference to such beginning Book Value using any permitted method selected by the Board in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g)(3).

"**Book Value**" means, with respect to any Company asset, the adjusted basis of such asset for federal income tax purposes, except as follows:

(a) the initial Book Value of any Company asset contributed by a Member to the Company shall be the gross Fair Market Value of such Company asset as of the date of such contribution;

(b) immediately prior to the Distribution by the Company of any Company asset to a Member, the Book Value of such asset shall be adjusted to its gross Fair Market Value as of the date of such Distribution;

(c) the Book Value of all Company assets shall be adjusted to equal their respective gross Fair Market Values, as determined by the Board, as of the following times:

(i) the acquisition of an additional Membership Interest in the Company by a new or existing Member in consideration of a Capital Contribution of more than a *de minimis* amount;

(ii) the acquisition of an additional Membership Interest in the Company by a new or existing Member in exchange for the provision or performance of services to or for the benefit of the Company;

(iii) the Distribution by the Company to a Member of more than a *de minimis* amount of property (other than cash) as consideration for all or a part of such Member's Membership Interest in the Company;

(iv) the liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g); and

(v) the exercise of a noncompensatory option to the extent required by Treasury Regulations Section 1.704-1(b)(2)(iv)(s)(1),

provided, that an adjustment pursuant to clauses (i), (ii), (iii), (iv) or (v) above need not be made if the Board reasonably determines that such adjustment is not necessary or appropriate to reflect the relative economic interests of the Members and that the absence of such adjustment does not adversely and disproportionately affect any Member;

(d) the Book Value of each Company asset shall be increased or decreased, as the case may be, to reflect any adjustments to the adjusted tax basis of such Company asset pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Account balances pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m); *provided*, that Book Values shall not be adjusted pursuant to this paragraph (d) to the extent that an adjustment pursuant to

paragraph (c) above is made in conjunction with a transaction that would otherwise result in an adjustment pursuant to this paragraph (d); and

(e) if the Book Value of a Company asset has been determined pursuant to paragraph (a) or adjusted pursuant to paragraphs (c) or (d) above, such Book Value shall thereafter be adjusted to reflect the Book Depreciation taken into account with respect to such Company asset for purposes of computing Net Income and Net Losses.

"**Breach**" means a breach of any provision of the Governing Documents or the Registration Rights Agreement, the result of which is that the Preferred Members or the rights and preferences of the Preferred Units are materially and adversely affected.

"**Budget**" has the meaning set forth in Section 11.03.

"**Business**" has the meaning set forth in Section 2.05(a).

"**Business Day**" means a day other than a Saturday, Sunday, or other day on which commercial banks in the City of New York are authorized or required to close.

"**Business Opportunity**" has the meaning set forth in Section 8.10(b).

"**Capital Account**" has the meaning set forth in Section 5.03.

"**Capital Contribution**" means, for any Member, the total amount of cash and cash equivalents and the Book Value of any property contributed to the Company by such Member.

"**Capstone**" has the meaning set forth in the Recitals.

"**Certificate of Formation**" has the meaning set forth in the Recitals.

"**Change of Control**" has the meaning set forth in Section 12.04(b).

"**Code**" means the Internal Revenue Code of 1986.

"**Common Member**" means a Member that holds Common Units.

"**Common Requisite Members**" means the holders of a majority of the Common Units held by the Common Members.

"**Common Unit Equivalents**" means any security or obligation that is by its terms, directly or indirectly, convertible into, exchangeable, or exercisable for Common Units, and any option, warrant, or other right to subscribe for, purchase, or acquire Common Units.

"**Common Units**" means the Units having the privileges, preference, duties, liabilities, obligations, and rights specified with respect to "Common Units" in this Agreement.

"**Common Units Deemed Outstanding**" means at any given time, the sum of (a) the number of Common Units actually outstanding at such time, plus (b) the number of Common Units reserved for issuance at such time under option or other equity or equity-linked incentive plans,

regardless of whether the Common Units are actually subject to outstanding options at such time or whether any outstanding options are actually exercisable at such time, plus (c) the number of Common Units issuable upon exercise of any other options (other than options described in clause (b) above) actually outstanding at such time, plus (d) the number of Common Units issuable upon conversion or exchange of convertible securities actually outstanding at such time (treating as actually outstanding any convertible securities issuable upon exercise of options actually outstanding at such time), in each case, regardless of whether the options or convertible securities are actually exercisable, convertible or exchangeable at such time.

"**Company**" has the meaning set forth in the Preamble.

"**Company Minimum Gain**" means "partnership minimum gain" as defined in Treasury Regulations Section 1.704-2(b)(2), substituting the term "Company" for the term "partnership" as the context requires.

"**Company Subsidiary**" means a Subsidiary of the Company.

"**Competitor**" means any Person engaged, directly or indirectly, in whole or in part (including through any Subsidiary, joint venture or other similar arrangement, or other Person), in any material aspect of the Business; *provided, however,* that any financial investment firm, fund, or collective investment vehicle that, together with its Affiliates, holds less than 15.0000% of the outstanding equity interests of any Competitor and that does not, nor does any of its Affiliates, designate or have a right to designate, any members of its board of directors, board of managers, or similar governing body shall not constitute a Competitor.

"**Confidential Information**" has the meaning set forth in Section 14.01.

"**Court of Chancery**" means the Court of Chancery of the State of Delaware.

"**Covered Person**" means each (a) Member, (b) officer, director, equity holder, direct and indirect partner (including partners of partners and equity holders and members of partners), member, manager, officer, Affiliate, employee, agent, or representative of a Member, and each of their controlling Affiliates and anyone who controls any of them within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, (c) Manager, Officer, employee, agent, or representative of the Company, (d) Partnership Representative and (e) Designated Individual.

"**Delaware Act**" means the Delaware Limited Liability Company Act, Title 6, Chapter 18, §§ 18-101, *et seq*.

"**Designated Individual**" has the meaning set forth in Section 11.04(a).

" **DIP Financing Agreement**" means the Super-Priority Senior Secured Debtor-in-Possession Note Purchase Agreement, as in effect on October 2, 2023, by and among Reorganized PublicCo, the other debtor parties thereto, Broad Street Credit Holdings LLC and Goldman Sachs Specialty Lending Group, L.P. (and not including amendments, supplements or modifications from time to time).

“**Distribution**” means a distribution made by the Company to a Member, whether in cash, property, or securities of the Company and whether by liquidating distribution or otherwise; *provided*, that none of the following shall be a Distribution: (a) any redemption or repurchase by the Company or any Member of any Units or Unit Equivalents (including pursuant to Section 3.07); (b) any recapitalization or exchange of securities of the Company; or (c) any subdivision (by a split of Units or otherwise) or any combination (by a reverse split of Units or otherwise) of any outstanding Units. “**Distribute**” when used as a verb shall have a correlative meaning.

“**Electronic Transmission**” means any form of communication not directly involving the physical transmission of paper, including the use of, or participation in, one or more electronic networks or databases (including one or more distributed electronic networks or databases), that creates a record that may be retained, retrieved, and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

“**Estimated Tax Amount**” of a Member for a Fiscal Year means the Member’s Tax Amount for such Fiscal Year as estimated in good faith from time to time by the Board. In making such estimate, the Board shall take into account amounts shown on Internal Revenue Service Form 1065 filed by the Company and similar state or local forms filed by the Company for the preceding taxable year and such other adjustments as in the reasonable business judgment of the Board are necessary or appropriate to reflect the estimated operations of the Company for the Fiscal Year.

“**Excess Amount**” has the meaning set forth in Section 7.03(c).

“**Exchange Act**” means the Securities Exchange Act of 1934.

“**Exercise Period**” has the meaning set forth in Section 9.01(c).

“**Exercising Member**” has the meaning set forth in Section 9.01(d).

“**Existing Business**” means the Business as modified by the Company’s engagement in any new business opportunities, investments or transactions since the date of this Agreement in accordance with the terms and conditions hereof, including Section 4.06(b).

“**Exit Facility**” means the New Debt Facility (as such term is defined in the Plan), as it may be amended from time to time, and any refinancings thereof permitted under Section 6.1(c) of the New Debt Facility.

“**Fair Market Value**” of any asset as of any date means the purchase price that a willing buyer having all relevant knowledge would pay a willing seller for such asset in an arm’s-length transaction, as determined in good faith by the Board based on such factors as the Board, in the exercise of its reasonable business judgment, considers relevant; *provided*, *however*, with respect to the Preferred Units, “Fair Market Value” means the value on an as-converted to Common Units basis, as agreed upon by the Company and the Preferred Requisite Members, or, if no such agreement is reached, the value established by an Appraiser. If there is a trading market for the equity of Reorganized PublicCo at the time of any Fair Market Value determination of the Preferred Units, such fair market value determination shall be determined by reference to the

trading price of such Reorganized PublicCo equity, with appropriate adjustments for customary and appropriate factors.

"**Fiscal Year**" means each twelve (12) month period ended March 31, which shall also be the Company's taxable year.

"**GAAP**" means United States generally accepted accounting principles in effect from time to time.

"**Governing Documents**" means this Agreement and the Certificate of Formation.

"**Governmental Authority**" means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations, or orders of such organization or authority have the force of law), or any arbitrator, court, or tribunal of competent jurisdiction.

"**Initial Members**" has the meaning set forth in the Preamble.

"**Insolvent**" means (a) the present fair saleable value of the Company's and its Subsidiaries' assets is less than the amount required to pay the Company's and its Subsidiaries' total indebtedness or (b) the Company and its Subsidiaries are unable to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become due.

"**Interested Transaction**" means any transaction, or series of similar transactions, to which the Company or any of its Affiliates is a party, if such transaction would have required disclosure by a reporting company in accordance with the provisions of Item 404 of Regulation S-K promulgated under the Securities Act, and in which the Restricted Entities will have a direct or indirect material interest.

"**Investment Company Act**" means the Investment Company Act of 1940.

"**Issuance Notice**" has the meaning set forth in Section 9.01(b).

"**Joinder Agreement**" means the joinder agreement in form and substance attached hereto as Exhibit A.

"**Lien**" means any mortgage, pledge, security interest, option, right of first offer, encumbrance, or other restriction or limitation of any nature, in each case except for restrictions under Applicable Law.

"**Liquidation Event**" has the meaning set forth in Section 12.04(b).

"**Liquidation Preference**" has the meaning set forth in Section 12.04(a).

"**Liquidator**" has the meaning set forth in Section 12.03(a).

"**Losses**" has the meaning set forth in Section 13.02(a).

"**Manager**" has the meaning set forth in Section 8.01.

"**Managers Schedule**" has the meaning set forth in Section 8.04(d).

"**Material Terms**" has the meaning set forth in Section 10.06(b).

" **Member**" means (a) each Initial Member, and (b) each Person who is hereafter admitted as a Member in accordance with the terms of this Agreement and the Delaware Act, in each case so long as such Person is shown on the Company's books and records as the owner of one or more Units. The Members shall constitute the "members" (as that term is defined in the Delaware Act) of the Company.

"**Member Indemnitors**" has the meaning set forth in Section 13.02(f).

"**Member Nonrecourse Debt**" means "partner nonrecourse debt" as defined in Treasury Regulations Section 1.704-2(b)(4), substituting the term "Company" for the term "partnership" and the term "Member" for the term "partner" as the context requires.

"**Member Nonrecourse Debt Minimum Gain**" means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if the Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Treasury Regulations Section 1.704-2(i)(3).

"**Member Nonrecourse Deduction**" means "partner nonrecourse deduction" as defined in Treasury Regulations Section 1.704-2(i), substituting the term "Member" for the term "partner" as the context requires.

"**Members Schedule**" has the meaning set forth in Section 3.01.

"**Membership Interest**" means an interest in the Company owned by a Member, including such Member's right (based on the type, class, or series of Unit or Units held by such Member), as applicable, to (a) such Member's distributive share of Net Income, Net Losses, and other items of income, gain, loss, and deduction of the Company, (b) such Member's distributive share of the assets of the Company, (c) vote on, consent to, or otherwise participate in any decision of the Members as provided in this Agreement and (d) any and all other benefits to which such Member may be entitled as provided in this Agreement or the Delaware Act.

"**Misallocated Item**" has the meaning set forth in Section 6.05.

"**Net Income**" and "**Net Loss**" mean, for each Fiscal Year or other period specified in this Agreement, an amount equal to the Company's taxable income or taxable loss, or particular items thereof, determined in accordance with Code Section 703(a) (where, for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or taxable loss), but with the following adjustments:

(a) any income realized by the Company that is exempt from federal income taxation, as described in Code Section 705(a)(1)(B), shall be added to such taxable income or taxable loss, notwithstanding that such income is not includable in gross income;

(b) any expenditures of the Company described in Code Section 705(a)(2)(B), including any items treated under Treasury Regulations Section 1.704-1(b)(2)(iv)(i) as items described in Code Section 705(a)(2)(B), shall be subtracted from such taxable income or taxable loss, notwithstanding that such expenditures are not deductible for federal income tax purposes;

(c) any gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Book Value of the property so disposed, notwithstanding that the adjusted tax basis of such property differs from its Book Value;

(d) any items of depreciation, amortization, and other cost recovery deductions with respect to Company property having a Book Value that differs from its adjusted tax basis shall be computed by reference to the property's Book Value (as adjusted for Book Depreciation) in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g);

(e) if the Book Value of any Company property is adjusted as provided in the definition of Book Value, then the amount of such adjustment shall be treated as an item of gain or loss and included in the computation of such taxable income or taxable loss;

(f) to the extent an adjustment to the adjusted tax basis of any Company property pursuant to Code Sections 732(d), 734(b) or 743(b) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis); and

(g) any items that are allocated pursuant to Section 6.02 shall not be taken into account in computing Net Income and Net Loss.

"**New Interests**" has the meaning set forth in Section 3.04.

"**New Securities**" has the meaning set forth in Section 9.01(a).

"**Non-Exercising Member**" has the meaning set forth in Section 9.01(d).

"**Nonrecourse Liability**" has the meaning set forth in Treasury Regulations Section 1.704-2(b)(3).

"**OFAC**" means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

"**Offer Notice**" has the meaning set forth in Section 10.06(b).

“**Offered Units**” has the meaning set forth in Section 10.03(a).

“**Offering Member**” has the meaning set forth in Section 10.03(a).

“**Offering Member Notice**” has the meaning set forth in Section 10.03(b)(i).

“**Officers**” has the meaning set forth in Section 8.08.

“**Original Agreement**” has the meaning set forth in the Recitals.

“**Over-Allotment Exercise Period**” has the meaning set forth in Section 9.01(d).

“**Over-Allotment Notice**” has the meaning set forth in Section 9.01(d).

“**Participation Units**” has the meaning set forth in Section 10.05(c)(i).

“**Partnership Representative**” has the meaning set forth in Section 11.04(a).

“**Percentage Interest**” means, for any Member (treating the Preferred Units and Common Units as one class of Units, on an as-converted basis), the number of Common Units Deemed Outstanding held by such Member (treating the Preferred Units as Common Units, on an as-converted basis) divided by the total number of Common Units Deemed Outstanding (treating the Preferred Units as Common Units, on an as-converted basis), expressed as a percentage.

“**Permitted Secured Indebtedness**” means the Exit Facility and any other indebtedness secured by Liens that is permitted under Section 4.06(a)(viii) or approved by the Preferred Requisite Members under Section 4.06.

“**Permitted Transfer**” means a Transfer of Preferred Units or Common Units carried out pursuant to Section 10.02.

“**Permitted Transferee**” means a recipient of a Permitted Transfer.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association, or other entity.

“**Plan**” means the Joint Prepackaged Chapter 11 Plan of Reorganization of Capstone Green Energy Corporation and Its Debtor Affiliates (as may be amended, supplemented, or otherwise modified from time to time in accordance with its terms and the terms of the Transaction Support Agreement, and including all exhibits and supplements thereto).

“**Preferred Member**” means a Member holding Preferred Units.

“**Preferred Requisite Members**” means the holders of a majority of the Preferred Units held by the Preferred Members.

“**Preferred Units**” means the Units having the privileges, preference, duties, liabilities, obligations, and rights specified with respect to “Preferred Units” in this Agreement.

“**Preferred Units Redemption Period**” means the six (6) months following the sixth (6th) anniversary of the effective date of this Agreement.

“**Pro Rata Portion**” means, with respect to any Member, on any issuance date for New Securities, the number of New Securities equal to the product of (a) the total number of New Securities to be issued by the Company on such date and (b) such Member’s Percentage Interest on such date immediately prior to such issuance.

“**Proposed Transferee**” has the meaning set forth in Section 10.05(a).

“**Prospective Purchaser**” has the meaning set forth in Section 9.01(b).

“**Public Official**” means any person holding an elected or appointed office and any other officer or employee of a government or a department, agency, instrumentality or part thereof (including a state-owned or -controlled enterprise or a joint venture / partnership with a government entity), any officer or employee of a public international organization or a political party, and any candidate for political office; or any person exercising a public function or acting in an official capacity for or on behalf of any of the foregoing.

“**Purchasing Member**” has the meaning set forth in Section 10.03(c)(i).

“**Qualified Public Offering**” means the Company’s (or its successor’s) first underwritten offering to the public pursuant to an effective registration statement under the Securities Act; *provided* that (a) such registration statement covers the offer and sale of Common Units the aggregate gross proceeds of which attributable to sales for the account of the Company (after payment of underwriters’ discounts and commissions) exceed $100,000,000.00, and (b) the Common Units are listed for trading on the New York Stock Exchange or the Nasdaq Stock Market (or, in each case, any successor market thereto).

“**Quarterly Estimated Tax Amount**” of a Member for any calendar quarter of a Fiscal Year means the excess, if any of (a) the product of (i) a quarter (¼) in the case of the first calendar quarter of the Fiscal Year, half (½) in the case of the second calendar quarter of the Fiscal Year, three-quarters (¾) in the case of the third calendar quarter of the Fiscal Year, and one (1) in the case of the fourth calendar quarter of the Fiscal Year and (ii) the Member’s Estimated Tax Amount for such Fiscal Year over (b) all Tax Advances previously made during such Fiscal Year to such Member.

“**Redemption Breach**” has the meaning set forth in Section 3.08(b).

“**Redemption Date**” means the date on which the Redemption Price is paid pursuant to a Redemption Request.

“**Redemption Deadline**” means the date one hundred and eighty (180) days following a redemption election.

“**Redemption Exceptions**” means any event in which the Company is not permitted to make payment of the Redemption Price to any Preferred Member because (a) such payment is

prohibited by Section 18-607 of the Delaware Act or (b) the Company is, or by payment of the Redemption Price would be, Insolvent.

"**Redemption Notice**" has the meaning set forth in Section 3.07(a).

"**Redemption Price**" has the meaning set forth in Section 3.07(b).

"**Redemption Request**" has the meaning set forth in Section 3.07(a).

"**Registration Rights Agreement**" means the registration rights agreement, dated as of the date of this Agreement, by and between the Company and the Preferred Members.

"**Regulatory Allocations**" has the meaning set forth in Section 6.02(e).

"**Regulatory Requirement**" has the meaning set forth in Section 13 of Annex B.

"**Reorganized PrivateCo**" means Capstone as of the consummation of the Plan.

"**Reorganized PrivateCo Entities**" means Reorganized PrivateCo and Reorganized PrivateCo's Affiliates other than, for the avoidance of doubt, the Company, the Company Subsidiaries, Reorganized PublicCo and any other Subsidiaries of Reorganized PublicCo.

"**Reorganized PublicCo**" means Capstone Turbine International, Inc. as of the consummation of the Plan.

"**Reorganized PublicCo Approved Sale**" has the meaning set forth in Section 10.04.

"**Reorganized PublicCo Services Agreement**" means the reorganized publicco services agreement, dated December 7, 2023, by and between Capstone Green Energy Holdings, Inc. (f/k/a Reorganized PublicCo), a Delaware corporation, and the Company.

"**Representative**" means, with respect to any Person, any and all directors, managers, officers, employees, consultants, financial advisors, counsel, accountants, and other agents of such Person.

"**Restricted Entities**" means the Company, its Subsidiaries and controlled Affiliates.

"**Restricted Transaction**" has the meaning set forth in Section 10.06(b).

"**Revised Partnership Audit Rules**" has the meaning set forth in Section 11.04(a).

"**ROFO Exercise Period**" has the meaning set forth in Section 10.06(c).

"**ROFO Offer**" has the meaning set forth in Section 10.06(b).

"**ROFO Offeror**" has the meaning set forth in Section 10.06(b).

"**ROFR Notice Period**" has the meaning set forth in Section 10.03(b)(i).

"**ROFR Offer Notice**" has the meaning set forth in Section 10.03(b)(i).

"**ROFR Rightholders**" has the meaning set forth in Section 10.03(a).

"**Sale Notice**" has the meaning set forth in Section 10.05(c).

"**Sanctioned Person**" has the meaning set forth in Section 1(b) of Annex B.

"**Sanctioned Territory**" has the meaning set forth in Section 1(b) of Annex B.

"**Sanctions**" means sanctions or trade embargoes enacted, imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC, U.S. Department of State, or U.S. Department of Commerce, or (b) the United Nations Security Council, the European Union ("**EU**") or any EU member state, His Majesty's Treasury of the United Kingdom.

"**Secretary of State**" has the meaning set forth in the Recitals.

"**Section 13(r)**" means Section 13(r) of the Exchange Act.

"**Securities Act**" means the Securities Act of 1933.

"**SEF**" means a swap execution facility as defined in CFTC Regulation 40.1(f).

"**Selling Member**" has the meaning set forth in Section 10.05(a).

"**Shared Representative**" has the meaning set forth in Section 14.01.

"**Shortfall Amount**" has the meaning set forth in Section 7.03(b).

"**Specified Indemnified Persons**" has the meaning set forth in Section 13.02(f).

"**Subsidiary**" means, with respect to any Person, any corporation, limited liability company, partnership, association or business entity of which (a) if a corporation, a majority of the total voting power of shares of capital 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 (b) if a limited liability company, partnership, association or other business entity (other than a corporation), a majority of partnership or other ownership interest thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity (other than a corporation) if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or control a managing member, manager or managing director (or a board comprised of any of the foregoing) or general partner of such limited liability company, partnership, association or other business entity.

“**Tag-Along Member**” has the meaning set forth in Section 10.05(a).

“**Tag-Along Notice**” has the meaning set forth in Section 10.05(d)(ii).

“**Tag-Along Period**” has the meaning set forth in Section 10.05(d)(ii).

“**Tag-Along Portion**” has the meaning set forth in Section 10.05(d)(i).

“**Tag-Along Sale**” has the meaning set forth in Section 10.05(a).

“**Tax Advance**” has the meaning set forth in Section 7.03(a).

“**Tax Amount**” of a Member for a Fiscal Year means the product of (a) the Tax Rate for such Fiscal Year and (b) the Adjusted Taxable Income of the Member for such Fiscal Year with respect to such Member’s Units.

“**Tax Contest**” has the meaning in Section 11.04(b).

“**Tax Rate**” of a Member, for any period, means the highest marginal blended federal, state, and local tax rate applicable to ordinary income, qualified dividend income, or capital gains, as appropriate, for such period for a corporation in New York, New York or Los Angeles, California, whichever is higher.

“**Third-Party Purchaser**” means any Person who is not the Company or a wholly owned Company Subsidiary.

“**Transaction Support Agreement**” means the transaction support agreement, dated September 27, 2023, by and among Reorganized PublicCo and Broad Street Credit Holdings LLC.

“ **Transfer**” means to, directly or indirectly, sell, transfer, assign, pledge, encumber, hypothecate, or similarly dispose of, either voluntarily or involuntarily, by operation of law or otherwise, or to enter into any contract, option, or other arrangement or understanding with respect to the sale, transfer, assignment, pledge, encumbrance, hypothecation, or similar disposition of, any Units owned by a Person or any interest (including a beneficial interest) in any Units or Unit Equivalents owned by a Person. “ **Transfer**” when used as a noun shall have a correlative meaning. “**Transferor**” and “**Transferee**” mean a Person who makes or receives a Transfer, respectively.

“**Treasury Regulations**” means the final or temporary regulations issued by the United States Department of Treasury pursuant to its authority under the Code, and any successor regulations.

“**Unallocated Item**” has the meaning set forth in Section 6.05.

“**Unit**” means a unit representing a fractional part of the Membership Interests of the Members and shall include all types, classes, and series of Units, including the Preferred Units and the Common Units; *provided*, that any type, class, or series of Unit shall have the privileges, preference, duties, liabilities, obligations, and rights set forth in this Agreement with respect to such type, class, or series of Unit and the Membership Interests represented by such type, class, or

series of Unit shall be determined in accordance with such privileges, preference, duties, liabilities, obligations, and rights.

"**Unit Equivalents**" means any security or obligation that is by its terms, directly or indirectly, convertible into, exchangeable, or exercisable for Units, including any option, warrant, or other right to subscribe for, purchase, or acquire Units.

"**Unrestricted Entities**" means Reorganized PublicCo, its Subsidiaries and controlled Affiliates, other than any of the Restricted Entities.

"**Voting Members**" has the meaning set forth in Section 4.07(b).

"**Voting Units**" has the meaning set forth in Section 4.07(a).

Section 1.02 Interpretation. For purposes of this Agreement, (a) the words "include," "includes," and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole. The definitions given for any defined terms in 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 gender-neutral forms. Unless the context otherwise requires, references herein: (i) to Articles, Sections, and Exhibits mean the Articles and Sections of, and Exhibits attached to, this Agreement; (ii) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (iii) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein. Unless indicated otherwise, all mathematical calculations contemplated by this Agreement shall be rounded to the fourth decimal place, except in respect of payments, which shall be rounded down to the nearest whole United States cent.

ARTICLE II
ORGANIZATION

Section 2.01 Formation.

(a) The Company was formed on October 16, 2023, pursuant to the provisions of the Delaware Act, upon the filing of the Certificate of Formation with the Secretary of State. This Agreement amends, restates, and supersedes the Original Agreement in its entirety.

(b) This Agreement shall constitute the "limited liability company agreement" (as that term is used in the Delaware Act) of the Company. The rights, powers, duties, obligations, and liabilities of the Members shall be determined pursuant to the Delaware

Act and this Agreement. To the extent that the rights, powers, duties, obligations, and liabilities of any Member are different by reason of any provision of this Agreement than they would be under the Delaware Act in the absence of such provision, this Agreement shall, to the extent permitted by the Delaware Act, control; *provided* that, notwithstanding the foregoing, none of Section 18-210 of the Delaware Act (entitled " Contractual Appraisal Rights"), Section 18-305(a) of the Delaware Act (entitled " Access to and confidentiality of information records") or Section 18-604 (entitled "Distribution upon resignation") shall apply to or be incorporated into this Agreement and each Member hereby expressly waives any and all rights under each such section of the Delaware Act.

Section 2.02 **Name.** The name of the Company is "Capstone Green Energy LLC" or such other name or names as the Board may from time to time designate and file with the Secretary of State in accordance with the Delaware Act; *provided*, that the name shall always contain the words " Limited Liability Company" or the abbreviation "L.L.C." or the designation "LLC." The Board shall give prompt notice to each of the Members of any change to the name of the Company.

Section 2.03 **Principal Office.** The principal office of the Company is located at 16640 Stagg Street, Van Nuys, CA 91406, or such other place as may from time to time be determined by the Board. The Board shall give prompt notice of any such change to each of the Members.

Section 2.04 **Registered Office; Registered Agent.**

(a) The registered office of the Company shall be the office of the initial registered agent named in the Certificate of Formation or such other office (which need not be a place of business of the Company) as the Board may designate from time to time in the manner provided by the Delaware Act and Applicable Law.

(b) The registered agent for service of process on the Company in the State of Delaware shall be the initial registered agent named in the Certificate of Formation or such other Person or Persons as the Board may designate from time to time in the manner provided by the Delaware Act and Applicable Law.

Section 2.05 **Purpose; Powers.**

(a) The purpose of the Company is to engage, directly or indirectly through one or more Restricted Entities, in (i) the manufacturing, sales, lease, parts supply and operational support services of microturbine energy systems for microgrid solutions and on-site energy (the "**Business**"), (ii) any and all such activities as may, subject to the provisions of Section 4.06 as applicable, be determined by the Board, to the extent that the same may be lawfully exercised by limited liability companies under the Delaware Act, and (iii) any and all lawful activities necessary or incidental thereto.

(b) 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 Delaware Act.

Section 2.06 **Term.** The term of the Company commenced on the date the Certificate of Formation was filed with the Secretary of State and shall continue in existence perpetually until the Company is dissolved in accordance with the provisions of this Agreement.

Section 2.07 No State-Law Partnership. The Members intend that the Company shall be treated as a partnership for federal and, if applicable, state and local income tax purposes, and, to the extent applicable, the Company shall elect to be treated as a partnership for such purposes. The Company and each Member shall file all tax returns and otherwise take all tax and financial reporting positions in a manner consistent with such treatment and no Member shall take any action inconsistent with such treatment. The Members intend that the Company shall not be a partnership (including a limited partnership) or joint venture, and that no Member, Manager, or Officer of the Company shall be a partner or joint venturer of any other Member, Manager, or Officer of the Company, for any purposes other than as set forth in the first two sentences of this Section 2.07.

ARTICLE III
UNITS

Section 3.01 Units Generally. The Membership Interests of the Members shall be represented by issued and outstanding Units, which may be divided into one or more types, classes, or series. Each type, class, or series of Units shall have the privileges, preference, duties, liabilities, obligations, and rights, including voting rights, if any, set forth in this Agreement with respect to such type, class, or series. The Board shall maintain a schedule of all Members, their respective mailing addresses, and the amount and type, class, or series of Units held by them (the "**Members Schedule**"), and shall have the authority to update the Members Schedule upon the issuance or Transfer of any Units in accordance with this Agreement, without the consent of any other Person. A copy of the Members Schedule as of the execution of this Agreement is attached hereto as **Schedule A**. Absent manifest error, the ownership interests recorded on the Members Schedule shall be conclusive record of the Units that have been issued and are outstanding. Any reference in this Agreement to the Members Schedule shall be deemed a reference to the Members Schedule as amended and in effect from time to time. The Company may issue fractional Units.

Section 3.02 Authorization and Issuance of Preferred Units. The Company is hereby authorized to issue up to 10,449,863 Units designated as Preferred Units. As of the date hereof, 10,449,863 Preferred Units are issued and outstanding to the Preferred Members in the amounts set forth on the Members Schedule opposite each such Preferred Member's name.

Section 3.03 Authorization and Issuance of Common Units. The Company is hereby authorized to issue up to 45,282,739 Units designated as Common Units. As of the date hereof, 17,416,438 Common Units are issued and outstanding to the Common Members in the amounts set forth on the Members Schedule opposite each such Common Member's name. The Company will reserve and keep available at all times, free of preemptive rights, a number of Common Units equal to 37.5000% of the Common Units Deemed Outstanding (as may be adjusted in accordance with Section 3.06(a)(ii)), such Common Units to be reserved solely for the conversion of Preferred Units to Common Units pursuant to Section 3.06.

Section 3.04 Other Issuances. In addition to the Preferred Units and Common Units authorized on the date hereof pursuant to Section 3.02 and Section 3.03, the Company is hereby authorized, subject to compliance with the provisions of Section 4.06, Section 9.01, and Section 10.01(b), as applicable, to create, authorize and issue or sell to any Person, for consideration and on other terms and conditions determined by the Board, any of the following (collectively, "**New Interests**"): (a) any new type, class, or series of Units not otherwise authorized in this Agreement,

including Units designated as classes or series of the Preferred Units or Common Units with different rights, privileges, or preferences; and (b) Unit Equivalents; and the Board is hereby authorized to amend this Agreement to reflect any such creation or issuance and to fix the relative privileges, preferences, duties, liabilities, obligations, and rights of any such New Interests, including economic and governance rights (which may be different from, pari passu with, senior to or more favorable than the other existing Units), including the number of such New Interests to be issued, the preference (with respect to Distributions, in liquidation, or otherwise) over any other Units, and any contributions required in connection therewith, in each case, without the approval or consent of any other Person except to the extent required pursuant to this Agreement.

Section 3.05 No Unit Certificates. Notwithstanding any provision to the contrary in this Agreement, the Company shall not (a) certificate any Member's ownership interest in the Company (and any such certificate purporting to evidence such Member's ownership interest in the Company shall be null and void *ab initio*) or (b) opt into (or otherwise elect that any Member's interest in the Company become a security governed by) Article 8 of the Uniform Commercial Code in effect in the State of Delaware.

Section 3.06 Conversion of Preferred Units. Preferred Units shall be converted into Common Units in accordance with the following:

(a) A Preferred Member may convert its Preferred Units into Common Units at any time and from time to time as follows:

(i) Upon the written election of a Preferred Member and without payment of any additional consideration, the number of specified Preferred Units shall be converted into the number of Common Units equal to (A) the specified number of Preferred Units divided by the total number of Preferred Units then outstanding, times (B) 37.5000% of the Common Units Deemed Outstanding.

(ii) To the extent some, but not all, of a Preferred Member's Preferred Units have been converted, the percentage included in Section 3.06(a)(i) shall be proportionally reduced. The same adjustment shall apply for purposes of calculating other as-converted entitlements of the Preferred Units, including voting rights and Distributions, and the Aggregate Purchase Price (for purposes of determining the Liquidation Preference of the remaining unconverted Preferred Units). By way of illustrative example, if 5,249,931.5 Preferred Units are converted, out of 10,449,863 total Preferred Units issued and outstanding (i.e., one-half), the percentage in Section 3.06(a)(i)(B) shall be reduced to 18.7500% (i.e., by one-half).

(b) <u>Procedure for Conversion</u>.

(i) In order for a Preferred Member to convert Preferred Units into Common Units, such Preferred Member shall provide written notice to the Board stating that such Preferred Member elects to convert all or any number of such Preferred Member's Preferred Units and, if applicable, any event or date on which such conversion is contingent. Such notice shall state such Preferred Member's

name and the names of the nominees in which such Preferred Member wishes the Common Units to be issued.

(ii) The close of business on the date of receipt by the Board, or such other date or time indicated on the notice of conversion, shall be the effective time of conversion, the Common Units issuable upon conversion of the specified Preferred Units shall be deemed to be outstanding of record as of such date, and the Preferred Units converted into such Common Units shall be deemed to be canceled as of such date.

Section 3.07 Redemption of Preferred Units.

(a) Optional Redemption; Redemption Date. At any time during the Preferred Units Redemption Period, the Preferred Requisite Members may elect to have all, but not less than all, of the then outstanding Preferred Units redeemed (a "**Redemption Request**"). In such event, the Company shall redeem, except to the extent any of the Redemption Exceptions applies, all, but not less than all, of the Preferred Units at the Redemption Price. Any election pursuant to this Section 3.07(a) shall be made by written notice from the Preferred Requisite Members to the Company (a "**Redemption Notice**"). The Preferred Units shall be deemed redeemed only upon receipt of the pro rata portion of the Redemption Price payable to each Preferred Member for such Preferred Member's percentage of the Preferred Units.

(b) Redemption Price. The aggregate price for Preferred Units redeemed pursuant to a Redemption Notice shall be an amount equal to the greater of (i) the Aggregate Purchase Price, plus declared but unpaid Distributions, or (ii) the Fair Market Value of the Preferred Units on an as-converted to Common Units basis at the time of such redemption (the "**Redemption Price**"). The aggregate Redemption Price shall be payable in cash by wire transfer of immediately available funds to the Preferred Members on the Redemption Date, on a pro rata basis.

(c) Insufficient Funds. If on a Redemption Date, a Redemption Exception prevents the Company from redeeming all Preferred Units, the Company shall redeem the maximum possible number of Preferred Units from the Preferred Members without triggering any Redemption Exceptions. At any time thereafter when the Redemption Exceptions do not prevent the Company from redeeming Preferred Units that remain issued and outstanding, the Company shall immediately use its funds to redeem the balance of the Preferred Units that the Company became obligated to redeem on the Redemption Date (but which it has not yet redeemed) at the then applicable Redemption Price. Any unredeemed Preferred Units shall remain outstanding and entitled to all of their rights and preferences.

(d) Capital Raise. The Company may, following the receipt of a Redemption Notice, raise new capital, including by incurring indebtedness or issuing equity, to fund the Redemption Price. Notwithstanding anything in this Agreement to the contrary, (i) no Preferred Member shall have any consent rights pursuant to Section 4.06 or preemptive rights pursuant to Section 9.01 following the Redemption Request, solely with respect to

any capital raised by the Company to fund the Redemption Price; *provided* that all of the Preferred Units are redeemed contemporaneously with, and as a condition to, the consummation of such capital raise and (ii) no Preferred Member shall have the consent right set forth in Section 4.06(a)(viii) in respect of the refinancing of any indebtedness to the Preferred Members or their Affiliates in connection with the maturity or acceleration thereof, solely with respect to the repayment of such indebtedness; *provided* that all such indebtedness is repaid contemporaneously with, and as a condition to, the consummation of such refinancing.

(e) Regulatory Redemption. Notwithstanding anything to the contrary in this Agreement, at any time and in the Preferred Requisite Members' sole discretion, the Preferred Requisite Members may elect for the Company to redeem all, but not less than all, of the Preferred Members' outstanding Preferred Units, Common Units and any other class of Units, in each case for an aggregate purchase price of $1.00 for each class of Units.

Section 3.08 Breaches; Failure to Effect Redemption.

(a) In the event of a Breach that is not cured within thirty (30) days of the written notice of such Breach from the Preferred Requisite Members to the Board, then (i) the Preferred Units shall be entitled to mandatory preferential Distributions at a per annum rate equal to 10.0000% of the Redemption Price determined on the date of such Breach, increasing by 1.0000% at the end of each three-month period thereafter (*provided* that in no event shall such rate exceed 16.0000%), commencing on such thirtieth (30th) day and continuing until the Breach is cured (*provided* that the payments of Distributions shall be in cash and subject to the Redemption Exceptions), and (ii) if such Breach is not cured within twelve (12) months of a written notice of such Breach from the Preferred Requisite Members to the Board, the Preferred Requisite Members may initiate and effect a financing transaction (which may include a sale of the Company) to redeem the Preferred Units; *provided* that such redemption may be consummated only on or after the second (2nd) anniversary of this Agreement and that any such financing transaction (or sale of the Company) is on terms reasonably acceptable to the Board.

(b) In the event that the Company does not timely satisfy in full, in cash, a Redemption Request and such failure continues beyond the Redemption Deadline (a "**Redemption Breach**"), then (i) the Preferred Units shall be entitled to mandatory preferential Distributions at a per annum rate equal to 10.0000% of the Redemption Price determined on the date of such Redemption Breach, increasing by 1.0000% at the end of each three-month period thereafter (*provided* that in no event shall such rate exceed 16.0000%), commencing on the Redemption Deadline and continuing until the Redemption Price is paid (*provided* that the payments of Distributions shall be in cash and subject to the Redemption Exceptions), and (ii) if such Redemption Breach is not cured within twelve (12) months of the Redemption Deadline, the Preferred Requisite Members may initiate and effect a financing transaction (which may include a sale of the Company) to redeem the Preferred Units; *provided* that such redemption may be consummated only on or after the second (2nd) anniversary of this Agreement and that any such financing transaction (or sale of the Company) is on terms reasonably acceptable to the Board.

(c) Without prejudice to the remedies to which the Preferred Members are entitled pursuant to Section 3.08(b), if the Company is unable to satisfy a Redemption Request in full, in cash, by the Redemption Deadline due to a Redemption Exception, then the Company shall pursue in good faith a financing transaction for the purpose of raising sufficient funds to effectuate such redemption in compliance with the Redemption Exceptions. For the avoidance of doubt, unless there is a change in Applicable Law, if any financing transaction (or sale of the Company) constitutes a sale of all or substantially all of the assets of Reorganized PublicCo, such financing transaction (or sale of the Company) shall be subject to approval by Reorganized PublicCo's Board and stockholders.

ARTICLE IV
MEMBERS

Section 4.01 Admission of New Members.

(a) New Members may be admitted from time to time in connection with (i) an issuance of Units by the Company in accordance with the provisions of this Agreement, including the provisions of Section 4.06, Section 9.01, and Section 10.01(b), as applicable, and (ii) a Transfer of Units, subject to compliance with the provisions of Article X, and in either case, following compliance with the provisions of Section 4.01(b).

(b) In order for any Person not already a Member of the Company to be admitted as a Member, whether pursuant to an issuance or Transfer of Units (including a Permitted Transfer), such Person shall have executed and delivered to the Company a written undertaking substantially in the form of the Joinder Agreement. Upon the amendment of the Members Schedule by the Board and the satisfaction of any other applicable conditions as may reasonably be deemed necessary or appropriate by the Board, including, if applicable, the receipt by the Company of payment for the issuance of the applicable Units, such Person shall be admitted as a Member and deemed listed as such on the books and records of the Company and thereupon shall be issued their Units. The Board may also adjust the Capital Accounts of the Members as necessary in accordance with Section 5.03 or Section 5.04, without the consent of any other Person.

Section 4.02 Representations and Warranties of Members. By execution and delivery of this Agreement or a Joinder Agreement, as applicable, each of the Members, whether admitted as of the date hereof or pursuant to Section 4.01, represents and warrants to the Company and acknowledges that:

(a) The Units have not been registered under the Securities Act or the securities laws of any other jurisdiction, are issued in reliance upon federal and state exemptions for transactions not involving a public offering, and cannot be disposed of or otherwise Transferred unless (i) they are subsequently registered or exempted from registration under the Securities Act and (ii) the provisions of this Agreement have been complied with;

(b) Such Member (i) is an "accredited investor" within the meaning of Rule 501 promulgated under the Securities Act and (ii) agrees to furnish any additional information

requested by the Company to assure compliance with applicable U.S. federal and state securities laws in connection with the purchase and sale of the Units;

(c) Such Member's Units are being acquired for such Member's own account solely for investment and not with a view to resale or distribution to the public or public offering thereof;

(d) Such Member has been advised to obtain independent counsel to advise such Member individually in connection with the drafting, preparation, negotiation, or review of this Agreement and, if applicable, the Joinder Agreement. Such Member has conducted its own independent review and analysis of the business, operations, assets, liabilities, results of operations, financial condition, and prospects of the Restricted Entities and such Member acknowledges having been provided adequate access to the personnel, properties, premises, and records of the Restricted Entities for such purpose;

(e) The determination of such Member to acquire Units has been made by such Member independent of any other Member and independent of any statements or opinions as to the advisability of such purchase or as to the business, operations, assets, liabilities, results of operations, financial condition, and prospects of the Restricted Entities that may have been made or given by any other Member or the Company or by any of its Affiliates or Representatives;

(f) Such Member has such knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of an investment in the Company and making an informed decision with respect thereto;

(g) Such Member is able to bear the economic and financial risk of an investment in the Company for an indefinite period of time;

(h) The execution, delivery, and performance of this Agreement or the Joinder Agreement by such Member (i) if it is an entity, have been duly authorized by all requisite entity action on the part of such Member and do not require such Member to obtain any consent or approval that has not been duly obtained; and (ii) do not contravene in any material respect or result in a default under (A) any provision of any law or regulation applicable to such Member; (B) if such Member is an entity, its governing documents; or (C) any agreement or instrument to which such Member is a party or by which such Member is bound;

(i) This Agreement is valid, binding, and enforceable against such Member in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium, and other similar laws of general applicability relating to or affecting creditors' rights or general equity principles (regardless of whether considered at law or in equity);

(j) Neither the issuance of any Units to such Member nor any provision contained herein will entitle such Member to remain in the employment of or other service to the Company or any of its Affiliates or affect the right of the Company or any of its Affiliates to terminate such Member's employment or other service at any time for any

reason, other than as otherwise expressly provided herein or in such Member's employment, service, or other similar agreement with the Company or any of its Affiliates, if applicable;

(k) no other Member has acted as an agent of such Member in connection with making its investment hereunder and no other Member shall be acting as an agent of such Member in connection with monitoring its investment hereunder;

(l) the Units were not offered to such Member by means of general solicitation or general advertising; and

(m) Such Member is subject to the applicable representations, warranties, covenants, agreements and obligations set forth in Annex A and Annex B hereto.

Section 4.03 No Personal Liability. Except as otherwise provided in the Delaware Act, by Applicable Law, or expressly in this Agreement, no Member will be obligated personally for any debt, obligation, or liability of any Restricted Entity or another Member, whether arising in contract, tort, or otherwise, solely by reason of being a Member.

Section 4.04 No Withdrawal. So long as a Member continues to hold any Units, such Member shall not have the ability to withdraw or resign as a Member prior to the dissolution and winding up of the Company and any such withdrawal or resignation or attempted withdrawal or resignation by a Member prior to the dissolution or winding up of the Company shall be null and void. As soon as any Person who is a Member ceases to hold any Units, such Person shall no longer be a Member. A Member shall cease to be a Member as a result of the Bankruptcy of such Member or any other/any event specified in Section 18-304 of the Delaware Act.

Section 4.05 Voting. Except as otherwise provided by this Agreement (including Section 4.06, Section 8.02, and Section 14.10) or as otherwise required by the Delaware Act or other Applicable Law:

(a) each Common Member shall be entitled to one vote per Common Unit on all matters upon which the Members have the right to vote under this Agreement; and

(b) the Preferred Units shall entitle the Preferred Members to vote on any matters required or permitted to be voted on by the Members on an as-converted basis. Each outstanding Preferred Unit shall be entitled to a number of votes (including fractional votes) equal to the number of Common Units (including fractional units) into which such Preferred Unit is then convertible.

Section 4.06 Matters Requiring Approval of Preferred Requisite Members.

(a) Approval of the Preferred Requisite Members (which, for the avoidance of doubt, may be granted by written notice without a meeting of the Preferred Members in accordance with Section 4.09) will be required with respect to any Restricted Entity (or Reorganized PublicCo, to the extent specifically noted), in connection with any of the following (whether by merger or otherwise):

(i) any alteration or change in the rights, preferences or privileges of the Preferred Units or amendment to any of the Governing Documents;

(ii) any change in corporate form, including conversion to a corporation;

(iii) increasing the authorized number of Preferred Units;

(iv) issuing Common Units or Common Unit Equivalents, or the Transfer by Reorganized PublicCo of Common Units or Common Unit Equivalents, to any Person or group of Persons (in each case other than to Reorganized PublicCo) such that after the issuance or Transfer, as applicable, such Person or group of Persons would own an aggregate number of Common Units (or the right to such Common Units under certain Common Unit Equivalents) in excess of 25.0000% of the actually outstanding Common Units on the date of this Agreement; *provided* that any Transfer of Common Units by Reorganized PublicCo in favor of or for the benefit of the loan parties or their affiliates under the Exit Facility shall not be subject to the approval requirements of this Section 4.06(a)(iv);

(v) creating any new class of units having preference over, or on parity with, the Preferred Units;

(vi) authorizing, issuing or reclassifying any securities, including any Membership Interests, issued by any Restricted Entity, other than issuances of Common Units by the Company to Reorganized PublicCo;

(vii) selling, issuing, sponsoring, creating or distributing any digital tokens, cryptocurrency or other blockchain-based assets;

(viii) incurring or issuing, in a single or a series of related transactions, including refinancing, indebtedness exceeding $5,000,000.00 (including all debt, Liens, guarantees, capital leases and negative pledges) other than (A) the indebtedness and related items expressly contemplated by the Transaction Support Agreement, (B) lease or other obligations (and any related notes payable) relating to the rental of equipment to customers or otherwise for energy-as-a-service (EaaS) business activity and (C) indebtedness and related items of the types permitted under the DIP Financing Agreement (whether or not such DIP Financing Agreement remains in effect);

(ix) declaring or paying any Distribution, or redeeming or acquiring any equity interests of the Company, other than (A) Tax Advances and (B) Distributions from the Company's Subsidiaries or controlled Affiliates to the Company or its wholly owned Subsidiaries;

(x) any Liquidation Event;

(xi) any acquisition of any business (whether by stock or asset purchase, merger, consolidation or otherwise), ownership of any equity securities in any

Person other than a wholly owned Subsidiary, or entry into any joint venture arrangement;

(xii) any public offering or direct listing on a national securities exchange;

(xiii) any merger or other similar transaction which results in the Company's (or its successor's) equity interests being listed or quoted for trading on an exchange or otherwise subject to registration;

(xiv) commencing, settling, defending or making any material decisions with respect to any material settlement or litigation (including with respect to any material Tax Contest);

(xv) any material change in the nature of the Existing Business; and

(xvi) any Interested Transaction except for (A) payments to Common Members in accordance with the terms of the Reorganized PublicCo Services Agreement, which shall not exceed an aggregate amount equal to $2,500,000.00 per Fiscal Year, to be increased on April 1 of each year by an amount equal to the greater of 3.5000% and the Consumer Price Index, as set by the U.S. Bureau of Labor Statistics and available on March 31 of each year; *provided*, *however*, that for the Fiscal Year ending March 31, 2024, such amount shall be prorated based on the number of days in such fiscal year following the execution of the Reorganized PublicCo Services Agreement; *provided, further, however*, that such increase effective on April 1, 2024 shall be equal to 1.7500%, and (B) compensation arrangements.

(b) For the avoidance of doubt, the Unrestricted Entities may not, without the consent of the Preferred Requisite Members, engage in any business opportunities, make any investments or enter into any transactions, including any of the foregoing which are or would reasonably be expected to be within the scope of, or would reasonably be deemed to be beneficial to, the Existing Business; *provided* that such consent shall not be unreasonably withheld, conditioned or delayed, including in circumstances in which any Unrestricted Entity proposes to engage in any such business opportunities, make any such investments or enter into any such transactions and (i) where the business opportunity, investment or transaction (the "**New Opportunity**") would constitute a change in the Existing Business if the Restricted Entities were to engage in such New Opportunity, make such investments or enter into such transactions and the Preferred Requisite Members do not consent to such change following the Company's request reasonably in advance of such New Opportunity for the Preferred Requisite Members to be able to reasonably consider such request (and in any event no later than ten (10) days after such request is made), or (ii) the New Opportunity is not within the scope of the Existing Business and either (A) the New Opportunity is first presented to the Company, the Company proposes such New Opportunity to the Preferred Requisite Members reasonably in advance of such New Opportunity for the Preferred Requisite Members to be able to reasonably consider such proposal, and the Preferred Members do not agree to fund their proportionate share of the

cost thereof within ten (10) days after such New Opportunity is presented, or (B) the New Opportunity is funded entirely with the proceeds of financing transactions by, or through the issuance of securities of, any Unrestricted Entity; *provided*, *however*, that such funding shall be subject to Section 4.06(a)(iv), if applicable.

(c) The Preferred Requisite Members shall have the right to approve and authorize the funding of any New Opportunity on behalf of all Preferred Members. Upon approval of a New Opportunity by the Preferred Requisite Members, all Preferred Members must approve, and shall be obligated to participate in the funding of, such New Opportunity.

Section 4.07 Meetings of Members.

(a) As used herein, the term "**Voting Units**" shall mean:

(i) the Common Units, for purposes of calling or holding any meeting of the Members or the Common Requisite Members, as applicable, providing notice of such a meeting, forming a quorum for such a meeting, or taking any action by vote at a meeting or by written consent without a meeting, in all cases subject to Section 4.06 or otherwise regarding action to be taken by the Common Members under this Agreement; and

(ii) the Preferred Units on an as-converted basis, for purposes of calling or holding any meeting of the Members or the Preferred Members, as applicable, providing notice of such a meeting, forming a quorum for such a meeting, or taking any action by vote at a meeting or by written consent without a meeting, in all cases including to take any action or conduct any business described in Section 4.06 or otherwise regarding action to be taken by the Members under this Agreement.

(b) Meetings of the Members may be called by (i) the Board, (ii) the Common Requisite Members or (iii) the Preferred Requisite Members. Meetings of the Members may be called by a Member or a group of Members holding more than 10.0000% of the Common Units or Preferred Units. Meetings of the Preferred Members may be called by a Preferred Member or a group of Preferred Members holding more than 10.0000% of the Preferred Units. Only Members who hold the relevant Voting Units ("**Voting Members**") shall have the right to attend meetings of the Members or Preferred Members, as applicable.

(c) Written notice stating the place, date, and time of the meeting and, in the case of a meeting of the Members not regularly scheduled, describing the purpose(s) for which the meeting is called, shall be delivered not fewer than three (3) days and not more than thirty (30) days before the date of the meeting to each Voting Member, by or at the direction of the Board or the Member(s) calling the meeting, as the case may be. The Voting Members may hold meetings at the Company's principal office or at such other place as the Board or the Member(s) calling the meeting may designate in the notice for such meeting.

(d) Any Voting Member may participate in a meeting of the Voting Members by means of conference telephone or other communications equipment by means of which

all Persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

(e) On any matter that is to be voted on by Voting Members, a Voting Member may vote in person or by proxy, and such proxy may be granted in writing, by means of Electronic Transmission, or as otherwise permitted by Applicable Law. Every proxy shall be revocable in the discretion of the Voting Member executing it unless otherwise provided in such proxy; *provided*, that such right to revocation shall not invalidate or otherwise affect actions taken under such proxy prior to such revocation.

(f) The business to be conducted at such meeting need not be limited to the purpose described in the notice and can include business to be conducted by Voting Members holding Common Units and Voting Members holding Preferred Units; *provided*, that the applicable Voting Members shall have been notified of the meeting in accordance with Section 4.07(c); and *provided, further*, that, notwithstanding anything herein to the contrary, any Preferred Member shall have the right to request removal from the meeting of any Common Member prior to any discussion of business at the meeting for which the Common Units do not have a vote, consent right or approval right. Attendance of a Member at any meeting shall constitute a waiver of notice of such meeting, except where a Member attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 4.08 Quorum; Required Vote. A quorum of any meeting of the Voting Members shall require the presence in person or by proxy of Members holding a majority of the applicable Voting Units. Subject to Section 4.08, no action at any meeting may be taken by the Members unless the applicable quorum is present. Subject to Section 4.08, no action may be taken by the Members at any meeting at which a quorum is present without the affirmative vote of Members holding a majority of the applicable Voting Units.

Section 4.09 Action Without Meeting. Notwithstanding the provisions of Section 4.06 and Section 4.07, any matter that is to be voted on, consented to, or approved by Voting Members may be taken without a meeting, without prior notice, and without a vote if consented to, in writing or by Electronic Transmission, by a Member or Members holding not less than the minimum number of Units that would be necessary to authorize or take such action at a meeting at which each Member entitled to vote on the action were present and voted; *provided, however,* that each Member entitled to vote on the action had been provided with not less than three (3) business days' advance notice prior to the taking of such action without a meeting. A record shall be maintained by the Board of each such action taken by written consent of a Member or Members. The Company shall, within five (5) Business Days following the taking of any such action without a meeting by less than unanimous written consent, provide notice (which notice may be oral, telephonic, or otherwise), together with a copy of the action taken, to those Members who were entitled to vote on such matter but have not consented thereto in writing.

Section 4.10 Power of Members. Notwithstanding the foregoing, it is the intent of the Members for all decisions regarding the management of the Company to be made by the Board and not by Member vote; *provided*, *however*, that 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

(including Section 4.06) and the Delaware Act. Except as otherwise specifically provided by this Agreement or required by the Delaware Act, no Member, in its capacity as a Member, shall have the power to act for or on behalf of, or to bind, the Company.

Section 4.11 Other Activities of Members; Business Opportunities. Each Member and such Member's Affiliates may, subject to performing their obligations set out in this Agreement (including under Section 4.06(b) and, in the case of a Manager that is an Affiliate of a Member, under Section 8.10(b)) or in any other agreement to which such Member or Affiliate is a party with a Restricted Entity, engage in any other activities, ventures, or businesses, regardless of whether those activities, ventures, or businesses are similar to or competitive with the Business; none of the Members or any of their Affiliates shall be obligated to account to the Company or to any other Member for any profits or income earned or derived from such other unrestricted activities, ventures, or businesses. Except as otherwise provided in Section 4.06(b) and Section 8.10(b) or in any other agreement to which such Member or Affiliate is a party with a Restricted Entity, none of the Members or any of their Affiliates shall be obligated to inform the Company or the other Members of any investment or business opportunity of any type or description.

Section 4.12 No Interest in Company Property. No real or personal property of the Company shall be deemed to be owned by any Member individually, but shall be owned by, and title shall be vested solely in, the Company. Without limiting the foregoing, each Member hereby irrevocably waives during the term of the Company any right that such Member may have to maintain any action for partition with respect to the property of the Company. All the Company's assets shall be recorded as the property of the Company on its books and records, irrespective of the name in which legal title to such assets is held.

ARTICLE V
CAPITAL CONTRIBUTIONS; CAPITAL ACCOUNTS

Section 5.01 Initial Capital Contributions. Each Initial Member owning Preferred Units or Common Units is deemed to have made the Capital Contribution giving rise to such Initial Member's initial Capital Account and is deemed to own the number and class of Units, in each case in the amounts set forth opposite such Initial Member's name on the Members Schedule.

Section 5.02 Additional Capital Contributions.

(a) No Member shall be required to make any additional Capital Contributions to the Company. Any future Capital Contributions made by any Member shall only be made with the approval of the Board, subject to the applicable provisions of Section 4.06, and in connection with an issuance of Units made in compliance with this Agreement.

(b) No Member shall be required to lend any funds to the Company and no Member shall have any personal liability for the payment or repayment of any Capital Contribution by or to any other Member.

Section 5.03 Maintenance of Capital Accounts. The Company shall establish and maintain for each Member a separate capital account (a "**Capital Account**") on its books and

records in accordance with this Section 5.03. Each Capital Account shall be established and maintained in accordance with the following provisions:

(a) Each Member's Capital Account shall be increased by the amount of:

(i) such Member's Capital Contributions, including such Member's initial Capital Contribution;

(ii) any Net Income or other item of income or gain allocated to such Member pursuant to Article VI; and

(iii) any liabilities of the Company that are assumed by such Member or secured by any property Distributed to such Member.

(b) Each Member's Capital Account shall be decreased by:

(i) the cash amount or Book Value of any property Distributed to such Member pursuant to Article VII or Section 12.03(c);

(ii) the amount of any Net Loss or other item of loss or deduction allocated to such Member pursuant to Article VI; and

(iii) the amount of any liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company.

Section 5.04 Succession Upon Transfer. In the event that any Units are Transferred in accordance with the terms of this Agreement, the Transferee shall succeed to the Capital Account of the Transferor to the extent it relates to the Transferred Units and, subject to Section 6.04, shall receive allocations and Distributions pursuant to Article VI, Article VII, and Article XII in respect of such Units. Any reference in this Agreement to a Distribution to a Person shall include any Distributions made to a former or Transferor Member in respect of Units Transferred to such Person.

Section 5.05 Negative Capital Accounts. In the event that any Member shall have a deficit balance in such Member's Capital Account, such Member shall have no obligation, during the term of the Company or upon dissolution or liquidation thereof, to restore such negative balance or make any Capital Contributions to the Company by reason thereof, except as may be required by Applicable Law or in respect of any negative balance resulting from a withdrawal of capital or dissolution in contravention of this Agreement.

Section 5.06 No Withdrawal. No Member shall be entitled to withdraw any part of such Member's Capital Account or to receive any Distribution from the Company, except as provided in this Agreement. No Member shall receive any interest, salary, or drawing with respect to such Member's Capital Contributions or Capital Account, except as otherwise provided in this Agreement. The Capital Accounts are maintained for the sole purpose of allocating items of income, gain, loss, and deduction among the Members and shall have no effect on the amount of any Distributions to any Members, pursuant to ARTICLE VII, ARTICLE XII or otherwise.

Section 5.07 Treatment of Loans from Members. Loans by any Member to the Company shall not be considered Capital Contributions and shall not affect the maintenance of such Member's Capital Account, other than to the extent provided in Section 5.03(a)(iii), if applicable.

Section 5.08 Modifications. The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such Treasury Regulations. If the Board determines that it is prudent to modify the manner in which the Capital Accounts, or any increases or decreases to the Capital Accounts, are computed in order to comply with such Treasury Regulations, the Board may authorize such modifications.

ARTICLE VI
ALLOCATIONS

Section 6.01 Allocation of Net Income and Net Loss. For each Fiscal Year (or portion thereof), except as otherwise provided in this Agreement, Net Income and Net Loss (and, to the extent necessary, individual items of income, gain, loss, or deduction) of the Company shall be allocated among the Members in a manner such that, after giving effect to the special allocations set forth in Section 6.02, the Capital Account balance of each Member, immediately after making such allocations, is, as nearly as possible, equal to (a) the Distributions that would be made to such Member pursuant to Section 12.03(c) if the Company were dissolved, its affairs wound up, and its assets sold for cash equal to their Book Value, all Company liabilities were satisfied (limited with respect to each Nonrecourse Liability to the Book Value of the assets securing such liability), and the net assets of the Company were Distributed, in accordance with Section 12.03(c), to the Members immediately after making such allocations, minus (b) such Member's share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain, computed immediately prior to the hypothetical sale of assets.

Section 6.02 Regulatory and Special Allocations. Notwithstanding the provisions of Section 6.01:

(a) If there is a net decrease in Company Minimum Gain (determined according to Treasury Regulations Section 1.704-2(d)(1)) during any Fiscal Year, each Member shall be specially allocated Net Income for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Treasury Regulations Section 1.704-2(g). The items to be so allocated shall be determined in accordance with Treasury Regulations Sections 1.704-2(f)(6) and 1.704-2(j)(2). This Section 6.02(a) is intended to comply with the "minimum gain chargeback" requirement in Treasury Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(b) Member Nonrecourse Deductions shall be allocated in the manner required by Treasury Regulations Section 1.704-2(i). Except as otherwise provided in Treasury Regulations Section 1.704-2(i)(4), if there is a net decrease in Member Nonrecourse Debt Minimum Gain during any Fiscal Year, each Member that has a share of such Member Nonrecourse Debt Minimum Gain shall be specially allocated Net Income for such Fiscal

Year (and, if necessary, subsequent Fiscal Years) in an amount equal to that Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain. Items to be allocated pursuant to this paragraph shall be determined in accordance with Treasury Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section 6.02(b) is intended to comply with the "minimum gain chargeback" requirements in Treasury Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(c) In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6), Net Income shall be specially allocated to such Member in an amount and manner sufficient to eliminate the Adjusted Capital Account Deficit created by such adjustments, allocations, or distributions as quickly as possible. This Section 6.02(c) is intended to comply with the qualified income offset requirement in Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(d) If the amount of Net Losses for any taxable period that would otherwise be allocated to a Member under Section 6.01 would cause or increase an Adjusted Capital Account Deficit of such Member as of the last day of such taxable period, then a proportionate part of such Net Losses, equal to such excess shall be allocated to the other Members, and the remainder of such Net Losses, if any, shall be allocated to such Member. In the event that some but not all of the Members would have or increase an Adjusted Capital Account Deficit as a result of an allocation of Net Losses under Section 6.01, except as otherwise required by the Code and Treasury Regulations, the limitation set forth in this Section 6.02(d) shall be applied on a Member-by-Member basis and Net Losses not allocable to any Member as a result of such limitation shall be allocated to the other Members in accordance with the positive balances in such other Members' respective Capital Accounts so as to allocate the maximum permissible Net Losses to each Member under Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and thereafter Net Losses shall be allocated in proportion to Percentage Interests.

(e) The allocations set forth in Section 6.02(a), Section 6.02(b), Section 6.02(c) and Section 6.02(d) above (the "**Regulatory Allocations**") are intended to comply with certain requirements of the Treasury Regulations under Code Section 704. Notwithstanding any other provisions of this Article VI (other than the Regulatory Allocations), the Regulatory Allocations shall be taken into account in allocating Net Income and Net Losses among Members so that, to the extent possible, the net amount of such allocations of Net Income and Net Losses and other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to such Member if the Regulatory Allocations had not occurred.

Section 6.03 Tax Allocations.

(a) Subject to Section 6.03(b) through Section 6.03(d), all income, gains, losses, and deductions of the Company shall be allocated, for federal, state, and local income tax purposes, among the Members in accordance with the allocation of such income, gains, losses, and deductions among the Members for computing their Capital Accounts, except that if any such allocation for tax purposes is not permitted by the Code

or other Applicable Law, the Company's subsequent income, gains, losses, and deductions shall be allocated among the Members for tax purposes, to the extent permitted by the Code and other Applicable Law, so as to reflect as nearly as possible the allocation set forth herein in computing their Capital Accounts.

(b) Items of Company taxable income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall be allocated among the Members in accordance with Code Section 704(c) and the traditional method of Treasury Regulations Section 1.704-3(b), so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its Book Value.

(c) If the Book Value of any Company asset is adjusted pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(f) as provided in clause (c) of the definition of Book Value, subsequent allocations of items of taxable income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Book Value in the same manner as under Code Section 704(c).

(d) Allocations of tax credit, tax credit recapture, and any items related thereto shall be allocated to the Members according to their interests in such items as determined by the Board taking into account the principles of Treasury Regulations Section 1.704-1(b)(4)(ii).

(e) Allocations pursuant to this Section 6.03 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Net Income, Net Losses, Distributions, or other items pursuant to any provisions of this Agreement.

Section 6.04 Allocations in Respect of Transferred Units. In the event of a Transfer of Units during any Fiscal Year made in compliance with the provisions of Article X, Net Income, Net Losses, and other items of income, gain, loss, and deduction of the Company attributable to such Units for such Fiscal Year shall be determined using the interim closing of the books method.

Section 6.05 Curative Allocations. In the event that the Board determines, after consultation with counsel experienced in income tax matters, that the allocation of any item of Company income, gain, loss, or deduction is not specified in this Article VI (an "**Unallocated Item**"), or that the allocation of any item of Company income, gain, loss, or deduction hereunder is clearly inconsistent with the Members' economic interests in the Company (determined by reference to the general principles of Treasury Regulations Section 1.704-1(b) and the factors set forth in Treasury Regulations Section 1.704-1(b)(3)(ii)) (a "**Misallocated Item**"), then the Board may allocate such Unallocated Items, or reallocate such Misallocated Items, to reflect such economic interests; *provided*, that no such allocation will be made without the prior consent of each Member that would be adversely affected thereby; and *provided*, *further*, that no such allocation shall have any material effect on the amounts Distributable to any Member, including the amounts to be Distributed upon the complete liquidation of the Company.

ARTICLE VII
DISTRIBUTIONS

Section 7.01 General.

(a) Subject to Section 3.08(a), Section 3.08(b), Section 4.06, Section 7.01(b), Section 7.02, Section 7.03, Section 7.04, and except as otherwise expressly provided in Article XII, the Board shall have sole discretion regarding the amounts and timing of Distributions to Members, including to decide to forgo payment of Distributions in order to provide for the retention and establishment of reserves of, or payment to third parties of, such funds as it deems necessary with respect to the reasonable business needs of the Company (which needs may include the payment or the making of provision for the payment when due of the Company's obligations, including present and anticipated debts and obligations, capital needs and expenses, the payment of any management or administrative fees and expenses, and reasonable reserves for contingencies).

(b) Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make any Distribution if such Distribution would violate Section 18-607 of the Delaware Act or other Applicable Law.

Section 7.02 Distributions. After making all Distributions required for a given Fiscal Year under Section 7.03 (giving effect to Section 7.03(d)) and any Distributions required pursuant to Section 3.08(a) and Section 3.08(b), all Distributions determined to be made by the Board shall be made to the Members holding Preferred Units, on an as-converted basis, and Common Units, in each case pro rata based on each Member's Percentage Interest; *provided* that, notwithstanding the foregoing, if Distributions are required to be made pursuant to Section 12.03, such Distributions shall be made solely in accordance with Section 12.03(c); *provided*, *further* that, notwithstanding the foregoing, Distributions to be made in connection with a Reorganized PublicCo Approved Sale shall be made solely in accordance with Section 10.04.

Section 7.03 **Tax Advances.**

(a) At least five (5) days before each date prescribed by the Code for a calendar-year corporation to pay quarterly installments of estimated tax, the Company shall use commercially reasonable efforts to Distribute cash to each Member in proportion to and to the extent of such Member's Quarterly Estimated Tax Amount for the applicable calendar quarter (each such Distribution, a "**Tax Advance**").

(b) If, at any time after the final Quarterly Estimated Tax Amount has been Distributed pursuant to Section 7.03(a) with respect to any Fiscal Year, the aggregate Tax Advances to any Member with respect to such Fiscal Year are less than such Member's Tax Amount for such Fiscal Year (a "**Shortfall Amount**"), the Company shall use commercially reasonable efforts to Distribute cash in proportion to and to the extent of each Member's Shortfall Amount. The Company shall use commercially reasonable efforts to Distribute Shortfall Amounts with respect to a Fiscal Year before the seventy-fifth (75th) day of the next succeeding Fiscal Year; *provided*, that if the Company has made Distributions other than pursuant to this Section 7.03, the Board may apply such Distributions to reduce any Shortfall Amount.

(c) If the aggregate Tax Advances made to any Member pursuant to this Section 7.03 for any Fiscal Year exceed such Member's Tax Amount (an "**Excess Amount**"), such Excess Amount shall reduce subsequent Tax Advances that would be made to such Member pursuant to this Section 7.03, except to the extent taken into account as an advance pursuant to Section 7.03(d).

(d) Any Distributions made to a Member pursuant to this Section 7.03 shall be treated for purposes of this Agreement as advances on Distributions pursuant to Section 7.02 and shall reduce, dollar-for-dollar, the amount otherwise Distributable to such Member pursuant to Section 7.02.

Section 7.04 **Distributions in Kind.**

(a) The Board is hereby authorized, in its sole discretion, to make Distributions to the Members in the form of securities or other property held by the Company; *provided*, that Tax Advances and any Distributions under Section 3.07, Section 3.08(a) and Section 3.08(b) shall be made only in cash. In any such non-cash Distribution, the securities or other property so Distributed will be Distributed among the Members in the same proportion and priority as cash equal to the Fair Market Value of such securities or other property would be Distributed among the Members pursuant to Section 7.02, and any resulting gain or loss shall be allocated to the Members' Capital Accounts in accordance therewith.

(b) Any Distribution of securities shall be subject to such conditions and restrictions as the Board determines are required or advisable to ensure compliance with Applicable Law. In furtherance of the foregoing, the Board may require that the Members execute and deliver such documents as the Board may deem necessary or appropriate to ensure compliance with all federal and state securities laws that apply to such Distribution and any further transfer of the Distributed securities.

ARTICLE VIII
MANAGEMENT

Section 8.01 Establishment and Authority of the Board. A board of managers of the Company (the "**Board**") is hereby established and shall be comprised of natural Persons (each such Person, a "**Manager**") who shall be appointed in accordance with the provisions of Section 8.02. The business and affairs of the Company shall be managed, operated, and controlled by or under the direction of the Board, and the Board shall have, and is hereby granted, the full and complete power, authority, and discretion for, on behalf of, and in the name of the Company, to take such actions as it may in its sole discretion deem necessary or advisable to carry out any and all of the objectives and purposes of the Company, to exercise any rights and powers granted to the Company under this Agreement, and to exercise all power and authority vested in managers under the Delaware Act, in each case subject only to the terms of this Agreement, including Section 4.06. Except as provided in this Agreement, no Manager, acting alone or with any other Managers, in such Manager's capacity as such, shall have any authority to bind the Company with respect to any matter except pursuant to a resolution authorizing such action that is duly adopted by the Board by the affirmative vote required with respect to such matter pursuant to this Agreement.

Section 8.02 Board Composition. The Company and the Members shall take such actions as may be required to ensure that the number of managers constituting the Board is at all times no less than one (1) manager and no greater than three (3) managers. The Board shall be comprised (and the Company and the Members shall take all such necessary actions, including voting all of such Member's Units, so that the Board is comprised) of individuals designated by the Common Requisite Members from time to time, who shall initially be Robert Flexon and John Juric.

Section 8.03 Board Observer Right.

(a) The Preferred Requisite Members shall have the right to appoint one individual as a non-voting observer to the Board ("**Board Observer**"). The Board Observer shall be entitled to attend all meetings of the Board and any committees of the Board and to receive all information provided to the members of the Board or its committees (including minutes of previous meetings of the Board or such committees); *provided*, that the Company reserves the right to exclude any such Board Observer from access to any material or meeting or portion thereof if the Board reasonably determines, in good faith after consultation with outside counsel, that (i) such exclusion is reasonably necessary to preserve the attorney-client privilege between the Company and its counsel, (ii) withholding such materials or so excluding the Board Observer is reasonably necessary due to a direct conflict of interest involving the Board Observer or (iii) the Board Observer is (or is affiliated with) a direct competitor of the Company and access to such materials or attendance at such meeting or portion thereof directly relates to the competitive activities, and, in any such case, the Company advises the Board Observer in writing of such determination; *provided*, *further*, that such exclusion shall be limited to the portion of the material or meeting that is the basis for such exclusion and shall not extend to any portion of the material or meeting that does not involve or pertain to such exclusion. For the avoidance of doubt, the Board Observer shall not have voting rights or fiduciary obligations to the Company or its Members (and a Board Observer may be required to enter into a confidentiality agreement if requested by the Board).

(b) At all times, the composition of any board of directors, board of managers, or similar governing body of any Company Subsidiary shall be the same as that of the Board (to the extent such Company Subsidiary is governed by a board of directors, board of managers or similar governing body).

Section 8.04 **Removal; Resignation.**

(a) The Common Requisite Members may remove any Manager at any time with or without cause, effective upon written notice to the other Members. Except as set forth in Section 8.04(c), no Manager may be removed except in accordance with this Section 8.04(a).

(b) In the event that a vacancy is created on the Board at any time due to the death, disability, retirement, resignation, or removal of a Manager, the Common Requisite Members shall have the exclusive right to designate an individual to fill such vacancy and

the Company and each Member hereby agrees to take such actions as may be required to ensure the election or appointment of any such designee to fill such vacancy on the Board.

(c) A Manager may resign at any time from the Board by delivering such Manager's written resignation to the Board. Any such resignation shall be effective upon receipt thereof unless it is specified to be effective at some other time or upon the occurrence of some other event. The Board's acceptance of a resignation shall not be necessary to make it effective.

(d) The Board shall maintain a schedule of all Managers with their respective mailing addresses (the "**Managers Schedule**"), and may update the Managers Schedule upon the appointment, removal, or replacement of any Manager in accordance with Section 8.02 or this Section 8.04, without the consent of any other Person.

Section 8.05 Meetings of the Board.

(a) The Board shall meet at such time and at such place as the Board may designate. Meetings of the Board may be held either in person or by means of telephone or video conference or other communications device that permits all Managers participating in the meeting to hear each other, at the offices of the Company, or such other place (either within or outside the State of Delaware) as may be determined from time to time by the Board. Written notice of each regular meeting of the Board shall be given to each Manager at least seventy-two (72) hours prior to each such meeting.

(b) Special meetings of the Board shall be held on the call of any two (2) Managers upon at least five (5) days' written notice (if the meeting is to be held in person) or one (1) day's written notice (if the meeting is to be held by telephone communications or video conference) to the Managers, or upon such shorter notice as may be approved by all the Managers. Any Manager may waive such notice as to such Manager.

(c) Attendance of a Manager at any meeting shall constitute a waiver of notice of such meeting, except where a Manager attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting.

Section 8.06 Quorum; Manner of Acting.

(a) A majority of the Managers serving on the Board present in person or by proxy shall constitute a quorum for the transaction of business of the Board. At all times when the Board is conducting business at a meeting of the Board, a quorum of the Board must be present at such meeting. If a quorum shall not be present at any meeting of the Board, then the Managers present at the meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

(b) Any Manager may participate in a meeting of the Board by means of telephone or video conference or other communications device that permits all Managers participating in the meeting to hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting. A Manager may vote or be present at a meeting either in person or by proxy, and such proxy may be granted in writing, by means of Electronic Transmission, or as otherwise permitted by Applicable Law.

(c) Each Manager shall have one vote on all matters submitted to the Board or any committee thereof. Except as specifically provided otherwise in this Agreement, with respect to any matter before the Board, the affirmative act of a majority of the Managers in attendance at any meeting of the Board at which a quorum is present shall be the act of the Board.

Section 8.07 Action By Written Consent. Notwithstanding the provisions of Section 8.05 and Section 8.06, any action required or permitted to be taken by the Board may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed unanimously by all the Managers. Any such consent shall have the same force and effect as a vote at a meeting of the Board where a quorum was present and may be stated as such in any document or instrument filed with the Secretary of State.

Section 8.08 Officers. The Board may appoint individuals as officers of the Company (the "**Officers**") as the Board deems necessary or desirable to carry on the business of the Company, and the Board may delegate to such Officers, and the Chief Executive Officer may delegate to such Officers other than the Chief Executive Officer, such power and authority as the Board or the Chief Executive Officer, as applicable, deems advisable. Unless the Board or the Chief Executive Officer (for any titles other than Chief Executive Officer) otherwise decides, if the title is one commonly used for officers of a Delaware corporation, the assignment of such title shall constitute the delegation to such Officer of the authority and duties that are normally associated with that office of a Delaware corporation, subject to any specific delegation of authority and duties made to such Officer by the Board or the Chief Executive Officer, as applicable. No Officer need be a Member or Manager. Any individual may hold two or more offices of the Company. Each Officer shall hold office until such Officer's successor is designated by the Board or until such Officer's earlier death, resignation, or removal. Any Officer may resign at any time upon written notice to the Board. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the written notice of resignation. Any Officer may be removed by the Board (acting by majority vote of all Managers other than the Officer being considered for removal, if a Manager) with or without cause at any time. A vacancy in any office occurring because of death, resignation, removal, or otherwise, may, but need not, be filled by the Board.

Section 8.09 Compensation and Reimbursement of Managers; No Employment.

(a) No Manager shall be compensated for such Manager's service as a Manager. Each Manager shall be reimbursed for such Manager's ordinary, necessary, and direct out-of-pocket expenses incurred in the performance of such Manager's duties as a Manager, pursuant to such policies as may from time to time be established by the Board. Nothing contained in this Section 8.09 shall be construed to preclude any Manager from

serving the Company or its Affiliates in any other capacity and receiving reasonable compensation for such services.

(b) This Agreement does not, and is not intended to, confer upon any Manager any rights with respect to employment by the Company or any of its Affiliates, and nothing herein shall be construed to have created any employment agreement with any Manager.

Section 8.10 **Other Activities of Managers; Business Opportunities.**

(a) Each Manager shall devote so much of such Manager's time and attention to the business of the Company as such Manager deems appropriate in such Manager's reasonable discretion. No Manager or Board Observer shall engage in any activity, venture, or business other than those of the Existing Business as a result of or using Confidential Information.

(b) If a Manager is offered or discovers a business opportunity of the type and character that is within the scope of the Existing Business (a "**Business Opportunity**"), such Manager shall, prior to pursuing such Business Opportunity and subject to Section 4.06(b), offer to the Company the right to pursue such Business Opportunity for the benefit of the Existing Business, regardless of whether such Manager believes any Restricted Entity would be able (financially or otherwise) or willing to pursue such Business Opportunity.

Section 8.11 No Personal Liability. Except as otherwise provided in the Delaware Act, by Applicable Law, or expressly in this Agreement, no Manager or Officer will be obligated personally for any debt, obligation, or liability of any Restricted Entity, whether arising in contract, tort, or otherwise, solely by reason of being a Manager or Officer.

ARTICLE IX
PREEMPTIVE RIGHTS

Section 9.01 Preemptive Right.

(a) **Issuance of New Securities.** The Company hereby grants each Preferred Member the right to purchase all or any portion of such Preferred Member's Pro Rata Portion, at such Preferred Member's sole discretion, of 100.0000% of any New Securities that any Restricted Entity may from time to time propose to issue or sell to any party (an "**Offeree**"). For purposes hereof, "**New Securities**" shall include any and all new issuances of debt (including by way of incurring loans or issuing debt securities), Units (other than Units that are authorized for issuance on the date hereof) and any Unit Equivalents (other than Unit Equivalents that are authorized for issuance on the date hereof) other than Units or Unit Equivalents issued or sold by any Restricted Entity in connection with: (i) the conversion or exchange of any Unit Equivalents into Units, or the exercise of any warrants or other rights to acquire Units; (ii) any acquisition by any Restricted Entity of any business (whether by stock or asset purchase, merger, consolidation or otherwise) or entry into any joint venture or similar arrangement; (iii) any merger, consolidation, or other business combination involving a Restricted Entity and a Third-Party Purchaser; (iv) the

commencement of any public offering or direct listing by a Restricted Entity; (v) any subdivision of Units (by a split of Units or otherwise) or payment of Distributions; (vi) a financing contemplated by Section 3.07(d); or (vii) any issuances of Common Units by the Company to Reorganized PublicCo.

(b) **Additional Issuance Notices.** The Company shall give written notice (an "**Issuance Notice**") of any proposed issuance or sale of New Securities described in Section 9.01(a) to the Preferred Members within five (5) Business Days following any meeting of the Board at which any such issuance or sale is approved and, if required, once approved under Section 4.06. The Issuance Notice shall, if applicable, be accompanied by a written offer from any prospective purchaser seeking to purchase New Securities (a "**Prospective Purchaser**") and shall set forth the material terms and conditions of the proposed issuance or sale, including:

(i) the number and description of the New Securities proposed to be issued and the percentage of the Company's Units then outstanding on a fully diluted basis (both in the aggregate and with respect to each class or series of Units proposed to be issued) that such issuance would represent;

(ii) the proposed issuance date, which shall be at least twenty (20) Business Days from the date of the Issuance Notice;

(iii) the proposed purchase price per Unit of the New Securities; and

(iv) if the consideration to be paid by the Prospective Purchaser includes non-cash consideration, the Board's good-faith determination of the Fair Market Value thereof.

The Issuance Notice shall also be accompanied by a current copy of the Members Schedule indicating the Members' holdings of Units in a manner that enables each Member to calculate such Member's Pro Rata Portion of any New Securities.

(c) **Exercise of Preemptive Rights.** Each Preferred Member shall for a period of ten (10) Business Days following the receipt of an Issuance Notice (the "**Exercise Period**") have the right to elect irrevocably to purchase all or any portion of such Preferred Member's Pro Rata Portion of 100.0000% of any New Securities, at the purchase price set forth in the Issuance Notice by delivering a written notice to the Company (an "**Acceptance Notice**") specifying the number of New Securities such Preferred Member desires to purchase. The delivery of an Acceptance Notice by a Preferred Member shall be a binding and irrevocable offer by such Preferred Member to purchase the New Securities described therein. The failure of a Preferred Member to deliver an Acceptance Notice by the end of the Exercise Period shall constitute a waiver of such Preferred Member's rights under this Section 9.01 with respect to the purchase of such New Securities, but shall not affect such Preferred Member's rights with respect to any future issuances or sales of New Securities.

(d) **Over-Allotment.** No later than five (5) Business Days following the expiration of the Exercise Period, the Company shall notify each Preferred Member in

writing of the number of New Securities that each Preferred Member has agreed to purchase (including, for the avoidance of doubt, where such number is zero) (the "**Over-Allotment Notice**"). Each Preferred Member exercising its rights to purchase such Preferred Member's Pro Rata Portion of the New Securities in full (an "**Exercising Member**") shall have a right of over-allotment such that if any other Preferred Member has failed to exercise its right under this Section 9.01 to purchase such other Member's full Pro Rata Portion of the New Securities (each, a "**Non-Exercising Member**"), such Exercising Member may purchase such Exercising Member's Pro Rata Portion of such Non-Exercising Member's allotment by giving written notice to the Company within five (5) Business Days of receipt of the Over-Allotment Notice (the "**Over-Allotment Exercise Period**").

(e) **Sales to the Prospective Purchaser.** Following the expiration of the Exercise Period and, if applicable, the Over-Allotment Exercise Period, the Company shall be free to complete the proposed issuance or sale of New Securities described in the Issuance Notice with respect to which Members declined to exercise the preemptive right set forth in this Section 9.01 at a price that is no less than the applicable per Unit price set forth in the Issuance Notice and on other terms and conditions which are not materially less favorable to the Company than those set forth in the Issuance Notice (except that the amount of New Securities to be issued or sold by the Company may be reduced); *provided*, that such issuance or sale is closed within forty (40) Business Days after the expiration of the Exercise Period and, if applicable, the Over-Allotment Exercise Period. In the event the Company has not sold such New Securities within such time period, the Company shall not thereafter issue or sell any New Securities without first again offering such securities to the Members in accordance with the procedures set forth in this Section 9.01. Notwithstanding anything herein to the contrary, there shall be no liability on the part of the Company, the Board or any Manager or Member if the proposed issuance of New Securities is not consummated for whatever reason except on account of a material breach of this Section 9.01. For the avoidance of doubt, the determination of whether to affect an issuance of New Securities shall be in the sole and absolute discretion of the Board.

(f) **Closing of the Issuance.** The closing of any purchase by any Preferred Member shall be consummated concurrently with the consummation of the issuance or sale described in the Issuance Notice. Upon the issuance or sale of any New Securities in accordance with this Section 9.01, the Company shall deliver the New Securities free and clear of any Liens (other than those arising hereunder and those attributable to the actions of the purchasers thereof), and the Company shall so represent and warrant to the purchasers thereof, and further represent and warrant to such purchasers that such New Securities shall be, upon issuance thereof to the Exercising Members and after payment therefor, duly authorized and validly issued. Each Exercising Member shall deliver to the Company the purchase price for the New Securities purchased by it by certified or bank check or wire transfer of immediately available funds. Each party to the purchase and sale of New Securities shall take all such other actions as may be reasonably necessary to consummate the purchase and sale, including entering into such additional agreements as may be necessary or appropriate, as determined by the Board.

(g) **Emergency Funding.** Notwithstanding anything to the contrary set forth herein, the Company may comply with the provisions of this Section 9.01 by first selling to one or more Offerees some or all of the Units contemplated to be sold by the Company and promptly thereafter offering to sell to each Preferred Member the number of such Units such Preferred Member is entitled to purchase pursuant to this Section 9.01. In order to exercise its purchase rights under this Section 9.01(g), a Preferred Member must, within ten (10) Business Days after delivery of written notice from the Company describing in reasonable detail the securities or type of securities being offered, the purchase price thereof, the payment terms and the number of such securities such Preferred Member is eligible to purchase, deliver an irrevocable written notice to the Company setting forth the number of Units that such Preferred Member is electing to purchase (not to exceed its pro rata share). In the event that a Preferred Member elects to purchase Units pursuant to this Section 9.01(g), upon the written request of the Board (in its discretion), within thirty (30) days of such written request, the Offerees shall sell, and the offering of Units to the Offerees shall be conditioned on the Offerees agreeing to sell, to the Company the same number and class of Units acquired by the Offerees in connection with the offering that are purchased by such Preferred Members exercising their rights under this Section 9.01(g) for a price per Unit equal to the original cost thereof (plus any accrued and unpaid preferred yield thereon, if applicable).

ARTICLE X
TRANSFER

Section 10.01 General Restrictions on Transfer.

(a) Each Member acknowledges and agrees that, until the consummation of a Qualified Public Offering, such Member (or any Permitted Transferee of such Member) shall not Transfer any Units or Unit Equivalents except as permitted in accordance with the terms and conditions herein, including those set forth in Section 4.06(a)(iv) and this Article X, as applicable; *provided* that all, but not less than all, Preferred Units held by the Preferred Members may be Transferred in one transaction or a series of related transactions only if:

(i) Transferred to the same Transferee (or its Affiliates) as part of the same transaction or series of related transactions, in which case (A) the Preferred Members shall cause the recipient(s) of such Preferred Units to comply with the terms of this Agreement, and (B) if such recipient(s) are Competitors of Reorganized PublicCo only if first converted into Common Units; or

(ii) Transferred to more than one unaffiliated Transferees as part of the same transaction or series of related transactions, in which case (A) the Preferred Members shall cause the recipients of such Preferred Units to comply with the terms of this Agreement, (B) if such recipients are Competitors of Reorganized PublicCo only if first converted into Common Units, and (C) one transferee must continue to hold a sufficient number of Preferred Units so that such Transferee qualifies as the Preferred Requisite Member.

Notwithstanding the foregoing, a Preferred Member may Transfer all or less than all of the Preferred Units held by such Preferred Member in one transaction or a series of related transactions to one or more Affiliates of such Preferred Member.

No Transfer of Units or Unit Equivalents to a Person not already a Member of the Company shall be deemed completed until the prospective Transferee is admitted as a Member of the Company in accordance with Section 4.01(b).

(b) Notwithstanding any other provision of this Agreement (including Section 10.02), prior to the consummation of a Qualified Public Offering, each Member agrees that such Member will not, directly or indirectly, Transfer any of such Member's Units or Unit Equivalents, and the Company agrees that it shall not issue any Units or Unit Equivalents:

(i) except as permitted under the Securities Act and other applicable federal or state securities or blue sky laws, and then, with respect to a Transfer of Units or Unit Equivalents, if requested by the Company, only upon delivery to the Company of an opinion of counsel in form and substance satisfactory to the Company to the effect that such Transfer may be effected without registration under the Securities Act;

(ii) if such Transfer or issuance would cause the Company to be considered a "publicly traded partnership" under Code Section 7704(b);

(iii) if such Transfer or issuance would affect the Company's existence or qualification as a limited liability company under the Delaware Act;

(iv) if such Transfer or issuance would cause the Company to lose its status as a partnership for federal income tax purposes;

(v) if such Transfer or issuance would cause any Restricted Entity to be required to register as an investment company under the Investment Company Act; or

(vi) if such Transfer or issuance would cause the assets of any Restricted Entity to be deemed " Plan Assets" as defined under the Employee Retirement Income Security Act of 1974 or its accompanying regulations or result in any "prohibited transaction" thereunder involving a Restricted Entity.

(c) Any Transfer or attempted Transfer of any Units or Unit Equivalents in violation of this Agreement shall be null and void, no such Transfer shall be recorded on the Company's books, and the purported Transferee in any such Transfer shall not be treated (and the purported Transferor shall continue to be treated) as the owner of such Units or Unit Equivalents for all purposes of this Agreement.

(d) For the avoidance of doubt, any Transfer of Units or Unit Equivalents permitted by Section 10.02 or made in accordance with the procedures hereof, including those described in this Article X, as applicable, and purporting to be a sale, transfer, assignment, or other disposal of the entire Membership Interest represented by such Units

or Unit Equivalents, inclusive of all the rights and benefits applicable to such Membership Interest as described in the definition of the term "Membership Interest," shall be deemed a sale, transfer, assignment, or other disposal of such Membership Interest in its entirety as intended by the parties to such Transfer, and shall not be deemed a sale, transfer, assignment, or other disposal of any less than all of the rights and benefits described in the definition of the term "Membership Interest," unless otherwise explicitly agreed to by the parties to such Transfer.

Section 10.02 Permitted Transfers. The provisions of Section 10.01(a), Section 10.03, Section 10.05 and Section 10.06 shall not apply to (a) any Transfer by any Member of any such Member's Units or Unit Equivalents to any Affiliate of such Member or (b) a financing contemplated by Section 3.07(d), as applicable.

Section 10.03 Right of First Refusal.

(a) **Offered Units.** At any time prior to the consummation of a Qualified Public Offering, and subject to the terms and conditions specified in this Section 10.03, each Preferred Member shall have a right of first refusal if any Common Member (the "**Offering Member**") receives a bona fide offer that the Offering Member desires to accept to Transfer all or any portion of such Offering Member's Units (the "**Offered Units**"). Each time the Offering Member receives an offer for a Transfer of all or any portion of such Offering Member's Units, the Offering Member shall first make an offering of the Offered Units to the Preferred Members (the "**ROFR Rightholders**") in accordance with the following provisions of this Section 10.03 prior to Transferring such Offered Units (other than Transfers that (i) are permitted by Section 10.02 or (ii) are made by a Tag-Along Member upon the exercise of such Tag-Along Member's participation right pursuant to Section 10.05 after the ROFR Rightholders have declined to exercise their rights in full under this Section 10.03).

(b) **Offer Notice.**

(i) The Offering Member shall, within five (5) Business Days of receipt of the Transfer offer, give written notice (the "**Offering Member Notice**") to the Company and the ROFR Rightholders stating that such Offering Member has received a bona fide offer for a Transfer of such Offering Member's Units and specifying: (A) the amount of Offered Units to be Transferred by the Offering Member; (B) the name of the Person who has offered to purchase such Offered Units (including, to the extent known by the Offering Member after using commercially reasonable efforts to obtain such information, all parties that, directly or indirectly, hold interests in such Person, unless such Person is a publicly traded company); (C) the purchase price and the other material terms and conditions of the Transfer, including a description of any non-cash consideration; and (D) the proposed date, time, and location of the closing of the Transfer, which shall not be less than sixty (60) days from the date of the Offering Member Notice.

(ii) The Offering Member Notice shall constitute the Offering Member's offer to Transfer the Offered Units to the ROFR Rightholders, which offer shall be irrevocable until the end of the ROFR Notice Period.

(iii) By delivering the Offering Member Notice, the Offering Member represents and warrants to the Company and each ROFR Rightholder that: (A) the Offering Member has full right, title, and interest in and to the Offered Units; (B) the Offering Member has all necessary power and authority to sell such Offered Units as contemplated by this Section 10.03; and (C) the Offered Units are free and clear of any and all Liens other than those arising as a result of or under the terms of this Agreement.

(c) **Exercise of the Rights of First Refusal.**

(i) Upon receipt of the Offering Member Notice, each ROFR Rightholder shall have ten (10) Business Days (the "**ROFR Notice Period**") to elect to purchase all or any portion of the Offered Units by delivering a written notice (a "**ROFR Offer Notice**") to the Offering Member and the Company stating that such ROFR Rightholder offers to purchase such Offered Units on the terms specified in the Offering Member Notice. Any ROFR Offer Notice shall be binding upon delivery and irrevocable by the applicable ROFR Rightholder. If more than one ROFR Rightholder delivers a ROFR Offer Notice, each such ROFR Rightholder (the "**Purchasing Member**") shall be allocated such ROFR Rightholder's pro rata share (based on such ROFR Rightholder's Percentage Interest) of the Offered Units, unless otherwise agreed by such Members. If the ROFR Rightholders do not elect, in the aggregate, to purchase all of the Offered Units from the Offering Member, then the consummation of the Transfer to the Purchasing Member(s) will be deferred until the consummation of the Transfer of the remainder of the Offered Units to the purchaser stated in the Offering Member Notice.

(ii) Each ROFR Rightholder who does not deliver a ROFR Offer Notice during the ROFR Notice Period shall be deemed to have waived all of such ROFR Rightholder's rights to purchase the Offered Units under this Section 10.03, and the Offering Member shall thereafter, subject to the rights of any Purchasing Member, be free to sell the Offered Units to the purchaser stated in the Offering Member Notice without any further obligation to such ROFR Rightholder pursuant to this Section 10.03.

(d) **Consummation of Sale.** If no ROFR Rightholder delivers a ROFR Offer Notice in accordance with Section 10.03(b), then, provided the Offering Member has also complied with the provisions of Section 10.05, to the extent applicable, the Offering Member may, during the sixty (60)-day period immediately following the expiration of the ROFR Notice Period, Transfer all of the Offered Units to the purchaser stated in the Offering Member Notice at a per Unit price that is no greater than the applicable per Unit price set forth in the Offering Member Notice and on other terms and conditions which are not materially more favorable to the Offering Member than those set forth in the Offering

Member Notice. Any Offered Units not Transferred within such time period following expiration of the ROFR Notice Period will be subject to the provisions of this Section 10.03 upon subsequent Transfer.

(e) **Cooperation.** Each Purchasing Member and the Offering Member shall take all actions as may be reasonably necessary to consummate the sale contemplated by this Section 10.03, including entering into agreements and delivering certificates and instruments and consents as may be deemed necessary or appropriate by the Offering Member to effectuate such sale and purchase.

(f) **Closing.** At the closing of any sale and purchase pursuant to this Section 10.03, the Offering Member shall deliver to the Purchasing Member(s) evidence of Transfer and all necessary transfer taxes paid and stamps affixed, if necessary, against receipt of the purchase price therefore from such Purchasing Member(s) by certified or official bank check or by wire transfer of immediately available funds.

Section 10.04 Change of Control Repurchase Right. Following the second (2nd) anniversary of the date of this Agreement, in the event that the Reorganized PublicCo board of directors and stockholders approve a Change of Control of Reorganized PublicCo (a "**Reorganized PublicCo Approved Sale**"), the Company may, subject to repayment of all Company indebtedness then held by the Preferred Members and their Affiliates, purchase all outstanding Preferred Units in connection with such Reorganized PublicCo Approved Sale at a price equal to the greater of (a) two times the Aggregate Purchase Price, plus declared but unpaid Distributions, or (b) the Fair Market Value of the Preferred Units on an as-converted basis at the time of such Reorganized PublicCo Approved Sale.

Section 10.05 Tag-Along Rights.

(a) **Participation.** Subject to the terms and conditions specified in Section 10.01, Section 10.02, and Section 10.03, if a Common Member (the "**Selling Member**") proposes to Transfer any Units to any Person (a "**Proposed Transferee**"), each Preferred Member (each, a "**Tag-Along Member**") shall be permitted to participate in such Transfer (a '**Tag-Along Sale**") on an as-converted to Common Units basis and on the terms and conditions set forth in this Section 10.05.

(b) **Application of Transfer Restrictions.** The provisions of this Section 10.05 shall only apply to Transfers in which no ROFR Rightholder has exercised such ROFR Rightholder's rights under Section 10.03 to purchase all of the Offered Units.

(c) **Sale Notice.** Prior to the consummation of any Transfer of Units qualifying under Section 10.05(b), and after satisfying such Selling Member's obligations pursuant to Section 10.03, the Selling Member shall deliver to the Company and each Tag-Along Member a written notice (a "**Sale Notice**") of the proposed Tag-Along Sale as soon as practicable following the expiration of the ROFR Notice Period, and in no event later than five (5) Business Days thereafter. The Sale Notice shall make reference to the Tag-Along Members' rights hereunder, shall include a copy of any form of agreement proposed to be executed in connection therewith, and shall describe in reasonable detail:

(i) the aggregate number and class of Units the Proposed Transferee has offered to purchase (the "**Participation Units**");

(ii) the identity of the Proposed Transferee;

(iii) the proposed date, time, and location of the closing of the Tag-Along Sale; and

(iv) the purchase price per applicable Unit (which must be payable only in cash) and the other material terms and conditions of the Transfer .

(d) **Exercise of Tag-Along Right.**

(i) The Selling Member and each Tag-Along Member timely electing to participate in the Tag-Along Sale pursuant to Section 10.05(d)(ii) shall have the right to Transfer in the Tag-Along Sale the number of Units equal to the product of (A) the aggregate number of Units that the Proposed Transferee proposes to buy as stated in the Sale Notice and (B) a fraction (x) the numerator of which is equal to the number of Units on an as-converted basis then held by such applicable Tag-Along Member and (y) the denominator of which is equal to the number of Units on a Common Units Deemed Outstanding basis then held by the Selling Member and all of the Tag-Along Members timely electing to participate in the Tag-Along Sale pursuant to Section 10.05(d)(ii) (such amount the "**Tag-Along Portion**").

(ii) Each Tag-Along Member may exercise such Tag-Along Member's right to participate in a Tag-Along Sale by delivering to the Selling Member a written notice (a "**Tag-Along Notice**") stating such Tag-Along Member's election to do so and specifying the number and class of Units (up to such Tag-Along Member's Tag-Along Portion) to be Transferred by such Tag-Along Member (which may be Common Units to be issued to such Tag-Along Member following the conversion of any such Tag-Along Member's Preferred Units pursuant to Section 3.06) no later than ten (10) Business Days after receipt of the Sale Notice (the "**Tag-Along Period**").

(iii) The offer of each Tag-Along Member set forth in a Tag-Along Notice shall be irrevocable, and, to the extent such offer is accepted, such Tag-Along Member shall be bound and obligated to consummate the Transfer on the terms and conditions set forth in this Section 10.05.

(e) **Waiver.** Each Tag-Along Member who does not deliver a Tag-Along Notice in compliance with Section 10.05(d)(ii) shall be deemed to have waived all of such Tag-Along Member's rights to participate in the Tag-Along Sale with respect to the Units owned by such Tag-Along Member, and the Selling Member shall (subject to the rights of any participating Tag-Along Member) thereafter be free to sell to the Proposed Transferee the Units identified in the Sale Notice at a per Unit price that is no greater than the applicable per Unit price set forth in the Sale Notice and on other terms and conditions which are not materially more favorable to the Selling Member than those set forth in the Sale Notice, without any further obligation to the non-accepting Tag-Along Members.

(f) **Conditions of Sale.**

(i) Each Tag-Along Member participating in the Tag-Along Sale shall receive the same consideration per Common Unit after deduction of such Preferred Member's proportionate share of the related expenses in accordance with Section 10.05(h); *provided, however*, that the aggregate proceeds from such Tag-Along Sale payable to all Tag-Along Members participating in the Tag-Along Sale shall, after giving effect to Section 10.05(h), be distributed and paid to such participating Tag-Along Members pursuant to Section 7.02 on the date of the Tag-Along Sale consummation, assuming that the only Units outstanding are the Units participating in the Tag-Along Sale.

(ii) Each Tag-Along Member shall make or provide the same representations, warranties, covenants, indemnities, and agreements as the Selling Member makes or provides in connection with the Tag-Along Sale; *provided*, that each Tag-Along Member shall only be obligated to make individual representations and warranties with respect to such Tag-Along Member's title to and ownership of such Tag-Along Member's Units, authorization, execution, and delivery of relevant documents, enforceability of such documents against the Tag-Along Member, and other matters relating to such Tag-Along Member, but not with respect to any of the foregoing with respect to any other Members or their Units; *provided*, *further*, that all representations, warranties, covenants, and indemnities shall be made by the Selling Member and each Tag-Along Member severally and not jointly and any indemnification obligation shall be pro rata based on the consideration received by the Selling Member and each Tag-Along Member, in each case in an amount not to exceed the aggregate proceeds received by the Selling Member and each such Tag-Along Member in connection with the Tag-Along Sale.

(g) **Cooperation.** Each Tag-Along Member shall take all actions as may be reasonably necessary to consummate the Tag-Along Sale, including entering into agreements and delivering certificates and instruments, in each case, consistent with the agreements being entered into and the certificates being delivered by the Selling Member, but subject to Section 10.05(f)(ii).

(h) **Consummation of Sale.** The Selling Member shall have sixty (60) days following the expiration of the Tag-Along Period in which to consummate the Tag-Along Sale, on terms and conditions which are not materially more favorable to the Selling Member than those set forth in the Sale Notice. If at the end of such period the Selling Member has not completed the Tag-Along Sale, the Selling Member may not then effect a Transfer that is subject to this Section 10.05 without again fully complying with the provisions of this Section 10.05.

(i) **Transfers in Violation of Tag-Along Right.** If the Selling Member sells or otherwise Transfers to a Proposed Transferee any of such Selling Member's Units in breach of this Section 10.05, then each Tag-Along Member shall have the right to sell to the Selling Member, and the Selling Member undertakes to purchase from each Tag-Along Member, the number of Units that such Tag-Along Member would have had the right to

sell to the Proposed Transferee pursuant to this Section 10.05, for a price and upon the terms and conditions on which the Proposed Transferee bought such Units from the Selling Member in the Tag-Along Sale; *provided*, that nothing contained in this Section 10.05(i) shall preclude any Tag-Along Member from seeking alternative remedies against such Selling Member as a result of such Selling Member's breach of this Section 10.05, including under Section 3.08(a). The Selling Member shall also reimburse each Tag-Along Member for any and all reasonable and documented out-of-pocket fees and expenses, including reasonable legal fees and expenses, incurred pursuant to the exercise or the attempted exercise of such Tag-Along Member's rights under this Section 10.05(i).

Section 10.06 Right of First Offer.

(a) A Preferred Member shall not offer or sell any Preferred Units to any Person other than the Restricted Entities except in compliance with the terms and conditions of Section 10.01, Section 10.02 and this Section 10.06.

(b) If the Preferred Members wish to Transfer Preferred Units (a "**Restricted Transaction**"), the Preferred Requisite Members (the "**ROFO Offeror**") shall, without notifying any third party of the ROFO Offeror's interest in the Restricted Transaction, provide written notice to Reorganized PublicCo of its offer to enter into such a transaction (the "**Offer Notice**") and the material financial and other terms and conditions of such offer (the "**Material Terms**"). Each Offer Notice constitutes an offer made by the ROFO Offeror to enter into an agreement with Reorganized PublicCo in accordance with the Material Terms ("**ROFO Offer**").

(c) At any time prior to the expiration of the ten (10) Business Day period following Reorganized PublicCo's receipt of the Offer Notice (the "**ROFO Exercise Period**"), Reorganized PublicCo may accept the ROFO Offer by delivery to the ROFO Offeror of a written notice of acceptance containing the Material Terms.

(d) If Reorganized PublicCo has not accepted the ROFO Offer and the ROFO Offeror has complied with all of the provisions of Section 10.01, Section 10.02 and this Section 10.06, at any time following the expiration of the ROFO Exercise Period, the ROFO Offeror may consummate the Restricted Transaction with one or more third parties on Material Terms that are the same or more favorable to the ROFO Offeror as the Material Terms set forth in the Offer Notice. The ROFO Offeror shall cause any Transferees of such Units to comply with the terms of this Agreement applicable to such Units.

ARTICLE XI
ACCOUNTING; REPORTING; TAX MATTERS

Section 11.01 Financial Statements. The Company shall furnish to each Preferred Member the following reports:

(a) **Annual Financial Statements.** As soon as available, and in any event no later than the date Reorganized PublicCo's Form 10-K for each Fiscal Year is due, audited consolidated balance sheet of the Company and any Company Subsidiaries, as at the end

of each such Fiscal Year, and audited consolidated statements of income, cash flows, and Members' equity for such Fiscal Year, in each case setting forth in comparative form the figures for the previous Fiscal Year (if available), accompanied by the certification of independent certified public accountants of recognized national standing selected by the Board, certifying to the effect that, except as set forth therein, such financial statements have been prepared in accordance with GAAP, applied on a basis consistent with prior years, and fairly present in all material respects the financial condition of the Company and any Company Subsidiaries as of the dates thereof and the results of their operations and changes in their cash flows and Members' equity for the periods covered thereby.

(b) **Quarterly Financial Statements**. As soon as available, and in any event no later than the date Reorganized PublicCo's Form 10-Q for each quarterly accounting period in each Fiscal Year (other than the last fiscal quarter of the Fiscal Year) is due, unaudited consolidated balance sheets of the Company and any Company Subsidiaries, as at the end of each such fiscal quarter and for the current Fiscal Year to date, and unaudited consolidated statements of income, cash flows, and Members' equity for such fiscal quarter and for the current Fiscal Year to date, in each case setting forth in comparative form the figures for the corresponding periods of the previous fiscal quarter (if available), all in reasonable detail and all prepared in accordance with GAAP, consistently applied (subject to normal year-end audit adjustments and the absence of notes thereto), and certified by the principal financial or accounting officer of the Company.

Section 11.02 Inspection Rights. The Company shall permit and shall cause all other Restricted Entities to permit the Managers, the Preferred Members and any Representatives designated by any Preferred Member, upon reasonable notice and during normal business hours and at their sole expense to (a) visit and inspect the properties of the Restricted Entities; (b) examine the books and records of the Restricted Entities; and (c) consult with the Officers and independent accountants of the Restricted Entities concerning the businesses, finances, and affairs of the Restricted Entities.

Section 11.03 Budget. Not later than thirty (30) days prior to the commencement of each Fiscal Year, the Chief Financial Officer or other applicable Officer of the Company shall prepare, submit to, and obtain the approval of the Board of a business plan and monthly and annual operating budgets for the Restricted Entities in detail for the upcoming Fiscal Year, including capital and operating expense budgets, cash flow projections, covenant compliance calculations of all outstanding and projected indebtedness, and profit and loss projections, all itemized in reasonable detail (collectively, the "**Budget**"). The Company shall operate in all material respects in accordance with the Budget; *provided*, that the Company may update the Budget for the then-current Fiscal Year to the extent reasonably required, from time to time.

Section 11.04 Partnership Representative.

(a) **Appointment.** The Members hereby appoint Reorganized PublicCo as the "partnership representative" as provided in Code Section 6223(a) (the "**Partnership Representative**"). The Partnership Representative may be removed at any time by the Board. If Reorganized PublicCo ceases to be the Partnership Representative for any reason, the Board shall appoint a new Partnership Representative. The Partnership Representative

shall designate an individual meeting the requirements of Treasury Regulation Section 301.6223-1(c)(3) (the "**Designated Individual**") as the sole person authorized to represent the Partnership Representative in audits and other proceedings governed by the partnership audit procedures set forth in Subchapter C of Chapter 63 of the Code as amended by the BBA (the "**Revised Partnership Audit Rules**"). Any Person that the Partnership Representative designates as the Designated Individual shall be treated as, and subject to, the requirements and obligations of, the Partnership Representative, for purposes of this Section 11.04. The Designated Individual may be removed at any time by the Board.

(b) **Tax Examinations and Audits.** The Partnership Representative is authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by Tax authorities, including resulting administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. Other than as provided herein, the Partnership Representative shall have sole authority to act on behalf of the Company in any such examinations and any resulting judicial proceedings, and shall have sole discretion to determine whether the Company (either on its own behalf or on behalf of the Members) will contest or continue to contest any tax deficiencies assessed or proposed to be assessed by any Tax authority. The Company shall be bound by the actions taken by the Partnership Representative. The Board shall notify the Preferred Members of any pending or threatened tax audit, examination, action or similar proceeding with respect to the Company (a "**Tax Contest**") and provide the Preferred Members with reasonably detailed accounts and updates regarding any such Tax Contest. The Preferred Members may choose to participate in any such Tax Contest at their sole cost and expense.

(c) **US Federal Tax Proceedings.** In the event of an audit of the Company that is subject to the partnership audit procedures set forth in the Revised Partnership Audit Rules, the Partnership Representative, in its sole discretion, shall have the right to make any and all elections and to take any actions that are available to be made or taken by the Partnership Representative or the Company under the Revised Partnership Audit Rules (including any election under Code Section 6226), subject to approval by the Board. If an election under Code Section 6226(a) is made, the Company shall furnish to each Member for the year under audit a statement of the Member's share of any adjustment set forth in the notice of final partnership adjustment, and each Member shall take such adjustment into account as required under Code Section 6226(b). To the extent that the Partnership Representative does not make an election under Code Section 6221(b) or Code Section 6226, the Company shall use commercially reasonable efforts to make any modifications available under Code Section 6225(c)(3), (4), and (5), to the extent such modification would reduce any taxes payable by the Company. Each Member agrees to cooperate with the Partnership Representative and to do or refrain from doing any or all things reasonably requested by the Partnership Representative with respect to the conduct of examinations under the Revised Partnership Audit Rules; *provided,* that a Member shall not be required to file an amended federal income tax return, as described in Code Section 6225(c)(2)(A).

(d) **Tax Returns and Tax Deficiencies.** Each Member agrees that such Member shall not treat any Company item inconsistently on such Member's federal, state, foreign, or other income tax return with the treatment of the item on the Company's return.

Any deficiency for taxes imposed on any Member (including penalties, additions to tax, or interest imposed with respect to such taxes and any tax deficiency imposed pursuant to Code Section 6226) will be paid by such Member and if required to be paid (and actually paid) by the Company, will be recoverable from such Member.

(e) **Expenses.** Notwithstanding anything herein to the contrary, any reasonable out-of-pocket expenses incurred by the Partnership Representative or the Designated Individual in carrying out their responsibilities and duties in such capacities under this Agreement shall be an expense of the Company for which the Partnership Representative or the Designated Individual, as applicable, shall be reimbursed by the Company.

(f) **Survival.** The provisions of this Section 11.04 and the obligations of a Member or former Member pursuant to Section 11.04 shall survive the termination, dissolution, liquidation, and winding up of the Company or the Transfer of such Member's Units or Unit Equivalents.

Section 11.05 Tax Returns.

(a) The Company shall engage a " Big 4" accounting firm, or BDO, Grant Thornton, Moss Adams or RSM, to assist in the preparation and filing of all tax returns required to be filed by the Company, and the Company shall not engage another accounting firm in such capacity without the prior written consent of Reorganized PrivateCo, which consent may not be unreasonably withheld, conditioned or delayed. Reorganized PrivateCo shall be afforded reasonable opportunity to review drafts of U.S. federal income tax returns of the Company and the Company shall reasonably consult with the Reorganized PrivateCo with respect to any comments thereto.

(b) The Company shall use commercially reasonable efforts to provide each Person who was a Member at any time during such Fiscal Year draft IRS Schedule K-1s (or similar information statements with estimated tax reporting information) for such Fiscal Year, within ninety (90) days after the end of each Fiscal Year, provided that the Company shall deliver such drafts no later than one hundred and twenty (120) days after the end of each Fiscal Year. The Company shall deliver final IRS Schedule K-1s to any such Members as soon as reasonably practicable thereafter.

Section 11.06 Company Funds. All funds of the Company shall be deposited in its name in such federally insured checking, savings, or other bank accounts, or held in its name in the form of such other investments as shall be designated by the Board. 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 as the Board may designate.

ARTICLE XII
DISSOLUTION AND LIQUIDATION

Section 12.01 Events of Dissolution. The Company shall be dissolved and its affairs wound up only upon the occurrence of any of the following events:

(a) The determination of the Board to dissolve the Company, subject to Section 4.06(a);

(b) An election to dissolve the Company made by the Common Requisite Members and the Preferred Requisite Members;

(c) The sale, exchange, involuntary conversion, or other disposition or transfer of all or substantially all the assets of the Company; or

(d) The entry of a decree of judicial dissolution under Section 18-802 of the Delaware Act.

Section 12.02 Effectiveness of Dissolution. Dissolution of the Company shall be effective on the day on which the event described in Section 12.01 occurs, but the Company shall not terminate until the winding up of the Company has been completed, the assets of the Company have been Distributed as provided in Section 12.03, and the Certificate of Formation shall have been canceled as provided in Section 12.04.

Section 12.03 Liquidation. If the Company is dissolved pursuant to Section 12.01, the Company shall be liquidated and its business and affairs wound up in accordance with the Delaware Act and the following provisions:

(a) **Liquidator.** The Board, or, if the Board is unable to do so, a Person selected by the Common Requisite Members and the Preferred Requisite Members, shall act as liquidator to wind up the Company (the "**Liquidator**"). The Liquidator shall have full power and authority to sell, assign, and encumber any or all of the Company's assets and to wind up and liquidate the affairs of the Company in an orderly and business-like manner.

(b) **Accounting.** As promptly as possible after dissolution and again after final liquidation, the Liquidator shall cause a proper accounting to be made by a recognized firm of certified public accountants of the Company's assets, liabilities, and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable.

(c) **Distribution of Proceeds.** The Liquidator shall liquidate the assets of the Company and Distribute the proceeds of such liquidation in the following order of priority, unless otherwise required by mandatory provisions of Applicable Law:

(i) *First*, to the payment of all of the Company's debts and liabilities to its creditors (including Members, if applicable) and the expenses of liquidation (including sales commissions incident to any sales of assets of the Company);

(ii) *Second*, to the establishment of and additions to reserves that are determined by the Liquidator to be reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company;

(iii) *Third*, pro rata among the Preferred Members, until Distributions to the Preferred Members under this Section 12.03(c)(iii) equal the aggregate

Liquidation Preference in respect of all the Preferred Units held by the Preferred Members as of the time of such Distribution;

(iv) *Fourth*, to the Common Members pro rata in proportion to their aggregate holdings of Common Units.

(d) **Discretion of Liquidator.** Notwithstanding Section 7.04 or the provisions of Section 12.03(c) that require the liquidation of the assets of the Company, but subject to the order of priorities set forth in Section 12.03(c), if upon dissolution of the Company the Liquidator determines that an immediate sale of part or all of the Company's assets would be impractical or could cause undue loss to the Members, the Liquidator may defer the liquidation of any assets except those necessary to satisfy Company liabilities and reserves, and may, in its absolute discretion, Distribute to the Members, in lieu of cash, as tenants in common and in accordance with the provisions of Section 12.03(c), undivided interests in such Company assets as the Liquidator deems not suitable for liquidation. Any such Distribution in kind shall be subject to such conditions relating to the disposition and management of such properties as the Liquidator, acting in good faith, deems reasonable and equitable and to any agreements governing the operating of such properties at such time. For purposes of any such Distribution, any property to be Distributed shall be valued at its Fair Market Value, as determined by the Liquidator in good faith.

(e) **Maintenance of Records.** All documents and records of the Company, including financial records, shall be delivered to Reorganized PublicCo upon dissolution of the Company. Reorganized PublicCo shall retain such documents and records for a period of not less than seven (7) years and shall make such documents and records reasonably available during normal business hours to the other Members and their Affiliates for inspection and copying; *provided* that such access does not unduly interfere with the management and business of Reorganized PublicCo.

Section 12.04 Liquidation Preference.

(a) The Preferred Units shall be entitled to a liquidation preference equal to the greater of (i) the Aggregate Purchase Price, plus declared but unpaid Distributions, and (ii) the amount that would be received in the relevant Liquidation Event on an as-converted basis (the greater of (i) and (ii), the "**Liquidation Preference**").

(b) The Liquidation Preference shall be due upon (i) a liquidation, dissolution or winding up, voluntary or involuntary, of the Company or (ii) a consolidation or merger of the Company with another entity, a Change of Control (as defined below) of the Company, or a sale, license, lease or transfer of all or substantially all of the Company's assets (each such event set forth in clause (i) or (ii) of this clause (b), a "**Liquidation Event**"). "**Change of Control**" shall mean any transaction pursuant to or as a result of which a single party (or group of affiliated parties) directly or indirectly acquires or holds equity interests of the Company or Reorganized PublicCo representing a majority of such entity's outstanding voting power or economic interests (for the avoidance of doubt, excluding Reorganized PublicCo's majority equity interest in the Company).

Section 12.05 Cancellation of Certificate. Upon completion of the Distribution of the assets of the Company as provided in Section 12.03(c), the Company shall be terminated and the Liquidator shall cause the cancellation of the Certificate of Formation in the State of Delaware and of all qualifications and registrations of the Company as a foreign limited liability company in jurisdictions other than the State of Delaware and shall take such other actions as may be necessary to terminate the Company.

Section 12.06 Survival of Rights, Duties, and Obligations. Dissolution, liquidation, winding up, or termination of the Company for any reason shall not release any party from any Loss which at the time of such dissolution, liquidation, winding up, or termination already had accrued to any other party or which thereafter may accrue in respect of any act or omission prior to such dissolution, liquidation, winding up, or termination. For the avoidance of doubt, none of the foregoing shall replace, diminish, or otherwise adversely affect any Member's right to indemnification pursuant to Section 13.02. The provisions of Section 12.03(e) shall survive the dissolution, liquidation, winding up, and termination of the Company in accordance with their terms.

Section 12.07 Recourse for Claims. Each Member shall look solely to the assets of the Company for all Distributions with respect to the Company, such Member's Capital Account, and such Member's share of Net Income, Net Loss, and other items of income, gain, loss, and deduction, and shall have no recourse therefor (upon dissolution or otherwise) against any Manager, the Liquidator, or any other Member.

ARTICLE XIII
EXCULPATION AND INDEMNIFICATION

Section 13.01 **Standard of Care; Duties; Reliance On Information.**

(a) **Standard of Care.** No Covered Person shall be liable to the Company or any other Covered Person for any loss, damage, or claim incurred by reason of any action taken or omitted to be taken by such Covered Person in its capacity as a Covered Person, whether or not such Person continues to be a Covered Person at the time such loss, damage, or claim is incurred or imposed, so long as such action or omission does not constitute fraud, gross negligence or willful misconduct, in each case as determined by a final, non-appealable order of a court of competent jurisdiction.

(b) **Waiver of Manager and Officer Duties.** Each Member hereby acknowledges the elimination of any and all fiduciary duties of the Board, each Officer and each Manager and hereby waives any right to make a claim or demand or bring a suit or action, and hereby agrees not to make any claim or demand or bring any suit or action, against the Board, any Officer or any Manager that such Member may have been entitled to make or bring if such fiduciary duties were not so eliminated.

(c) **Member Duties.** Notwithstanding anything herein to the contrary, (i) this Agreement is not intended to, and does not, create or impose any fiduciary duty on any Member or its Affiliates; (ii) each of the Members and the Company hereby waives any and all fiduciary duties that, absent such waiver, may be implied by Applicable Law, and

in doing so, acknowledges and agrees that the duties and obligations of each Member to each other and to the Company are only as expressly set forth in this Agreement; (iii) the provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Member otherwise existing at law or in equity, are agreed by the Members to replace such other duties and liabilities of such Member; and (iv) whenever in this Agreement a Member is permitted or required to make a decision (including a decision that is in such Member's "discretion" or under a grant of similar authority or latitude), such Member shall be entitled to consider only such interests and factors as such Member desires, including such Member's own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Company or any other Person; and (v) whenever in this Agreement a Member is permitted or required to make a decision in such Member's "good faith," such Member shall act under such express standard and shall not be subject to any other or different standard imposed by this Agreement or any other Applicable Law. For the avoidance of doubt, references in this Section 13.01(c) to a Member are to a Member in its capacity as such.

(d) **Reliance on Information.** A Covered Person shall be fully protected in relying in good faith upon the records of Reorganized PublicCo and its controlled Affiliates and upon such information, opinions, reports, or statements (including financial statements and information, opinions, reports, or statements as to the value or amount of the assets, liabilities, Net Income, or Net Losses of the Restricted Entities, or any facts pertinent to the existence and amount of assets from which Distributions might properly be paid) of the following Persons or groups: (i) a Manager; (ii) one or more Officers or employees of Reorganized PublicCo and its controlled Affiliates; (iii) any attorney, independent accountant, appraiser, or other expert or professional employed or engaged by or on behalf of Reorganized PublicCo and its controlled Affiliates; or (iv) any other Person selected in good faith by or on behalf of Reorganized PublicCo and its controlled Affiliates, in each case as to matters that such relying Person reasonably believes to be within such other Person's professional or expert competence. 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 Delaware Act.

Section 13.02 **Indemnification.**

(a) To the fullest extent permitted by the Delaware Act, as the same now exists or may hereafter be amended, substituted, or replaced (but, in the case of any such amendment, substitution, or replacement only to the extent that such amendment, substitution, or replacement permits the Company to provide broader indemnification rights than the Delaware Act permitted the Company to provide prior to such amendment, substitution, or replacement), the Company shall indemnify, hold harmless, defend, pay, and reimburse any Covered Person from and against any and all losses, claims (including any third-party or governmental claims), damages, judgments, fines, taxes, penalties or liabilities, including reasonable legal fees or other costs and expenses incurred in investigating or defending against such losses, claims, damages, judgments, fines, or liabilities, and any amounts expended in settlement of any claims, as the same are incurred, of any kind or nature whatsoever (whether or not arising out of third party third-party claims and including all amounts paid in investigation, defense or settlement of the

foregoing) which may be sustained or suffered by any such Covered Person (collectively, "**Losses**") to which such Covered Person may become subject, based upon, arising out of, or by reason of:

(i) any act or omission or alleged act or omission performed or omitted to be performed on behalf of the Company in connection with the business of the Company;

(ii) the fact that such Covered Person is or was acting in connection with the business of the Company as a manager, officer, employee, or agent of the Company or that such Covered Person is or was serving at the request of the Company as a manager, director, officer, employee, or agent of any other Person, including any Restricted Entity; or

(iii) relating in any way to such Covered Person's status as an equity holder or otherwise relating to such Covered Person's investment in the Company (including any and all Losses under the Securities Act, the Exchange Act or other federal or state statutory law, at common law or otherwise, which relate directly or indirectly to the registration, purchase, sale or ownership of any securities of the Company or to any fiduciary obligation owed with respect thereto);

provided, that such Covered Person's conduct did not constitute fraud, gross negligence or willful misconduct, in each case as determined by a final, non-appealable order of a court of competent jurisdiction. In connection with the foregoing, 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 Covered Person's conduct constituted fraud, gross negligence or willful misconduct.

(b) **Advancement**. To the fullest extent permitted by Applicable Law, expenses (including reasonable legal fees and expenses) incurred by a Covered Person in connection with investigating, preparing to defend, or defending any claim relating to any Losses for which such Covered Person may be entitled to be indemnified pursuant to Section 13.02(a) shall, from time to time, be advanced by the Company prior to a final, non-appealable determination of a court of competent jurisdiction that, in respect of such matter, such Covered Person is not entitled to indemnification for such Losses; *provided*, *however*, that the Covered Person shall have provided to the Company (i) written affirmation of such Covered Person's good faith belief that such Covered Person has met the standard of conduct necessary for indemnification for such Losses under Section 13.02(a); and (ii) an undertaking to repay all such advanced amounts if it shall ultimately be determined that the Covered Person is not entitled to such indemnification. Notwithstanding the foregoing, the Company shall not be required to advance expenses incurred by a Covered Person in connection with a claim initiated against such Covered Person by the Company.

(c) **Entitlement to Indemnity**. The indemnification provided by this Section 13.02 shall not be deemed exclusive of any other rights to indemnification to which those seeking indemnification may be entitled under any agreement or otherwise. The provisions of this Section 13.02 shall continue to afford protection to each Covered Person regardless

of whether such Covered Person remains in the position or capacity pursuant to which such Covered Person became entitled to indemnification under this Section 13.02 and shall inure to the benefit of the executors, administrators, legatees, and distributees of such Covered Person.

(d) **Insurance**. To the extent available on commercially reasonable terms, the Company shall purchase and thereafter maintain, at its expense, insurance to cover Losses covered by the foregoing indemnification provisions and to otherwise cover Losses for any breach or alleged breach by any Covered Person of such Covered Person's duties in such amount and with such deductibles as the Board may determine; *provided*, that (i) all Preferred Members shall be treated equally under any such insurance policies, and (ii) the failure to obtain such insurance shall not affect the right to indemnification of any Covered Person under the indemnification provisions contained herein, including the right to be reimbursed or advanced expenses or otherwise indemnified for Losses hereunder. If any Covered Person recovers any amounts in respect of any Losses from any insurance coverage, then such Covered Person shall, to the extent that such recovery is duplicative, reimburse the Company or any Company Subsidiary for any amounts previously paid to such Covered Person by the Company or any Company Subsidiary in respect of such Losses.

(e) **Funding of Indemnification Obligation**. Notwithstanding anything contained herein to the contrary, any indemnity by the Company relating to the matters covered in this Section 13.02 shall be provided out of and to the extent of Company assets only, and no Member (unless such Member otherwise agrees in writing) shall have personal liability on account thereof or shall be required to make additional Capital Contributions to help satisfy such indemnity by the Company.

(f) **Primacy of Indemnification**. The Company hereby acknowledges that the Preferred Members, their Affiliates and their partners, directors, officers, employees, agents, and other representatives (the "**Specified Indemnified Persons**") may have rights to indemnification and advancement of expenses provided by a Member or its Affiliate (directly or by insurance provided by such Person) (collectively, the "**Member Indemnitors**"). The Company hereby agrees that it is the indemnitor of first resort of the Specified Indemnified Persons with respect to matters for which indemnification is provided to them under this Agreement and that the Company will be obligated to make all payments due to or for the benefit of a Specified Indemnified Person to the extent required under this Agreement without regard to any rights that such Specified Indemnified Person may have against a Member Indemnitor. The Company hereby waives and releases any and all equitable and other rights or claims to contribution, subrogation, or indemnification from or against the Member Indemnitors in respect of any amounts paid to a Specified Indemnified Person hereunder. The Company further agrees that no payment of Losses or expenses by any Member Indemnitor to or for the benefit of a Specified Indemnified Person shall affect the obligations of the Company hereunder, and that the Company shall be obligated to repay the Member Indemnitors for all amounts so paid or reimbursed to the extent that the Company has an obligation to indemnify a Specified Indemnified Person for such Losses or expenses hereunder. The Member Indemnitors are

third-party beneficiaries of and shall have the power and authority to enforce the provisions of this Section 13.02(f).

(g) **Savings Clause**. If this Section 13.02 or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless each Covered Person pursuant to this Section 13.02 to the fullest extent permitted by any applicable portion of this Section 13.02 that shall not have been invalidated and to the fullest extent permitted by Applicable Law.

(h) **Amendment**. The provisions of this Section 13.02 shall be a contract between the Company, on the one hand, and each Covered Person who served in such capacity at any time while this Section 13.02 is in effect, on the other hand, pursuant to which the Company and each such Covered Person intend to be legally bound. No amendment, modification, or repeal of this Section 13.02 that adversely affects the rights of a Covered Person to indemnification for Losses incurred or relating to a state of facts existing prior to such amendment, modification, or repeal shall apply in such a way as to eliminate or reduce such Covered Person's entitlement to indemnification for such Losses without the Covered Person's prior written consent.

Section 13.03 Survival. The provisions of this ARTICLE XIII shall survive the dissolution, liquidation, winding up, and termination of the Company.

ARTICLE XIV
MISCELLANEOUS

Section 14.01 Confidentiality. Each Member shall, and shall cause each of such Member's Affiliates to, maintain, at all times (including after any time that such Member ceases to be a Member), the confidentiality of all information furnished to such Member pertaining to the Company or its Affiliates ("**Confidential Information**"), other than information that such Member can demonstrate (a) is or becomes generally available to the public other than as a result of a disclosure by such Member or such Member's Affiliates or Representatives; (b) becomes available to such Member on a non-confidential basis from a third party who is not prohibited by any obligation of confidentiality owed to the Company or its Affiliates from transmitting the information to such Member; or (c) was already in the possession of such Member or such Member's Affiliates prior to their becoming a Member; *provided, however,* that the prohibitions set forth in this Section 14.01 shall not prohibit disclosure of Confidential Information (i) to Representatives of such Member or such Member's Affiliates who, in the reasonable judgment of such Member, have a need to know such information and have agreed to be bound by the provisions of this Section 14.01 as if a Member; (ii) to any investor in the equity or assets of such Member or its Affiliates as part of disclosures to such investor in the ordinary course of such Member's or its Affiliate's business and who is bound by obligations of confidentiality no less restrictive than those in this Agreement; (iii) to any bona fide prospective Transferee of such Member that shall have agreed to be bound by the provisions of this Section 14.01 as if a Member; (iv) to the extent necessary in the course of performing such Member's obligations or enforcing any remedy under this Agreement or the agreements expressly contemplated hereby; (v) as is required to be disclosed by a court of competent jurisdiction, administrative body, or governmental body (including in Exchange Act filings, reports, disclosure statements or otherwise by the

Securities and Exchange Commission or any securities exchange) or by subpoena, summons, or legal process, or by Applicable Law; or (vi) as requested or required by any regulatory, banking or other authority (whether pursuant to an audit, examination, inquiry, request or routine supervisory oversight); *provided* that, to the extent permitted by Applicable Law and except in the case of disclosure pursuant to clause (vi) above, the Member required to make such disclosure shall provide to the Board prompt notice of such disclosure. The obligations of a Member pursuant to Section 14.01 shall survive the termination, dissolution, liquidation, and winding up of the Company or the Transfer of such Member's Units or Unit Equivalents. Notwithstanding anything to the contrary in this Section 14.01, for purposes of this Section 14.01, receipt of or access to Confidential Information shall not be imputed to any Member's equityholders or Affiliates (other than the Company and the Company Subsidiaries), portfolio companies or their respective equityholders solely by virtue of the fact that such Member's directors, officers, stockholders, employees, agents, consultants and other advisors and representatives who serve in a similar capacity for such equityholder, Affiliate or portfolio company (a "**Shared Representative**") have received such Confidential Information unless a Shared Representative (x) directly or indirectly conveys, shares or communicates, in any manner, such Confidential Information to such equityholder, Affiliate or portfolio company or (y) participates, directly or indirectly, on behalf of such equityholder, Affiliate or portfolio company, in activities prohibited by this Agreement (including by causing, authorizing, directing or encouraging such equityholder, Affiliate or portfolio company to engage in such activities).

Section 14.02 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including fees and disbursements of counsel, financial advisors, and accountants, incurred in connection with the preparation and execution of this Agreement, or any amendment or waiver hereof, and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

Section 14.03 Further Assurances. Each Member shall execute all such certificates and other documents and do all such filing, recording, publishing, and other acts as the Board deems necessary or appropriate to comply with the requirements of the Delaware Act or Applicable Law relating to the formation and operation of the Company and the acquisition, operation, or holding of its property.

Section 14.04 Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by email of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 14.04):

If to the Company:	Capstone Green Energy LLC 16640 Stagg Street

Van Nuys, CA 91406
Attention: John Juric, Chief Financial Officer
Email: JJuric@cgrnenergy.com

with a copy to: Katten Muchin Rosenman LLP
525 W. Monroe Street
Chicago, IL 60661-3693
Attention: Mark D. Wood
Email: mark.wood@katten.com

If to a Member, to such Member's respective mailing address or email address, as set forth on the Members Schedule.

Section 14.05 Headings. The headings in this Agreement are inserted for convenience or reference only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision of this Agreement.

Section 14.06 Severability. If any term or provision of this Agreement is held to be invalid, illegal, or unenforceable under Applicable Law in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Except as provided in Section 13.02(h), upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 14.07 Entire Agreement. This Agreement, together with the Certificate of Formation and all related Exhibits and Schedules, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter, including the Original Agreement.

Section 14.08 Successors and Assigns. Subject to the restrictions on Transfers set forth herein, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and permitted assigns. This Agreement may not be assigned by any Member except as permitted by this Agreement and any assignment in violation of this Agreement shall be null and void.

Section 14.09 No Third-Party Beneficiaries. Except as provided in Article XIII, which shall be for the benefit of and enforceable by Covered Persons and Member Indemnitors as described therein, this Agreement is for the sole benefit of the parties hereto (and their respective heirs, executors, administrators, successors, and permitted assigns) and nothing herein, express or implied, is intended to or shall confer upon any other Person, including any creditor of the Company, any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

Section 14.10 Amendment. No provision of this Agreement or any Annex hereto, may be amended or modified except by an instrument in writing executed by the Company, the Common Requisite Members and the Preferred Requisite Members. Any such written amendment or modification will be binding upon the Company and each Member; *provided*, that (i) an amendment or modification modifying the rights or obligations of any Member in a manner that is disproportionately adverse to such Member relative to the rights of other Members in respect of Units of the same class or series shall be effective only with that Member's consent, and (ii) any amendment or modification of Section 5.02 or this Section 14.10 shall require the approval of all Members. Notwithstanding the foregoing, the Board may, without the consent of or execution by the Members, amend or modify (A) this Agreement in accordance with the provisions of Section 3.04 and (B) the Members Schedule, in either case to reflect any new authorization, issuance, or Transfer of Units or Unit Equivalents in accordance with this Agreement.

Section 14.11 Waiver. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege. For the avoidance of doubt, nothing contained in this Section 14.11 shall diminish any of the explicit waivers described in this Agreement, including in Section 4.07(e), Section 8.04(c), Section 9.01(c), Section 10.03(c)(ii) and Section 14.14 hereof.

Section 14.12 Governing Law. All issues and questions concerning the application, construction, validity, interpretation, and enforcement of this Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware, without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Delaware.

Section 14.13 Submission to 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 Superior Court 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 form. Service of process, summons, notice, or other document by registered mail

to the address set forth in Section 14.04 shall be effective service of process for any suit, action, or other proceeding brought in any such court.

Section 14.14 Waiver of Jury Trial. Each party hereto hereby acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues and, therefore, each such party irrevocably and unconditionally waives any right such party may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

Section 14.15 Equitable Remedies. Each party hereto acknowledges that a breach or threatened breach by such party of any of such party's obligations under this Agreement would give rise to irreparable harm to the other parties, for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by such party of any such obligations, each of the other parties hereto shall, in addition to any and all other rights and remedies that may be available to them in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance, and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

Section 14.16 No Impairment of Rights. Neither Reorganized PublicCo nor any other Common Member or any of their Affiliates shall take any action that has the intent or could reasonably be expected to have the effect of materially circumventing, diminishing or impairing any of the rights or economic interests of the Preferred Members; *provided*, *however*, that this Section 14.16 shall not supersede Section 13.01 and shall not create any duties for Reorganized PublicCo or any other Common Member beyond those permitted by this Agreement pursuant to Applicable Law.

Section 14.17 Attorneys' Fees. In the event that any party hereto institutes any legal suit, action, or proceeding, including arbitration, against another party in respect of a matter arising out of or relating to this Agreement, the prevailing party in the suit, action, or proceeding shall be entitled to receive, in addition to all other damages to which such party may be entitled, the costs incurred by such party in conducting the suit, action, or proceeding, including reasonable attorneys' fees and expenses, and court costs.

Section 14.18 Remedies Cumulative. Except to the extent otherwise expressly provided herein, the rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

Section 14.19 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by email, or other means of Electronic Transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 14.20 Independent Counsel. Each Member has read this Agreement and acknowledges that:

(a) Counsel for the Company prepared this Agreement on behalf of the Company;

(b) Such Member has been advised that a conflict may exist between such Member's interests, the interests of the other Members, or the interests of the Company;

(c) This Agreement may have significant legal, financial, or tax consequences to such Member;

(d) None of the Company, its Affiliates or Representatives (including counsel) makes or has made any representations to such Member regarding such consequences; and

(e) Such Member has been advised to seek, and has had the full opportunity to seek, the advice of independent counsel and tax or other advisors regarding such consequences.

Section 14.21 Representations and Warranties of the Company. By execution and delivery of this Agreement, the Company represents and warrants to the Members and acknowledges that it is subject to the applicable representations, warranties, covenants, agreements and obligations included in Annex B hereto.

Section 14.22 Pledge of Membership Interests. Any provision to the contrary contained in this Agreement, the Certificate of Formation or any agreement to which the Company is a party or otherwise bound notwithstanding, the limited liability company interests (for purposes hereof, such "limited liability company interests" shall be deemed to constitute "limited liability company interests" under the Delaware Act) issued hereunder or covered hereby and all associated rights and powers may be pledged or assigned to any lender or lenders (or an agent therefor) as collateral for any Permitted Secured Indebtedness, and any such pledged or assigned limited liability company interests and all associated rights and powers shall be subject to such lender's or lenders' rights under any collateral documentation governing or pertaining to such pledge or assignment. The pledge or assignment of such limited liability company interests shall not, except as otherwise may result due to an exercise of rights and remedies under such collateral documentation, cause the pledging Member to cease to (i) be a member of the Company or (ii) have the power to exercise any rights or powers of a Member and, except as provided in such collateral documentation, such lender or lenders shall not have any liability solely as a result of such pledge or assignment. Without limiting the generality of the foregoing, the right of such lender or lenders (or an agent therefor) to enforce and exercise their rights and remedies under such collateral documentation hereby is acknowledged by all the Members and any such action taken in accordance therewith shall be valid and effective for all purposes under this Agreement and the Certificate of Formation (in each case, regardless of any restrictions or procedures otherwise herein or therein contained) and applicable law (including the Delaware Act), and any assignment, sale or other disposition of the limited liability company interests by such lender or lenders (or an agent therefor) pursuant to any Permitted Secured Indebtedness in connection with the exercise of any such lender's or lenders' rights and powers shall be valid and effective for all purposes, including under Sections 18-702 and 18-704 of the Delaware Act, this Agreement and the Certificate of Formation and other applicable law, to transfer all right, title and interest (and rights and powers) of the pledging

Member to itself, any other lender or any other Person, including a nominee, an agent or a purchaser at a foreclosure (each an "**Assignee**") in accordance with such collateral documentation and applicable law (including the rights and powers to participate in the management of the business and the business affairs of the Company, to replace, appoint, direct and substitute any Manager, to vote as a "Member," to amend and restate this Agreement, to access information and review the Company's books and records, to compel dissolution, to share profits and losses, to receive, cause and declare distributions, and to receive allocation of income, gain, loss, deduction, credit or similar items, and all other economic, control and "member status" rights) and such Assignee shall automatically (without further requirements) be a Member with all rights and powers of a Member (and, if elected, of the Manager) and as a "member" under the Delaware Act. No such assignment, sale or other disposition shall constitute an event of dissolution or withdrawal under Section 12.01 or any other provision hereunder or otherwise. Further, no lender or any such Assignee shall be liable for the obligations of any Member assignor to make contributions. Each Member approves all of the foregoing and agrees that no further approval, consent, notice or other action shall be required for the exercise of any rights or remedies under such collateral documentation (except as may be expressly provided in such collateral documentation). No Member shall cease to be a member of the Company for any of the reasons described in Section 18-304 of the Delaware Act.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

The Company:

CAPSTONE GREEN ENERGY LLC

By: /s/ John Juric
Name: John Juric
Title: Executive Vice President, Chief Financial Officer and Secretary

The Members:

CAPSTONE GREEN ENERGY HOLDINGS, INC. (f/k/a Capstone Turbine International, Inc.)

By: /s/ John Juric
Name: John Juric
Title: Chief Financial Officer (Principal Financial Officer) Treasurer and Secretary

CAPSTONE DISTRIBUTOR SUPPORT SERVICES CORPORATION

By: /s/ Matt Carter
Name: Matt Carter
Title: Director

[Signature Page to Amended and Restated Limited Liability Company Agreement]

ANNEX A

Member Representations Regarding Compliance with Anti-Corruption and Anti-Bribery Laws and Sanctions.

1. The Members represent, warrant, covenant and agree that, in connection with Reorganized PublicCo and its controlled Affiliates, they will comply with the Anti-Corruption and Anti-Bribery Laws, AML Laws and Sanctions.

2. The Common Members represent, warrant, covenant and agree that they shall use commercially reasonable measures to cause the Company and its controlled Affiliates to comply with (i) the Anti-Corruption and Anti-Bribery Laws, AML Laws and Sanctions and (ii) the representations, warranties and covenants set forth in Annex B.

ANNEX B

1. For the periods prior to the consummation of the Plan as specified below, the Company and Reorganized PublicCo each represents that:

(a) none of Capstone, any Capstone Subsidiary or any directors, officers, managers or employees of Capstone or any Capstone Subsidiary, nor, to the knowledge of the Company or Reorganized PublicCo, any independent contractors, representatives or agents of Capstone or any Capstone Subsidiary has, in the last eight years: (i) violated, conspired to violate or aided and abetted the violation of any Anti-Corruption and Anti-Bribery Laws, Sanctions or AML Laws; (ii) corruptly offered, made, promised, authorized, solicited or received any payment or contribution of any kind, including payments, gifts or gratuities (or promises thereof) of any money or anything of material value to or from (A) any Public Official for the purpose of influencing any official act or decision of such official or inducing him or her to use his or her influence to affect any act or decision of a Governmental Authority, or (B) any political party or official thereof or candidate for political office for the purpose of influencing any official act or decision of such party, official or candidate or inducing such party, official or candidate to use his, her or its influence to affect any act or decision of a Governmental Authority in order to assist Capstone or any Capstone Subsidiaries to obtain or retain business for, or direct business to, Capstone or any Capstone Subsidiaries, as applicable; (iii) established or maintained any unrecorded fund or asset for any purpose or made any fraudulent entries on the books and records of Capstone or any Capstone Subsidiary for any reason; or (iv) paid or delivered any illegal fee, commission or any other sum of money or item of material property, however characterized, to any finder, agent, Public Official or other person;

(b) none of Capstone, any Capstone Subsidiary or any directors, officers, managers or employees of Capstone or any Capstone Subsidiary, nor, to the knowledge of the Company or Reorganized PublicCo, any independent contractors, representatives or agents of Capstone or any Capstone Subsidiary is a Person with whom any dealings were restricted or prohibited under Sanctions at the time of such dealing, including as a result of being (i) included in a list of persons subject to Sanctions, (ii) located, organized, resident in, or the government of, a country or territory that is subject to comprehensive territorial sanctions (as of the date hereof, Cuba, Iran, North Korea, Syria, and the Crimea, Donetsk, Kherson, Luhansk, and Zaporizhzhia regions of Ukraine) ("**Sanctioned Territory**"), or (iii) owned or controlled or acting on behalf of, any of the foregoing ("**Sanctioned Person**");

(c) none of Capstone, any Capstone Subsidiary or any directors, officers, managers or employees of Capstone or any Capstone Subsidiary, nor, to the knowledge of the Company or Reorganized PublicCo, any independent contractors, representatives or agents of Capstone or any Capstone Subsidiary has, in the last eight years, violated Sanctions or engaged in activities reasonably expected to result in the imposition of Sanctions;

(d) there have not, in the last five years, been any known or written allegations of violations, enforcement actions, penalties; written threats of penalty, whistleblower reports, governmental investigations; or audits, voluntary disclosures to a government agency, or threatened or pending litigation relating to Anti-Corruption and Anti-Bribery

Laws, Sanctions or AML Laws, involving Capstone or any Capstone Subsidiary, or any directors, officers, managers employees of Capstone or any Capstone Subsidiary; and

(e) Capstone and the Capstone Subsidiaries have been subject to and currently maintain anti-corruption and Sanctions compliance programs reasonably designed to detect and prevent violations of AML Laws, Sanctions, Anti-Corruption and Anti-Bribery Laws and Sanctions, respectively.

2. For the period following the consummation of the Plan until the date on which the Reorganized PrivateCo Entities no longer hold any Units, Reorganized PublicCo and the Company covenant, warrant and agree that:

(a) none of the Company, any Company Subsidiaries, any directors, officers, managers or employees of the Company or any Company Subsidiaries (when such directors, officers, managers or employees are acting on behalf of the Company or any Company Subsidiaries), nor, in connection in any way with the Company or any Company Subsidiaries, Reorganized PublicCo, shall violate, conspire to violate or aid and abet the violation of any Anti-Corruption and Anti-Bribery Laws, AML Laws or Sanctions;

(b) the Company and the Company Subsidiaries shall promptly engage in appropriate remediation related to any violation of the Anti-Corruption and Anti-Bribery Laws or Sanctions by (i) the Company and any Company Subsidiary, (ii) to the extent practical, any distributors, suppliers, agents or representatives of the Company or any Company Subsidiary, and (iii) in connection in any way with the Company or any Company Subsidiary, Reorganized PublicCo;

(c) the Company and the Company Subsidiaries shall maintain systems of policies, procedures, and internal controls (including accounting systems, purchasing systems and billing systems) reasonably designed to promote compliance with the Anti-Corruption and Anti-Bribery Laws, AML Laws and Sanctions;

(d) the Company shall promptly notify each Preferred Member if the Company becomes aware of the Company, any Company Subsidiary, any the officers, directors or employees of the Company or any Company Subsidiary or, in connection in any way with the Company or any Company Subsidiary, Reorganized PublicCo, violating any, or becoming the subject of any allegation, voluntary disclosure, investigation, prosecution or other enforcement action relating to, the Anti-Corruption and Anti-Bribery Laws, AML Laws or Sanctions;

(e) none of Reorganized PublicCo, any of its controlled Affiliates, the Company, any Company Subsidiary or any director, officer or employee of Reorganized PublicCo, the Company or any Company Subsidiary shall (i) be a Sanctioned Person, (ii) engage in any business activity with a Sanctioned Person, or (iii) make any payment pursuant to this agreement (including any Distributions) or to any Member with funds derived directly or indirectly from a Sanctioned Person or illegal activity or in a manner that would otherwise cause a violation of Sanctions or the AML Laws;

(f) upon reasonable request by Reorganized PrivateCo, the Company agrees to provide responsive information and/or certifications concerning the Company's and the Company Subsidiaries' compliance with the Anti-Corruption and Anti-Bribery Laws, AML Laws or Sanctions;

(g) the Company shall adopt and maintain a policy regarding distributor diligence and oversight, which policy shall be acceptable to the Preferred Requisite Members in their reasonable discretion, and which acceptance shall not be unreasonably withheld, conditioned or delayed, and the Company shall designate an executive to oversee compliance with such policy. Such policy shall include with respect to distributors, "know-your-customer" processes, standards for monitoring compliance with law (including licensing, litigation and regulatory actions), and anti-bribery and sanctions compliance measures; and

(h) Reorganized PublicCo and the Company will take commercially reasonable steps to ensure that Reorganized PublicCo, the Company and the Company Subsidiaries:

(i) maintain and implement appropriate, risk-based anti-bribery, anti-corruption, sanctions and money laundering compliance measures, including appropriate training measures;

(ii) maintain and implement an appropriate, risk-based diligence process for distributors, agents, lessees and customers designed to promote compliance by these counterparties with applicable laws and avoid legal liability and reputational damage for the Members, the Company and the Company Subsidiaries; and

(iii) adopt, using a risk-based approach, the use of anti-bribery, anti-corruption, sanctions and ant-money laundering compliance provisions in contracts with business partners of the Company and the Company Subsidiaries.

3. **Regulatory Compliance.** Reorganized PublicCo and the Company represent, warrant, agree and covenant that (a) the Company is and will remain an operating company and is not engaged and will not engage in the activity of investing, reinvesting or trading securities. The Company is not an " Investment Company" as defined the Investment Company Act and it does not rely on 3 (c)(1) or 3(c)(7) of the Investment Company Act in making the determination that it is not an investment company within the meaning of such act, nor is it otherwise a "covered fund" (as defined in 17 C.F.R. 75.10(b)) and (b) the Company will not (i) become a bank or bank holding company or depositary institution, (ii) become a covered fund, or (iii) engage in activities that would deem it to be a SEF or exchange.

4. **Reduction of Rights.** Any Preferred Member may, in its sole discretion, reduce or limit any of rights afforded to it in this Agreement.

5. **Regulatory Information Rights.**

(a) Reorganized PublicCo and the Company represent, warrant, agree and covenant that Reorganized PublicCo and the Company will promptly notify each Preferred Member of any material noncompliance with applicable laws or regulations with respect to

Reorganized PublicCo, the Company or any Company Subsidiaries that (i) Reorganized PublicCo or the Company reasonably believes would cause Reorganized PublicCo, the Company or any Company Subsidiary to be required to make a report or reports to any governmental agency or self-regulatory organization or (ii) would result in adverse legal or regulatory consequences for any Member (including any action that would result in a violation of any Sanctions or the Anti-Corruption and Anti-Bribery Laws).

(b) Reorganized PublicCo and the Company represent, warrant, agree and covenant that Reorganized PublicCo and the Company shall keep each Preferred Member informed, on a current basis, of any events, discussions, notices or changes with respect to any tax (other than ordinary course communications that could not reasonably be expected to be material to Reorganized PublicCo, the Company or the Company Subsidiaries), criminal or regulatory investigation or action involving Reorganized PublicCo, the Company or any Company Subsidiaries, and shall reasonably cooperate with any Preferred Member in an effort to avoid or mitigate any cost or regulatory consequences to them that might arise from such investigation or action (including by reviewing written submissions to government or regulatory authorities in advance, attending meetings with government or regulatory authorities and coordinating and providing assistance in meeting with government or regulatory authorities).

(c) Reorganized PublicCo and the Company represent, warrant, agree and covenant that Reorganized PublicCo and the Company shall (i) provide to any Preferred Member any information reasonably requested by any Preferred Member regarding compliance with applicable laws, policies and procedures by the Company and the Company Subsidiaries; (ii) upon reasonable advance notice and at a reasonable time, make available for discussion with any Preferred Member any member of the management of the Company and the Company Subsidiaries with duties relating to the Company's compliance with applicable laws; and (iii) notify each Preferred Member of any material data breaches or unauthorized access, use or disclosure of any personal information involving or otherwise related to the Company and the Company Subsidiaries.

6. **Regulatory Disclosure.**

(a) Reorganized PublicCo and the Company represent, warrant and agree that, for the period prior to the consummation of the Plan, none of Capstone or any Capstone Subsidiaries has engaged, in the last five years, in any activity that would be reportable by the Company if the Company was required to make a disclosure under Section 13(r).

(b) For the period following the consummation of the Plan until the date on which the Reorganized PrivateCo Entities no longer hold any Units, Reorganized PublicCo and the Company represent, warrant, covenant and agree that:

(i) None of the Company or the Company Subsidiaries will engage in any activity that would be reportable under Section 13(r), to the extent Section 13(r) is applicable. To the extent that the Company or the Company Subsidiaries become engaged in any activities that would be so reportable, they shall promptly, upon becoming aware of such information, disclose such information in writing to each

Preferred Member in sufficient detail in order that such Preferred Member can timely satisfy disclosure obligations they may have under Section 13(r); and

(ii) The Company and the Company Subsidiaries shall promptly provide any Preferred Member with any information concerning the Company, the Company Subsidiaries, and their respective officers, directors and employees requested by any Preferred Member to allow the Preferred Member to comply with any disclosure requested or required under any law applicable to any of them or by any Governmental Authority, including any Section 13(r) compliance questionnaire and any other disclosure requested or required by the Securities and Exchange Commission, Federal Deposit Insurance Corporation, Federal Reserve Board, Office of the Comptroller of the Currency or OFAC.

7. **Restrictive Covenants.** None of Reorganized PublicCo or its controlled Affiliates shall enter into or otherwise become bound by any agreement that contains a non-competition, non-solicitation or other restrictive covenant that binds any Preferred Member or any of Preferred Member's Affiliates.

8. **Certain Limitations; Investment Banking Services.** Nothing contained in the this Agreement shall in any way (a) limit the Preferred Members or their Affiliates from engaging in any brokerage, investment advisory, financial advisory, anti-raid advisory, principaling, merger advisory, financing, asset management, trading, market making, arbitrage, investment activity and other similar activities conducted in the ordinary course of its business or (b) apply to common stock or any securities convertible or exercisable or exchangeable for common stock acquired by the Preferred Members or their Affiliates following the effective date of any initial public offering of the Company or its successor. The parties hereto acknowledge and agree that nothing in this Agreement shall be deemed to create a fiduciary duty of the Preferred Members or any of their Affiliates to Reorganized PublicCo or any of its Affiliates or Members. Each of Reorganized PublicCo and its controlled Affiliates and each Member understands and acknowledges that, notwithstanding any actions or omissions by representatives of the Preferred Members or any of their Affiliates in whatever capacity, it is understood that neither any Preferred Member nor any of its Affiliates is acting as a financial advisor, agent or underwriter to Reorganized PublicCo or its controlled Affiliates or otherwise on their behalf, unless retained to provide such services pursuant to a separate written agreement.

9. **Non-Impairment.** Notwithstanding any other terms in this Agreement to the contrary, nothing contained in this Agreement shall affect, limit or impair the rights and remedies of any Preferred Member or any of its Affiliates (a) in its or their capacity as a lender or as agent for lenders to Reorganized PublicCo or any of its Affiliates pursuant to any agreement under which Reorganized PublicCo or any of its Affiliates has borrowed money, or (b) in its or their capacity as a lender or as agent for lenders to any other Person who has borrowed money. Without limiting the generality of the foregoing, any such Person, in exercising its rights as a lender, including making its decision on whether to foreclose on any collateral security, will have no duty to consider (i) its or any of its Affiliates' status as a Member, (ii) the interests of Reorganized PublicCo or any of its Affiliates or (iii) any duty it may have to any Member, except as may be required under the Agreement, the applicable loan documents or by commercial law applicable to creditors generally. No consent, approval, vote or other action taken or required to be taken by any Preferred Member

in such capacity shall in any way impact, affect or alter the rights and remedies of such Preferred Member or any of its Affiliates as a lender or agent for lenders.

10. **Non-Promotion.** Reorganized PublicCo and each of its controlled Affiliates hereby agrees that it shall not, and shall cause its representatives not to, except as may be required by Applicable Law, (a) use in advertising, publicity or otherwise the name of any Preferred Member or any of its Affiliates, or the name of any member, equity holder, partner, manager or employee of any Preferred Member or any Preferred Member's Affiliates, or any trade name, trademark, trade device, logo, service mark, symbol or any abbreviation, contraction or simulation thereof owned or used by any Preferred Member or any Preferred Member's Affiliates; (b) represent, directly or indirectly, that any product or any service provided by Reorganized PublicCo or any of its Affiliates has been approved, endorsed, recommended or provided by, or in association with, any Preferred Member or any Preferred Member's Affiliates or (c) disclose the fact that any Preferred Member or any Preferred Member's Affiliate is an investor in or customer of Reorganized PublicCo or any of its Affiliates, in each case of the foregoing clauses (a) through (c), without the prior written consent of such Preferred Member (which the Preferred Member may provide or withhold, in each case, in its sole and absolute discretion); *provided*, *however*, clause (c) shall not restrict the Company from disclosing its capitalization table to actual or potential investors, lenders, underwriters or acquirors and their respective advisors in connection with future financing transactions or a future Liquidation Event, in each case, so long as the recipient of such information is bound by confidentiality obligations enforceable against such recipient by the Company in respect of such information (other than any potential investor, in which case the Company shall have informed such potential investor of the confidential nature of such information and directed such potential investor to maintain the confidentiality thereof).

11. **Use of Logos.** Reorganized PublicCo and its Affiliates grant Reorganized PrivateCo permission to use the their names and logos in Reorganized PrivateCo's marketing materials. Reorganized PrivateCo shall include a trademark attribution notice giving notice of such ownership of such trademarks in the marketing materials in which the such names or logos appear.

12. **Antitrust.** Notwithstanding anything to the contrary contained in this Agreement, neither any Preferred Member nor any of any Preferred Member's Affiliates, shall be required in order to resolve any objections asserted by any Governmental Authority under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, the Competition Act or any other foreign antitrust or combination laws with respect to any transactions Reorganized PublicCo or any of its controlled Affiliates proposes to enter into or consummate to divest any of its businesses, properties or assets, or take or agree to take any other action (including agreeing to hold separate any business or assets or take other similar actions) or agree to any limitation or restriction, that any Preferred Member determines would be or presents a risk of being, individually or in the aggregate, adverse to such Preferred Member or any of its Affiliates.

13. **Regulatory Transfer**. In the event it becomes unlawful for a Preferred Member to continue to hold its Units, in whole or in part, or some or all of the Units held by a Preferred Member, or restrictions are imposed on a Preferred Member by any statute, regulation or governmental authority which, in the reasonable judgment of such Preferred Member, gives rise to a limitation under Applicable Law that will materially impair the ability of such Preferred Member or any of their respective Affiliates to conduct their respective businesses (a "**Regulatory**

Requirement"), (a) such Preferred Member shall promptly inform the Company and of the occurrence of such Regulatory Requirement, to the extent permitted by Applicable Law, (b) Reorganized PublicCo and its controlled Affiliates, the Members and such Preferred Member shall cooperate in good faith to restructure the terms of such investment by such Preferred Member, including by amendment to this Agreement or any other agreement in a manner acceptable to the Company, such Preferred Member and the Members required to approve such amendment under the terms of this Agreement so as to remediate the circumstances giving rise to such Regulatory Requirement; *provided*, *however*, in no event shall the Company or any Member be required to agree to any amendment pursuant to this Section 13 if such amendment would adversely affect any material preference or right or increase or create any material obligation, in each case, of the Company or any Member set forth in this Agreement or any other agreement, without the consent of the Company and such Member, and (c) without limitation of the remedies available pursuant to the immediately preceding clause (b), such Preferred Member shall be permitted to sell or otherwise transfer its Units to any other Person, including any other Member, and Reorganized PublicCo and its controlled Affiliates shall, at such Preferred Member's sole cost and expense, use commercially reasonable efforts to assist such Preferred Member in facilitating a sale or transfer by such Preferred Member of any or all of its Units of the Company as may be reasonably requested by such Preferred Member subject to Section 10.01(b) and Section 10.02.

EXHIBIT A

FORM OF JOINDER AGREEMENT

JOINDER TO
AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT

THIS JOINDER (this "**Joinder**") to the Amended and Restated Limited Liability Company Agreement of Capstone Green Energy LLC, a Delaware limited liability company (the " **Company**"), dated as of December 7, 2023, as amended or restated from time to time, by and among the Company and the Members (the " **Agreement**"), is made and entered into as of the date the Company accepts this Joinder as set forth below, by and between the Company and the undersigned Member (the "**Holder**"). Capitalized terms used but not otherwise defined in this Joinder shall have the meanings ascribed to such terms in the Agreement.

WHEREAS, on the date of this Joinder, the Holder has acquired Units, and the Agreement and the Company require the Holder, as a holder of Units, to become a party to the Agreement, and the Holder agrees to do so in accordance with this Joinder.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Joinder and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties to this Joinder agree as follows:

AGREEMENT TO BE BOUND. The Holder hereby: (a) acknowledges that he/she/it has received and reviewed a complete copy of the Agreement and (b) agrees that upon execution of this Joinder and subject to the Company's acceptance hereof (indicated by the Company countersigning this Joinder and delivering a copy thereof to the Holder) and compliance with the Agreement, the Holder will become a party to the Agreement and will be fully bound by, and subject to, all of the Agreement's terms as though an original party to the Agreement and will be admitted as a Member for all purposes of the Agreement and will be entitled to all the rights incidental thereto.

MEMBERS SCHEDULE. For purposes of the Members Schedule, the name, address and email of the Holder are as follows:

Name:________________________________
Address:______________________________
____
Email:_________________________________

GOVERNING LAW. All issues and questions concerning the application, construction, validity, interpretation, and enforcement of this Joinder shall be governed by and construed in accordance with the internal laws of the State of Delaware, without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Delaware.

COUNTERPARTS. This Joinder may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Joinder delivered by email, or other means of Electronic Transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Joinder.

HEADINGS. The headings in this Joinder are inserted for convenience or reference only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Joinder or any provision of this Joinder.

(Signature Page Follows)

IN WITNESS WHEREOF, the parties to this Joinder have executed it as of the date set forth below the Company's acceptance hereof.

MEMBERS WHO ARE NATURAL PERSONS:
(*i.e.*, individuals)

By:____
Print Name:

MEMBERS WHO ARE NOT NATURAL PERSONS:
(*i.e.*, corporations, limited liability companies, partnerships, trusts or other entities)

Print Name of Entity:_____________________________

By:____
Print Name:
Print Title:

ACCEPTANCE:

CAPSTONE GREEN ENERGY LLC

By: ________________________________
Name: ______________________________
Title: _______________________________

Dated:_______________ ____, ________

SCHEDULE A

MEMBERS SCHEDULE

December 7, 2023

Common Members

Member Name, Address and Email	**Common Units**
Capstone Green Energy Holdings, Inc. (f/k/a Capstone Turbine International, Inc.) 16640 Stagg Street Van Nuys, CA 91406 Attention: John Juric, Chief Financial Officer Email: JJuric@cgrnenergy.com	17,416,438
Total:	17,416,438

Preferred Members

Member Name, Address and Email	**Preferred Units**
Capstone Distributor Support Services Corp oration 2001 Ross Avenue, Suite 2800 Dallas, TX 85201 Attention: Matt Carter Email: Matt.Carter@gs.com	10,449,863
Total:	10,449,863

MANAGERS SCHEDULE

December 7, 2023

John Juric
Capstone Green Energy
16640 Stagg Street
Van Nuys, CA 91406

Robert Flexon
Capstone Green Energy
16640 Stagg Street
Van Nuys, CA 91406

REORGANIZED PUBLICCO SERVICES AGREEMENT

This Reorganized PublicCo Services Agreement (this "***Agreement***"), dated as of December 7, 2023 ("***Effective Date***"), is made by and between Capstone Green Energy Holdings, Inc. (f/k/a Capstone Turbine International, Inc.), a Delaware corporation ("***Reorganized PublicCo***"), and Capstone Green Energy LLC, a Delaware limited liability company ("***New Subsidiary***" and together with Reorganized PublicCo, the "***Parties***" and each a "***Party***").

WHEREAS, Reorganized PublicCo and certain of its affiliates have jointly proposed that certain Joint Prepackaged Chapter 11 Plan of Reorganization of Capstone Green Energy Corporation and Its Debtor Affiliates, filed on September 28, 2023, which contemplates the reorganization and restructuring of the aforementioned parties (as amended, supplemented or modified from time to time, the "***Plan***");

WHEREAS, as of the date hereof, Reorganized PublicCo holds a majority of the issued and outstanding equity interests of New Subsidiary;

WHEREAS, as of the date hereof, Reorganized PublicCo is publicly traded and listed on the Nasdaq stock exchange;

WHEREAS, in connection with being a publicly traded company, Reorganized PublicCo incurs audit, board and executive compensation expenses (the "***PublicCo Expenses***"); and

WHEREAS, capitalized terms used but not otherwise defined in this Agreement shall have the meanings ascribed to such terms in the Plan.

NOW, THEREFORE in connection with the foregoing recitals, which are hereby incorporated in this Agreement, and the mutual covenants contained in this Agreement, the Parties, intending to be legally bound hereby, do agree as follows:

1. Expense Reimbursement. New Subsidiary hereby agrees to reimburse Reorganized PublicCo for, and Reorganized PublicCo hereby agrees to accept reimbursement for, the PublicCo Expenses, in each case upon the terms and subject to the conditions set forth herein.

2. Term and Termination. The term of this Agreement (the "***Term***") shall commence on the date hereof and shall terminate in its entirety upon the earliest of: (a) the consummation of a direct or indirect Change of Control (as defined in the Amended and Restated Limited Liability Company Agreement of New Subsidiary, dated on or about the date hereof (the "***LLC Agreement***")); (b) 30 days following written notice provided by either party to the other Party providing for the termination of this Agreement; or (c) a date mutually agreed upon in writing by Reorganized PublicCo and New Subsidiary.

3. Scope of Services. During the Term, Reorganized PublicCo shall provide certain services to New Subsidiary, in its capacity as a majority equity holder of New Subsidiary, as

consideration for the PublicCo Expenses, which services shall be reasonably determined by Reorganized PublicCo and New Subsidiary from time to time (the "***Services***").

4. Services Fee and Payment. In consideration of the Services provided by Reorganized PublicCo, New Subsidiary shall pay Reorganized PublicCo a fee, to be determined in accordance with this Section 4 (the "***Services Fee***"), which fee shall be paid quarterly or at such other time intervals as reasonably agreed by the Parties from time to time (any such time interval, a "***Fee Period***"). The Services Fee for each Fee Period shall be limited to reasonable and documented PublicCo Expenses actually incurred during such Fee Period. As promptly as practicable following the end of each Fee Period, Reorganized PublicCo shall provide an invoice to New Subsidiary for the Services Fee which invoice shall include a calculation of the Services Fee for the PublicCo Expenses actually incurred during such Fee Period. The Services Fee shall be payable by New Subsidiary no later than 30 calendar days following receipt of such invoice for such Fee Period. Notwithstanding anything to the contrary herein, the Services Fee for fiscal year 2023 shall not exceed $2,500,000.00, in the aggregate (the "***Services Fee Cap***"), which amount shall be prorated based on the number of days in such fiscal year following the execution of this Agreement. Effective as of April 1 of each year, beginning with April 1, 2024, the Services Fee Cap shall increase for each fiscal year by an amount equal to the greater of (a) 3.5000% and (b) the Consumer Price Index, as set by the U.S. Bureau of Labor Statistics and available on March 31 of each year; *provided,* that such increase effective on April 1, 2024 shall be equal to 1.7500%. For the avoidance of doubt, New Subsidiary shall directly pay all employee and officer compensation and related expenses, including for Reorganized PublicCo's named executive officers, whether related to the provision of the Services or otherwise, and such compensation and related expenses shall not be counted for purposes of determining whether the Services Fee Cap has been reached. Any payment of the Services Fee shall be subject to the terms and conditions of the LLC Agreement.

5. Entire Agreement. This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous agreements, negotiations, correspondence, undertakings and communications of the Parties, written or oral, with respect to such subject matter.

6. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns. However, neither this Agreement nor any of the rights of the Parties may be transferred or assigned by any Party without the prior written consent of the other Party. Any attempted transfer or assignment in violation of this Section 6 shall be void.

7. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

8. Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any

right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

9. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

10. Governing Law; Submission to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to any choice of law or conflict of law rules or provisions that would cause the application of any laws of any jurisdiction other than the State of Delaware. The Parties agree that any legal action or proceeding with respect to any obligations under this Agreement may be brought in any state or federal court located in the State of Delaware. By the execution and delivery of this Agreement, each of the Parties submit to and accept, generally and unconditionally, the non-exclusive jurisdiction of those courts. Each Party hereby waives any claim that the State of Delaware is not a convenient forum or the proper venue for any such suit, action or proceeding.

11. WAIVER OF JURY TRIAL. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION; (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER; (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY; AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.

12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by electronic transmission (including .pdf signature or DocuSign) shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

13. No Strict Construction. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties, and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

14. No Punitive Damages. None of the Parties shall be liable to the other party hereto under this Agreement for punitive damages of any kind.

15. Interpretation and Rules of Construction. Words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other gender as the context requires. The terms "hereof," "herein," "hereby" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement. The terms "includes" and the word "including" and words of similar import shall be deemed to be followed by the words "without limitation." Section references are to the Sections of this Agreement unless otherwise specified.

16. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

17. Subject to the Plan. This Agreement is being executed and delivered pursuant to, and is subject to and shall be governed by the terms and conditions of, the Plan. Nothing in this Agreement is intended to or shall be deemed to amend, modify, supplement, or limit in any manner any of the covenants, agreements, rights, or obligations of the Parties under the Plan. In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of the Plan, the terms and conditions of the Plan shall control.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Parties have executed this Services Agreement as of the Effective Date.

CAPSTONE GREEN ENERGY HOLDINGS, INC.

By: /s/ John Juric
Name: John Juric
Title: Chief Financial Officer (Principal Financial Officer) Treasurer and Secretary

CAPSTONE GREEN ENERGY LLC

By: /s/ John Juric
Name: John Juric
Title: Executive Vice President, Chief Financial Officer and Secretary

[*Signature Page to Reorganized PublicCo Services Agreement*]

EXHIBIT 10.3

REORGANIZED PRIVATECO SERVICES AGREEMENT

THIS SERVICES AGREEMENT (this "Agreement"), effective as of December 7, 2023 (the "Effective Date"), is entered into by and among Capstone Green Energy LLC, a Delaware limited liability company ("Capstone"), and Capstone Distributor Support Services Corporation (f/k/a Capstone Green Energy Corporation), a Delaware corporation ("Reorganized PrivateCo"). Each of Capstone and Reorganized PrivateCo are referred to herein as a "Party" and together as the "Parties."

WHEREAS, pursuant to the Plan (as defined below), (i) all liabilities and assets of Reorganized PrivateCo (other than (x) the stock of Capstone Turbine International, Inc., (y) those liabilities and assets directly related to the Retained Assets (as described in the Plan) and (z) obligations under the DIP Financing Agreement (as defined below) and Pre-Petition Secured Debt (as defined in the Plan)) were transferred to Capstone; (ii) the common units and preferred units of Capstone were issued to Reorganized PrivateCo; and (iii) Reorganized PrivateCo contributed the common units of Capstone to Reorganized PublicCo and retained the preferred units of Capstone.

WHEREAS, in connection with the transactions contemplated by the Plan and in order to assist Reorganized PrivateCo in the operation of the Retained Assets, Capstone and Reorganized PrivateCo have each agreed to provide certain services to the other, in each case in accordance with the terms of this Agreement; and

WHEREAS, it is a condition to the consummation of the transactions contemplated by the Plan that this Agreement be executed substantially concurrently with the Plan's effective date.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Definitions and Construction.

1.1 Definitions. The following terms shall have the meanings ascribed to them in this Section 1.1.

"Affiliate" means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" of a Person means the power, directly or indirectly, either (a) to vote at least a majority of the securities of such Person having ordinary voting power for the election of directors of such Person or (b) to direct or cause the direction of the management and policies of such Person, whether by contract or otherwise; provided, however, that in no event shall Reorganized PrivateCo and its equityholders, on the one hand, and Capstone or its subsidiaries or common equity holders, on the other hand, be considered Affiliates of one another for purposes of this Agreement.

"Agreement" has the meaning set forth in the Preamble.

"Authorized Persons" has the meaning set forth in Section 5.1.

"Business Day" means any day other than a Saturday, Sunday or day on which banks located in New York, New York or Wilmington, Delaware are authorized or required by Law to be closed for business.

"Capstone" has the meaning set forth in the Preamble.

"Capstone Indemnified Party" has the meaning set forth in Section 7.2.

"Capstone Personnel" has the meaning set forth in Section 3.2.

"Capstone Trademarks" has the meaning set forth in Section 6.2.

"Capstone Work Product" has the meaning set forth in Section 6.1(b).

"Confidential Information" has the meaning set forth in Section 5.1.

"Contract" means any agreement, contract, license, arrangement, understanding, obligation or commitment to which a party is bound or to which its assets or properties are subject, whether oral or written, and any amendments and supplements thereto.

"DIP Financing Agreement" means the Super-Priority Senior Secured Debtor-in-Possession Note Purchase Agreement, as in effect on October 2, 2023, by and among Reorganized PublicCo, the other debtor parties thereto, Broad Street Credit Holdings LLC and Goldman Sachs Specialty Lending Group, L.P.

"Discloser" has the meaning set forth in Section 5.1.

"Effective Date" has the meaning set forth in the Preamble.

"Force Majeure" means an event beyond the reasonable control of Capstone (or any Person acting on its behalf), including acts of God, storms, floods, riots, fires, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared), pandemics or epidemics, or armed hostilities or other national or international calamity or one or more acts of terrorism or failure of energy sources.

"Governmental Authority" means any nation or government, any foreign or domestic federal, state, county, municipal or other political instrumentality or subdivision thereof and any foreign or domestic agency, entity or body exercising executive, legislative, judicial, regulatory, administrative or taxing functions of or pertaining to government, including any court, arbitrator or tribunal of competent jurisdiction.

"Indemnifiable Losses" has the meaning set forth in Section 7.1.

"Income" means cash actually received (i) directly from Capstone's distributors or (ii) from Capstone, including (A) as part of its collection of Distributor Support Services fees from Capstone's distributors and (B) any payments in consideration for use of any intellectual property

(including the Capstone Trademarks).

"Invoice" has the meaning set forth in Section 3.3(a).

"Law" means any law, Order, statute, code, regulation, ordinance, decree, rule, or other requirement with similar effect of any Governmental Authority.

"Legally Requested Disclosure" has the meaning set forth in Section 5.3.

"Litigation" has the meaning set forth in Section 8.1(c).

"Order" means any judgment, order, writ, injunction, decision, ruling, decree or award of any Governmental Authority.

"Party" and "Parties" has the meaning set forth in the Preamble.

"Person" means any individual, person, entity, general partnership, limited partnership, limited liability partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, Governmental Authority, foreign trust or foreign business organization and the heirs, executors, administrators, legal representatives, successors and assigns of the "Person" when the context so permits.

"Plan" means the Joint Prepackaged Chapter 11 Plan of Reorganization of Capstone Green Energy Corporation and Its Debtor Affiliates (as may be amended, supplemented, or otherwise modified from time to time in accordance with its terms and the terms of the Transaction Support Agreement, and including all exhibits and supplements thereto).

"Recipient" has the meaning set forth in Section 5.1.

"Reorganized PrivateCo" has the meaning set forth in the Preamble.

"Reorganized PrivateCo Indemnified Party" has the meaning set forth in Section 7.1.

"Reorganized PrivateCo Work Product" has the meaning set forth in Section 6.1(a).

"Reorganized PublicCo" means Capstone Green Energy Holdings, Inc. (f/k/a Capstone Turbine International, Inc.), a Delaware corporation.

"Requested Services" has the meaning set forth in Section 2.5.

"Retained Information" has the meaning set forth in Section 4.4.

"SA Coordinators" has the meaning set forth in Section 2.4.

"Sales Taxes" has the meaning set forth in Section 3.4(a).

"Service Consent" has the meaning set forth in Section 2.6.

"Service Fees" has the meaning set forth in Section 3.1

"Service Periods" has the meaning set forth in Section 2.1.

"Service Schedules" has the meaning set forth in Section 2.1.

"Services" has the meaning set forth in Section 2.1.

"Systems" has the meaning set forth in Section 5.5.

"Term" has the meaning set forth in Section 4.1.

"Third-Party Costs" has the meaning set forth in Section 3.1.

"Trademark License Agreement" has the meaning set forth in Section 6.2.

"Transaction Support Agreement" means the transaction support agreement, dated September 28, 2023, by and among Reorganized PublicCo and Broad Street Credit Holdings LLC.

1.2 Rules of Construction. In this Agreement, unless a clear contrary intention appears: (a) if a term is defined as one part of speech (such as a noun), it shall have a corresponding meaning when used as another part of speech (such as a verb); (b) the term "including" (and all correlative terms) shall be construed to be expansive rather than limiting in nature and to mean "including, without limitation"; (c) the word "or" is inclusive; (d) references to Articles and Sections refer to Articles and Sections of this Agreement; (e) the words "this Agreement," "herein," "hereof," "hereby," "hereunder" and words of similar import refer to this Agreement as a whole, including the Service Schedules, and not to any particular subdivision unless expressly so limited; (f) references in any Article or Section or definition to any clause means such clause of such Article, Section or definition; (g) all references to money refer to the lawful currency of the United States; (h) any event contemplated by this Agreement requiring the payment of cash or cash equivalents on a day that is not a Business Day shall be deferred until the next Business Day; (i) reference to any Person includes such Person's heirs, executors, administrators, legal representatives, successors and assigns but only if such heirs, executors, administrators, legal representatives, successors and assigns are not prohibited by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually; (j) reference to any agreement (including this Agreement), document, or instrument means, unless specifically provided otherwise, such agreement, document, or instrument as amended or modified and in effect from time to time in accordance with the terms thereof; (k) reference to any Law means, unless specifically provided otherwise, such Law as amended, modified, codified, replaced, or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder and reference to any section or other provision of any Law means, unless specifically provided otherwise, that provision of such law from time to time in effect and constituting the substantive amendment, modification, codification, replacement, or reenactment of such section or other provision; (l) relative to the determination of any period of time, "from" means "from and including" and "to" means "to but excluding"; (m) the Article and Section titles and headings in this Agreement are inserted for convenience of reference only and are not intended to be a part of,

or to affect the meaning or interpretation of, this Agreement; and (n) all actions which any Person may take and all determinations which any Person may make pursuant to this Agreement may be taken and made at the sole and absolute discretion of such Person, unless specifically provided otherwise.

2. Provision of Services.

2.1 Services. Capstone shall provide to Reorganized PrivateCo, and Reorganized PrivateCo shall provide to Capstone's distributors on a subcontracted basis and, where applicable, to Capstone, the applicable services described on Schedule A (Ongoing Services) and Schedule B (Transition Services) (collectively, the "Services") for the periods specified with respect to those Services set forth thereon (the "Service Periods"). In addition, Capstone shall provide Reorganized PrivateCo the premises and property services on the terms set forth on Schedule C (together with Schedule A and Schedule B, the "Service Schedules").

2.2 Level of Services. Each of Capstone and Reorganized PrivateCo shall perform the applicable Services (a) in accordance with the provisions of this Agreement, (b) in a commercially reasonable manner in accordance with generally accepted industry standards and practices and (c) at a level of quality substantially similar to that at which the Services are provided by the relevant provider for its own business. Capstone shall notify Reorganized PrivateCo promptly if Capstone becomes aware of any circumstances that adversely impact or are reasonably likely to adversely impact Capstone's performance or Reorganized PrivateCo's receipt of the Services to be provided by Capstone. Reorganized PrivateCo shall notify Capstone promptly if Reorganized PrivateCo becomes aware of any circumstances that adversely impact or are reasonably likely to adversely impact Reorganized PrivateCo's performance or Capstone's receipt of the Services to be provided by Reorganized PrivateCo.

2.3 Work Policy. When working on Capstone's premises or utilizing Capstone's information technology systems, Reorganized PrivateCo shall (a) comply with Capstone's safety, security, and other regulations and policies; (b) cooperate with any background check procedures reasonably requested by Capstone; and (c) at Capstone's request, surrender any visitor identification card issued to Capstone for the purposes of working on Capstone's premises. When working on Reorganized PrivateCo's premises or utilizing Reorganized PrivateCo's information technology systems, Capstone shall comply with Reorganized PrivateCo's security and other regulations and policies, including any Reorganized PrivateCo insider trading policy to the extent applicable.

2.4 Cooperation. Each Party shall reasonably cooperate with the employees of the other Parties to the extent reasonably requested for delivery of the Services. In addition, each Party shall name a point of contact who will be responsible for the day-to-day implementation of this Agreement, including attempted resolution of any issues that may arise during the performance of a Party's obligations under this Agreement (the "SA Coordinators").

2.5 Additional Services. Each Party may at any time, upon provision of written notice to the other Party's SA Coordinator, request that new or additional services be added to the Service Schedules (the "Requested Services"). Within 10 Business Days following such request, the Parties shall negotiate in good faith and mutually agree on the terms under which the Requested Service

may be added to the Service Schedules, if any. Upon mutual written agreement of such terms, if any, such Requested Service will be deemed added to the Service Schedules for purposes of this Agreement and will thereafter constitute one of the Services.

2.6 Compliance with Law; Consents. Each Party shall comply with all applicable Laws in connection with its performance or receipt of the Services (as applicable), except as would not be material to the performance or receipt of the Services (as applicable). The Parties acknowledge and agree that certain Services to be provided hereunder may require the Party providing the Services to make use of third-party software, technology or intellectual property, or otherwise to allow certain third-party products or services to be used in connection with the Services. Capstone and Reorganized PrivateCo shall (and shall cause their Affiliates to) cooperate with each other in good faith to promptly secure and maintain from any applicable third party the licenses and consents not held by Capstone or Reorganized PrivateCo, as applicable, that are necessary or required for the provision of the Services by Capstone or Reorganized PrivateCo, as applicable, or receipt of the Services by Capstone or Reorganized PrivateCo, as applicable (each, a "Service Consent"). If the Parties are unable to obtain a Service Consent, the Party providing the Services shall use reasonable best efforts to enter into arrangements to provide the recipient of the Services with the economic and operational equivalent of the affected Services to derive substantially the same services, claims, rights and benefits under such Service (including the same relative pricing or cost of service). Obtaining any such necessary Service Consents is an express condition to the obligation of the Party providing the applicable Services to provide any Service requiring the use of such software, technology or intellectual property under this Agreement, and such Party shall not be considered in breach of this Agreement for failure to provide any such Service due to the fact that the Parties were unable to acquire such Service Consents in accordance with this Section 2.6. All costs, expenses, fees, levies or charges paid to a third party in connection with obtaining the Service Consents or securing such alternate arrangements shall be borne equally by both Parties.

3. Fees.

3.1 Service Fees. Reorganized PrivateCo shall pay to Capstone the service fees (the "Service Fees") as described in this Section 3.1. The Service Fees shall be an amount in cash equal to 90% of Reorganized PrivateCo's Income less itemized expenses incurred and actually paid in cash by Reorganized PrivateCo in direct support of Capstone's distributors and in Reorganized PrivateCo's performance of the Services (excluding the Service Fees). For the avoidance of doubt, expenses, fees, commissions and any other costs incurred or required by, or in relation to, Reorganized PrivateCo's Affiliates are to be excluded from the calculation of the Service Fees. In addition to the Service Fees, subject to the terms set forth on the Service Schedules with respect to any service, Reorganized PrivateCo shall reimburse Capstone for all reasonable and documented out-of-pocket costs and expenses incurred by Capstone in the provision of the Services (the "Third-Party Costs"). If a portion of such Third-Party Costs are incurred by Capstone not in connection with the provision of the Services, Reorganized PrivateCo shall reimburse Capstone only for the portion of such Third-Party Costs allocable to the provision of the Services to Reorganized PrivateCo. With respect to Services provided by Reorganized PrivateCo to Capstone's applicable distributors on a subcontracted basis, Reorganized PrivateCo shall be paid certain fees from such distributors on a passthrough basis via Capstone; provided, that Capstone may set-off against such passthrough amount the applicable Service Fees payable by Reorganized PrivateCo to Capstone hereunder. If the provision of a Service is terminated in accordance with Section 4.1 or Section 4.2

prior to the expiration of a Service Period, Reorganized PrivateCo will be liable only for the Service Fees for such Service through the effective date of termination.

3.2 Compensation of the Capstone Personnel. As between the Parties, Capstone is solely responsible for compensating its personnel providing the Services (the "Capstone Personnel"), for maintaining worker's compensation, personal liability, property, and other insurance coverage relating to such Capstone Personnel, and for any and all other liabilities associated with or related to the Capstone Personnel. Any increase by Capstone in the rate of compensation paid to the Capstone Personnel shall not affect the Service Fees or be passed on to Reorganized PrivateCo.

3.3 Payment.

(a) Within 30 days following the end of each calendar month during the Term and within 30 days following any termination of this Agreement, Capstone shall provide to Reorganized PrivateCo invoices for all Services provided to Reorganized PrivateCo during the applicable calendar month (each, an "Invoice").

(b) Subject to Section 3.3(c), Reorganized PrivateCo will pay amounts due on each Invoice in U.S. dollars within 30 days after receiving the Invoice, except that Reorganized PrivateCo has no obligation to pay any amount included on any Invoice that is not a Service Fee or a Third-Party Cost that Reorganized PrivateCo is obligated to pay under the terms of this Agreement. Invoices shall provide an aggregate amount of the applicable Service Fee for the applicable period, based on the applicable quarterly budget projections, with applicable adjustments to be made on a quarterly basis.

(c) In the event of a good-faith dispute as to the amount of any Invoice or portions thereof, the appropriate accounting representatives of each Party shall discuss the disputed items within 5 Business Days following receipt of such written notice of dispute. If the Party's accounting representatives are unable to resolve the dispute within such 5 Business Day period, the dispute shall be referred to Matt Carter (on behalf of Reorganized PrivateCo) and John Juric (on behalf of Capstone), or other senior executives holding comparable positions, as determined by Reorganized PrivateCo and Capstone, respectively, who shall work together in good faith to resolve the dispute within 10 Business Days following the date that the dispute is referred to them. Each Party shall promptly pay all outstanding amounts determined in accordance with the resolution of the applicable dispute pursuant to this Section 3.3(c). If the Parties are unable to resolve the dispute in accordance with this Section 3.3(c), then each Party may exercise any remedies available to it with respect to such dispute.

3.4 Taxes.

(a) The Service Fees shall be inclusive of any and all sales, use, value added, goods and services or similar taxes (collectively, and together with any interest, penalties or additions to tax imposed with respect thereto, "Sales Taxes"). Capstone shall pay and be responsible for any Sales Taxes imposed with respect to or in connection with the provision of the Services.

(b) The Parties acknowledge that Capstone and Reorganized PrivateCo shall each pay and be responsible for (a) any real or personal Taxes on property it owns or leases, (b) franchise, margin, privilege and similar Taxes on its business, (c) the employment Taxes of its employees and (d) Taxes based on net income.

(c) Payments for the Services or any other amounts payable under this Agreement must be made without any deduction or withholding in respect of taxes except to the extent such deduction or withholding is required under applicable Law. To the extent such deduction or withholding is so required with respect to the making of any payment hereunder, the Party making such payment shall deduct or withhold amounts so required to be deducted or withheld, and shall promptly remit any such deducted or withheld amounts to the appropriate taxing authority, and such deducted or withheld amounts shall be treated for all purposes of this Agreement as having been paid to or on behalf of the payee. Prior to making any deduction or withholding pursuant to the foregoing provisions of this Section 3.4(c) with respect to any payment to be made hereunder, the payor shall notify the payee of its intention to so deduct or withhold and provide the payee with reasonable opportunity to provide such forms, certificates, or other documentation as would permit such payment to be made without any such deduction or withholding or at a reduced rate of deduction or withholding.

3.5 Records. Each Party shall prepare and maintain, during the Term and for at least three years thereafter, in accordance with generally accepted accounting principles and applicable Law, complete and accurate books, time sheets, and records sufficient to document fees, costs and expenses and the provision of the Services provided by such Party. Each Party shall also maintain backup, security, and other measures sufficient to protect such documentation from loss, alteration, destruction, or unauthorized disclosure, and shall promptly provide that documentation to the other Party at such other Party's request.

4. Term and Termination.

4.1 Term. Subject to Section 4.4, this Agreement shall commence on the Effective Date and shall terminate on the date that neither Party is obligated to provide any of the Services pursuant to the Service Schedules (as amended pursuant to Section 3.2), unless this Agreement is terminated earlier upon the occurrence of the following (the "Term"):

(a) by mutual written agreement of Capstone and Reorganized PrivateCo;

(b) by Capstone or Reorganized PrivateCo, by notice to the other Party, if the other Party makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy or for reorganization or rearrangement under the bankruptcy laws, or if a petition in bankruptcy is filed against such other Party and is not dismissed within 30 days after the filing, or if a receiver or trustee is appointed for all or any Party of the property or assets of such other Party;

(c) by Reorganized PrivateCo, following any material breach by Capstone of its obligations under this Agreement, which breach, if curable, remains uncured for 30

Business Days following written notice of such breach from Reorganized PrivateCo to Capstone in accordance with Section 9.1;

(d) by Capstone, following any material breach by Reorganized PrivateCo of its obligations under this Agreement (including if Reorganized PrivateCo fails to pay any amount, not subject to dispute in accordance with Section 3.3(e), when due hereunder and such amount remains unpaid 15 Business Days after delivery of notice of such default) which breach, if curable, remains uncured for 30 Business Days (except in the case of any such payment failure, which shall be 15 Business Days) following written notice of such breach from Capstone to Reorganized PrivateCo in accordance with Section 8.1; or

(e) the effective time of any transaction pursuant to which Reorganized PrivateCo will no longer hold any equity interests in Capstone.

4.2 Extension of Services. No later than 30 days prior to the expiration date of a Service as set forth on the Service Schedules (as amended pursuant to this Section 4.2) or agreed to by the Parties, the Party receiving any applicable Service may request in writing that such Service be extended for up to one additional year; provided, that the party providing such Services may reasonably request modifications to the same terms and conditions for any such Service (including terms and conditions with respect to pricing). The Service Schedules shall be deemed to be automatically amended, without any further action on the part of either Party, to reflect the extension of any Service in accordance with this Section 4.2.

4.3 Early Termination of Services. Notwithstanding anything to the contrary herein, the Party receiving any applicable Service shall have the right to terminate any such Service (or portions thereof) upon 30 days' prior written notice to the Party providing such Service. No termination of any Services (or portions thereof) shall relieve either Party of the obligation to provide Services provided by such Party that are not the subject of such termination.

4.4 Effect of Expiration or Termination. Articles 3, 5, 7, and 9 and those provisions necessary to interpret and apply them, shall survive the termination or expiration of this Agreement. Upon the expiration of this Agreement or if this Agreement is earlier terminated pursuant to Section 4.1, there shall be no liability or obligation on the part of Capstone or Reorganized PrivateCo (or any of their respective Affiliates and Authorized Persons) hereunder; provided that (a) Reorganized PrivateCo shall continue to be obligated to pay Capstone for services rendered by Capstone or its Affiliates on or prior to the last day of the Term, (b) each Party shall pay any amounts outstanding and payable by it hereunder as of the date of termination, (c) claims made pursuant to Article 7 shall survive termination of the Agreement, (d) if this Agreement is terminated by Reorganized PrivateCo pursuant to Section 4.1(c), Capstone shall remain liable for any grossly negligent or willful breach of this Agreement by Capstone prior to such termination and (e) if this Agreement is terminated by Capstone pursuant to Section 4.1(d), Reorganized PrivateCo shall remain liable for any grossly negligent or willful breach of this Agreement by Reorganized PrivateCo prior to such termination. Upon the termination of this Agreement for any reason, (i) Reorganized PrivateCo shall, and shall cause its Affiliates to, discontinue all use of the Services and shall destroy, erase or return to Capstone all copies of Capstone's or any of Capstone's Affiliates' Confidential Information in Reorganized PrivateCo's or its Affiliates' possession, custody or control and (ii) Capstone shall, and shall cause its Affiliates to, destroy, erase or return to Reorganized PrivateCo

all copies of Reorganized PrivateCo's or any of Reorganized PrivateCo's Affiliates' Confidential Information in Capstone's possession, custody or control. Notwithstanding the foregoing, the Parties may retain any Confidential Information for archival purposes or as otherwise required by law, rule or regulation ("Retained Information"); provided that such Retained Information shall remain subject to Section 5.1 through Section 5.4.

5. Confidential Information.

5.1 Obligations. Each Party acknowledges that any information disclosed to such Party ("Recipient") by the other Party ("Discloser") or its Authorized Persons under this Agreement (whether prepared by the Discloser, its Authorized Persons or otherwise, and whether oral, written or electronic, and regardless of whether the information was noted thereon to be confidential) constitutes the confidential and proprietary information of the Discloser (such information, together with all analyses, compilations, forecasts, studies, summaries, memoranda, notes, reports, data compilations, interpretations and other documents and materials in whatever form maintained whether prepared by the Discloser or Recipient or either party's Authorized Persons or others, which contain or reflect, or are generated wholly or partly from, any such information, being collectively referred to herein as the "Confidential Information"). Recipient shall maintain in confidence Discloser's Confidential Information and protect that Confidential Information from any unauthorized disclosure, access, or use, exercising at least the same degree of care as Recipient exercises for its own confidential information, but not less than a reasonable degree of care. Recipient shall not, nor permit any Person to (a) use or copy Discloser's Confidential Information except as necessary to perform its obligations or exercise its rights under this Agreement or any other Contract between the Parties, or (b) disclose Discloser's Confidential Information to any Person other than (i) Recipient's Affiliates, (ii) Persons who are (or who are prospective) direct or indirect purchasers of Recipient's equity interests or assets or lenders to Recipient or its Affiliates, and (iii) Recipient's and its Affiliates' employees, officers, directors, agents, contractors, attorneys, auditors or accountants who have a "need to know" or who require the Confidential Information to exercise Recipient's rights under this Agreement ((i), (ii) and (iii) collectively, "Authorized Persons"). Recipient (A) shall ensure that its Authorized Persons comply with this Agreement as if they were parties to this Agreement in place of Recipient, and (B) is liable to Discloser for the failure of Recipient's Authorized Persons to comply with this Agreement to the same extent that Recipient would have been had Recipient failed to comply.

5.2 Exceptions. "Confidential Information" excludes information that Recipient can demonstrate (a) is or becomes generally available to and known by the public, other than due to Recipient's or its Authorized Persons' breach of this Agreement, (b) Recipient rightfully obtained after the Effective Date without a duty of confidentiality, (c) Recipient received on an unrestricted basis from a source unrelated to either Party and not under a duty of confidentiality with respect to the information or (d) Recipient developed after the Effective Date independently of any Confidential Information and for which Recipient provides documentary evidence maintained contemporaneously with the development that verifies the development was independent of any Confidential Information.

5.3 Permitted Disclosures. Notwithstanding anything to the contrary in this Article 5, Confidential Information may be disclosed by Recipient, its Affiliates or Authorized Persons (a) to the extent to which the Discloser consents in writing; (b) to the extent reasonably necessary in

connection with Recipient's enforcement of its rights under this Agreement or any other related document; (c) as is required to be disclosed by a court of competent jurisdiction, administrative body, or governmental body or by subpoena, summons, or legal process, or by applicable law, and (d) as requested or required by any regulatory, banking or other authority (whether pursuant to an audit, examination, inquiry, request or routine supervisory oversight) or (e) to the extent that Recipient or such Affiliate or any such Authorized Person has received advice from its counsel that it is legally required to do so (including pursuant to the rules of an applicable stock exchange or the Securities and Exchange Commission). Further, nothing in this Agreement shall prohibit or restrict Recipient from lawfully (i) initiating communications directly with, cooperating with, providing information to, causing information to be provided to, or otherwise assisting in an investigation by any Governmental Authority regarding a possible violation of any law; (ii) responding to any inquiry or legal process directed to Recipient, its Affiliates or Authorized Persons individually from any such Governmental Authorities; (iii) testifying, participating or otherwise assisting in an action or proceeding by any such Governmental Authorities relating to a possible violation of law; or (iv) making any other disclosures that are protected under the whistleblower provisions of any applicable law. Notwithstanding anything herein to the contrary, in the event that Recipient or its Affiliates or any such Authorized Persons is requested or required by Law or any Governmental Authority to disclose any Confidential Information (other than a disclosure in the normal course to a regulatory body or other Governmental Authority (other than in its capacity as a customer or potential customer of such Recipient or its Affiliates) that does not specifically target this Agreement or any Party or its Affiliates or Authorized Persons, however expressly including, for the purposes of clarity, any such request from a Governmental Authority that is a customer or potential customer of Capstone and any disclosure pursuant to clause (c) or clause (d) above) (a "Legally Requested Disclosure"), Recipient shall provide Discloser with prompt written notice of such Legally Requested Disclosure and the Confidential Information requested thereby so that Discloser may seek an appropriate protective order. In the event Discloser determines to seek such a protective order or other remedy with respect to Confidential Information subject to such Legally Requested Disclosure, Recipient, its Affiliates and its Authorized Persons shall exercise commercially reasonable efforts to cooperate with Discloser in seeking such protective order or other remedy. If Discloser does not obtain a protective order or other remedy with respect to Confidential Information subject to such Legally Requested Disclosure, and Recipient, its Affiliates or its Authorized Persons, as applicable, is upon the advice of legal counsel, compelled to disclose any Confidential Information subject to such Legally Requested Disclosure, Recipient, its Affiliates or such Authorized Persons, as applicable, may disclose such Confidential Information; provided, that Recipient, its Affiliates or such Authorized Persons shall exercise commercially reasonable efforts to assist Discloser in obtaining assurance that confidential treatment will be accorded to such Confidential Information subject to such Legally Requested Disclosure. In any event, Recipient, its Affiliates and its Authorized Persons shall not oppose action by Discloser to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded such Confidential Information subject to such Legally Requested Disclosure. Additionally, Recipient, its Affiliates and its Authorized Persons shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (1) is made (A) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (B) solely for the purpose of reporting or investigating a suspected violation of law; or (2) is made to such Recipient's, Affiliates' or Authorized Persons' attorney in relation to a lawsuit for retaliation against such Recipient, its Affiliates or Authorized Person for reporting a suspected violation of law; or (3) is made in a complaint or other document filed in a lawsuit or other

proceeding, if such filing is made under seal.

5.4 Injunctive Relief. Each Party acknowledges that the remedies at law for a breach of this Article 5 would be inadequate and the damages resulting from any such breach would not readily be measured in monetary terms. Without limiting a Party's other rights and remedies, if there is an actual or threatened breach of the foregoing provisions, the non-breaching Party shall be entitled to obtain any injunctive or other equitable relief that a court of competent jurisdiction deems proper (including an order restraining any threatened or future breach), on use of affidavit evidence or otherwise, and without furnishing proof of actual damages or posting a bond or other surety.

5.5 Access to Information Technology Systems. If either Party has access (either on-site or remotely) to the other Party's computer systems, information stores or other information technology systems, equipment, networks, software, cloud infrastructure, databases, other computer-based resources or similar technology (collectively, the "Systems") in the course of the provision or receipt of the Services, the accessing Party shall (a) limit such access solely to the use of such Systems for purposes of the applicable Services and shall not access or attempt to access the Systems other than those required for the applicable Services , (b) follow (and, upon request by the Party whose Systems are being accessed, sign or acknowledge in writing) all of such Party's security rules, access agreements, and procedures for restricting access and use, when allowed, to its Systems in accordance with all applicable laws and orders, and (c) maintain reasonable security measures to protect the Systems to which it has access pursuant to this Agreement from access by unauthorized third parties, and from any "back door," "time bomb," "Trojan Horse," "worm," "drop dead device," "virus" or other computer software routine intended or designed to disrupt, disable, harm or otherwise impede in any manner the operation of such Systems. Each Party shall limit access to the other Party's Systems to only those of its employees or contractors with a bona fide need to have such access in connection with the applicable Services, and notify such employees or contractors regarding the restrictions set forth in this Agreement. All user identification numbers and passwords disclosed to either Party and any information obtained by either Party as a result of such Party's access to and use of the other Party's Systems shall be deemed to be, and treated as, Confidential Information hereunder. The Parties shall cooperate in the reasonable investigation of any apparent unauthorized access to any Party's Systems.

6. Intellectual Property and Data Privacy.

6.1 Work Product.

(a) All work product, deliverables, reports, documents, data and metadata created or authored by Capstone specifically for Reorganized PrivateCo in connection with Capstone performing the applicable Services for Reorganized PrivateCo (but excluding any work product, deliverables, reports, documents, data and metadata, and any intellectual property, that (i) was existing prior to the Effective Date or (ii) is developed or authored by Capstone independently of this Agreement) ("Reorganized PrivateCo Work Product") are and will be, as between the Parties, the exclusive property of Reorganized PrivateCo, and to the extent permitted by Law, constitutes a "work-made-for-hire" commissioned by Reorganized PrivateCo. To the

extent any such Reorganized PrivateCo Work Product is not a "work-made-for-hire," Capstone hereby irrevocably assigns to Reorganized PrivateCo (for no additional consideration) all right, title, and interest in and to such Reorganized PrivateCo Work Product (including all intellectual property therein and thereto). Upon completion of any Service provided by Capstone for Reorganized PrivateCo, or any milestone or deliverable otherwise agreed to by the Parties, Capstone shall promptly notify Reorganized PrivateCo and identify, and deliver to Reorganized PrivateCo in a format agreed to by Reorganized PrivateCo, all relevant Reorganized PrivateCo Work Product.

(b) All work product, deliverables, reports, documents, data and metadata created or authored by Reorganized PrivateCo specifically for Capstone in connection with Reorganized PrivateCo performing the applicable Services for Capstone (but excluding any work product, deliverables, reports, documents, data and metadata, and any intellectual property, that (i) was existing prior to the Effective Date or (ii) is developed or authored by Reorganized PrivateCo independently of this Agreement) ("Capstone Work Product") are and will be, as between the Parties, the exclusive property of Capstone, and to the extent permitted by Law, constitutes a "work-made-for-hire" commissioned by Capstone. To the extent any such Capstone Work Product is not a "work-made-for-hire," Reorganized PrivateCo hereby irrevocably assigns to Capstone (for no additional consideration) all right, title, and interest in and to such Capstone Work Product (including all intellectual property therein and thereto). Upon completion of any Service provided by Reorganized PrivateCo for Capstone, or any milestone or deliverable otherwise agreed to by the Parties, Reorganized PrivateCo shall promptly notify Capstone and identify, and deliver to Capstone in a format agreed to by Capstone, all relevant Capstone Work Product.

6.2 License to Capstone. To the extent the provision or receipt of the applicable Services requires the use by Capstone (or any of its Affiliates) of any intellectual property owned by Reorganized PrivateCo, Reorganized PrivateCo hereby grants, and shall use commercially reasonable efforts to procure that its applicable Affiliates grant, to Capstone a non-exclusive, worldwide, non-transferable, fully paid-up, royalty-free license, under any intellectual property owned by Reorganized PrivateCo or such Affiliates, solely to the extent and duration required, for the purpose of Capstone providing the Services in accordance with the terms of this Agreement. For the avoidance of doubt, the foregoing license shall terminate upon termination of the applicable Service for which such licensed intellectual property is used. For the avoidance of doubt, each Party's rights to use the Capstone Trademarks (as defined in the Trademark License Agreement, as defined below) are set forth in the Trademark License Agreement, dated as of the date hereof, by and between Reorganized PublicCo and Reorganized PrivateCo (the "Trademark License Agreement").

6.3 License to Reorganized PrivateCo. To the extent the provision or receipt of the applicable Services requires the use by Reorganized PrivateCo of any intellectual property owned by Capstone (or any of its Affiliates), Capstone hereby grants, and shall use commercially reasonable efforts to procure that its applicable Affiliates grant, to Reorganized PrivateCo a non-

exclusive, worldwide, non-transferrable, fully paid-up, royalty-free license, under any intellectual property owned by Capstone or its Affiliates, solely to the extent and duration required, for the purpose of Reorganized PrivateCo receiving the Services in accordance with the terms of this Agreement. For the avoidance of doubt, the foregoing license shall terminate upon termination of the applicable Service for which such licensed intellectual property is used.

6.4 Rights Reserved. Nothing contained in this Agreement shall be construed as conferring any rights by implication, estoppel or otherwise, under any intellectual property other than the assignment in Section 6.1 and the licenses expressly granted in Sections 6.2 and 6.3. Subject to the assignment and licenses granted above, each Party retains all right, title, and interest to its intellectual property.

6.5 Data Privacy. Each Party shall, and shall cause its relevant Affiliates to, comply with all applicable privacy laws in the course of performing its obligations or exercising its rights under this Agreement. If in connection with this Agreement, a Party obtains access to any personal information or personal data, as defined under any applicable privacy law, or any other data identifying or relating to an individual, including an employee, contractor or customer of the other Party, the first Party shall (a) use such personal information only for the purposes for which such personal information was obtained, to perform its obligations under this Agreement or as otherwise required by applicable privacy law, and (b) comply with all reasonable restrictions on the use, handling and disclosure of such personal information communicated by the other Party. To the extent required by applicable privacy laws, each Party hereby agrees to enter into additional agreements, including data protection agreements, to render access to and processing of such personal information as required under this Agreement lawful.

7. Indemnification.

7.1 Indemnification by Capstone. Capstone shall indemnify, defend and hold harmless Reorganized PrivateCo, its Affiliates and Authorized Persons (each, an "Reorganized PrivateCo Indemnified Party") from and against any and all claims, demands, suits, losses (including costs of defense, reasonable attorneys' fees, penalties and interest), damages, causes of action and liability of every type and character (together, "Indemnifiable Losses") which may be asserted against such Reorganized PrivateCo Indemnified Party in connection with (a) the gross negligence or willful misconduct of Capstone, its employees or contractors in the performance of the applicable Services hereunder, (b) any third-party claim that the provision or receipt of the Services provided by Capstone hereunder violates the rights of such third party or (c) any material breach of this Agreement by Capstone.

7.2 Indemnification by Reorganized PrivateCo. Reorganized PrivateCo shall indemnify, defend and hold harmless Capstone, its Affiliates and Authorized Persons (each, a "Capstone Indemnified Party") from and against any and all Indemnifiable Losses which may be asserted against such Capstone Indemnified Party in connection with (a) the gross negligence or willful misconduct of Reorganized PrivateCo, its employees or contractors in the performance of the applicable Services hereunder or (b) any material breach of this Agreement by Reorganized PrivateCo.

7.3 Limitation on Liability. Notwithstanding any other provision contained in this

Agreement, neither Party shall be liable under this Article 6 for any exemplary, special, indirect, punitive or consequential losses, damages or expenses, including business interruption or loss of profits. The Parties acknowledge that the Services to be provided hereunder are subject to, and that the remedies under this Agreement are limited by, the applicable provisions of this Article 6 and Article 7, including the limitations on representations and warranties with respect to the Services.

8. Representations and Warranties.

8.1 Representations and Warranties of Capstone. Capstone hereby represents and warrants to Reorganized PrivateCo that, as of the Effective Date:

(a) Capstone is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware;

(b) Capstone has taken all necessary limited liability company action to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder; and

(c) there is no pending or, to the knowledge of Capstone, threatened claims, actions, suits, audits, inquiries, proceedings or governmental investigations ("Litigation") against or affecting Capstone or its property, which would reasonably be expected to have a material adverse effect on Capstone's ability to perform its obligations under this Agreement.

8.2 Representations and Warranties of Reorganized PrivateCo. Reorganized PrivateCo hereby represents and warrants to Capstone that, as of the Effective Date:

(a) Reorganized PrivateCo is a corporation, duly organized, validly existing and in good standing under the laws of the State of Delaware;

(b) Reorganized PrivateCo has taken all necessary corporate action to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder; and

(c) there is no pending or, to the knowledge of Reorganized PrivateCo, threatened Litigation against or affecting Reorganized PrivateCo or its property, which would reasonably be expected to have a material adverse effect on Reorganized PrivateCo's ability to perform its obligations under this Agreement.

8.3 Disclaimer of Additional Warranties. EXCEPT WITH RESPECT TO THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS ARTICLE 8, EACH PARTY EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS OR WARRANTIES WHATSOEVER, WHETHER EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THE SERVICES, INCLUDING ANY WARRANTIES WITH RESPECT TO MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR TRADE USAGE.

9. Miscellaneous.

9.1 Notices.

(a) All notices and communications required or permitted to be given hereunder shall be in writing and shall be (i) delivered personally, (ii) sent by nationally recognized overnight courier; or (iii) delivered by electronic mail, in each case addressed to the appropriate Party at the address for such Party shown below or at such other address as such Party shall have theretofore designated by written notice delivered to the Party giving such notice:

Notices to Reorganized PrivateCo:

Capstone Distributor Support Services Corporation
2001 Ross Avenue, Suite 2800
Dallas, TX 75201
Attention: Matt Carter
Email: Matt.Carter@gs.com
with a copy to (which shall not constitute notice): Cleary Gottlieb Steen & Hamilton LLP

One Liberty Plaza
New York, NY 10006
Attention: Sean O'Neal Email: soneal@cgsh.com

Notices to Capstone:

Capstone Green Energy LLC
16640 Stagg Street
Van Nuys, CA 91406
Attention: John Juric
Email: jjuric@cgrnenergy.com
with a copy to (which shall not constitute notice): Katten Muchin Rosenman LLP

525 West Monroe Street
Chicago, Il 60661
Attention: Mark D. Wood, Esq
Email: mark.wood@katten.com

(b) Any notice given in accordance herewith shall be deemed to have been given when delivered to the addressee in person, or by courier during normal business hours, or upon actual receipt by the addressee after such notice has either been delivered to an overnight courier or deposited in the United States Mail, or upon transmission if given by electronic mail, as the case may be. The Parties hereto may change the address and email addresses to which such communications are to be addressed by giving written notice to the other Parties in the manner provided in this Section 9.1.

9.2 Force Majeure.

(a) Capstone (or any Person acting on its behalf) shall have no liability or responsibility for failure to fulfill any obligation (other than a payment obligation) under this Agreement so long as and to the extent to which the fulfillment of such obligation is prevented, frustrated, hindered or delayed as a consequence of circumstances of Force Majeure. Each Party (or such Person) shall exercise commercially reasonable efforts to minimize the effect of Force Majeure on its obligations, and the standard of care that Capstone shall provide in delivering a Service after a Force Majeure shall be substantially the same as the standard of care that Capstone provides to its Affiliates and its other business components with respect to such Service.

(b) During the period of a Force Majeure, Reorganized PrivateCo shall be entitled to seek an alternative service provider with respect to such Service(s) and shall be entitled to permanently terminate such Service(s) (and shall be relieved of the obligation to pay Service Fees for such Services(s) throughout the duration of such Force Majeure) if a Force Majeure shall continue to exist for more than 15 consecutive days.

9.3 Governing Law. All issues and questions concerning the application, construction, validity, interpretation, and enforcement of this Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware, without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Delaware.

9.4 Jurisdiction; Court Proceedings; Waiver of Jury Trial. Each Party 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 Superior Court 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 form. Service of process, summons, notice, or other document by registered mail to the address set forth in Section 9.1 shall be effective service of process for any suit, action, or other proceeding brought in any such court. Each Party hereby acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues and, therefore, each such Party irrevocably and unconditionally waives any right such Party may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

9.5 Entire Agreement. This Agreement, together with the Service Schedules attached hereto and other agreements entered into by and among the Parties on the date hereof, constitute

the entire agreement of the Parties relating to the subject matter hereof and supersede all prior Contracts, whether oral or written.

9.6 Assignment. Neither Party may assign, delegate, or otherwise transfer this Agreement or any of its rights, remedies, or obligations under this Agreement (including by forward or reverse merger, consolidation, dissolution, or operation of Law, and whether voluntarily or by a Governmental Authority's action or order) without the other Party's prior written consent, which may not be unreasonably withheld, conditioned or delayed; except that either Party may assign, delegate, or otherwise transfer this Agreement (and its rights, remedies, and obligations under this Agreement) to (a) an Affiliate or (b) a successor in connection with the sale of all or substantially all of the business to which this Agreement relates. Any purported assignment, delegation, or other transfer in contravention of this Section 9.6 is void. This Agreement binds and inures to the benefit of the Parties and their respective permitted assignees and successors.

9.7 Severability. Should any provision of this Agreement or the application thereof to any Person or circumstance be held invalid or unenforceable to any extent: (a) such provision shall be ineffective to the extent, and only to the extent, of such unenforceability or prohibition and shall be enforced to the greatest extent permitted by Law, (b) such unenforceability or prohibition in any jurisdiction shall not invalidate or render unenforceable such provision as applied (i) to other Persons or circumstances or (ii) in any other jurisdiction, and (c) such unenforceability or prohibition shall not affect or invalidate any other provision of this Agreement. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible.

9.8 Amendment. This Agreement may be amended or modified only by a written instrument that refers specifically to this Agreement and is executed by each of the Parties in accordance with Section 9.14. For purposes of this Section 9.8, "written instrument" does not include the text of e-mails or similar electronic communications.

9.9 Waiver. A Party's failure to enforce any provisions of or rights deriving from this Agreement does not waive those provisions or rights, or that Party's right to enforce those provisions or rights. Except to the extent stated otherwise in this Agreement, each Party's rights and remedies under this Agreement are cumulative and are in addition to any other rights and remedies available at Law or in equity.

9.10 Third Parties. Except as provided in Article 7 with respect to Capstone Indemnified Parties and Reorganized PrivateCo Indemnified Parties, this Agreement is for the sole benefit of the Parties and their permitted successors and assigns and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person, including any union or any employee or former employee of Capstone, or entity any legal or equitable right, benefit or remedy of any nature whatsoever, including any rights of employment for any specified period, under or by reason of this Agreement.

9.11 No Presumption. The Parties acknowledge that the provisions of this Agreement are

the language the Parties chose to express their mutual intent and hereby waive any remedy and the applicability of any Law that would require interpretation of any claimed ambiguity, omission or conflict in this Agreement against the Party that drafted it.

9.12 Schedules. The Service Schedules constitute a part of this Agreement and are incorporated into this Agreement for all purposes.

9.13 Independent Relationship. The Parties acknowledge that Capstone is performing the Services as an independent contractor; and neither Party's personnel are entitled to participate in the other Party's employee pension, health, welfare or other fringe benefit plans, except to the extent set forth on the Service Schedules. Nothing in this Agreement creates an employment, agency, joint venture or partnership relationship between the Parties or any of their personnel, or any other legal arrangement that would impose liability upon one Party for the act or failure to act of the other Party. Neither Party shall have any express or implied power to enter into any Contracts or commitments or to incur any liabilities in the name of, or on behalf of, the other Party, or to bind the other Party in any respect whatsoever. Nothing in this Agreement precludes Reorganized PrivateCo from retaining the services of any Person or from independently developing or acquiring any materials.

9.14 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if both signatory Parties had signed the same document. All counterparts shall be construed together and shall constitute one and the same instrument. Signatures to this Agreement transmitted by electronic mail in "portable document format" (".pdf"), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document will have the same effect as physical delivery of the paper document bearing the original signature.

[*Signature Pages Follow*]

The Parties have caused this Services Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

CAPSTONE GREEN ENERGY LLC
a Delaware limited liability company

By: /s/ John Juric
Name: John Juric
Title: Executive Vice President, Chief Financial Officer and Secretary

CAPSTONE DISTRIBUTOR SUPPORT SERVICES CORPORATION (F/K/A CAPSTONE GREEN ENERGY CORPORATION)

By: /s/ Matt Carter
Name: Matt Carter
Title: Director

[*Signature Page to Services Agreement*]

SCHEDULE A

ONGOING SERVICES

1. FINANCE AND OPERATIONS SERVICES

Item	Service Area	Service Description
A1.01	Accounts Payable	● Capstone will effectively act as an outsourced accounts payable function to Reorganized PrivateCo and carry out all accounts payable activities including receiving, recording, tracking, validating, and paying vendor invoices. ● Capstone will carry out these activities using its systems, processes, and people associated with its own day-to-day accounts payable function. ● Capstone will complete vendor payments relating to Reorganized PrivateCo from Reorganized PrivateCo bank accounts or will receive reimbursement for vendor payments when it invoices Reorganized PrivateCo for the Service Fees.
A1.02	Accounts Receivable and Billing	● Capstone will manage all billing related activities including calculating, reviewing, producing and generating invoices in relation to the services that Reorganized PrivateCo provides, including any fees for the provision of distributor support services such as those described in section 3.1.7 of Capstone's form of distributor agreement. ● Capstone will effectively act as an outsourced accounts receivable function to Reorganized PrivateCo and carry out all accounts receivable activities including calculating, producing, issuing, reconciling and collecting customer/distributor invoices. ● For customers/distributors who have contracted directly with Reorganized PrivateCo, Capstone will carry out collection activities but such customers/distributors will be directed to pay funds directly to bank accounts owned and under the control of Reorganized PrivateCo. This relates to any amounts which Reorganized PrivateCo is entitled to receive directly from customer/distributors as described in Section 3.1.7 of Capstone's form of distributor agreement. ● For customers/distributors who have not contracted directly with Reorganized PrivateCo, Capstone will carry out collection activities with respect to any fees for the provision of distributor support services and such customers/distributors will pay funds on account of such services to Capstone. Capstone will promptly remit such funds to Reorganized PrivateCo following receipt from such customers/distributor, or off-set such funds against Service Fees, as agreed between Capstone and Reorganized PrivateCo.
A1.03	Banking and Treasury	● Capstone will support Reorganized PrivateCo with establishing, monitoring and managing bank accounts that are separate from Capstone bank accounts.
A1.04	Inventory, Consumables, Office Supplies, and Printing	● Capstone will carry out the ordering of inventory, consumables, office supplies, and printing, as reasonably requested by Reorganized PrivateCo, following the processes for vendor payments noted under A1.01 Accounts Payable.
A1.05	Accounting	● Capstone will carry out accounting and finance related activities, including maintaining the companies accounting records, providing general bookkeeping services, reconciling and maintaining financial records. ● Access to Reorganized PrivateCo accounting records that are maintained by Capstone will be available and information will be provided as soon as reasonably practicable following request of Reorganized PrivateCo employees, leadership, officers or shareholders.
A1.06	Books and Records	● Capstone will hold certain books and records including historical and future records relating to Reorganized PrivateCo, which shall not include organizational documents and capitalization records of Reorganized PrivateCo. ● Access to Reorganized PrivateCo books and records that are maintained by Capstone will be available and information will be provided as soon as reasonably practicable following request of Reorganized PrivateCo employees, leadership, officers or shareholders.

A1.07	Fixed Assets, Physical Goods, Inventory or other Stock and Tangible Assets	● Capstone will provide storage and security for fixed assets, physical goods, inventory, stock or other tangible fixed assets owned by Reorganized PrivateCo. ● Reorganized PrivateCo may request access to and use of assets with verbal or written notice.
A1.08	Payroll, Employee Benefits Administration and Employee Expense Reimbursement	● Capstone will carry out all payroll and employee benefits administration related tasks for Reorganized PrivateCo employees. ● Capstone will seek to establish a sub-account structure under its own payroll processing system and maintain this account for Reorganized PrivateCo. ● Capstone will seek to establish sub-accounts with the employee benefits administrators and maintain such accounts for Reorganized PrivateCo. ● Capstone will manage review, approval and reimbursement of Reorganized PrivateCo employee expenses. Capstone will treat Reorganized PrivateCo employees as having the same expense policies and rules and Capstone has for its employees.
A1.9	Distributor Training	● Capstone will develop, deliver, and maintain distributor training records, materials, courses and/or any other training or technical materials for distributors or customers in a manner consistent with Capstone's business activities. ● Reorganized PrivateCo will support Capstone and distributors with delivery of these activities and services in a non-technical manner. This may include document design, structuring, and formatting, or other non-technical development of training and/or support services.
A1.10	Distributor Support	● Capstone will provide support services to distributors, including technical support, sales support and/or any other forms of support requested from distributors to Reorganized PrivateCo. ● Reorganized PrivateCo will support Capstone and distributors with delivery of these activities and services in a non-technical manner. This may include document design, structuring, and formatting, or other non-technical development of training and/or support services.
A1.11	Trade Shows and Events	● Reorganized PrivateCo will carry out activities relating to trade shows, events or other promotional activities. Capstone will provide reasonably requested support and personnel for delivering and attending such events.
A1.12	Website	● Capstone will be responsible for hosting, management and maintenance of the website and Reorganized PrivateCo employees will have access to update, develop, design and generally manage the Capstone website for the purposes of carrying out its marketing, promotional and brand development activities.
A1.13	Marketing Activities, Events and Marketing Materials	● Capstone will be responsible for the development of product catalogues but will work with Reorganized PrivateCo employees in respect of design. ● Capstone will support Reorganized PrivateCo through providing reasonably requested personnel, access to resources, systems and other general business tools so that Reorganized PrivateCo can carry out general marketing and promotional activities and fulfil its obligations to distributors generally. ● Reorganized PrivateCo will provide marketing, branding and promotional services and expertise for the benefit of the Capstone brand, Capstone, and the distributor network. Reorganized PrivateCo will support with the planning, administration, development and delivery or marketing events, trade events and other promotional activities and Capstone will support Reorganized PrivateCo with such activities, including the management and payment of vendors associated with such activities from Reorganized PrivateCo funds.
A1.14	Distributor Reimbursement Charges	● Capstone will calculate, validate and administer distributor reimbursement charges for all distributors and may add any amounts paid by Capstone in respect of these charges to the Service Fee.
A1.15	Intellectual Property, Trademarks and Brand Names	● Reorganized PrivateCo will hold the trademarks and logos for the Capstone brand and Reorganized PublicCo will pay $100,000.00 per annum for a limited license to the Capstone Trademarks, as more fully described in the Trademark License Agreement.
A1.16	Customer Data Management and Customer Relationship Management	● Capstone will provide reasonably requested access to Reorganized PrivateCo to customer relationship management systems, records, tools, and databases. ● Reorganized PrivateCo will hold the license for the Customer Relationship Management Platform, Salesforce, and use this for managing leads, opportunities and general customer data. Further detail is provide in Schedule A item A2.02.

A1.17	Vendor Management	● Capstone will maintain vendor records in its accounting and enterprise management system(s) on behalf of Reorganized PrivateCo and its vendors.
A1.18	Mail Processing, Freight and Shipping	● Reorganized PrivateCo mail will be delivered to Capstone's office address and Capstone will receive inbound mail addressed to Reorganized PrivateCo. Mail items received by Capstone for Reorganized PrivateCo will be passed physically or digitally to Reorganized PrivateCo employees as soon as reasonably practicable after receipt. ● Capstone will support Reorganized PrivateCo with outbound shipping and freight requests.

2. IT AND SOFTWARE

Item	Service Area	Service Description
A2.01	IT and Office Technology	● Capstone will provide access and use of office IT equipment including printers, projectors, label machines, telephony devices, charging docks and stations, televisions, computer displays and other general office IT hardware. ● Capstone will be responsible for maintaining and replenishing all such equipment to the extent reasonably required, except in the event such equipment is for the exclusive use of Reorganized PrivateCo.
A2.02	Software Licenses	● Capstone will hold and pay for master licenses for the following software tools and provide access to Reorganized PrivateCo and its employees as needed: o Canva o Jack Nadel International o Extreme Wraps o Equisolve o Resource 4 Signs o CoForce o UPrinting o Nashbox Studios o Reaction Concepts o Xibeo o US Translations o Microsoft Office This list may be refreshed from time to time and as Capstone acquires new software licenses that Reorganized PrivateCo employees need access to, access will be provided. ● Reorganized PrivateCo will hold and pay for master licenses for the following software tools and provide access to Capstone and its employees as needed: o Salesforce o Web Chat (eMatrix) o Equisolve o Adobe o Pandadoc
A2.03	IT Support	● Capstone will provide general IT support services to Reorganized PrivateCo in the same manner that it provides to its own employees. Reorganized PrivateCo employees will follow the same processes for requesting IT support as Capstone employees. This will include support for IT assets that are owned by Reorganized PrivateCo.
A2.04	Networking, Network Security and Shared Networks	● Capstone will have overall ownership and responsibility for the IT and network infrastructure and network used in operating the Capstone and Reorganized PrivateCo businesses. Capstone will maintain IT security for all IT devices including external and local network security such as VLAN, inbound firewalls, antivirus, virus detection and IDS/IPS.
A2.05	Mobile Phones	● Capstone will provide mobile phones to applicable Reorganized PrivateCo employees in a manner consistent with that which Capstone provides mobile phones to its own employees.

SCHEDULE B

TRANSITION SERVICES

Item	Service Area	Service Description
B1.01	Banking and Treasury	● Capstone will manage the reconciliation and transfer of customer and distributor funds received into the existing pre-bankruptcy Reorganized PrivateCo bank accounts to the relevant new Capstone or new Reorganized PrivateCo bank accounts. ● Receipts relating to Distributor Support Services (DSS) fees from the selected distributors will be paid directly to a new Reorganized PrivateCo bank account. ● Capstone will instruct distributors, customers and other parties making payment into the existing pre-bankruptcy Reorganized PrivateCo bank accounts to redirect funds. ● Capstone will complete the closure of the existing pre-bankruptcy Reorganized PrivateCo bank accounts six months from the Plan's effective date.
B1.02	Payroll, Employee Benefits Administration and Employee Expense Reimbursement	● Capstone will provide all payroll services to Reorganized PrivateCo staff through the existing payroll structure until such time that a new payroll account can be created and a separate system is created by Reorganized PrivateCo. ● Capstone will manage and maintain benefits packages for Reorganized PrivateCo employees under existing structures until such time that separate systems are created by Reorganized PrivateCo.

SCHEDULE C

PREMISES AND PROPERTY SERVICES

Item	Service Area	Service Description
C1.01	Physical Office Space	● Capstone will provide access to office space for all Reorganized PrivateCo employees, officers, shareholders, and other affiliates and will provide a minimum of three furnished office desks. ● Capstone is responsible for all maintenance, cleaning and security of the premises. ● Access to office space will be consistent with that provided to Capstone's similarly situated employees.
C1.02	Building and Security	● Capstone will manage all building security related matters. ● Reorganized PrivateCo employees, officers, shareholders and other affiliates will be granted reasonably requested access the Capstone office and any other locations where Reorganized PrivateCo employees carry out their business.
C1.03	Premises Insurance	● Capstone will maintain building and contents insurance for the premises and contents.
C1.04	Other Insurance	● Capstone will assist Reorganized PrivateCo in procuring and maintaining the necessary insurance policies for its business and employees.

EXHIBIT 10.4

Trademark License Agreement

This Trademark License Agreement, dated as of December 7, 2023 (such date, the "Effective Date", and such agreement, this "Agreement"), is entered into by and between Capstone Distributor Support Services Corporation, a Delaware corporation, formerly known as Capstone Green Energy Corporation ("Licensor") and Capstone Green Energy Holdings, Inc., a Delaware corporation ("Licensee"). Licensor and Licensee are referred to herein individually as a "Party" and collectively as the "Parties".

WHEREAS, Licensor, Capstone Turbine Financial Services, LLC, and Capstone Turbine International, Inc. have jointly proposed that certain Joint Prepackaged Chapter 11 Plan of Reorganization of Capstone Green Energy Corporation and Its Debtor Affiliates, filed on September 28, 2023, which contemplates the reorganization and restructuring of the aforementioned parties (the "Plan"); unless otherwise defined in this Agreement, capitalized terms used in this Agreement have the meanings set forth in the Plan;

WHEREAS, prior to the implementation of the Plan, Licensor has been operating the business of providing customized microgrid solutions and on-site energy technology systems, including microturbine energy systems and distributor support services, and, following the implementation of the Plan, as of the Effective Date, Licensee and its Affiliates (other than Licensor) will operate such business (other than the Distributor Support Services (as defined in the Plan) which will be operated by Licensor) (such business to be operated by Licensee and its Affiliates (other than Licensor), the "Business");

WHEREAS, Licensor owns all right, title, and interest in and to the Capstone Trademarks (as defined herein);

WHEREAS, Licensee wishes to use the Capstone Trademarks in connection with the Business; and

WHEREAS, pursuant to the Plan, Licensor is required to enter into the License Agreement, and this Agreement satisfies such requirement.

NOW, THEREFORE, in consideration of the foregoing and the mutual warranties, covenants and agreements set forth herein and in the Plan, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I – DEFINITIONS

Section 1.1 Definitions.

(a) "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 first Person.

(b) "Capstone Trademarks" means the Trademarks set forth in Schedule 1 of this Agreement.

(c) "Control" means possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a Person (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

(d) "Person" means any natural person, corporation, general or limited partnership, company, limited liability company, joint venture, limited liability partnership, firm, trust, estate, governmental authority or other legal person or entity, and shall be broadly interpreted.

(e) "Trademark" means trademarks, service marks, logos, trade dress, domain names, social media accounts and handles, corporate names, and trade names.

ARTICLE II – GRANT OF LICENSE, ROYALTIES AND OWNERSHIP

Section 2.1 License to Capstone Trademarks.

(a) Subject to the terms and conditions of this Agreement, including payment of the royalty set forth in Section 2.1(c), Licensor hereby grants to Licensee during the Term a non-exclusive, royalty-bearing (as set forth in Section 2.1(c)), non-transferable, non-sublicensable (except as provided in Section 2.1(b)), worldwide, perpetual (subject to Section 5.2), irrevocable (subject to Section 5.2), limited license, under all of Licensor's right, title and interest in and to the Capstone Trademarks, to use the Capstone Trademarks (in accordance with the terms and conditions herein) solely in connection with the Business.

(b) The license granted in Section 2.1(a) includes the right to grant non-sublicensable sublicenses during the Term within the scope of such license solely to any Affiliate of Licensor, so long as such Person remains an Affiliate of Licensor, for such Affiliate to use the Capstone Trademarks (in accordance with the terms and conditions herein) solely in connection with the Business; provided that (i) any such sublicense shall be in writing and shall include all of the restrictions and obligations imposed on Licensee in this Agreement and any breach of such terms by Licensee's sublicensees shall be deemed a breach of this Agreement by Licensee and (ii) Licensee may sublicense the trademark "Capstone Energy Finance" (Reg. No. 5219152) solely to Capstone Energy Finance LLC.

(c) In consideration for the license granted in Section 2.1(a), Licensee shall pay to Licensor during the Term an annual royalty of $100,000.00, to be paid to Licensor's designated bank account communicated by Licensor to Licensee (the "Royalty Payment"). The first Royalty Payment shall be made to Licensor within the first calendar month following the first anniversary of the Effective Date (i.e., within the thirteenth (13th) month after the Effective Date) and thereafter within the first calendar month following each next anniversary of the Effective Date. Each of the Parties and its respective Affiliates is responsible for all taxes (including net income, gross receipts, franchise and property taxes and any other taxes) imposed on such Party or its Affiliates under applicable Laws and arising as a result of or in connection with this Agreement or the transactions contemplated by this Agreement.

Section 2.2 Ownership.

(a) Licensee acknowledges that Licensor is the sole and exclusive owner of the Capstone Trademarks and Licensor retains all right, title and interest (including all goodwill) associated therewith. Licensee shall do all things and execute any documents requested by Licensor from time to time to confirm Licensor's ownership of its rights in and to the Capstone Trademarks.

(b) Licensee shall not gain any right, title or interest in the Capstone Trademarks by virtue of this limited license or any use thereby. All goodwill associated with the use of the Capstone Trademarks by Licensee and its sublicensees shall inure to the sole benefit of Licensor.

Section 2.3 No Inconsistent Action. Licensee shall not:

(a) take, maintain or direct any action that is inconsistent with Licensor's ownership of, or interferes with any of Licensor's rights in or to, the Capstone Trademarks;

(b) assert any claim of right in (except for the limited rights expressly granted herein) or ownership of the Capstone Trademarks or any confusingly similar Trademark anywhere in the world or contest the validity of the Capstone Trademarks or challenge Licensor's right, title or

interest in, or ownership of, the Capstone Trademarks, its registrations therefor or Licensor's right to license the same;

(c) interfere with, oppose or challenge, directly or indirectly, any of Licensor's applications for or registrations of the Capstone Trademarks or any Trademarks that include the Capstone Trademarks or interfere with, oppose or challenge the exploitation of the Capstone Trademarks by or on behalf of Licensor;

(d) apply for, or participate with or cause any other Person to apply for the registration of, any Trademark which (i) consists in whole or in part of the Capstone Trademarks or (ii) is confusingly similar to the Capstone Trademarks; or

(e) take any action that would have an adverse effect on the rights of Licensor in the Capstone Trademarks, or that would diminish or dilute the value, reputation or goodwill of the Capstone Trademarks or that would otherwise denigrate the image and reputation of Licensor or in any other way diminish or adversely affect the validity or enforceability of the Capstone Trademarks or Licensor's rights therein; provided that,

(f) in the event that Licensee or any of its Affiliates (other than Licensor) nevertheless registers, files or prosecutes any application or other filing for any Trademarks incorporating or confusingly similar to a Capstone Trademarks, in Licensee's (or its Affiliates' (other than Licensor's)) own name, Licensee hereby assigns, and shall cause its applicable Affiliates (other than Licensor) to assign, such Trademark to Licensor for no additional consideration.

ARTICLE III – QUALITY CONTROL

Section 3.1 Quality Control. Licensee is familiar with and recognizes Licensor's reputation as a provider of high quality products and services, and the reputation of Licensor's offerings in connection with the Capstone Trademarks. Licensee shall maintain the same (or higher) standards of quality for its products and services. At Licensor's request, Licensee shall promptly cease any use of the Capstone Trademarks that Licensor believes is not in compliance with this Agreement and take any corrective measures reasonably requested by Licensor. In the event that Licensor becomes aware of a failure to maintain or meet such quality standards, Licensor shall notify Licensee in writing and Licensee shall have thirty (30) days to cure such failure. If Licensee fails to meet the required quality standards to Licensor's satisfaction within such period, Licensor may immediately suspend Licensee's right to use the Capstone Trademarks in connection with the specific use that does not meet the quality standards, and if Licensee fails to meet the quality standards to Licensor's satisfaction within the following sixty (60) day period, such failure shall be deemed a material breach for purposes of Section 5.2(b) of this Agreement.

Section 3.2 Licensee's Obligations of Compliance and Use.

(a) Licensee shall use and display the Capstone Trademarks in the same form, font, color and style as Licensor's own use and display thereof, or in a manner substantially consistent with Licensor's use and display during the twelve (12) month period prior to the Effective Date, or as otherwise approved by Licensor in writing in advance. Licensee shall not use or display the Capstone Trademarks in any manner that would reasonably be expected to (i) materially harm, degrade, disparage, tarnish, dilute or adversely affect the validity or enforceability of any Capstone Trademark, or (ii) imply that the Capstone Trademarks are owned by Licensee.

(b) All uses of the Capstone Trademarks by Licensee shall include the designation "®", to the extent legally required or reasonably necessary for the enforcement of Trademark rights or as specifically directed otherwise by Licensor in writing. Licensor shall have the right to revise the above designation requirements upon written notice to Licensee from time to time.

(c) From time to time, at Licensor's request and for the purpose of verifying compliance with this Article III of this Agreement, Licensee shall provide samples of Licensee's use of public-facing materials bearing the Capstone Trademarks (including samples of advertising or marketing material), and any other further information reasonably requested by Licensor for that purpose.

ARTICLE IV – INTELLECTUAL PROPERTY PROTECTION

Section 4.1 Notice of Infringement. Licensee shall promptly notify Licensor in writing of any infringement of the Capstone Trademarks by others which come to Licensee's attention. Licensor shall have the sole right, but not the obligation, to determine what, if any, actions shall be taken on account of any such infringement, and, at Licensor's sole cost and expense, Licensee shall reasonably cooperate in connection therewith.

Section 4.2 Equitable Relief. Licensee acknowledges that the Capstone Trademarks and the goodwill associated therewith possess special, unique, and extraordinary characteristics, which make difficult the assessment of monetary damages which Licensor would sustain by Licensee's unauthorized use. Licensee recognizes that Licensor would suffer irreparable injury by such unauthorized use and agrees that injunctive and other equitable relief is appropriate in the event of a breach of this Agreement by Licensee. Such remedy shall not be exclusive of any other remedies available to Licensor, nor shall it be deemed an election of remedies by Licensor.

ARTICLE V – TERM; TERMINATION

Section 5.1 Term. This Agreement shall commence on the Effective Date and shall continue in effect unless earlier terminated pursuant to **Error! Reference source not found.** (the "Term").

Section 5.2 Termination. This Agreement may be terminated solely (a) upon the written agreement of Licensor and Licensee, (b) by Licensor, if Licensee materially breaches this Agreement and does not cure such breach within thirty (30) days of receipt of notice from Licensor of such breach or (c) by Licensee, upon written notice to Licensor. If Licensor desires to assign any of its right, title and interest in and to the Capstone Trademarks to a third party that is not an Affiliate of Licensor, Licensor may do so solely with Licensee's consent, not to be unreasonably withheld, delayed or conditioned (provided that, for the avoidance of doubt, Licensee's withholding of consent for any assignment to a then competitor of Licensee would not be unreasonable). If Licensor does not use any of the Capstone Trademarks for a period of six (6) consecutive months, then all of Licensor's right, title and interest in and to the Capstone Trademarks shall be promptly assigned to Licensee for no further consideration (provided that, for purposes of this Section 5.2, "use" of the Capstone Trademarks will mean conducting the Distributor Support Services business, using the name "Capstone", including as a legal entity name, trade name, corporate name, "d/b/a" or business name (even if none of the Capstone Trademarks are used on any specific products or services), or using the name "Capstone" in any marketing related to such business).

Section 5.3 Effect of Termination.

(a) Upon any expiration or termination of this Agreement, Licensee shall immediately cease all use of the Capstone Trademarks; provided that nothing in this Agreement shall prevent or restrict Licensee from making any use of the Capstone Trademarks that would constitute "fair use" or otherwise not be prohibited under Applicable Law if such use were made by a third party.

(b) Survival. Upon any expiration or termination of this Agreement, **Error! Reference source not found.**, **Error! Reference source not found.**, **Error! Reference source not found.**, Article VII and Article VII shall survive and continue in full force and effect.

ARTICLE VI – INDEMNIFICATION

Section 6.1 Indemnity. Licensee shall defend, indemnify and hold harmless Licensor, its Affiliates and each of its and their respective directors, officers, employees and agents (each, a "Licensor Indemnified Party") from and against any and all losses, damages and liabilities (including attorneys' fees) ("Losses") to the extent resulting from or arising out of (a) any breach of this Agreement by Licensee or (b) use of the Capstone Trademarks (collectively, the "Licensed Rights") by Licensee, except to the extent such Losses result from any claim of Trademark infringement arising from Licensee's use of the Licensed Rights as authorized by this Agreement, provided that such use is in the same jurisdiction in which, and in connection with the same goods or services in connection with which, Licensor used such Licensed Rights prior to the Effective Date.

Section 6.2 Indemnity Procedure. Licensor shall promptly provide Licensee with timely written notice of any and all claims that are within the scope of Licensee's indemnity hereunder; provided that any failure to give such notice shall not affect the rights of Licensor under Section 6.1, except to the extent that such failure actually prejudices Licensee. Licensee shall not settle or compromise any claims against Licensor without Licensor's prior written consent (which consent shall not be unreasonably withheld or delayed), unless such settlement or compromise: (i) includes an unconditional release of Licensor from all liability arising out of such claims; (ii) is solely monetary in nature; and (iii) does not include remedial or equitable measures or relief (including any injunction), a statement as to, or an admission of, fault, culpability or failure to act by or on behalf of, Licensor or otherwise materially adversely affect Licensor. Licensor shall furnish Licensee with such assistance as Licensee shall reasonably request in connection with the defense, settlement and/or discharge of any and all such claims.

ARTICLE VII – GENERAL

Section 7.1 Amendments; Waiver. This Agreement may not be amended, altered or modified except by written instrument executed by the Parties, which may be entered into at any time. Any agreement on the part of the Parties to waive any term or provision of this Agreement shall be valid only if set forth in an instrument in writing signed on behalf of the Party or Parties against whom the waiver is to be effective. No such waiver shall constitute a waiver of, or estoppel with respect to, any subsequent or other inaccuracy, breach or failure to strictly comply with the provisions of this Agreement. No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

Section 7.2 Entire Agreement. This Agreement and the Plan constitute the entire agreement of the Parties and supersede all prior agreements and understandings, discussions, negotiations and communications, written and oral, between the Parties with respect to the subject matter hereof.

Section 7.3 Interpretation.

(a) Unless the context otherwise requires, when a reference is made in this Agreement to: (i) Schedules, such reference shall be to a Schedule to this Agreement; (ii) "paragraphs", such reference shall be deemed references to separate paragraphs of the section or subsection in which the reference occurs; (iii) any contract (including this Agreement) or law shall be deemed references to such contract or law as amended, supplemented or modified from time to time in accordance with its terms and the terms hereof, as applicable, and in effect at any given time (and, in the case of any law, to any successor provisions thereof) so long as, in the case of any contract, such amendment, supplement and modification has been made available to Licensor or Licensee, as applicable; (iv) any Person, such reference shall be deemed references to such Person's successors

and permitted assigns; and (v) any law shall be deemed references to all rules and regulations promulgated thereunder.

(b) The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(c) Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." "Writing," "written" and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. "Or" shall be deemed to be used in the inclusive sense of "and/or."

(d) Any reference to "days" means calendar days unless business days are expressly specified. If any action under this Agreement is required to be done or taken on a day that is not a business day, then such action shall be required to be done or taken not on such day but on the first succeeding business day thereafter. The phrases "the date of this Agreement," "the date hereof" and terms of similar import, unless the context otherwise requires, shall be deemed to refer to the date set forth in the first paragraph of this Agreement.

Section 7.4 Severability. Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

Section 7.5 Notice. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail of a .pdf document (with confirmation of transmission) if sent prior to 8:00 p.m. in the place of receipt on a business day, and on the next business day if sent after 8:00 p.m. in the place of receipt on a business day or at any time on a date that is not a business day; or (d) on the third (3rd) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 7.5):

if to Licensor:

Capstone Distributor Support Services Corp.
2001 Ross Avenue, Suite 2800
Dallas, TX 75201
Attention: Matt Carter
Email: matt.carter@gs.com

with a copy to (which shall not constitute notice):

Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, NY 10006
Attention: Sean O'Neal
Email: soneal@cgsh.com

if to Licensee:

Capstone Green Energy Holdings, Inc.
16640 Stagg Street
Van Nuys, CA 91406
Attention: John Juric, Chief Financial Officer
Email: JJuric@cgrnenergy.com

with a copy to (which shall not constitute notice):

Katten Muchin Rosenman LLP
525 W. Monroe Street
Chicago, IL 60661-3693
Attention: Mark D. Wood
Email: mark.wood@katten.com

or such other address as may be specified by a Party pursuant to notice given to the other Party in accordance with the provisions of this paragraph.

Section 7.6 Binding Effect; Persons Benefitting; No Assignment. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns and any transferee of all or substantially all of the assets of such Party and its subsidiaries taken as a whole. No provision of this Agreement is intended or shall be construed to confer upon any entity or Person other than the Parties and their respective successors and permitted assigns any right, remedy or claim under or by reason of this Agreement or any part hereof. This Agreement may not be assigned by (a) Licensee without the prior written consent of Licensor or (b) Licensor (except to Affiliates of Licensor) without the prior written consent of Licensee, not to be unreasonably withheld, delayed or conditioned (provided that, for the avoidance of doubt, Licensee's withholding of consent for any assignment to a then competitor of Licensee would not be unreasonable).

Section 7.7 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement, it being understood that all of the Parties need not sign the same counterpart. Delivery of an executed signature page of this Agreement by electronic image scan transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 7.8 Governing Law; Consent to Jurisdiction.

(a) This Agreement shall be governed in all respects, including as to validity, interpretation and effect, by the Laws of the State of New York, without giving effect to its principles or rules of conflict of laws, to the extent such principles or rules are not mandatorily applicable by statute and would permit or require the application of the Laws of another jurisdiction.

(b) Each of the Parties hereto submits to the exclusive jurisdiction of any state or federal court sitting in the Borough of Manhattan in the City of New York, in any suit, claim, demand, action, proceeding or cause of action arising out of or relating to this Agreement, agrees that all claims under any theory of liability in respect of such suit, claim, demand, action, proceeding or cause of action may and shall be heard and determined in any such court and agrees not to bring any suit, claim, demand, action, proceeding or cause of action arising out of or relating to this Agreement in any other court. Each Party irrevocably and unconditionally waives any defense of inconvenient forum or any other objection to the maintenance of any suit, claim, demand, action, proceeding or cause of action so brought and waives any bond, surety or other security that might be required of any other Party with respect thereto. Each Party agrees that service of summons and complaint or any other process that might be served in any suit, claim, demand, action, proceeding or cause of action may be made on such Party, and shall be effective service of process for any such suit, claim, demand, action, proceeding or cause of action, by sending or delivering a copy of any such process to the Party

to be served at the address of the Party and in the manner provided for the giving of notices in Section 7.5. Nothing in this Section 7.8, however, shall affect the right of any Party to serve legal process in any other manner permitted by Law. Each Party agrees that a final, non-appealable judgment in any suit, claim, demand, action, proceeding or cause of action so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner provided by Law.

Section 7.9 Waiver of Jury Trial. Each Party hereby waives, to the fullest extent permitted by Law, any right to trial by jury of any suit, claim, demand, action, proceeding or cause of action (a) arising under this Agreement or (b) in any way connected with or related or incidental to the dealings of the Parties in respect of this Agreement or any of the Transactions, in each case whether now existing or hereafter arising, and whether in contract, tort, equity, or otherwise. The Parties each hereby agree and consent that any such suit, claim, demand, action, proceeding or cause of action shall be decided by court trial without a jury and that the Parties to this Agreement may file an original counterpart of a copy of this Agreement with any court as written evidence of the consent of the Parties hereto to the waiver of their right to trial by jury.

[Remainder of page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, the Parties have entered into this Agreement or have caused this Agreement to be executed as of the Effective Date by their respective officers thereunto duly authorized.

CAPSTONE DISTRIBUTOR SUPPORT SERVICES CORPORATION

By: /s/ Matt Carter_________________
Name: Matt Carter
Title: Director

CAPSTONE GREEN ENERGY HOLDINGS, INC.

By: /s/ John Juric_________________
Name: John Juric
Title: Chief Financial Officer (Principal Financial Officer)
Treasurer and Secretary

[*Signature Page to Trademark License Agreement*]

SCHEDULE 1

Trademarks

REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT (the "Agreement") is dated as of this 7th day of December 2023, by and among Capstone Green Energy LLC, a Delaware limited liability company (the "Company"), and the persons identified on the signature pages hereto (collectively, the "Holders," and each individually, the "Holder").

WHEREAS, the parties to this Agreement are simultaneously entering into a certain Limited Liability Company Agreement, dated as of the date hereof; and

WHEREAS, the Holders will obtain ownership of the Company's Preferred Units (as defined below) pursuant to the Joint Prepackaged Chapter 11 Plan of Reorganization of Capstone Green Energy Corporation and its Debtor Affiliates.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant and agree with each other as follows:

1. **Certain Definitions**.

As used in this Agreement, the following terms shall have the following respective meanings:

"Adverse Disclosure" shall mean any public disclosure of material non-public information, which disclosure, in the good faith judgment of the Chairman, Chief Executive Officer, President, Secretary or Chief Financial Officer of the Company, after consultation with counsel to the Company, (i) would be required to be made in any Registration Statement or prospectus in order for the applicable Registration Statement or prospectus not to contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein (in the case of any prospectus and any preliminary prospectus, in the light of the circumstances under which they were made) not misleading, (ii) would not be required to be made at such time if the Registration Statement were not being filed and (iii) the Company has a bona fide business purpose for not making such information public.

"Commission" shall mean the United States Securities and Exchange Commission, or any other federal agency administering the Securities Act and the Exchange Act at the time.

"Common Units" shall mean the Common Units of the Company and any other common equity securities issued by the Company, and any other securities issued or issuable with respect thereto (whether by way of a dividend or split or in exchange for or upon conversion of such units or otherwise in connection with a combination of units, recapitalization, merger, consolidation or other corporate reorganization).

"Convertible Securities" means all then outstanding options, warrants, rights, convertible notes, Preferred Units or other securities of the Company directly or indirectly convertible into or exercisable for Common Units.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, or any similar successor federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time.

"Person" shall mean an individual, a corporation, a partnership, a joint venture, a trust, an unincorporated organization, a limited liability company or partnership, a government and any agency or political subdivision thereof.

"Preferred Units" shall mean the Series A Preferred Units of the Company.

"Registrable Securities" shall mean (i) any Common Units held by the Holders at any time and (ii) any Common Units issued or issuable pursuant to the conversion of (x) the Preferred Units or (y) any other Convertible Securities held by the Holders at any time and (iv) any other securities issued or issuable with respect to any such units described in clauses (i) and (ii) above by way of a dividend or split or in connection with a combination of units, recapitalization, merger, consolidation or other reorganization (including any reorganization in connection with the Company's initial public offering or listing of its securities on a securities exchange) (it being understood that, for purposes of this Agreement, a Person will be deemed to be a holder of Registrable Securities whenever such Person has the right to then acquire or obtain from the Company any Registrable Securities, whether or not such acquisition has actually been effected). As to any particular Registrable Securities, such securities shall cease to be Registrable Securities when (x) they have been sold or distributed to the public pursuant to an offering registered under the Securities Act or sold to the public through a broker, dealer or market maker in compliance with Rule 144 or (y) such securities have been repurchased by the Company or any of its subsidiaries or Affiliates.

"Securities Act" shall mean the Securities Act of 1933, as amended, or any similar successor federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time.

2. **Demand Registration**.

(a) Subject to the terms and conditions of this Agreement, at any time after the initial public offering or listing on a securities exchange of the Company's Common Units pursuant to an effective registration under the Securities Act, the holders of a majority of the Registrable Securities may notify the Company that they intend to offer or cause to be offered for public sale all or any portion of their Registrable Securities in the manner specified in such request. Upon receipt of such request, the Company shall promptly deliver notice of such request to all Holders holding Registrable Securities who shall then have thirty (30) days to notify the Company in writing of their desire to be included in such registration. If the request for registration contemplates an underwritten public offering, the Company shall state such in the written notice and in such event the right of any Person to participate in such registration shall be conditioned upon such Person's participation in such underwritten public offering and the inclusion of such Person's Registrable Securities in the underwritten public offering to the extent provided herein. The Company will use its reasonable best efforts to file a registration to effect (but in any event no later than thirty (30) days after such request) the registration of all Registrable Securities whose holders request participation in such registration under the Securities Act, but only to the extent provided for in this Agreement. Notwithstanding anything to the contrary contained herein, no request may be made under this Section 2 within ninety (90) days after the effective date of a registration statement filed by the Company; provided, that the Company shall have complied with its obligations in respect of Registrable Securities as to which registration shall have been requested. Each Holder of Registrable Securities agrees that such Holder shall treat as confidential the receipt of the notice of Demand Registration and shall not disclose or use the information contained in such notice of Demand Registration without the prior written consent of the Company until such time as the information contained therein is or becomes available to the public generally.

(b) If a requested registration involves an underwritten public offering and the managing underwriter of such offering determines in good faith that the number of securities sought to be offered should be limited due to market conditions, then the number of securities to be included in such underwritten public offering shall be reduced to a number deemed satisfactory by such managing underwriter; *provided*, that the securities to be excluded shall be determined in the following order of priority: (i) persons not having any contractual or other right to include such securities in the registration statement, (ii) securities held by any other Persons (other than the holders of Registrable Securities) having a contractual, incidental "piggy back" right to include such securities in the registration statement, (iii) securities to be registered by the Company pursuant to such registration statement, (iv) Registrable Securities of holders who did not make the original request for registration and, if necessary, (v) Registrable Securities of holders who requested such registration pursuant to Section 2(a). If there is a reduction of the number of Registrable Securities pursuant to clauses (iv) or (v), such reduction shall be made on a pro rata basis (based upon the aggregate number of Registrable Securities held by such holders).

(c) With respect to a request for registration pursuant to Section 2(a) which is for an underwritten public offering, the managing underwriter shall be chosen by the holders of a majority of the Registrable Securities to be sold in such offering, subject to the approval of the Company (which approval will not be unreasonably withheld or delayed). The Company may not cause any other registration of securities for sale for its own account (other than a registration effected solely to implement an employee benefit plan or a transaction to which Rule 145 of the Securities Act is applicable) to become effective within one hundred twenty (120) days following the effective date of any registration required pursuant to this Section 2.

3. **Form S-3**.

After the first public offering of its securities registered under the Securities Act, the Company shall use its reasonable best efforts to qualify and remain qualified to register securities pursuant to a registration statement on Form S-3 (or any successor form) under the Securities Act. Once the Company is eligible to file a registration statement on Form S-3 (or any successor form), then a Holder or Holders holding Registrable Securities anticipated to have an aggregate sale price in excess of $5,000,000 shall have the right to require the Company to file registration statements, including a shelf registration statement, and if the Company is a WKSI, an automatic shelf registration statement, on Form S-3 or any successor form under the Securities Act covering all or any part of their and their affiliates' Registrable Securities, by delivering a written request to the Company. Such request shall be in writing and shall state the number of securities of Registrable Securities to be disposed of and the intended method of disposition of such securities by such holder or holders. The Company shall give notice to all other holders of the Registrable Securities of the receipt of a request for registration pursuant to this Section 3 and such holders of Registrable Securities shall then have thirty (30) days to notify the Company in writing of their desire to participate in the registration. The Company shall use its reasonable best efforts to promptly effect the registration of all securities on Form S-3 (or a comparable successor form) to the extent requested by such holders. The Company shall use its reasonable best efforts to keep such registration statement effective until such holders have completed the distribution described in such registration statement. Under no circumstances shall the Company be obligated to effect more than an aggregate of three (3) Registrations pursuant to a Demand Registration under Sections 2 and 3 with respect to any or all Registrable Securities and in no event may a Holder or Holders request any underwritten public offering more than one (1) time in any six month period.

4. **Piggyback Registration**.

If the Company at any time proposes to register any of its securities under the Securities Act for sale to the public (except with respect to registration statements on Forms S-4, S-8 or another form not available for registering the Registrable Securities for sale to the public), each such time it will give written notice at the applicable address of record to each holder of Registrable Securities of its intention to do so. Upon the written request of any of such holders of the Registrable Securities, given within ten (10) days after receipt by such Person of such notice, the Company will, subject to the limits contained in this Section 4, use its reasonable best efforts to cause all such Registrable Securities of said requesting holders to be registered under the Securities Act and qualified for sale under any state blue sky law, all to the extent required to permit such sale or other disposition of said Registrable Securities; *provided, however*, that if the Company is advised in writing in good faith by any managing underwriter of the Company's securities being offered in a public offering pursuant to such registration statement that the amount to be sold by persons other than the Company (collectively, "Selling Securityholders") is greater than the amount which can be offered without adversely affecting the offering, the Company may reduce the amount offered for the accounts of Selling Securityholders (including such holders of Registrable Securities) to a number deemed satisfactory by such managing underwriter; and *provided further*, that (a) in no event shall the amount of Registrable Securities of selling Holders be reduced below thirty percent (30%) of the total amount of securities included in such offering, unless such offering is the initial public offering of the Company's securities; and (b) any securities to be excluded shall be determined in the following order of priority: (i) securities held by any Persons not having any such contractual, incidental registration rights, (ii) securities held by any Persons having contractual, incidental registration rights pursuant to an agreement which is not this Agreement, and (iii) the Registrable Securities sought to be included by the holders thereof as determined on a pro rata basis (based upon the aggregate number of Registrable Securities held by such holders).

5. **Registration Procedures**. If and whenever the Company is required by the provisions of this Agreement to use its reasonable best efforts to promptly effect the registration of any of its securities under the Securities Act, the Company will:

(a) use its reasonable best efforts to diligently prepare and file with the Commission a registration statement on the appropriate form under the Securities Act with respect to such securities, which form shall comply as to form in all material respects with the requirements of the applicable form and include all financial statements required by the Commission to be filed therewith, and use its reasonable best efforts to cause such registration statement to become and remain effective until completion of the proposed offering;

(b) use its reasonable best efforts to diligently prepare and file with the Commission such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective until the distribution described in such registration statement has been completed and to comply with the provisions of the Securities Act with respect to the sale or other disposition of all securities covered by such registration statement whenever the seller or sellers of such securities shall desire to sell or otherwise dispose of the same, but only to the extent provided in this Agreement;

(c) furnish to each selling holder and the underwriters, if any, such number of copies of such registration statement, any amendments thereto, any documents incorporated by reference therein, the prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as such selling holder may reasonably request in order to facilitate the public sale or other disposition of the securities owned by such selling holder;

(d) use its reasonable best efforts to register or qualify the Registrable Securities covered by such registration statement under such other securities or state blue sky laws of such jurisdictions as

each selling holder shall request, and do any and all other acts and things which may be necessary under such securities or blue sky laws to enable such selling holder to consummate the public sale or other disposition in such jurisdictions of the securities owned by such selling holder, except that the Company shall not for any such purpose be required to (i) qualify to do business as a foreign corporation in any jurisdiction wherein it is not so qualified, (ii) consent to general service of process in any such jurisdiction or (iii) subject itself to taxation in any such jurisdiction;

(e) within a reasonable time before each filing of the registration statement or prospectus or amendments or supplements thereto with the Commission, furnish to counsel selected by the holders of Registrable Securities copies of such documents proposed to be filed, which documents shall be subject to the approval of such counsel (such approval not to be unreasonably withheld or delayed);

(f) promptly notify each selling holder of Registrable Securities, such selling holder's counsel and any underwriter and (if requested by any such Person) confirm such notice in writing, of the happening of any event which makes any statement made in the registration statement or related prospectus untrue or which requires the making of any changes in such registration statement or prospectus so that they will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein in the light of the circumstances under which they were made not misleading; and, as promptly as reasonably practicable thereafter, prepare and file with the Commission and furnish a supplement or amendment to such prospectus so that, as thereafter deliverable to the purchasers of such Registrable Securities, such prospectus will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(g) in the event of the issuance of any stop order suspending the effectiveness of a registration statement, use its reasonable best efforts to promptly obtain the withdrawal of such stop order suspending the effectiveness of a registration statement;

(h) if requested by the managing underwriter or underwriters (if any), any selling holder, or such selling holder's counsel, promptly incorporate in a prospectus supplement or post-effective amendment such information as such Person requests to be included therein, including, without limitation, with respect to the securities being sold by such selling holder to such underwriter or underwriters, the purchase price being paid therefor by such underwriter or underwriters and with respect to any other terms of an underwritten offering of the securities to be sold in such offering, and promptly make all required filings of such prospectus supplement or post-effective amendment;

(i) make available to each selling holder, any underwriter participating in any disposition pursuant to a registration statement, and any attorney, accountant or other agent or representative retained by any such selling holder or underwriter (collectively, the "Inspectors"), all financial and other records, pertinent corporate documents and properties of the Company, as shall be reasonably necessary to enable them to exercise their due diligence responsibility, and cause the Company's officers, directors and employees to supply all information requested by any such Inspector in connection with such registration statement;

(j) enter into any reasonable and customary underwriting agreement required by the proposed underwriter(s) for the selling holders, if any, and use its reasonable best efforts to facilitate the public offering of the securities;

(k) in the case of an underwritten public offering, use its reasonable best efforts to furnish to each prospective selling holder a signed counterpart, addressed to the underwriters, of (A) an

opinion of counsel for the Company, dated the effective date of the registration statement, and (B) a "comfort" letter signed by the independent public accountants who have certified the Company's financial statements included in the registration statement, covering substantially the same matters with respect to the registration statement (and the prospectus included therein) and (in the case of the accountants' letter) with respect to events subsequent to the date of the financial statements, as are customarily covered (at the time of such registration) in opinions of the Company's counsel and in accountants' letters delivered to the underwriters in underwritten public offerings of securities;

(l) cause the Registrable Securities covered by such registration statement to be listed on the securities exchange or quoted on the quotation system on which the Common Units of the Company are then listed or quoted (or if the Common Units are not yet listed or quoted, then on such exchange or quotation system as the selling holders of Registrable Securities and the Company shall determine);

(m) otherwise use its reasonable best efforts to comply with all applicable rules and regulations of the Commission;

(n) otherwise cooperate with the underwriter(s), the Commission and other regulatory agencies and take all actions and execute and deliver or cause to be executed and delivered all documents necessary to effect the registration of any securities under this Agreement; and

(o) during the period when the prospectus is required to be delivered under the Securities Act, timely (giving effect to any extensions that may be available pursuant to Rule 12b-25 under the Securities Act or successor thereto) file all documents required to be filed with the Commission pursuant to Sections 13(a), 13(c), 14, or 15(d) of the Exchange Act; provided, that the failure to file Current Reports on Form 8-K, shall not be deemed to violate this Section 5(a) to the extent that Rule 144 remains available for the resale of Registrable Securities and the failure does not cause the Company to lose eligibility to use Form S-3.

6. **Deemed Underwriter**. The Company agrees that, if a Holder or any of its affiliates (each, a "Holder Entity") could reasonably be deemed to be an "underwriter," as defined in Section 2(a)(11) of the Securities Act, in connection with any registration of the Company's securities pursuant to this Agreement, and any amendment or supplement thereof (any such registration statement or amendment or supplement a "Holder Underwriter Registration Statement"), then the Company will cooperate with such Holder Entity in allowing such Holder Entity to conduct customary "underwriter's due diligence" with respect to the Company and satisfy its obligations in respect thereof. In addition, at such Holder's request, the Company will use its reasonable best efforts to furnish to such Holder, on the date of the effectiveness of any Holder Underwriter Registration Statement and thereafter from time to time on such dates as such Holder may reasonably request (i) an opinion of counsel for the Company, including, without limitation, a standard "10b-5" statement, dated the effective date of the registration statement, and (ii) a "comfort" letter signed by the independent public accountants who have certified the Company's financial statements included in the registration statement, covering substantially the same matters with respect to the registration statement (and the prospectus included therein) and (in the case of the accountants' letter) with respect to events subsequent to the date of the financial statements, as are customarily covered (at the time of such registration) in opinions of the Company's counsel and in accountants' letters delivered to the underwriters in underwritten public offerings of securities. The Company will also permit legal counsel to such Holder to review and comment upon any such Holder Underwriter Registration Statement at least three business days prior to its filing with the SEC and all amendments and supplements to any such Holder Underwriter Registration Statement within a reasonable number of days prior to their filing with the SEC and not file any Holder Underwriter Registration Statement or amendment or supplement thereto in a form to which such Holder's legal counsel reasonably objects.

7. **Expenses**. All expenses incurred by the Company or the Holders in effecting the registrations provided for in Sections 2, 3 and 4, including, without limitation, all registration and filing fees, printing expenses, fees and disbursements of counsel for the Company, fees and disbursements of one counsel for the Holders participating in such registration as a group (selected by the holders of a majority of the Registrable Securities that are being registered in such registration), underwriting expenses (other than fees, commissions or discounts), expenses of any audits incident to or required by any such registration and expenses of complying with the securities or blue sky laws of any jurisdictions, shall be paid by the Company. Each Person that sells securities hereunder shall bear and pay all underwriting discounts and commissions, underwriter marketing costs, brokerage fees and transfer taxes applicable to the securities sold for such Person's account and all reasonable fees and expenses of any legal counsel representing any such Person.

8. **Indemnification**.

(a) The Company shall indemnify and hold harmless each Holder that is a selling holder of Registrable Securities (including its partners (including partners of partners and shareholders of such partners)), each underwriter (as defined in the Securities Act), and directors, officers, employees and agents of any of them, and each other Person, if any, who controls (within the meaning of the Securities Act) such seller or underwriter (individually and collectively, the "Company-Indemnified Person") against any losses, claims, damages or liabilities (collectively, the "liability"), joint or several, to which such Company-Indemnified Person may become subject under the Securities Act or any other statute or at common law, insofar as such liability (or action in respect thereof) arises out of or is based upon (i) any untrue statement or alleged untrue statement of any material fact contained, on the effective date thereof, in any registration statement under which such Registrable Securities were registered under the Securities Act, any preliminary prospectus or final prospectus contained therein, or any amendment or supplement thereto, or any free writing prospectus used in connection with any offering, including but not limited to, any free writing prospectus used by the Company, the underwriters or the Holders, or (ii) any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or (iii) any violation by the Company of the Securities Act, any state securities or "blue sky" laws or any sale or regulation thereunder in connection with such registration, or (iv) any information provided by the Company or at the instruction of the Company to any Person participating in the offer at the point of sale containing any untrue statement or alleged untrue statement of any material fact or omitting or allegedly omitting any material fact required to be included in such information or necessary to make the statements therein not misleading. Except as otherwise provided in Section 8(d), the Company shall reimburse each such Company-Indemnified Person in connection with investigating or defending any such liability; *provided, however*, that the Company shall not be liable to any Company-Indemnified Person in any such case to the extent that any such liability arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged omission made in such registration statement, preliminary or final prospectus, or amendment or supplement thereto, free writing prospectus, or other information, in reliance upon and in conformity with information furnished in writing to the Company by such Company-Indemnified Person specifically for use therein.

(b) Each Holder holding any Registrable Securities included in such registration being effected shall indemnify and hold harmless each other selling holder of any securities, the Company, its directors and officers, employees and agents, each underwriter and each other Person, if any, who controls (within the meaning of the Securities Act) the Company or such underwriter (individually and collectively also, the "Holder-Indemnified Person" and, together with the Company-Indemnified Person, individually and collectively, the " Indemnified Person"), against any liability, joint or several, to which any such Holder-Indemnified Person may become subject under the Securities Act or any other statute or at common law, insofar as such liability (or actions in respect thereof) arises out of or is based upon (i) any untrue statement or alleged untrue statement of any material fact contained, on the effective date

thereof, in any registration statement under which securities were registered under the Securities Act at the request of such selling Holder, any preliminary prospectus or final prospectus contained therein, or any amendment or supplement thereto, or any free writing prospectus used in connection with such offering, including but not limited to, any free writing prospectus used by the Company, the underwriters, the Holders, or (ii) any omission or alleged omission by such selling Holder to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or (iii) any information provided at the instruction of the Company to any Person participating in the offer at the point of sale containing any untrue statement or alleged untrue statement of any material fact or omitting or allegedly omitting any material fact required to be included in such information or necessary to make the statements therein not misleading, in the case of (i), (ii) and (iii) to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in such registration statement, preliminary or final prospectus, amendment or supplement thereto, free writing prospectus, or other information, in reliance upon and in conformity with information furnished in writing to the Company by such selling Holder specifically for use therein. Such selling Holder shall reimburse any Holder-Indemnified Person for any legal fees incurred in investigating or defending any such liability; *provided, however*, that in no event shall the liability of any Holder for indemnification under this Section 8 in its capacity as a seller of Registrable Securities exceed the amount equal to the net proceeds (before deducting expenses) to such Holder of the securities sold in any such registration.

(c) In the event the Company, any selling holder or other Person receives a complaint, claim or other notice of any liability or action, giving rise to a claim for indemnification under Sections 8(a), or (b) above, the Person claiming indemnification under such paragraphs shall promptly notify the Person against whom indemnification is sought of such complaint, notice, claim or action, and such indemnifying Person shall have the right to investigate and defend any such loss, claim, damage, liability or action. Any Indemnified Person shall, unless in such Indemnified Person's reasonable judgment a conflict of interest between such Indemnified Person and indemnifying parties may exist with respect to such claim, permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the Indemnified Person. An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim shall not be obligated to pay the fees and expenses of more than one counsel (as well as one local counsel for each applicable jurisdiction) for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable judgment of any Indemnified Person a conflict of interest may exist between such Indemnified Person and any other of such Indemnified Persons with respect to such claim. In such instance, the conflicted Indemnified Persons shall have a right to retain one separate counsel, chosen by the holders of a majority of the Registrable Securities included in the registration, at the expense of the indemnifying party.

(d) If the indemnification provided for in this Section 8 for any reason is held by a court of competent jurisdiction to be unavailable to an Indemnified Person in respect of any losses, claims, damages expenses or liabilities referred to therein, then each indemnifying party under this Section 8, in lieu of indemnifying such indemnified party thereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages, expenses or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, the Holder or Holders and the underwriters from the offering of Registrable Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, the other Holders and the underwriters in connection with the statements or omissions which resulted in such losses, claims, damages expenses or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company, the Holders and the underwriters shall be deemed to be in the same respective proportions that the net proceeds from the offering (before deducting expenses) received by the Company, the Holders, and the underwriting discount received by the underwriters, in each case as set forth in the table on the cover page of the applicable prospectus, bear to the aggregate public offering

price of the Registrable Securities. The relative fault of the Company, the Holders and the underwriters shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company, the Holders, or the underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and the Holders agree that it would not be just and equitable if contribution to this Section 8 were determined by pro rata or per capita allocation or by any other method of allocation which does not take account the equitable considerations referred to in the immediately preceding paragraph. In no event, however, shall a Holder be required to contribute under this Section 8(e) in excess of the net proceeds (before deducting expenses) received by such Holder from its sale of Registrable Securities under such registration statement. No Person found guilty of fraudulent representation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not found guilty of such fraudulent misrepresentation.

(e) The amount paid by an indemnifying party or payable to an Indemnified Person as a result of the losses, claims, damages, expenses and liabilities referred to in this Section 8 shall be deemed to include, subject to limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim, payable as the same are incurred and in accordance with Section 8(c). The indemnification and contribution provided for in this Section 8 will remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Persons or any other officer, director, employee, agent or controlling person of the Indemnified Persons. No indemnifying party, in the defense of any such claim or litigation, shall enter into a consent or entry of any judgment or enter into a settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to the Indemnified Persons of a full release from all liability with respect to such Claim or which includes any admission as to fault or culpability on the part of any Indemnified Person without the consent of the Indemnified Person, which consent will not be unreasonably withheld or delayed.

9. **Compliance with Rule 144**. In the event that the Company (i) registers a class of securities under Section 12 of the Exchange Act or (ii) shall commence to file reports under Section 13 or 15(d) of the Exchange Act, the Company will use its reasonable best efforts thereafter to file with the Commission such information as is required under the Exchange Act for so long as there are holders of Registrable Securities; and in such event, the Company shall use its reasonable best efforts to make and keep public information available, as those terms are understood and defined in Rule 144 and use its reasonable best efforts to facilitate and expedite transfers of Registrable Securities pursuant to Rule 144 under the Securities Act, which efforts shall include timely notice to its transfer agent to expedite such transfers of Registrable Securities and delivery of any opinions requested by the transfer agent.

10. **[Reserved]**

11. **Amendments**. The provisions of this Agreement may be amended, and the Company may take any action herein prohibited or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of the holders of at least a majority of the Registrable Securities. For the purposes of this Agreement and all agreements executed pursuant hereto, no course of dealing between or among any of the parties hereto and no delay on the part of any party hereto in exercising any rights hereunder or thereunder shall operate as a waiver of the rights hereof and thereof.

12. **Postponement**.

(a) Notwithstanding anything to the contrary contained herein, the Company may postpone the filing or initial effectiveness of or suspend the continued use of any registration statement (or amendment or supplement thereto) required hereunder on not more than three occasions, not to exceed one-hundred (100) days in the aggregate during any twelve (12) month period, if the Company determines that the filing, initial effectiveness or continued use of a registration statement would (a) require the Company to make an Adverse Disclosure, (b) require the inclusion in such registration statement of financial statements that are unavailable to the Company for reasons beyond the Company's control, or (c) in the good faith judgment of the majority of the Company's Board of Directors such Registration be seriously detrimental to the Company and the majority of the Company's Board of Directors concludes as a result that it is essential to defer such filing, initial effectiveness or continued use at such time (a "Black Out Period"). Upon notice of the existence of a Black Out Period from the Company to any Holder or Holders with respect to any registration statement already effective, such Holder or Holders shall refrain from selling their Registrable Securities under such registration statement until such Black Out Period has ended; *provided, however*, that the Company shall not impose a Black Out Period with respect to any registration statement that is already effective more than once during any period of twelve (12) consecutive months and in no event shall such Black Out Period exceed sixty (60) days.

(b) Upon receipt of written notice from the Company that a registration statement or prospectus contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein in the light of the circumstances under which they were made not misleading, each of the Holders shall forthwith discontinue disposition of Registrable Securities until it has received copies of a supplemented or amended prospectus correcting such untrue statement of a material fact or omission to state any material fact required to be stated therein or necessary to make the statements therein in the light of the circumstances under which they were made not misleading, or until it is advised in writing by Company that the use of the prospectus may be resumed.

13. **Market Stand-Off**.

(a) Each Holder agrees, that if requested by the Company and an underwriter of Registrable Securities of the Company in connection with any public offering of the Company, not to directly or indirectly offer, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant for the sale of or otherwise dispose of or transfer any units held by it for such period, not to exceed (a) one hundred eighty (180) days following the effective date of the relevant registration statement filed under the Securities Act in connection with the Company's initial public offering of Registrable Securities, or (b) ninety (90) days following the effective date of the relevant registration statement in connection with any other public offering of Registrable Securities, as such underwriter shall specify reasonably and in good faith, *provided, however*, that all officers and directors of the Company and all 1% or greater securityholders of the Company enter into similar agreements and *provided, further*, that in the event of any release or waiver of the foregoing restrictions with respect to any officer or director of the Company or any 1% or greater securityholder, each Holder shall be granted the same release or waiver from the foregoing restrictions. Notwithstanding anything in this Agreement, (i) none of the provisions of this Agreement shall in any way limit any Holder from engaging in any brokerage, investment advisory, financial advisory, anti-raid advisory, principaling, merger advisory, financing, asset management, trading (other than for its own accounts, subject to the terms and conditions hereof), market making, arbitrage, investment activity and other similar activities conducted in the ordinary course of their business, and (ii) the restrictions contained in this Agreement shall not apply to Registrable Securities acquired by any Holder Entity following the initial public offering or listing on a securities exchange of the Company's securities. Each Holder further agrees to execute such agreements as may be reasonably requested by the underwriters in connection with such registration that are consistent with this Section 13 or that are necessary to give further effect thereto.

14. **Participation in Underwritten Registrations.** No Person may participate in any registration hereunder which is underwritten unless such Person (a) agrees to sell such Person's securities on the basis provided in any underwriting arrangements approved by the Person or Persons entitled hereunder to approve such arrangements (including, without limitation, pursuant to any over-allotment or "green shoe" option requested by the underwriters; provided that no holder of Registrable Securities shall be required to sell more than the number of Registrable Securities such holder has requested to include) and (b) completes and executes all questionnaires, powers of attorney, custody agreements, stock powers, indemnities, underwriting agreements and other documents required under the terms of such underwriting arrangements; provided that no holder of Registrable Securities included in any underwritten registration shall be required to make any representations or warranties to the Company or the underwriters (other than representations and warranties regarding such holder, such holder's title to the securities, such Person's authority to sell such securities and such holder's intended method of distribution) or to undertake any indemnification obligations to the Company or the underwriters with respect thereto that are materially more burdensome than those provided in Section 8. Each holder of Registrable Securities shall execute and deliver such other agreements as may be reasonably requested by the Company and the lead managing underwriter(s) that are consistent with such holder's obligations under Section 13 and this Section 14 or that are necessary to give further effect thereto, and the Company shall execute and deliver such other agreements as may be reasonably requested by the lead managing underwriter(s) (if applicable) in order to effect any registration required hereunder. To the extent that any such agreement is entered into pursuant to, and consistent with, Section 13 and this Section 14, the respective rights and obligations created under such agreement shall supersede the respective rights and obligations of the holders, the Company and the underwriters created pursuant to this Section 14.

15. **Transferability of Registration Rights**. The registration rights set forth in this Agreement are transferable to each transferee of Registrable Securities. Each subsequent holder of Registrable Securities must consent in writing to be bound by the terms and conditions of this Agreement in order to acquire the rights granted pursuant to this Agreement.

16. **Rights Which May Be Granted to Subsequent Holders**. Other than permitted transferees of Registrable Securities under this Section, the Company shall not, without the prior written consent of holders of at least a majority of the Registrable Securities, (a) allow purchasers of the Company's securities to become a party to this Agreement or (b) grant any other registration rights to any third parties that are more favorable than, on parity with or inconsistent with the rights granted hereunder.

17. **Damages**. The Company recognizes and agrees that each holder of Registrable Securities will not have an adequate remedy if the Company fails to comply with the terms and provisions of this Agreement and that damages will not be readily ascertainable, and the Company expressly agrees that, in the event of such failure, it shall not oppose an application by any holder of Registrable Securities or any other Person entitled to the benefits of this Agreement requiring specific performance of any and all provisions hereof or enjoining the Company from continuing to commit any such breach of this Agreement.

18. **Successors and Assigns**. Subject to the conditions of transfers set forth in Section 14, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and permitted assigns.

19. **Miscellaneous**.

(a) Notices. All notices, requests, demands and other communications provided for hereunder shall be in writing and mailed (by first class registered or certified mail, postage prepaid),

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telegraphed, sent by express overnight courier service or electronic facsimile transmission (with a copy by mail), or delivered to the applicable party at the addresses indicated below:

If to the Company:

Capstone Green Energy LLC
16640 Stagg Street
Van Nuys, CA 91406
Attention: John Juric, Chief Financial Officer
Email: JJuric@cgrnenergy.com

With a copy to:

Katten Muchin Rosenman LLP
525 W. Monroe Street
Chicago, IL 60661
Attention: Mark D. Wood, Esq. and Elizabeth C. McNichol, Esq.
Email: mark.wood@katten.com; elizabeth.mcnichol@katten.com

If to the Holders:

Capstone Distributor Support Services Corp.
2001 Ross Avenue, Suite 2800
Dallas, TX 75201
Attention: Matt Carter
Email: Matt.Carter@gs.com

With a copy to:

Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, NY 10006
Attention: Sean O'Neal
Email: soneal@cgsh.com

If to any other holder of Registrable Securities:

At such Person's address for notice as set forth in the books and records of the Company or, as to each of the foregoing, at such other address as shall be designated by such Person in a written notice to other parties complying as to delivery with the terms of this subsection (a).

All such notices, requests, demands and other communications shall, when mailed or sent, respectively, be effective (i) two days after being deposited in the mails or (ii) one day after being delivered to the company, deposited with the express overnight courier service or sent by email, respectively, addressed as aforesaid.

(b) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State New York without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York. The Company hereby (i) submits to the jurisdiction of any New York State or Federal court sitting in the Borough of Manhattan in the City of

New York with respect to any actions and proceedings arising out of, or relating to, this Agreement, (ii) agrees that all claims with respect to such actions or proceedings may be heard and determined in such New York State or Federal court, (iii) waives the defense of an inconvenient forum and (iv) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(c) Waiver of Jury Trial. Each party hereto hereby acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues and, therefore, each such party irrevocably and unconditionally waives any right such party may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

(d) Counterparts. This Agreement may be executed in one or more counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which together shall be deemed to constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including .pdf) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and to be valid and effective for all purposes.

(e) Severability. If any provision of this Agreement shall be held to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall attach only to such provision and shall not in any manner affect or render illegal, invalid or unenforceable any other provision of this Agreement, and this Agreement shall be carried out as if any such illegal, invalid or unenforceable provision were not contained herein.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Registration Rights Agreement to be duly executed as of the date first set forth above.

COMPANY:

CAPSTONE GREEN ENERGY LLC

By: /s/ John Juric_________________
Name: John Juric
Title: Executive Vice President, Chief Financial Officer and Secretary

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HOLDERS:

CAPSTONE DISTRITUBTOR SUPPORT SERVICES CORPORATION

By: /s/ Matt Carter__________________
Name: Matt Carter
Title: Director

Address For Notices:

Capstone Distributor Support Services Corporation
2001 Ross Avenue, Suite 2800
Dallas, TX 85201
Attention: Matt Carter
Email: Matt.Carter@gs.com

EXHIBIT 10.6

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT (this "**Agreement**") is made as of [__], by and between Capstone Green Energy Holdings, Inc., a Delaware corporation (the "**Company**"), and [●] ("**Indemnitee**").

RECITALS

WHEREAS, highly competent persons have become more reluctant to serve publicly-held corporations as directors, officers or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of such corporations;

WHEREAS, the Board of Directors of the Company (the "**Board**"*)* has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and any of its subsidiaries from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among United States-based publicly-traded corporations and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. The Second Amended and Restated Certificate of Incorporation of the Company (the "**Charter**") and the Amended and Restated Bylaws of the Company (the "**Bylaws**") require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to applicable provisions of the Delaware General Corporation Law ("**DGCL**"). The Charter, the Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the Board, officers and other persons with respect to indemnification, hold harmless, exoneration, advancement and reimbursement rights;

WHEREAS, the uncertainties relating to such insurance and to indemnification have increased the difficulty of attracting and retaining such persons;

WHEREAS, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company's stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, hold harmless, exonerate and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so protected against liabilities;

WHEREAS, this Agreement is a supplement to and in furtherance of the Charter and the Bylaws and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder;

WHEREAS, Indemnitee may not be willing to serve as an officer or director, advisor or in another capacity without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that Indemnitee be so indemnified; and

NOW, **THEREFORE**, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

TERMS AND CONDITIONS

1. SERVICES TO THE COMPANY. In consideration of the Company's covenants and obligations hereunder, Indemnitee will serve or continue to serve as an officer, director, advisor, key employee or in any other capacity of the Company, as applicable, for so long as Indemnitee is duly elected, appointed or retained or until Indemnitee tenders Indemnitee's resignation or until Indemnitee is removed. The foregoing notwithstanding, this Agreement shall continue in full force and effect after Indemnitee has ceased to serve as a director, officer, advisor, key employee or in any other capacity of the Company, as provided in Section 17. This Agreement, however, shall not impose any obligation on Indemnitee or the Company to continue Indemnitee's service to the Company beyond any period otherwise required by law or by other agreements or commitments of the parties, if any.

2. DEFINITIONS. As used in this Agreement:

2.1 References to "**Agent**" shall mean any person who is or was a director, officer or employee of the Company or a subsidiary of the Company or other person authorized by the Company to act for the Company, to include such person serving in such capacity as a director, officer, employee, advisor, fiduciary or other official of another corporation, partnership, limited liability company, joint venture, trust or other enterprise at the request of, for the convenience of, or to represent the interests of the Company or a subsidiary of the Company.

2.2 The terms "**Beneficial Owner**" and "**Beneficial Ownership**" shall have the meanings set forth in Rule 13d-3 promulgated under the Exchange Act (as defined below) as in effect on the date hereof.

2.3 A "**Change in Control**" shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:

2.3.1 Acquisition of Stock by Third Party. Any Person (as defined below) that is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing twenty-five percent (25%) or more of the combined voting power of the Company's then outstanding securities entitled to vote generally in the election of directors, unless (1) the change in the relative Beneficial Ownership of the Company's securities by any Person results solely from a reduction in the

aggregate number of outstanding shares of securities entitled to vote generally in the election of directors, or (2) such acquisition was approved in advance by the Continuing Directors (as defined below) and such acquisition would not constitute a Change in Control under part 2.4.3 of this definition;

2.3.2 Change in Board of Directors. Individuals who, as of the date hereof, constitute the Board, and any new director whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who were directors on the date hereof or whose election or nomination for election was previously so approved (collectively, the "**Continuing Directors**"), cease for any reason to constitute at least a majority of the members of the Board;

2.3.3 Corporate Transactions. The effective date of a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination, involving the Company and one or more businesses (a "**Business Combination**"), in each case, unless, following such Business Combination: (1) all or substantially all of the individuals and entities who were the Beneficial Owners of securities entitled to vote generally in the election of directors immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of the combined voting power of the then outstanding securities of the Company entitled to vote generally in the election of directors resulting from such Business Combination (including a corporation which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more Subsidiaries (as defined below)) in substantially the same proportions as their ownership immediately prior to such Business Combination, of the securities entitled to vote generally in the election of directors; (2) no Person (excluding any corporation resulting from such Business Combination) is the Beneficial Owner, directly or indirectly, of twenty-five percent (25%) or more of the combined voting power of the then outstanding securities entitled to vote generally in the election of directors of the surviving corporation except to the extent that such ownership existed prior to the Business Combination; and (3) at least a majority of the Board of Directors of the corporation resulting from such Business Combination were Continuing Directors at the time of the execution of the initial agreement, or of the action of the Board of Directors, providing for such Business Combination; or

2.3.4 Liquidation. The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement or series of agreements for the sale or disposition by the Company of all or substantially all of the Company's assets, other than factoring the Company's current receivables (or, if such stockholder approval is not required, the decision by the Board to proceed with such a liquidation, sale, or disposition in one transaction or a series of related transactions).

2.4 "**Corporate Status**" describes the status of a person who is or was a director, officer, trustee, general partner, manager, managing member, fiduciary, advisor,

employee or Agent of the Company or of any other Enterprise (as defined below) which such person is or was serving at the request of the Company.

2.5 "**Delaware Court**" shall mean the Court of Chancery of the State of Delaware.

2.6 "**Disinterested Director**" shall mean a director of the Company who is not and was not a party to the Proceeding (as defined below) in respect of which indemnification is sought by Indemnitee.

2.7 "**Enterprise**" shall mean the Company and any other corporation, constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger to which the Company (or any of its wholly owned subsidiaries) is a party, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, officer, trustee, general partner, manager, managing member, fiduciary, advisor, employee or Agent.

2.8 "**Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended.

2.9 "**Expenses**" shall include all direct and indirect costs, fees and expenses of any type or nature whatsoever, including all reasonable attorneys' fees and costs, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, fees of private investigators and professional advisors, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, fax transmission charges, secretarial services and all other disbursements, obligations or expenses in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, settlement or appeal of, or otherwise participating in, a Proceeding (as defined below), including reasonable compensation for time spent by Indemnitee for which such Indemnitee is not otherwise compensated by the Company or any third party. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding, including the principal, premium, security for, and other costs relating to any cost bond, supersedes bond, or other appeal bond or its equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

2.10 References to "**fines**" shall include any excise tax assessed on Indemnitee with respect to any employee benefit plan;

2.11 References to "**serving at the request of the Company**" shall include any service as a director, officer, employee, Agent or fiduciary of the Company which imposes duties on, or involves services by, such director, officer, employee, Agent or fiduciary with respect to an employee benefit plan, its participants or beneficiaries; and if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan, Indemnitee shall

be deemed to have acted in a manner "**not opposed to the best interests of the Company**" as referred to in this Agreement.

2.12 "**Independent Counsel**" shall mean a law firm or a member of a law firm with significant experience in matters of corporate law and that neither presently is, nor in the past five years (5) has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements); or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "*Independent Counsel*" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

2.13 The term "**Person**" shall have the meaning as set forth in Sections 13(d) and 14(d) of the Exchange Act as in effect on the date hereof; provided, however, that "Person" shall exclude: (i) the Company; (ii) any Subsidiaries (as defined below) of the Company; (iii) any employment benefit plan of the Company or of a Subsidiary of the Company or of any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company; and (iv) any trustee or other fiduciary holding securities under an employee benefit plan of the Company or of a Subsidiary of the Company or of a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

2.14 The term "**Proceeding**" shall include any threatened, pending or completed action, suit, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil (including intentional or unintentional tort claims), criminal, administrative or investigative or related nature, in which Indemnitee was, is, will or might be involved as a party or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Company, by reason of any action (or failure to act) taken by Indemnitee or of any action (or failure to act) on Indemnitee's part while acting as a director or officer of the Company, or by reason of the fact that Indemnitee is or was serving at the request of the Company as a director, officer, trustee, general partner, manager, managing member, fiduciary, employee or Agent of any other Enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Agreement.

2.15 The term "**Subsidiary**," with respect to any Person, shall mean (i) any corporation of which more than fifty percent (50%) of the outstanding voting securities are owned directly or indirectly by the Corporation, or which is otherwise controlled by the Company, and (ii) any partnership, limited liability company, joint venture, trust or other entity of which more than fifty percent (50%) of the equity interest is owned directly or indirectly by the Company, or which is otherwise controlled by the Company. For the

avoidance of doubt, Capstone Green Energy, LLC shall constitute a "Subsidiary" of the Company.

2.16 The phrase "***to the fullest extent permitted by applicable law***" shall include, but not be limited to: (a) to the fullest extent authorized or permitted by the provision of the DGCL that authorizes or contemplates additional indemnification by agreement, or the corresponding provision of any amendment to or replacement of the DGCL, and (b) to the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement that increase the extent to which a corporation may indemnify its officers and directors.

3. INDEMNITY IN THIRD-PARTY PROCEEDINGS.

To the fullest extent permitted by applicable law, the Company shall indemnify, hold harmless and exonerate Indemnitee in accordance with the provisions of this Section 3 if Indemnitee was, is, or is threatened to be made, a party to or a participant (as a witness, deponent or otherwise) in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor by reason of Indemnitee's Corporate Status. Pursuant to this Section 3, Indemnitee shall be indemnified, held harmless and exonerated against all Expenses, judgments, liabilities, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties and amounts paid in settlement) actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal Proceeding, had no reasonable cause to believe that Indemnitee's conduct was unlawful.

4. INDEMNITY IN PROCEEDINGS BY OR IN THE RIGHT OF THE COMPANY.

To the fullest extent permitted by applicable law, the Company shall indemnify, hold harmless and exonerate Indemnitee in accordance with the provisions of this Section 4 if Indemnitee was, is, or is threatened to be made, a party to or a participant (as a witness, deponent or otherwise) in any Proceeding by or in the right of the Company to procure a judgment in its favor by reason of Indemnitee's Corporate Status. Pursuant to this Section 4, Indemnitee shall be indemnified, held harmless and exonerated against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company. No indemnification, hold harmless or exoneration for Expenses shall be made under this Section 4 in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged by a court of competent jurisdiction to be liable to the Company, unless and only to the extent that any court in which the Proceeding was brought or the Delaware Court shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification, to be held harmless or to exoneration.

5. INDEMNIFICATION FOR EXPENSES OF A PARTY WHO IS WHOLLY OR PARTLY SUCCESSFUL.

Notwithstanding any other provisions of this Agreement, to the extent that Indemnitee was or is, by reason of Indemnitee's Corporate Status, a party to (or a participant in) and is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, the Company shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee against all Expenses actually and reasonably incurred by Indemnitee in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with each successfully resolved claim, issue or matter. If Indemnitee is not wholly successful in such Proceeding, the Company also shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee against all Expenses reasonably incurred in connection with a claim, issue or matter related to any claim, issue, or matter on which Indemnitee was successful. For purposes of this Section 5 and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

6. INDEMNIFICATION FOR EXPENSES OF A WITNESS.

Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of Indemnitee's Corporate Status, a witness or deponent in any Proceeding to which Indemnitee was or is not a party or threatened to be made a party, Indemnitee shall, to the fullest extent permitted by applicable law, be indemnified, held harmless and exonerated against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith.

7. ADDITIONAL INDEMNIFICATION, HOLD HARMLESS AND EXONERATION RIGHTS.

Notwithstanding any limitation in Sections 3, 4, or 5 hereof, the Company shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Expenses, judgments, liabilities, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, liabilities, fines, penalties and amounts paid in settlement) actually and reasonably incurred by Indemnitee in connection with the Proceeding. No indemnification, hold harmless or exoneration rights shall be available under this Section 7 on account of Indemnitee's conduct which constitutes a breach of Indemnitee's duty of loyalty to the Company or its stockholders or is an act or omission not in good faith or which involves intentional misconduct or a knowing violation of applicable law.

8. CONTRIBUTION IN THE EVENT OF JOINT LIABILITY.

8.1 To the fullest extent permissible under applicable law, if the indemnification, hold harmless and/or exoneration rights provided for in this Agreement are unavailable to Indemnitee in whole or in part for any reason whatsoever, the Company, in lieu of indemnifying, holding harmless or exonerating Indemnitee, shall pay, in the first instance, the entire amount incurred by Indemnitee, whether for judgments, liabilities, fines, penalties, amounts paid or to be paid in settlement and/or for Expenses, in connection with any Proceeding without requiring Indemnitee to contribute to such payment, and the Company hereby waives and relinquishes any right of contribution it may have at any time against Indemnitee.

8.2 The Company shall not enter into any settlement of any Proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such Proceeding) unless such settlement provides for a full and final release of all claims asserted against Indemnitee.

8.3 The Company hereby agrees to fully indemnify, hold harmless and exonerate Indemnitee from any claims for contribution which may be brought by officers, directors or employees of the Company other than Indemnitee who may be jointly liable with Indemnitee.

9. EXCLUSIONS.

Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnification, advance expenses, hold harmless or exoneration payment in connection with any claim made against Indemnitee:

9.1 for which payment has actually been received by or on behalf of Indemnitee under any insurance policy or other indemnity or advancement provision and which payment has not subsequently been returned, except with respect to any excess beyond the amount actually received under any insurance policy, contract, agreement, other indemnity or advancement provision or otherwise;

9.2 for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section l6(b) of the Exchange Act (or any successor rule) or similar provisions of state statutory law or common law;

9.3 for any reimbursement of the Company by Indemnitee of any compensation pursuant to any compensation recoupment or clawback policy adopted by the Board or the compensation committee of the Board, including but not limited to any such policy adopted to comply with stock exchange listing requirements implementing Section 10D of the Exchange Act; or

9.4 except as otherwise provided in Sections 14.5 and 14.6 hereof, prior to a Change in Control, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding)

prior to its initiation or (ii) the Company provides the indemnification, hold harmless or exoneration payment, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

10. ADVANCES OF EXPENSES; DEFENSE OF CLAIM.

10.1 Notwithstanding any provision of this Agreement to the contrary, and to the fullest extent not prohibited by applicable law, the Company shall pay the Expenses incurred by Indemnitee (or reasonably expected by Indemnitee to be incurred by Indemnitee within three months) in connection with any Proceeding within ten (10) days after the receipt by the Company of a statement or statements requesting such advances from time to time, prior to the final disposition of any Proceeding. Advances shall, to the fullest extent permitted by law, be unsecured and interest free. Advances shall, to the fullest extent permitted by law, be made without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to be indemnified, held harmless or exonerated under the other provisions of this Agreement. Advances shall include any and all reasonable Expenses incurred pursuing a Proceeding to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Company to support the advances claimed The Indemnitee hereby undertakes to repay any amounts advanced (without interest) to the extent that it is ultimately determined that Indemnitee is not entitled under this Agreement to be indemnified by the Company in respect thereof. No other form of undertaking shall be required of Indemnitee other than the execution of this Agreement. This Section 10.1 shall not apply to any claim made by Indemnitee for which an indemnification, hold harmless or exoneration payment is excluded pursuant to Section 9.

10.2 The Company will be entitled to participate in the Proceeding at its own expense.

10.3 The Company shall not settle any action, claim or Proceeding (in whole or in part) which would impose any Expense, liability, judgment, fine, penalty or limitation on Indemnitee or which includes any admission as to fault or culpability on the part of Indemnitee without Indemnitee's prior written consent.

11. PROCEDURE FOR NOTIFICATION AND APPLICATION FOR INDEMNIFICATION.

11.1 Indemnitee agrees to notify promptly the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding, claim, issue or matter therein which may be subject to indemnification, hold harmless or exoneration rights, or advancement of Expenses covered hereunder. The failure of Indemnitee to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement, unless, and to the extent that, such failure actually and materially prejudices the interests of the Company

11.2 Indemnitee may deliver to the Company a written application to indemnify, hold harmless or exonerate Indemnitee in accordance with this Agreement. Such application(s) may be delivered from time to time and at such time(s) as Indemnitee deems appropriate in such Indemnitee's sole discretion. Following such a written application for indemnification by Indemnitee, Indemnitee's entitlement to indemnification shall be determined according to Section 12.1 of this Agreement.

12. PROCEDURE UPON APPLICATION FOR INDEMNIFICATION.

12.1 A determination, if required by applicable law, with respect to Indemnitee's entitlement to indemnification shall be made in the specific case by one of the following methods, which shall be at the election of Indemnitee: (i) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, (iii) if there are no Disinterested Directors or if such directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee, or (iv) by vote of the stockholders. The Company promptly will advise Indemnitee in writing with respect to any determination that Indemnitee is or is not entitled to indemnification, including a description of any reason or basis for which indemnification has been denied. If it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten (10) days after such determination. Indemnitee shall reasonably cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or Expenses (including reasonable attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

12.2 In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 12.1 hereof, the Independent Counsel shall be selected as provided in this Section 12.2. The Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected and certifying that the Independent Counsel so selected meets the requirements of "Independent Counsel" as defined in Section 2 of this Agreement. If the Independent Counsel is selected by the Board, the Company shall give written notice to Indemnitee advising Indemnitee of the identity of the Independent Counsel so selected and certifying that the Independent Counsel so selected meets the requirements of "Independent Counsel" as defined in Section 2 of this Agreement. In either event, Indemnitee or the Company, as the case may be, may, within ten (10) days after such written notice of selection shall have been received, deliver to the Company or to Indemnitee, as the case may be, a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so

selected does not meet the requirements of "Independent Counsel" as defined in Section 2 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court of competent jurisdiction has determined that such objection is without merit. If, within twenty (20) days after submission by Indemnitee of a written request for indemnification pursuant to Section 11.2 hereof, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition the Delaware Court for resolution of any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the Delaware Court, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 12.1 hereof. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 14.1 of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

12.3 The Company agrees to pay the reasonable fees and expenses of Independent Counsel and to fully indemnify and hold harmless such Independent Counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

13. PRESUMPTIONS AND EFFECT OF CERTAIN PROCEEDINGS.

13.1 In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 11.2 of this Agreement, and the Company shall have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Company (including by the Disinterested Directors or Independent Counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by the Disinterested Directors or Independent Counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

13.2 If the person, persons or entity empowered or selected under Section 12 of this Agreement to determine whether Indemnitee is entitled to indemnification shall not have made a determination within thirty (30) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall be, to the fullest extent permitted by law, deemed to have been made and Indemnitee shall be entitled to such indemnification, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially

misleading, in connection with the request for indemnification, or (ii) a final judicial determination that any or all such indemnification is expressly prohibited under applicable law; provided, however, that such 30-day period may be extended for a reasonable time, not to exceed an additional fifteen (15) days, if the person, persons or entity making the determination with respect to entitlement to indemnification in good faith requires such additional time for the obtaining or evaluating of documentation and/or information relating thereto.

13.3 The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

13.4 For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by other directors, managers, managing members or officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member or on information or records given or reports made to the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member by an independent certified public accountant or by an appraiser or other expert selected by the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member. The provisions of this Section 13.4 shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed or found to have met the applicable standard of conduct set forth in this Agreement.

13.5 The knowledge and/or actions, or failure to act, of any other director, officer, trustee, partner, manager, managing member, fiduciary, advisor, Agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

14. REMEDIES OF INDEMNITEE.

14.1 In the event that (i) a determination is made pursuant to Section 12 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses, to the fullest extent permitted by applicable law, is not timely made pursuant to Section 10 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 12.1 of this Agreement within thirty (30) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to Sections 5, 6, 7 or the last sentence of Section 12.1 of this Agreement within ten (10) days after receipt by the Company of a

written request therefor, (v) a contribution payment is not made in a timely manner pursuant to Section 8 of this Agreement, (vi) payment of indemnification pursuant to Section 3 or 4 of this Agreement is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification, or (vii) payment to Indemnitee pursuant to any hold harmless or exoneration rights under this Agreement or otherwise is not made within ten (10) days after receipt by the Company of a written request therefor, Indemnitee shall be entitled to an adjudication by the Delaware Court to such indemnification, hold harmless, exoneration, contribution or advancement rights. Alternatively, Indemnitee, at Indemnitee's option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association. Except as set forth herein, the provisions of Delaware law (without regard to its conflict of laws rules) shall apply to any such arbitration. The Company shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

14.2 In the event that a determination shall have been made pursuant to Section 12.1 of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 14 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 14, Indemnitee shall be presumed to be entitled to be indemnified, held harmless, exonerated and to receive advancement of Expenses under this Agreement and the Company shall have the burden of proving Indemnitee is not entitled to be indemnified, held harmless, exonerated and to receive advancement of Expenses, as the case may be, and the Company may not refer to or introduce into evidence any determination pursuant to Section 12.1 of this Agreement adverse to Indemnitee for any purpose. If Indemnitee commences a judicial proceeding or arbitration pursuant to this Section 14, Indemnitee shall not be required to reimburse the Company for any advances pursuant to Section 10 until a final determination is made with respect to Indemnitee's entitlement to indemnification (as to which all rights of appeal have been exhausted or lapsed).

14.3 If a determination has been made pursuant to Section 12.1 of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 14, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

14.4 The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 14 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

14.5 The Company shall indemnify and hold harmless Indemnitee to the fullest extent permitted by law against all Expenses and, if requested by Indemnitee, shall (within ten (10) days after the Company's receipt of such written request) pay to Indemnitee, to the fullest extent permitted by applicable law, such Expenses which are incurred by Indemnitee in connection with any judicial proceeding or arbitration brought by Indemnitee (i) to enforce Indemnitee's rights under, or to recover damages for breach of, this Agreement or any other indemnification, hold harmless, exoneration, advancement or contribution agreement or provision of the Charter or the Bylaws now or hereafter in effect; or (ii) for recovery or advances under any insurance policy maintained by any person for the benefit of Indemnitee, regardless of the outcome and whether Indemnitee ultimately is determined to be entitled to such indemnification, hold harmless or exoneration right, advancement, contribution or insurance recovery, as the case may be (unless such judicial proceeding or arbitration was not brought by Indemnitee in good faith).

14.6 Interest shall be paid by the Company to Indemnitee at the legal rate under Delaware law for amounts which the Company indemnifies, holds harmless or exonerates, or advances, or is obliged to indemnify, hold harmless or exonerate or advance for the period commencing with the date on which Indemnitee requests indemnification, to be held harmless, exonerated, contribution, reimbursement or advancement of any Expenses and ending with the date on which such payment is made to Indemnitee by the Company.

15. SECURITY.

Notwithstanding anything herein to the contrary, to the extent requested by Indemnitee and approved by the Board, the Company may at any time and from time to time provide security to Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnitee, may not be revoked or released without the prior written consent of Indemnitee.

16. NON-EXCLUSIVITY; SURVIVAL OF RIGHTS; INSURANCE; SUBROGATION.

16.1 The rights of Indemnitee as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Charter, the Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any Proceeding (regardless of when such Proceeding is first threatened, commenced or completed) or claim, issue or matter therein arising out of, or related to, any action taken or omitted by such Indemnitee in Indemnitee's Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in applicable law, whether by statute or judicial decision, permits greater indemnification, hold harmless or exoneration rights or advancement of Expenses than would be afforded currently under the Charter, the Bylaws or this Agreement, then this Agreement (without any further action by the parties hereto) shall automatically be deemed to be amended to require that the Company indemnify Indemnitee to the fullest extent permitted by law. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other

right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

16.2 The Charter, the Bylaws and the DGCL permit the Company to purchase and maintain insurance or furnish similar protection or make other arrangements including, but not limited to, providing a trust fund, letter of credit, or surety bond ("**Indemnification Arrangements**") on behalf of Indemnitee against any liability asserted against Indemnitee or incurred by or on behalf of Indemnitee or in such capacity as a director, officer, employee or Agent of the Company, or arising out of Indemnitee's status as such, whether or not the Company would have the power to indemnify Indemnitee against such liability under the provisions of this Agreement or under the DGCL, as it may then be in effect. The purchase, establishment, and maintenance of any such Indemnification Arrangement shall not in any way limit or affect the rights and obligations of the Company or of Indemnitee under this Agreement except as expressly provided herein, and the execution and delivery of this Agreement by the Company and Indemnitee shall not in any way limit or affect the rights and obligations of the Company or the other party or parties thereto under any such Indemnification Arrangement.

16.3 To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, trustees, partners, managers, managing members, fiduciaries, advisor, employees, or Agents of the Company or of any other Enterprise which such person serves at the request of the Company, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, trustee, partner, manager, managing member, fiduciary, advisor, employee or Agent under such policy or policies. If, at the time the Company receives notice from any source of a Proceeding as to which Indemnitee is a party or a participant (as a witness, deponent or otherwise), the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

16.4 In the event of any payment under this Agreement, the Company, to the fullest extent permitted by law, shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights. No such payment by the Company shall be deemed to relieve any insurer of any of its obligations.

16.5 The Company's obligation to indemnify, hold harmless, exonerate or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, trustee, partner, manager, managing member, fiduciary, employee or Agent of any other Enterprise shall be reduced by any amount Indemnitee has actually received as indemnification, hold harmless or exoneration payments or

advancement of expenses from such Enterprise. Notwithstanding any other provision of this Agreement to the contrary, (i) Indemnitee shall have no obligation to reduce, offset, allocate, pursue or apportion any indemnification, hold harmless, exoneration, advancement, contribution or insurance coverage among multiple parties possessing such duties to Indemnitee prior to the Company's satisfaction and performance of all its obligations under this Agreement, and (ii) the Company shall perform fully its obligations under this Agreement without regard to whether Indemnitee holds, may pursue or has pursued any indemnification, advancement, hold harmless, exoneration, contribution or insurance coverage rights against any person or entity other than the Company.

17. DURATION OF AGREEMENT.

All agreements and obligations of the Company contained herein shall continue during the period Indemnitee serves as a director or officer of the Company or as a director, officer, trustee, partner, manager, managing member, fiduciary, advisor, employee or Agent of any other corporation, partnership, joint venture, trust, employee benefit plan or other Enterprise which Indemnitee serves at the request of the Company and shall continue thereafter so long as Indemnitee shall be subject to any possible Proceeding (including any rights of appeal thereto and any Proceeding commenced by Indemnitee pursuant to Section 14 of this Agreement) by reason of Indemnitee's Corporate Status, whether or not Indemnitee is acting in any such capacity at the time any liability or expense is incurred for which indemnification or advancement can be provided under this Agreement.

18. SEVERABILITY.

If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: the validity, legality and enforceability of the remaining provisions of this Agreement (including each portion of any Section, paragraph or sentence of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including each portion of any Section, paragraph or sentence of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

19. ENFORCEMENT AND BINDING EFFECT.

19.1 The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director, officer or key employee of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director, officer or key employee of the Company.

19.2 Without limiting any of the rights of Indemnitee under the Charter or the Bylaws as they may be amended from time to time, this Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

19.3 The Company shall not seek from a court, or agree to, a “bar order” which would have the effect of prohibiting or limiting the Indemnitee’s rights to receive advancement of expenses under this Agreement.

19.4 The indemnification, hold harmless, exoneration and advancement of expenses rights provided by or granted pursuant to this Agreement shall be binding upon and be enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company), shall continue as to an Indemnitee who has ceased to be a director, officer, employee or Agent of the Company or a director, officer, trustee, general partner, manager, managing member, fiduciary, advisor, employee or Agent of any other Enterprise at the Company’s request, and shall inure to the benefit of Indemnitee and such Indemnitee’s spouse, assigns, heirs, devisees, executors and administrators and other legal representatives.

19.5 The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all or a substantial part, of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

19.6 The Company and Indemnitee agree herein that a monetary remedy for breach of this Agreement, at some later date, may be inadequate, impracticable and difficult of proof, and further agree that such breach may cause Indemnitee irreparable harm. Accordingly, the parties hereto agree that Indemnitee may, to the fullest extent permitted by law, enforce this Agreement by seeking, among other things, injunctive relief and/or specific performance hereof, without any necessity of showing actual damage or irreparable harm and that by seeking injunctive relief and/or specific performance, Indemnitee shall not be precluded from seeking or obtaining any other relief to which Indemnitee may be entitled. The Company and Indemnitee further agree that Indemnitee shall, to the fullest extent permitted by law, be entitled to such specific performance and injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions, without the necessity of posting bond or other undertaking in connection therewith. The Company acknowledges that, in the absence of a waiver, a bond or undertaking may be required of Indemnitee by a court of competent jurisdiction and the Company hereby waives any such requirement of such a bond or undertaking to the fullest extent permitted by law.

20. MODIFICATION AND WAIVER.

No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the Company and Indemnitee. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions of this Agreement nor shall any waiver constitute a continuing waiver.

21. NOTICES.

21.1 All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) if delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, on such delivery, or (ii) if mailed by certified or registered mail with postage prepaid, on the third (3rd) business day after the date on which it is so mailed:

(a) If to Indemnitee, at the address indicated on the signature page of this Agreement, or such other address as Indemnitee shall provide in writing to the Company.

(b) If to the Company, to:

Capstone Green Energy Holdings, Inc.
16640 Stagg Street
Van Nuys, CA 91406
Attn: John Juric
Email: jjuric@cgrn.com

With copies, which shall not constitute notice, to:

Katten Muchin Rosenman LLP
525 W. Monroe Street
Chicago, IL 60661-3693
Attn: Mark D. Wood and Elizabeth McNichol
Email: mark.wood@katten.com; elizabeth.mcnichol@katten.com

or to any other address as may have been furnished to Indemnitee in writing by the Company.

22. APPLICABLE LAW AND CONSENT TO JURISDICTION.

This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 14.l of this Agreement, to the fullest extent permitted by law, the Company and Indemnitee hereby irrevocably and unconditionally: (a) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Court and not in any other state or federal court in the United States of America or any court in any other country; (b) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement; (c) waive any

objection to the laying of venue of any such action or proceeding in the Delaware Court; and (d) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum, or is subject (in whole or in part) to a jury trial. To the fullest extent permitted by law, the parties hereby agree that the mailing of process and other papers in connection with any such action or proceeding in the manner provided by Section 21, or in such other manner as may be permitted by law, shall be valid and sufficient service thereof.

23. IDENTICAL COUNTERPARTS.

This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement. In the event that any signature is delivered by facsimile transmission or any other form of electronic delivery, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof.

24. MISCELLANEOUS.

As used herein, words in the singular or plural include the singular and plural and pronouns stated in either the masculine, the feminine or neuter gender shall include the masculine, feminine and neuter. The use of the word “including” herein shall be by way of example rather than limitation and the word “or” shall not be exclusive. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

25. PERIOD OF LIMITATIONS.

No legal action shall be brought and no cause of action shall be asserted by or in the right of the Company against Indemnitee, Indemnitee’s spouse, heirs, executors or personal or legal representatives after the expiration of two years from the date of accrual of such cause of action, and any claim or cause of action of the Company shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such two-year period; provided, however, that if any shorter period of limitations is otherwise applicable to any such cause of action such shorter period shall govern.

26. ADDITIONAL ACTS.

If for the validation of any of the provisions in this Agreement any act, resolution, approval or other procedure is required, to the fullest extent permitted by law, the Company undertakes to cause such act, resolution, approval or other procedure to be affected or adopted in a manner that will enable the Company to fulfill its obligations under this Agreement.

27. MAINTENANCE OF INSURANCE.

The Company shall use commercially reasonable efforts to obtain and maintain in effect during the entire period for which the Company is obligated to indemnify the Indemnitee under

this Agreement, one or more policies of insurance with reputable insurance companies to provide the officers and directors of the Company with coverage for losses from wrongful acts and omissions and to ensure the Company's performance of its indemnification obligations under this Agreement. The Indemnitee shall be named as an insured in such a manner as to provide the Indemnitee with the same rights and benefits as are accorded to the most favorably insured of the Company's directors and officers.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Indemnity Agreement to be signed as of the day and year first above written.

CAPSTONE GREEN ENERGY HOLDINGS, INC.

By: ________________________________
Name:
Title: [Authorized Signatory]

INDEMNITEE

____
Name:
Title:

[*Signature Page to Indemnity Agreement*]

EXHIBIT 10.7

CAPSTONE GREEN ENERGY HOLDINGS, INC.

SEVERANCE PAY PLAN AND SUMMARY PLAN DESCRIPTION

Effective December 7, 2023

ARTICLE I
INTRODUCTION

This Capstone Green Energy Holdings, Inc. (the "Company") Severance Pay Plan (the "Plan") is established effective as of the date set forth above (the "Effective Date"). As of the Effective Date, this Plan replaces and supersedes all prior agreements and understandings, oral or written, regarding severance or other compensation or benefits payable upon a termination of employment or service with the Company, any of its subsidiaries or its successors. This document serves as both the Plan document and the summary plan description of the Plan. The purpose of this Plan is to assist employees in their transition to finding new employment following a qualifying termination of employment and is not intended to be a reward for prior service with the Company, any of its subsidiaries or its successors. Benefits paid to an employee hereunder are not earned or otherwise accrued by an employee.

ARTICLE II
PARTICIPATION IN THE PLAN

Regular full-time employees of the Company, its subsidiaries or its successors whose employment is involuntarily terminated under conditions described in Article III ("Eligible Employees") will be eligible for benefits upon satisfaction of the terms and conditions described in this Plan. For purposes of eligibility, a regular full-time employee is an employee who is a resident of the United States and is regularly scheduled to work at least 30 hours per week. It does not include: (i) employees who are designated by the Company, its subsidiaries or its successors as temporary, seasonal or intern, or (ii) individuals who provide services under an employee lease agreement, "leased employees" (defined in section 414(n) of the Internal Revenue Code) or independent contractors. Employees of the Company, its subsidiaries or its successors who are eligible for severance under another plan, agreement or arrangement of the Company, its subsidiaries or its successors are not eligible to receive duplicate benefits under this Plan. For the avoidance of doubt, any benefits payable pursuant to a Change in Control Agreement between an Eligible Employee and the Company, any of its subsidiaries or its successors shall be in lieu of, and not in addition to, the benefits payable pursuant to this Plan.

ARTICLE III
BENEFIT ELIGIBILITY

An Eligible Employee may receive benefits under this Plan only if the Company, any of its subsidiaries or its successors terminates his/her employment without Cause (as defined in Article VII) and the Eligible Employee satisfies all conditions and covenants provided in the Plan.

Benefits are conditioned on an involuntary termination of employment by the Company, any of its subsidiaries or its successors. An individual shall not be eligible for benefits if, following

termination of employment that is in connection with a Change in Control (as defined in Article VII), he/she becomes employed or is offered employment by a successor to the Company in a position that is substantially similar to the position he/she had with the Company or the relevant subsidiary at the time of termination of employment, provided that the geographic location of such position is not more than 50 miles from the geographic location at which the Eligible Employee provided services at the time of termination of employment.

An Eligible Employee will be notified if he/she is eligible for benefits due to a reduction in force or job elimination. However, an Eligible Employee will not be entitled to benefits under the Plan if he/she is offered and does not accept a reasonable reassignment to another position with the Company, any of its subsidiaries or its successors following such reduction or elimination, provided that the geographic location of such position is not more than 50 miles from the geographic location at which the Eligible Employee provided services immediately prior to termination of employment.

An Eligible Employee will not be entitled to benefits under this Plan in the event of resignation by an Eligible Employee, termination of the Eligible Employee's employment by the Company, any of its subsidiaries or its successors for Cause, or the Eligible Employee's death or disability.

ARTICLE IV
SEVERANCE BENEFIT

If an Eligible Employee is eligible for benefits under Article III, his/her severance benefits will be calculated in accordance with Section 4.01, but subject to forfeiture under Section 4.07 or adjustment under Section 4.08, as applicable.

Section 4.01. Severance Benefit Formula. If an Eligible Employee timely executes, does not thereafter revoke (if applicable), and complies with the General Release & Separation Agreement (as defined in Section 4.03 below), the Eligible Employee will receive the severance benefit described in the Severance Benefit Formula Addendum that applies to the Eligible Employee's job classification.

Section 4.02. Payment. Each week of severance pay is equivalent to the weekly compensation regularly paid to the Eligible Employee at the time his/her employment terminates, excluding any overtime pay, bonuses and imputed income, and will be subject to withholding of applicable income, employment, and other taxes. The severance pay benefit will be reduced by any payments required to be paid by the Company, any of its subsidiaries or its successors to the Eligible Employee under any federal or state law, including without limitation the Worker Adjustment Retraining Notification Act of 1988, as amended (except unemployment benefits payable in accordance with state law and payment for accrued but unused vacation). The severance pay benefit will be paid in the same manner as the regular payroll practices of the Company, the relevant subsidiary or the Company's successors during the severance period beginning on the first payroll date following the effective date of the General Release & Separation Agreement but no later than sixty (60) days following the termination date. Eligible Employees will also be paid for any accrued but unused vacation time, as defined in the vacation policy of the Company, the

relevant subsidiary or the Company's successors, as applicable, determined as of the termination date, which payment shall be made no later than required by applicable state law.

All other accruals, benefits and perquisites will cease upon termination of employment except to the extent of continuation coverage that may be required under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") or other applicable law. The COBRA reimbursement described in the Severance Benefit Formula Addendum shall be subject to the Eligible Employee's timely and proper election for COBRA continuation coverage and the conditions set forth below. Such Eligible Employee shall be reimbursed for any COBRA premiums paid by the Eligible Employee until the earliest of: (i) the expiration of the applicable COBRA reimbursement period set forth in the Severance Benefit Formula Addendum; or (ii) the date the Eligible Employee becomes covered under another employer's health plan. At the end of this period, the Eligible Employee shall be eligible to continue coverage, pursuant to COBRA, and shall be responsible for the entire COBRA premium for the remainder of the applicable COBRA continuation period. Any such COBRA reimbursement shall be paid by the Company, the relevant subsidiary or the Company's successors to the Eligible Employee as soon as administratively practicable, but no later than sixty (60) days after the COBRA premium has been paid by the Eligible Employee; provided that, within the first ten (10) days of the month for which the COBRA reimbursement is being requested, the Eligible Employee submits appropriate documentation to the Company, the relevant subsidiary or the Company's successors substantiating his/her payments for COBRA continuation coverage.

Section 4.03. General Release & Separation Agreement. To receive benefits calculated under Section 4.01, an Eligible Employee must sign (and not thereafter revoke, if applicable) a separation agreement containing, among other provisions, a general release of claims in favor of the Company and related persons and entities (the "General Release & Separation Agreement") in the form prescribed by the Administrator (as defined in Article VI below) within the time period set forth in the General Release & Separation Agreement, which shall not exceed sixty (60) days following the termination date. If an Eligible Employee does not timely sign (or if the Eligible Employee thereafter revokes, if applicable) the General Release & Separation Agreement, such Eligible Employee will not be eligible to receive severance benefits under this Plan.

Section 4.04. Company Benefit Plans. Participation in this Plan is not intended to alter any benefits an Eligible Employee is entitled to receive under any other benefit plans maintained by the Company, any of its subsidiaries or its successors, except as is expressly provided in such plans or in Section 4.08. Except as set forth in Section 4.08, those benefits will continue to be determined by the terms of those plans. For more information, please refer to the plan documents and summary plan descriptions for those plans.

Section 4.05. Non-Alienation of Benefit. An Eligible Employee may not, in any manner, sell, pledge, transfer, assign, encumber, or otherwise dispose of any severance pay benefit, or any right to such benefit, under this Plan, either voluntarily or involuntarily, before he/she receives it, and any attempt to do so or to otherwise dispose of any right to benefits under this Plan will be void.

Section 4.06. Application for Benefits. To receive benefits under this Plan, an Eligible Employee must notify the Human Resources Department of the Company, the relevant subsidiary

or the Company's successors by executing and delivering to Human Resources a General Release & Separation Agreement and the General Release & Separation Agreement must become fully effective, all within the time period set forth in the General Release & Separation Agreement, which shall not exceed sixty (60) days following the termination date. If an Eligible Employee does not receive a benefit to which he/she believes he/she is entitled, the Eligible Employee may write to the Administrator at the address set forth in this Plan and state the benefit to which the Eligible Employee believes he/she is entitled. Such writing will be considered a claim for benefits described in Section 7.02.

Section 4.07. Forfeiture. Notwithstanding anything to the contrary set forth herein, any and all remaining severance benefits shall be forfeited and cease immediately upon:

(1) Any breach of the terms set forth in the General Release & Separation Agreement;

(2) An Eligible Employee's rejection of an offer of re-employment with the Company, any of its subsidiaries or its successors in a substantially similar position, provided that the geographic location of such position is not more than 50 miles from the geographic location at which the Eligible Employee provided services at the time of termination of employment; or

(3) An Eligible Employee's acceptance of re-employment with the Company, any of its subsidiaries or its successors.

Section 4.08. No Duplication. An Eligible Employee may not receive severance benefits under both the Plan and another plan, agreement or arrangement with the Company, any of its subsidiaries or its successors. Such an Eligible Employee will only be entitled to severance benefits under the plan, agreement or arrangement that provides the Eligible Employee with the greatest amount of severance pay.

ARTICLE V
PLAN AMENDMENT OR TERMINATION

The Board of Directors of the Company (the "Board") may terminate or amend the Plan in its sole discretion at any time by a written amendment that is authorized by the Board. Notice of any amendment must be provided to or made available to the Administrator. Oral amendments and modifications of this Plan are not effective. All amendments and modifications must be in writing and approved by the Board to be effective.

ARTICLE VI
PLAN ADMINISTRATION AND SUMMARY OF INFORMATION

Section 6.01. Plan Administrator. Except for those responsibilities specifically reserved to the Board herein, the Plan is administered by the "Administrator." The Administrator is the individual or committee of individuals designated from time to time by the Board to administer the Plan. In the absence of such designation, the Board shall be the Administrator. The Administrator may delegate any of its duties or authorities to any person or entity. The Administrator has absolute discretion to make all decisions under the Plan, including making determinations about eligibility for and the amounts of benefits payable under the Plan and

interpreting all Plan provisions. All decisions of the Administrator are final, binding and conclusive.

Section 6.02. How to Make a Claim for Benefits. If severance benefits are not automatically paid upon a payment event, an Eligible Employee may file a request for benefits in writing with the Administrator within sixty (60) days following the termination date. Failure to timely submit an application for benefits in writing will result in a loss of Plan benefits.

If an Eligible Employee's claim for Benefits is denied, the Administrator will furnish written notice of denial to the Eligible Employee (the "Claimant") within ninety (90) days of the date the claim is received, unless special circumstances require an extension of time for processing the claim. This extension will not exceed ninety (90) days, and the Claimant must receive written notice stating the grounds for the extension and the length of the extension within the initial ninety (90) day review period. If the Administrator does not provide written notice of denial, the Claimant may deem the claim denied and seek review according to the appeals procedures set forth below.

1. The notice of denial to the Claimant shall state:

(a) The specific reasons for the denial;

(b) Specific references to pertinent provisions of the Plan on which the denial was based;

(c) A description of any additional material or information needed for the Claimant to perfect his or her claim and an explanation of why the material or information is needed;

(d) A description of the Plan's review procedure and time limits applicable to such procedures, including a statement that the Claimant has the right to bring a civil action under Section 502(a) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")

(e) A statement that the Claimant may request, upon written application to the Administrator, to review pertinent Plan documents; and

(f) The name and address of the Administrator to which the Claimant may forward an appeal. The notice of denial may state that failure to appeal the action to the Administrator in writing within a sixty (60) day period will render the determination final, binding and conclusive.

2. If the Claimant appeals to the Administrator, the Claimant or his/her authorized representative must submit a written request for review, and may include whatever issues, documents, records, comments or other information that he/she believes to be pertinent, no later than sixty (60) days after the Claimant has received written notification of the denial. The Claimant has the right to be provided with, upon request and free of charge, reasonable access to and copies of all pertinent documents, records, and other information that is relevant to his/her claim for benefits. The Administrator shall reexamine all facts related to the appeal, taking into account all comments, documents, records, and other information that the Claimant submitted

relating to his/her claim (without regard to whether such information was submitted or considered in the initial denial of his/her claim), and make a final determination of whether the denial of benefits is justified under the circumstances. The Administrator shall advise the Claimant in writing of:

(a) The Administrator's decision on appeal;

(b) The specific reasons for the decision;

(c) The specific provisions of the Plan on which the decision is based; and

(d) That the Claimant has the right to bring a civil action under Section 502(a) ERISA.

Notice of the Administrator's decision shall be given within sixty (60) days of the Claimant's written request for review, unless additional time is required due to special circumstances. In no event shall the Administrator render a decision on an appeal later than one hundred and twenty (120) days after receiving a written request for a review.

Section 6.03. Additional Information. The Plan, as a "severance pay arrangement" within the meaning of Section 3(2)(B)(i) of ERISA, is intended to be and shall be administered and maintained as an unfunded welfare benefit plan under Section 3(1) of ERISA. Benefits under the Plan are paid out of the general assets of the Company. The Company may, in its discretion establish a "grantor trust" to fund the payment of benefits under the Plan. Otherwise, the Plan does not give an Eligible Employee any rights to any particular assets of the Company. Cash amounts paid under a severance plan are generally considered taxable income to the recipient.

Section 6.04. ERISA Rights. Participants in the Plan are entitled to certain rights and protections under ERISA. ERISA provides that all Plan participants shall be entitled to:

- Examine, without charge, at the Administrator's office and at other specified locations, all documents governing the Plan, including insurance contracts, and a copy of the latest annual report (Form 5500 Series) filed by the Plan with the U.S. Department of Labor.

- Obtain copies, upon written request to the Administrator, of all documents governing the operation of the Plan, including insurance contracts, and copies of the latest annual report (Form 5500 Series) and updated summary plan description. The Administrator may make a reasonable charge for the copies.

In addition to creating rights for Plan participants, ERISA imposes duties upon the people who are responsible for the operation of the employee benefit plan. The people who operate this Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in the interest of Eligible Employees and other Plan participants and beneficiaries. No one, including the Company or any other person, may fire an Eligible Employee or otherwise discriminate against an Eligible Employee in any way to prevent the Eligible Employee from obtaining a benefit under this Plan or from exercising his/her rights under ERISA. As discussed above, if a claim for a benefit is denied in whole or in part, an Eligible Employee must receive a written explanation of the reason

for the denial. Eligible Employees have the right to have the Administrator review and reconsider a claim.

Under ERISA, there are steps an Eligible Employee can take to enforce the above rights. For instance, if an Eligible Employee requests materials from the Administrator and does not receive them within thirty (30) days, he/she may file suit in federal court. In such a case, the court may require the Administrator to provide the materials and pay the Eligible Employee up to $110 a day until the Eligible Employee receives the materials, unless the materials were not sent because of reasons beyond the control of the Administrator.

If an Eligible Employee has a claim for benefits that is denied or ignored, in whole or in part, and he/she has exhausted all administrative remedies provided herein and under ERISA, such Eligible Employee may file suit in federal court. If it should happen that Plan fiduciaries misuse the Plan's money or if an Eligible Employee is discriminated against for asserting his/her rights, the Eligible Employee may seek assistance from the U.S. Department of Labor or may file suit in federal court. The court will decide who should pay court costs and fees. If the Eligible Employee loses, the court may order him/her to pay these costs and fees, for example, if it finds the Eligible Employee's claim is frivolous.

If an Eligible Employee has any questions about the Plan, he/she should contact the Administrator. If an Eligible Employee has any questions about this statement or about his/her rights under ERISA, the Eligible Employee should contact the nearest Area Office of the U.S. Labor-Management Services Administration.

Section 6.05. Section 409A. It is intended that the payments and benefits set for in this Plan are, to the greatest extent possible, exempt from the application of Section 409A of the Internal Revenue Code ("Section 409A") and the Plan shall be construed and interpreted accordingly. However, if the Company (or, if applicable, any of its subsidiaries or its successors) determines that all or a portion of the payments and benefits provided under the Plan constitute "deferred compensation" under Section 409A and that the Eligible Employee is a "specified employee" of the Company, any of its subsidiaries or its successors, as such term is defined in Section 409A(a)(2)(B)(i), then, solely to the extent necessary to avoid the incurrence of the adverse personal tax consequences under Section 409A, the timing of the applicable payments shall be delayed until the first payroll date following the six (6) month anniversary of the Eligible Employee's "separation from service" (as defined under Section 409A) and the Company, the relevant subsidiary or the Company's successors, as applicable, shall (A) pay to the Eligible Employee a lump sum amount equal to the sum of the payments that the Eligible Employee would otherwise have received during such six (6) month period had no such delay been imposed and (B) commence paying the balance of the payments, if any, in accordance with the applicable payment schedule set forth in the Plan. For purposes of Section 409A, each installment payment provided under the Plan shall be treated as a separate payment. To the extent required by Section 409A, any payments to be made to an Eligible Employee upon his/her termination of employment shall only be made upon such Eligible Employee's separation from service. The Company makes no representations that the payments and benefits provided under the Plan comply with Section 409A and in no event shall the Company, its subsidiaries or its successors be liable for all or any portion of any taxes, penalties, interest, or other expenses that may be incurred by the Eligible Employee on account of noncompliance with Section 409A.

Section 6.06. Summary of Plan Information.

Name of Plan:	Capstone Green Energy Holdings, Inc. Severance Pay Plan
Company Address:	Capstone Green Energy Holdings, Inc. 16640 Stagg Street Van Nuys, CA 91406
Who Pays for the Plan:	The cost of the Plan is paid entirely by the Company.

The Company's Employer Identification No.: 20-1514270

Plan Number: [●]

Plan Year: January 1 to December 31

Plan Administrator:

For the Company's Chief Executive Officer:

Administrator of the Severance Pay Plan
c/o Board of Directors
Capstone Green Energy Holdings, Inc.
16640 Stagg Street
Van Nuys, CA 91406

(818) 734-5300

For the Company's Chief Financial Officer:

Administrator of the Severance Pay Plan
c/o John Juric
Capstone Green Energy Holdings, Inc.
16640 Stagg Street
Van Nuys, CA 91406

(818) 734-5300

All other Eligible Employees:

Administrator of the Severance Pay Plan
Capstone Green Energy Holdings, Inc.
16640 Stagg Street
Van Nuys, CA 91406

(818) 734-5300

Agent for Service of Legal Process on the Plan: Chief Executive Officer of the Company or the Administrator.

ARTICLE VII
DEFINITIONS

For purposes of the Plan, the following terms shall be defined as set forth below:

"*Change in Control*" shall mean (references to the Company in this definition shall include the Company's successors, as applicable): (a) any "person," as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Act") (other than the Company, any of its subsidiaries, or any trustee, fiduciary or other person or entity holding securities under any employee benefit plan or trust of the Company or any of its subsidiaries), together with all "affiliates" and "associates" (as such terms are defined in Rule 12b-2 under the Act) of such person, shall become the "beneficial owner" (as such term is defined in Rule 13d-3 under the Act), directly or indirectly, of securities of the Company representing fifty (50) percent or more of the combined voting power of the Company's then outstanding securities having the right to vote in an election of the Board ("Voting Securities") (in such case other than as a result of an acquisition of securities directly from the Company); (b) the following individuals cease for any reason to constitute a majority of the number of directors then serving on the Board: individuals who, on the date of this Agreement, constitute the Board and any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest, including, but not limited to, a consent solicitation relating to the election of directors of the Company) whose appointment or election by the Board or nomination for election by the Company's stockholders was approved or recommended by a vote of at least a majority of the directors then still in office who either were members of the Board on the Effective Date or whose appointment, election or nomination for election was previously so approved (the "Incumbent Directors"); or (c) the consummation of (i) any consolidation or merger of the Company (A) where the stockholders of the Company, immediately prior to the consolidation or merger, would not, immediately after the consolidation or merger, beneficially own (as such term is defined in Rule 13d-3 under the Act), directly or indirectly, shares representing in the aggregate more than fifty (50) percent of the voting shares of the Company issuing cash or securities in the consolidation or merger (or of its ultimate parent corporation, if any) or (B) after which the Incumbent Directors continuing immediately thereafter do not represent at least a majority of the board of directors of the resulting or successor entity (or its ultimate parent, if applicable), or (ii) any sale or other transfer (in one transaction or a series of transactions contemplated or arranged by any party as a single plan) of all or substantially all of the assets of the Company.

Notwithstanding the foregoing, a "Change in Control" shall not be deemed to have occurred for purposes of the foregoing clause (a) solely as the result of an acquisition of securities by the Company that, by reducing the number of shares of Voting Securities outstanding, increases the proportionate number of shares of Voting Securities beneficially owned by any person to fifty (50) percent or more of the combined voting power of all then outstanding Voting Securities; provided, however, that if any person referred to in this sentence shall thereafter become the beneficial owner of any additional shares of Voting Securities (other than pursuant to a stock split, stock dividend, or similar transaction or as a result of an acquisition of securities directly from the Company) and immediately thereafter beneficially owns fifty (50) percent or more of the combined

voting power of all then outstanding Voting Securities, then a "Change in Control" shall be deemed to have occurred for purposes of the foregoing clause (a). Further, notwithstanding the foregoing, a "Change in Control" shall be deemed not to have occurred for purposes of any of the foregoing clauses (a) or (b) unless the respective transaction constitutes a "change in control event" within the meaning of Treas. Reg. §1.409A-3(i)(5).

"*Cause*" shall mean (a) if the Eligible Employee is a party to an employment or service agreement with the Company, any of its subsidiaries or its successors and such agreement provides for a definition of Cause, the definition contained therein; or (b) if no such agreement exists, or if such agreement does not define Cause, any of the following: (i) an Eligible Employee's failure to devote substantially all of the Eligible Employee's full professional time, attention, energies, and abilities to the Eligible Employee's employment duties for the Company, the relevant subsidiary or the Company's successors, which failure has continued for more than thirty (30) days following written notice of such non-performance from the Company, the relevant subsidiary or the Company's successors; (ii) an Eligible Employee's inducement of any customer, consultant, employee, or supplier of the Company, any of its subsidiaries or its successors to unreasonably breach any contract with the Company, any of its subsidiaries or its successors or cease its business relationship with the Company, any of its subsidiaries or its successor; (iii) an Eligible Employee's failure to perform the duties and obligations of the Eligible Employee's position(s), which failure has continued for more than thirty (30) days following written notice of such non-performance from the Company, the relevant subsidiary or the Company's successors; (iv) an act or acts of dishonesty undertaken by the Eligible Employee resulting in substantial personal gain by the Eligible Employee at the expense of the Company, any of its subsidiaries or its successors; (v) an Eligible Employee's gross negligence or willful misconduct or material breach of a fiduciary or contractual duty to the Company, any of its subsidiaries or its successors; (vi) an Eligible Employee's material violation of state or federal securities laws or failure to cooperate with a bona fide internal investigation or an investigation by regulatory or law enforcement authorities, after being instructed by the Company, any of its subsidiaries or its successors to cooperate, or the willful destruction or failure to preserve documents or other materials known to be relevant to such investigation or the inducement of others to fail to cooperate or to produce documents or other materials in connection with such investigation; (vii) an Eligible Employee's breach of any confidentiality, trade secret or return of property obligations to the Company, any of its subsidiaries or its successor, which breach, if curable, has not been cured within thirty (30) days following written notice of such breach from the Company, the relevant subsidiary or the Company's successors; (viii) a violation by an Eligible Employee of the material written employment policies of the Company, the relevant subsidiary or the Company's successors, including those regarding discrimination, harassment and retaliation; (ix) an Eligible Employee's commission of, or plea of guilty or no contest to, any felony or a misdemeanor involving moral turpitude, deceit, dishonesty or fraud, or any conduct by an Eligible Employee that would reasonably be expected to result in material injury or reputational harm to the Company, any of its subsidiaries or its successors if he/she were retained in his/her position(s); (x) an Eligible Employee's breach of any non-competition, non-solicitation, non-disparagement or other written agreement with the Company, any of its subsidiaries or its successors containing restrictive covenants; (xi) an Eligible Employee's excessive use of alcohol or the use or possession of an illegal or controlled substance, in each case, in the workplace or which materially impairs the ability of the Eligible Employee to effectively perform his/her duties or responsibilities; or (xii) the suspension or loss of, or a failure by an Eligible Employee to maintain in full force and effect,

any professional license or certification needed by the Eligible Employee, under applicable law or otherwise, to be entitled to perform any of his/her duties or responsibilities.

This Capstone Green Energy Holdings, Inc. Severance Pay Plan was approved by the Board on December 7, 2023, to be effective as of the Effective Date.

Severance Benefit Formula Addendum

General

The Severance Benefit Formula in Section 4.01 is calculated as follows for Eligible Employees who are not classified by the Company, any of its subsidiaries or its successors as a Director, Vice President or Executive or the Chief Executive Officer at the time of termination of employment: subject to the terms and conditions set forth in Article IV, each such Eligible Employee will receive one (1) week of severance pay for each full year of service with the Company, any of its subsidiaries or its successors as an Eligible Employee (except for years of service for which severance benefits have previously been paid by the Company, any of its subsidiaries or its successors) for the period ending on the date of termination; provided, however, that benefits will not be less than two (2) weeks of severance pay, or more than twelve (12) weeks of severance pay.

A "Director" is an employee of the Company, any of its subsidiaries or its successors who reports directly to an Executive or Vice President of the Company, any of its subsidiaries or its successors and makes at least $85,000 in annual base salary. An "Executive" is an employee of the Company, any of its subsidiaries or its successors who reports directly to the Chief Executive Officer of the Company, any of its subsidiaries or its successors. A "Vice President" is any Vice President of the Company, any of its subsidiaries or its successors who does not report directly to the Chief Executive Officer of the Company, any of its subsidiaries or its successors.

Severance Benefit Formula Addendum

Directors

The Severance Benefit Formula in Section 4.01 is calculated as follows for Eligible Employees who are classified by the Company, any of its subsidiaries or its successors as Directors at the time of termination of employment: subject to the terms and conditions set forth in Article IV, each such Eligible Employee will receive two (2) weeks of severance pay for each full year of service with the Company, any of its subsidiaries or its successors as an Eligible Employee (except for years of service for which severance benefits have previously been paid by the Company, any of its subsidiaries or its successors) for the period ending on the date of termination; provided, however, that benefits will not be less than two (2) weeks of severance pay, or more than twelve (12) weeks of severance pay.

A “Director” is an employee of the Company, any of its subsidiaries or its successors who reports directly to an Executive or Vice President of the Company, any of its subsidiaries or its successors and makes at least $85,000 in annual base salary.

Severance Benefit Formula Addendum

Vice Presidents

The Severance Benefit Formula in Section 4.01 is calculated as follows for Eligible Employees who are classified by the Company, any of its subsidiaries or its successors as Vice Presidents at the time of termination of employment: subject to the terms and conditions set forth in Article IV, each such Eligible Employee will receive twelve (12) weeks of severance pay. The severance plan also includes COBRA reimbursement for a period of three (3) months following the date of termination.

A "Vice President" is any Vice President of the Company, any of its subsidiaries or its successors who does not report directly to the Chief Executive Officer of the Company, any of its subsidiaries or its successors.

Severance Benefit Formula Addendum

Executives

The Severance Benefit Formula in Section 4.01 is calculated as follows for Eligible Employees who are classified by the Company, any of its subsidiaries or its successors as Executives at the time of termination of employment: subject to the terms and conditions set forth in Article IV, each such Eligible Employee will receive twenty-six (26) weeks of severance pay. The severance plan also includes COBRA reimbursement for a period of six (6) months following the date of termination. The Chief Financial Officer will receive (52) weeks of severance pay including COBRA reimbursement for a period of (12) months following the date of termination.

An “Executive” is an employee of the Company, any of its subsidiaries or its successors who is or who reports directly to the Chief Executive Officer of the Company, any of its subsidiaries or its successors but not including the Chief Executive Officer.

Severance Benefit Formula Addendum

Chief Executive Officer

The Severance Benefit Formula in Section 4.01 is calculated as follows for the Eligible Employee who is the Chief Executive Officer of the Company, any of its subsidiaries or its successors at the time of termination of employment: subject to the terms and conditions set forth in Article IV, each such Eligible Employee will receive eighteen (18) months of severance pay. The severance plan also includes COBRA reimbursement for a period of eighteen (18) months following the date of termination.

EXHIBIT 10.8

CHANGE IN CONTROL AGREEMENT

This Change in Control Agreement ("Agreement") is made as of the **___th day of** [**MONTH**] **202**[●] by and between Capstone Green Energy Holdings, Inc., a Delaware corporation (the "Company"), and [EMPLOYEE NAME] (the "Employee").

1. Purpose. The Company considers it essential to the best interests of its stockholders to promote and preserve the continuous employment of key management personnel. The Board of Directors of the Company (the "Board") recognizes that, as is the case with many corporations, the possibility of a Change in Control (as defined in Section 2 hereof) exists and that such possibility, and the uncertainty and questions that it may raise among management, may result in the departure or distraction of key management personnel to the detriment of the Company and its stockholders. Therefore, the Board has determined that appropriate steps should be taken to reinforce and encourage the continued attention and dedication of members of key management, including the Employee, to their assigned duties without distraction arising from the possibility of a Change in Control and to provide certain benefits to the Employee following a Qualifying Termination (as defined in Section 3 hereof) in connection with a Change in Control (often described as "double trigger"). Nothing in this Agreement shall be construed as creating an express or implied contract of employment and, except as otherwise agreed in writing between the Employee and the Company, any of its subsidiaries or its successors, the Employee shall not have any right to be retained in the employ of the Company, any of its subsidiaries or its successors.

2. Change in Control. A "Change in Control" shall be deemed to have occurred upon the occurrence of any one of the following events (references to the Company in this Section 2 shall include the Company's successors, as applicable):

(a) any "person," as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Act") (other than the Company, any of its subsidiaries, or any trustee, fiduciary or other person or entity holding securities under any employee benefit plan or trust of the Company or any of its subsidiaries), together with all "affiliates" and "associates" (as such terms are defined in Rule 12b-2 under the Act) of such person, shall become the "beneficial owner" (as such term is defined in Rule 13d-3 under the Act), directly or indirectly, of securities of the Company representing fifty (50) percent or more of the combined voting power of the Company's then outstanding securities having the right to vote in an election of the Board ("Voting Securities") (in such case other than as a result of an acquisition of securities directly from the Company);

(b) the following individuals cease for any reason to constitute a majority of the number of directors then serving on the Board: individuals who, on the date of this Agreement, constitute the Board and any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest, including, but not limited to, a consent solicitation relating to the election of directors of the Company) whose appointment or election by the Board or nomination for election by the Company's stockholders was approved or recommended by a vote of at least a majority of the directors then still in office who either were members of the Board on the Effective Date or whose appointment, election or nomination for election was previously so approved (the "Incumbent Directors"); or

(c) the consummation of (i) any consolidation or merger of the Company (A) where the stockholders of the Company, immediately prior to the consolidation or merger, would not, immediately after the consolidation or merger, beneficially own (as such term is defined in Rule 13d-3 under the Act), directly or indirectly, shares representing in the aggregate more than fifty (50) percent of the voting shares of the Company issuing cash or securities in the consolidation or merger (or of its ultimate parent corporation, if any) or (B) after which the Incumbent Directors continuing immediately thereafter do not represent at least a majority of the board of directors of the resulting or successor entity (or its ultimate parent, if applicable), or (ii) any sale or other transfer (in one transaction or a series of transactions contemplated or arranged by any party as a single plan) of all or substantially all of the assets of the Company.

Notwithstanding the foregoing, a "Change in Control" shall not be deemed to have occurred for purposes of the foregoing clause (a) solely as the result of an acquisition of securities by the Company that, by reducing the number of shares of Voting Securities outstanding, increases the proportionate number of shares of Voting Securities beneficially owned by any person to fifty (50) percent or more of the combined voting power of all then outstanding Voting Securities; provided, however, that if any person referred to in this sentence shall thereafter become the beneficial owner of any additional shares of Voting Securities (other than pursuant to a stock split, stock dividend, or similar transaction or as a result of an acquisition of securities directly from the Company) and immediately thereafter beneficially owns fifty (50) percent or more of the combined voting power of all then outstanding Voting Securities, then a "Change in Control" shall be deemed to have occurred for purposes of the foregoing clause (a). Further, notwithstanding the foregoing, a "Change in Control" shall be deemed not to have occurred for purposes of any of the foregoing clauses (a) or (b) unless the respective transaction constitutes a "change in control event" within the meaning of Treas. Reg. §1.409A-3(i)(5).

3. Definitions. For purposes of this Agreement, the following terms shall have the meanings ascribed to them below:

(a) "Accelerated Vesting" shall mean, for each equity award granted by the Company, or any successor to the Company, that is outstanding on the date of a Qualifying Termination and subject to (i) time-based vesting, the immediate vesting of all such time-based awards and (ii) performance-based vesting, the satisfaction of the applicable performance-based vesting condition assuming achievement at target and without reduction for any shortened performance period.

(b) "Business Day" shall mean any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of Delaware are authorized or required by law or other governmental action to close.

(c) "Cause" shall mean any of the following: (i) the Employee's failure to devote substantially all of the Employee's full professional time, attention, energies, and abilities to the Employee's employment duties for the Company, any of its subsidiaries or its successors, which failure has continued for more than thirty (30) days following written notice of such non-performance from the Company, the relevant subsidiary or the Company's successors; (ii) the Employee's inducement of any customer, consultant, employee, or supplier of the Company, any of its subsidiaries or its successors to unreasonably breach any contract with the Company, any of

its subsidiaries or its successors or cease its business relationship with the Company, any of its subsidiaries or its successors; (iii) the Employee's failure to perform the duties and obligations of the Employee's position(s), which failure has continued for more than thirty (30) days following written notice of such non-performance from the Company, the relevant subsidiary or the Company's successors; (iv) an act or acts of dishonesty undertaken by the Employee resulting in substantial personal gain by the Employee at the expense of the Company, any of its subsidiaries or its successors; (v) the Employee's gross negligence or willful misconduct or material breach of a fiduciary or contractual duty to the Company, any of its subsidiaries or its successors; (vi) the Employee's material violation of state or federal securities laws or failure to cooperate with a bona fide internal investigation or an investigation by regulatory or law enforcement authorities, after being instructed by the Company, any of its subsidiaries or its successors to cooperate, or the willful destruction or failure to preserve documents or other materials known to be relevant to such investigation or the inducement of others to fail to cooperate or to produce documents or other materials in connection with such investigation; (vii) the Employee's breach of any confidentiality, trade secret or return of property obligations to the Company, any of its subsidiaries or its successors, which breach, if curable, has not been cured within thirty (30) days following written notice of such breach from the Company, the relevant subsidiary or the Company's successors; (viii) a violation by the Employee of the material written employment policies of the Company, any of its subsidiaries or its successors, including those regarding discrimination, harassment and retaliation; (ix) the Employee's commission of, or plea of guilty or no contest to, any felony or a misdemeanor involving moral turpitude, deceit, dishonesty or fraud, or any conduct by the Employee that would reasonably be expected to result in material injury or reputational harm to the Company, any of its subsidiaries or its successors if he were retained in his position(s); (x) the Employee's breach of any non-competition, non-solicitation, non-disparagement or other written agreement with the Company, any of its subsidiaries or its successors containing restrictive covenants; (xi) the Employee's excessive use of alcohol or the use or possession of an illegal or controlled substance, in each case, in the workplace or which materially impairs the ability of the Employee to effectively perform his duties or responsibilities; or (xii) the suspension or loss of, or a failure by the Employee to maintain in full force and effect, any professional license or certification needed by the Employee, under applicable law or otherwise, to be entitled to perform any of his duties or responsibilities.

(d) "Conditions" shall mean that the Employee: (i) signs, returns and (if applicable) does not revoke a Separation Agreement; *provided* that if the Date of Termination for the Employee's corresponding Qualifying Termination occurs during the Pre-CIC Window, the Employee must sign, return and not revoke (if applicable) the Separation Agreement all within a period of sixty (60) days following the Change in Control; *provided further* that if the Date of Termination for the Employee's corresponding Qualifying Termination occurs during the Post-CIC Window, the Employee must sign, return and not revoke (if applicable) the Separation Agreement all within a period of sixty (60) days following the Date of Termination; (ii) complies with his obligations under the Separation Agreement; and (iii) complies with any continuing obligations to the Company, any of its subsidiaries or its successors under this Agreement or any other agreement with the Company, any of its subsidiaries or its successors, including those obligations pertaining to confidentiality, return of property, non-solicitation, non-competition, and non-disparagement.

(e) "CIC Window" shall mean the total period of time spanning the Pre-CIC Window and Post-CIC Window.

(f) "Disabled" shall mean the Employee is disabled and unable to perform the essential functions of his position(s) with or without reasonable accommodation for a period of one hundred and eighty (180) days (which need not be consecutive) in any twelve (12) month period.

(g) "Good Reason" shall mean that the Employee has complied with the "Good Reason Process" (hereinafter defined) following the occurrence of any of the following events: (i) any significant change in the Employee's title, or position, or duties and responsibilities that is adverse to the Employee and is not initiated, or voluntarily agreed to by the Employee; (ii) any material involuntary decrease in base salary (other than any which may be assessed on a percentage basis to the Company's, the relevant subsidiary's or any successor's key management personnel as a whole); (iii) a permanent change in the principal location at which the Employee provides services to the Company, any of its subsidiaries or its successors beyond fifty (50) miles from its current location; or (iv) any material breach of this Agreement by the Company, any of its subsidiaries or its successors.

(h) "Good Reason Process" shall mean that (i) the Employee reasonably determines in good faith that a "Good Reason" condition has occurred; (ii) the Employee notifies the Company, the relevant subsidiary or the Company's successors in writing of the first occurrence of the Good Reason condition within sixty (60) days of the first occurrence of such condition; (iii) the Employee cooperates in good faith with the Company's, the relevant subsidiary's or any successor's efforts, for a period of not less than thirty (30) days following such notice (the "Cure Period"), to remedy the condition; (iv) notwithstanding such efforts, the Good Reason condition continues to exist; and (v) the Employee terminates his employment within sixty (60) days after the end of the Cure Period. If the Company, the relevant subsidiary or any successor cures the Good Reason condition during the Cure Period, Good Reason shall be deemed not to have occurred.

(i) "Health Benefits" shall mean a monthly cash payment in an amount equal to the monthly employer contribution that the Company, the relevant subsidiary or the Company's successors would have made to provide health insurance to the Employee if the Employee had remained employed by the Company, any of its subsidiaries or its successors.

(j) "Health Benefits Period" shall mean the Employee's COBRA health continuation period or the eighteen (18) month period immediately following the Separation Agreement Effective Date, whichever ends earlier.

(k) "Post-CIC Window" shall mean the twenty-four (24) month period immediately following a Change in Control.

(l) "Pre-CIC Window" shall mean the six (6) month period immediately before a Change in Control.

(m) "Qualifying Termination" shall mean a termination of the Employee's employment either (i) by the Company, any of its subsidiaries or its successors without Cause

(other than due to the Employee's death, the Employee being Disabled, or the Employee becoming an employee of any direct or indirect successor to the business or assets of the Company, rather than continuing as an employee of the Company or any of its subsidiaries, following a Change in Control) or (ii) by the Employee for Good Reason.

(n) "Separation Agreement" shall mean a separation agreement in a form and manner satisfactory to the Company, the relevant subsidiary or the Company's successors containing, among other provisions, a general release of claims (in favor of the Company, its related persons, entities and successors) and a non-disparagement covenant.

(o) "Separation Agreement Effective Date" shall mean either: (i) if the Employee is under age forty (40) as of the Date of Termination, then the date the Employee signs and returns the Separation Agreement to the Company, the relevant subsidiary or the Company's successors; or (ii) if the Employee is age forty (40) or over as of the Date of Termination, then the date that the Separation Agreement becomes irrevocable after the Employee has returned a signed copy of the Separation Agreement to the Company, the relevant subsidiary or the Company's successors.

(p) "Severance Pay" shall mean an amount equal to [NUMBER] times the sum of the Employee's: (i) annual base salary for the calendar year in which the Date of Termination occurs (or the Employee's annual base salary in effect immediately prior to the Change in Control, if higher); *plus* (ii) target annual incentive compensation for the calendar year in which the Date of Termination occurs but pro-rated for the portion of such calendar year that falls prior to the Date of Termination.

4. Change in Control Benefits. In the event of a Qualifying Termination within the CIC Window, subject to the Employee satisfying the Conditions, the Company, the relevant subsidiary or the Company's successors shall pay or provide to the Employee the following "Change in Control Benefits":

(a) The Company, the relevant subsidiary or the Company's successors shall pay the Employee the Severance Pay, in a single lump sum, on the first Business Day that occurs after the thirtieth (30th) day following the Separation Agreement Effective Date.

(b) The Company, the relevant subsidiary or the Company's successors shall commence payment of the installments of the Health Benefits on the first Business Day that occurs after the thirtieth (30th) day following the Separation Agreement Effective Date, which installments shall continue on a monthly basis thereafter during the Health Benefits Period.

(c) Accelerated Vesting on the Separation Agreement Effective Date. Any unvested equity awards outstanding on the date of a Qualifying Termination that would otherwise be forfeited by the Employee shall remain outstanding during the time period the Employee has to satisfy the Conditions. If the Employee fails to satisfy the Conditions, all equity awards held by the Employee shall be governed by the terms of such awards without regard to any accelerated vesting set forth in this Agreement.

5. Additional Limitation.

(a) Anything in this Agreement to the contrary notwithstanding, in the event that the amount of any compensation, payment or distribution by the Company, any of its subsidiaries or its successors to or for the benefit of the Employee, whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise, calculated in a manner consistent with Section 280G of the Internal Revenue Code (the "Code") and the applicable regulations thereunder (the "Aggregate Payments"), would be subject to the excise tax imposed by Section 4999 of the Code, then the Aggregate Payments shall be reduced (but not below zero) so that the sum of all of the Aggregate Payments shall be $1.00 less than the amount at which the Employee becomes subject to the excise tax imposed by Section 4999 of the Code; provided that such reduction shall only occur if it would result in the Employee receiving a higher After Tax Amount (as defined below) than the Employee would receive if the Aggregate Payments were not subject to such reduction. In such event, the Aggregate Payments shall be reduced in the following order, in each case, in reverse chronological order beginning with the Aggregate Payments that are to be paid the furthest in time from consummation of the transaction that is subject to Section 280G of the Code: (1) cash payments not subject to Section 409A of the Code; (2) cash payments subject to Section 409A of the Code; (3) equity-based payments and acceleration; and (4) non-cash forms of benefits; provided that, in the case of all of the foregoing Aggregate Payments, all amounts or payments that are not subject to calculation under Treas. Reg. §1.280G-1, Q&A-24(b) or (c) shall be reduced before any amounts that are subject to calculation under Treas. Reg. §1.280G-1, Q&A-24(b) or (c).

(b) For purposes of this Section 5, the "After Tax Amount" means the amount of the Aggregate Payments less all federal, state, and local income, excise and employment taxes imposed on the Employee as a result of the Employee's receipt of the Aggregate Payments. For purposes of determining the After Tax Amount, the Employee shall be deemed to pay federal income taxes at the highest marginal rate of federal income taxation applicable to individuals for the calendar year in which the determination is to be made, and state and local income taxes at the highest marginal rates of individual taxation in each applicable state and locality, net of the maximum reduction in federal income taxes which could be obtained from deduction of such state and local taxes.

(c) The determination as to whether a reduction in the Aggregate Payments shall be made pursuant to Section 5(a) shall be made by a nationally recognized accounting firm selected by the Company, the relevant subsidiary or the Company's successors (the "Accounting Firm"), which shall provide detailed supporting calculations both to the Company, the relevant subsidiary or the Company's successors and the Employee within fifteen (15) business days of the Date of Termination, if applicable, or at such earlier time as is reasonably requested by the Company, the relevant subsidiary, the Company's successors or the Employee. Any determination by the Accounting Firm shall be binding upon the Company, the relevant subsidiary, the Company's successors and the Employee.

6. Section 409A.

(a) Anything in this Agreement to the contrary notwithstanding, if at the time of the Employee's "separation from service" within the meaning of Section 409A of the Code, the

Company, the relevant subsidiary or the Company's successors determine that the Employee is a "specified employee" within the meaning of Section 409A(a)(2)(B)(i) of the Code, then to the extent any payment or benefit that the Employee becomes entitled to under this Agreement on account of the Employee's separation from service would be considered deferred compensation subject to the twenty (20) percent additional tax imposed pursuant to Section 409A(a) of the Code as a result of the application of Section 409A(a)(2)(B)(i) of the Code, such payment shall not be payable and such benefit shall not be provided until the date that is the earlier of (A) six (6) months and one day after the Employee's separation from service, or (B) the Employee's death.

(b) The parties intend that this Agreement will be administered in accordance with Section 409A of the Code. To the extent that any provision of this Agreement is ambiguous as to its compliance with Section 409A of the Code, the provision shall be read in such a manner so that all payments hereunder comply with Section 409A of the Code. The parties agree that this Agreement may be amended, as reasonably requested by either party, and as may be necessary to fully comply with Section 409A of the Code and all related rules and regulations in order to preserve the payments and benefits provided hereunder without additional cost to either party.

(c) All in-kind benefits provided and expenses eligible for reimbursement under this Agreement shall be provided by the Company, the relevant subsidiary or the Company's successors or incurred by the Employee during the time periods set forth in this Agreement. All reimbursements shall be paid as soon as administratively practicable, but in no event shall any reimbursement be paid after the last day of the taxable year following the taxable year in which the expense was incurred. The amount of in-kind benefits provided or reimbursable expenses incurred in one taxable year shall not affect the in-kind benefits to be provided or the expenses eligible for reimbursement in any other taxable year. Such right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit.

(d) To the extent that any payment or benefit described in this Agreement constitutes "non-qualified deferred compensation" under Section 409A of the Code, and to the extent that such payment or benefit is payable upon the Employee's termination of employment, then such payments or benefits shall be payable only upon the Employee's "separation from service." The determination of whether and when a separation from service has occurred shall be made in accordance with the presumptions set forth in Treasury Regulation Section 1.409A-1(h).

(e) The Company makes no representation or warranty that the payments and benefits provided under this Agreement comply with Section 409A of the Code, and the Company, its subsidiaries and its successors shall have no liability to the Employee or any other person if any provisions of this Agreement are determined to constitute deferred compensation subject to Section 409A of the Code but do not satisfy an exemption from, or the conditions of, Section 409A of the Code.

7. Term. This Agreement shall take effect on the date first set forth above and shall terminate upon the earlier of (a) the termination of the Employee's employment with the Company, any of its subsidiaries or its successors for any reason other than the occurrence of a Qualifying Termination during the CIC Window, or (b) the expiration of the Post-CIC Window if the Employee is still employed by the Company or its successor.

8. Withholding. All payments made by the Company, any of its subsidiaries or its successors to the Employee under this Agreement shall be net of any tax or other amounts required to be withheld by the Company, its subsidiaries or its successors under applicable law.

9. Notice and Date of Termination.

(a) Notice of Termination. After a Change in Control and during the term of this Agreement, any purported termination of the Employee's employment (other than by reason of death) shall be communicated by written Notice of Termination from one party hereto to the other party hereto in accordance with this Section 9. For purposes of this Agreement, a "Notice of Termination" shall mean a notice which shall indicate the specific termination provision in this Agreement relied upon.

(b) Date of Termination. "Date of Termination" shall mean: (i) if the Employee's employment is terminated by his death, the date of his death; (ii) if the Employee's employment is terminated on account of being Disabled or by the Company, the relevant subsidiary or the Company's successors with or without Cause, the date on which Notice of Termination is given; (iii) if the Employee's employment is terminated by the Employee without Good Reason, thirty (30) days after the date on which a Notice of Termination is given, and (iv) if the Employee's employment is terminated by the Employee with Good Reason, the date on which a Notice of Termination is given after the end of the Cure Period. Notwithstanding the foregoing, in the event that the Employee gives a Notice of Termination to the Company, the relevant subsidiary or the Company's successors, the Company, the relevant subsidiary or the Company's successors (as applicable) may unilaterally accelerate the Date of Termination and such acceleration shall not result in a termination by the Company, the relevant subsidiary or the Company's successors for purposes of this Agreement.

10. Non-solicitation. In order to protect the confidential information and good will of the Company, its subsidiaries and its successors, during the Employee's employment with the Company, any of its subsidiaries or its successors and for a period of one (1) year following the termination of the Employee's employment for any reason, the Employee will not directly or indirectly, in any manner, other than for the benefit of the Company, its subsidiaries or its successors, solicit, induce or influence any employee or consultant of the Company, its subsidiaries or its successors to leave the Company, its subsidiaries or its successors.

11. No Mitigation. The Company agrees that, if the Employee's employment by the Company, any of its subsidiaries or its successors is terminated during the term of this Agreement, the Employee is not required to seek other employment or to attempt in any way to reduce the Change in Control Benefits for which the Employee is eligible. Further, Change in Control Benefits shall not be reduced by any compensation earned by the Employee as the result of employment by another employer, by retirement benefits, or by offset against any amount claimed to be owed by the Employee to the Company, any of its subsidiaries or its successors.

12. Consent to Jurisdiction. The parties hereby consent to the jurisdiction of the courts of the State of Delaware and the United States District Court for the District of Delaware. Accordingly, with respect to any such court action, the Employee (a) submits to the personal jurisdiction of such courts; (b) consents to service of process; and (c) waives any other requirement

(whether imposed by statute, rule of court, or otherwise) with respect to personal jurisdiction or service of process.

13. Integration. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes in all respects all prior agreements between the parties concerning such subject matter.

14. Successor to the Employee. This Agreement shall inure to the benefit of and be enforceable by the Employee’s personal representatives, executors, administrators, heirs, distributees, devisees and legatees. In the event of the Employee’s death after a Qualifying Termination but prior to the completion by the Company, the relevant subsidiary or the Company’s successors of all payments due to him under this Agreement, the Company, the relevant subsidiary or the Company’s successors shall continue such payments to the Employee’s beneficiary designated in writing to the Company, the relevant subsidiary or the Company’s successors prior to his death (or to his estate, if the Employee fails to make such designation).

15. Enforceability. If any portion or provision of this Agreement (including, without limitation, any portion or provision of any section of this Agreement) shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

16. Waiver. No waiver of any provision hereof shall be effective unless made in writing and signed by the waiving party. The failure of any party to require the performance of any term or obligation of this Agreement, or the waiver by any party of any breach of this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

17. Notices. Any notices, requests, demands and other communications provided for by this Agreement shall be sufficient if in writing and delivered in person or sent by a nationally recognized overnight currier service or by registered or certified mail, postage prepaid, return receipt requested, to the Employee at the last address the Employee has filed in writing with the Company, the relevant subsidiary or the Company’s successors, or to the Company, the relevant subsidiary or any successor at its main office, to the attention of the Board of Directors.

18. Amendment. This Agreement may be amended or modified only by a written instrument signed by the Employee and by a duly authorized representative of the Company or its successors.

19. Governing Law. This is a Delaware contract and shall be construed under and be governed in all respects by the laws of the State of Delaware, without giving effect to the conflict of laws principles of such state. With respect to any disputes concerning federal law, such disputes shall be determined in accordance with the law as it would be interpreted and applied by the United States Court of Appeals for the Third Circuit.

20. Successor to Company. The Company shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the

business or assets of the Company expressly to assume and agree to perform this Agreement to the same extent that the Company would be required to perform it if no succession had taken place. Failure of the Company to obtain an assumption of this Agreement at or prior to the effectiveness of any succession shall be a material breach of this Agreement.

21. Gender Neutral. Wherever used herein, a pronoun in the masculine gender shall be considered as including the feminine gender unless the context clearly indicates otherwise.

22. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be taken to be an original; but such counterparts shall together constitute one and the same document.

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the date and year first above written.

CAPSTONE GREEN ENERGY HOLDINGS, INC.

By: _
Name:
Title: Authorized Signatory

EMPLOYEE

_
Name:
Title:

EXHIBIT 10.9

CAPSTONE GREEN ENERGY HOLDINGS, INC.
2023 EQUITY INCENTIVE PLAN

1. Purpose; Eligibility.

1.1 General Purpose. The name of this plan is the Capstone Green Energy Holdings, Inc. 2023 Equity Incentive Plan (the "**Plan**"). The purposes of the Plan are to (a) enable Capstone Green Energy Holdings, Inc., a Delaware corporation (the "**Company**"), and any Affiliate to attract and retain the types of Employees, Consultants and Directors who will contribute to the Company's long-term success; (b) provide incentives that align the interests of Employees, Consultants and Directors with those of the stockholders of the Company; and (c) promote the success of the Company's business.

1.2 Eligible Award Recipients. The persons eligible to receive Awards are the Employees, Consultants and Directors of the Company and its Affiliates.

1.3 Available Awards. Awards that may be granted under the Plan include: (a) Incentive Stock Options, (b) Non-qualified Stock Options, (c) Stock Appreciation Rights, (d) Restricted Awards, (e) Performance Share Awards, (f) Cash Awards, and (g) Other Equity-Based Awards.

2. Definitions.

"**Affiliate**" means a corporation or other entity that, directly or through one or more intermediaries, controls, is controlled by or is under common control with, the Company.

"**Applicable Laws**" means the requirements related to or implicated by the administration of the Plan under applicable state corporate law, United States federal and state securities laws, the Code, any stock exchange or trading market on which the shares of Common Stock are listed or quoted, and the applicable laws of any foreign country or jurisdiction where Awards are granted under the Plan.

"**Award**" means any right granted under the Plan, including an Incentive Stock Option, a Non-qualified Stock Option, a Stock Appreciation Right, a Restricted Award, a Performance Share Award, a Cash Award, or an Other Equity-Based Award.

"**Award Agreement**" means a written agreement, contract, certificate or other instrument or document evidencing the terms and conditions of an individual Award granted under the Plan which may, in the discretion of the Company, be transmitted electronically to any Participant. Each Award Agreement shall be subject to the terms and conditions of the Plan.

"**Beneficial Owner**" has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular Person, such Person shall be deemed to have beneficial ownership of all securities that such Person has the right to acquire by conversion or exercise of other securities, whether

such right is currently exercisable or is exercisable only after the passage of time. The terms "Beneficially Owns" and "Beneficially Owned" have a corresponding meaning.

"**Board**" means the Board of Directors of the Company, as constituted at any time.

"**Cash Award**" means an Award denominated in cash that is granted under Section 10 of the Plan.

"**Cause**" means, unless the applicable Award Agreement or other agreement between the Company or an Affiliate and the Participant (the terms of which have been approved by the Committee) provides otherwise:

(a) If the Participant is a party to an employment or service agreement with the Company or an Affiliate and such agreement provides for a definition of Cause, the definition contained therein; or

(b) If no such agreement exists, or if such agreement does not define Cause, any of the following (as applicable): (i) if the Participant is an Employee, the Participant's failure to devote substantially all of the Participant's full professional time, attention, energies, and abilities to the Participant's employment duties for the Company or an Affiliate, which failure has continued for more than thirty (30) days following written notice of such non-performance from the Company or such Affiliate; (ii) a Participant's inducement of any customer, consultant, employee, or supplier of the Company or an Affiliate to unreasonably breach any contract with the Company or an Affiliate or cease its business relationship with the Company or an Affiliate; (iii) a Participant's failure to perform the duties and obligations of the Participant's position(s), which failure has continued for more than thirty (30) days following written notice of such non-performance from the Company or an Affiliate; (iv) an act or acts of dishonesty undertaken by the Participant resulting in substantial personal gain by the Participant at the expense of the Company or an Affiliate; (v) a Participant's gross negligence or willful misconduct or material breach of a fiduciary or contractual duty to the Company or an Affiliate; (vi) a Participant's material violation of state or federal securities laws or failure to cooperate with a bona fide internal investigation or an investigation by regulatory or law enforcement authorities, after being instructed by the Company or an Affiliate to cooperate, or the willful destruction or failure to preserve documents or other materials known to be relevant to such investigation or the inducement of others to fail to cooperate or to produce documents or other materials in connection with such investigation; (vii) a Participant's breach of any confidentiality, trade secret or return of property obligations to the Company or an Affiliate, which breach, if curable, has not been cured within thirty (30) days following written notice of such breach from the Company or such Affiliate; (viii) if the Participant is an Employee, a violation by the Participant of the material written employment policies of the Company or an Affiliate, including those regarding discrimination, harassment and retaliation; (ix) a Participant's commission of, or plea of guilty or no contest to, any felony or a misdemeanor involving moral turpitude, deceit, dishonesty or fraud, or any conduct by a Participant that would reasonably be expected to result in material injury or reputational harm to the Company or an

Affiliate if the Participant were retained in his or her position(s); (x) a Participant's breach of any non-competition, non-solicitation, non-disparagement or other written agreement with the Company or an Affiliate containing restrictive covenants; (xi) a Participant's excessive use of alcohol or the use or possession of an illegal or controlled substance, in each case, in the workplace or which materially impairs the ability of the Participant to effectively perform his or her duties or responsibilities; or (xii) the suspension or loss of, or a failure by a Participant to maintain in full force and effect, any professional license or certification needed by the Participant, under applicable law or otherwise, to be entitled to perform any of his or her duties or responsibilities.

The Committee, in its absolute discretion, shall determine the effect of all matters and questions relating to whether a Participant has been discharged for Cause.

"**Change in Control**" means:

(a) any "person," as such term is used in Sections 13(d) and 14(d) of the Exchange Act (other than the Company, an Affiliate, or any trustee, fiduciary or other person or entity holding securities under any employee benefit plan or trust of the Company or an Affiliate), together with all "affiliates" and "associates" (as such terms are defined in Rule 12b-2 under the Exchange Act) of such person, shall become the "beneficial owner" (as such term is defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing 50% or more of the combined voting power of the Company's then outstanding securities having the right to vote in an election of the Board ("**Voting Securities**") (in such case other than as a result of an acquisition of securities directly from the Company);

(b) the following individuals cease for any reason to constitute a majority of the number of directors then serving on the Board: individuals who, on the date of this Agreement, constitute the Board and any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest, including, but not limited to, a consent solicitation relating to the election of directors of the Company) whose appointment or election by the Board or nomination for election by the Company’s stockholders was approved or recommended by a vote of at least a majority of the directors then still in office who either were members of the Board on the Effective Date or whose appointment, election or nomination for election was previously so approved (the "**Incumbent Directors**"); or

(c) the consummation of (i) any consolidation or merger of the Company (A) where the stockholders of the Company, immediately prior to the consolidation or merger, would not, immediately after the consolidation or merger, beneficially own (as such term is defined in Rule 13d-3 under the Exchange Act), directly or indirectly, shares representing in the aggregate more than 50% of the voting shares of the Company issuing cash or securities in the consolidation or merger (or of its ultimate parent corporation, if any) or (B) after which the Incumbent Directors continuing immediately thereafter do not represent at least a majority of the board of directors of the resulting or successor entity (or its ultimate parent, if applicable), or (ii) any sale or other transfer

(in one transaction or a series of transactions contemplated or arranged by any party as a single plan) of all or substantially all of the assets of the Company.

Notwithstanding the foregoing, a "Change in Control" shall not be deemed to have occurred for purposes of the foregoing clause (a) solely as the result of an acquisition of securities by the Company that, by reducing the number of shares of Voting Securities outstanding, increases the proportionate number of shares of Voting Securities beneficially owned by any person to 50% or more of the combined voting power of all then outstanding Voting Securities; provided, however, that if any person referred to in this sentence shall thereafter become the beneficial owner of any additional shares of Voting Securities (other than pursuant to a stock split, stock dividend, or similar transaction or as a result of an acquisition of securities directly from the Company) and immediately thereafter beneficially owns 50% or more of the combined voting power of all then outstanding Voting Securities, then a "Change in Control" shall be deemed to have occurred for purposes of the foregoing clause (a). Further, notwithstanding the foregoing, a "Change in Control" shall be deemed not to have occurred for purposes of any of the foregoing clauses (a) or (b) unless the respective transaction constitutes a "change in control event" within the meaning of Treas. Reg. §1.409A-3(i)(5).

"**Code**" means the Internal Revenue Code of 1986, as it may be amended from time to time. Any reference to a section of the Code shall be deemed to include a reference to any regulations promulgated thereunder.

"**Committee**" means a committee of one or more members of the Board, appointed by the Board to administer the Plan in accordance with Section 3.3 and Section 3.4.

"**Common Stock**" means the common stock, $0.001 par value per share, of the Company, or such other securities of the Company as may be designated by the Committee from time to time in substitution thereof.

"**Company**" means Capstone Green Energy Holdings, Inc., a Delaware corporation, and any successor thereto.

"**Consultant**" means any natural person that provides bona fide services to the Company or an Affiliate, other than as an Employee or Director, and such services are not in connection with the offer or sale of securities in a capital-raising transaction and do not directly or indirectly promote or maintain a market for the Company's securities.

"**Continuous Service**" means that the Participant's service with the Company or an Affiliate, whether as an Employee, Consultant or Director, is not interrupted or terminated. The Participant's Continuous Service shall not be deemed to have terminated merely because of a change in the capacity in which the Participant renders service to the Company or an Affiliate as an Employee, Consultant or Director or a change in the entity for which the Participant renders such service, *provided that* there is no interruption or termination of the Participant's Continuous Service; *provided further that,* if any Award is subject to Section 409A of the Code, this sentence shall only be given effect to the extent consistent with Section 409A of the Code. For example, a change in status from an Employee of the Company to a Director of an Affiliate will not constitute an interruption of Continuous Service. The

Committee or its delegate, in its sole discretion, may determine whether Continuous Service shall be considered interrupted in the case of any leave of absence approved by that party, including sick leave, military leave or any other personal or family leave of absence. The Committee or its delegate, in its sole discretion, may determine whether a Company transaction, such as a sale or spin-off of a division or subsidiary that employs a Participant, shall be deemed to result in a termination of Continuous Service for purposes of affected Awards, and such decision shall be final, conclusive and binding.

"**Deferred Stock Units (DSUs)**" has the meaning set forth in Section 8.1(b) hereof.

"**Director**" means a member of the Board.

"**Disability**" means, unless the applicable Award Agreement or other agreement between the Company or an Affiliate and the Participant (the terms of which have been approved by the Committee) provides otherwise, that the Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment; *provided, however,* for purposes of determining the term of an Incentive Stock Option pursuant to Section 6.10 hereof, the term Disability shall have the meaning ascribed to it under Section 22(e)(3) of the Code. The determination of whether an individual has a Disability shall be determined under procedures established by the Committee. Except in situations where the Committee is determining Disability for purposes of the term of an Incentive Stock Option pursuant to Section 6.10 hereof within the meaning of Section 22(e)(3) of the Code, the Committee may rely on any determination that a Participant is disabled for purposes of benefits under any long-term disability plan maintained by the Company or any Affiliate in which a Participant participates.

"**Disqualifying Disposition**" has the meaning set forth in Section 17.12.

"**Effective Date**" means the effective date of the Plan as provided in Section 18.

"**Employee**" means any person, including an Officer or Director, employed by the Company or an Affiliate; *provided, that,* for purposes of determining eligibility to receive Incentive Stock Options, an Employee shall mean an employee of the Company or a parent or subsidiary corporation within the meaning of Section 424 of the Code. Mere service as a Director or payment of a director's fee by the Company or an Affiliate shall not be sufficient to constitute "employment" by the Company or an Affiliate.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

"**Fair Market Value**" means, as of any date, the value of the Common Stock as determined below. If the Common Stock is listed or quoted on any established stock exchange or trading market, including without limitation, the New York Stock Exchange, the Nasdaq Stock Market or any market of OTC Markets Group Inc. (or successor thereto), the Fair Market Value shall be the closing price of a share of Common Stock (or, if no sales were reported, the closing price on the date immediately preceding such date) as quoted on the principal exchange or trading market for the Common Stock on the day of determination. In the absence of an established market for the Common Stock, the Fair Market Value shall be

determined in good faith by the Committee and such determination shall be conclusive and binding on all persons.

"**Fiscal Year**" means the Company's fiscal year.

"**Free Standing Rights**" has the meaning set forth in Section 7.

"**Grant Date**" means the date on which the Committee adopts a resolution, or takes other appropriate action, expressly granting an Award to a Participant that specifies the key terms and conditions of the Award or, if a later date is set forth in such resolution, then such date as is set forth in such resolution.

"**Incentive Stock Option**" means an Option that is designated by the Committee as an incentive stock option within the meaning of Section 422 of the Code and that meets the requirements set out in the Plan.

"**Non-Employee Director**" means a Director who is a "non-employee director" within the meaning of Rule 16b-3.

"**Non-qualified Stock Option**" means an Option that by its terms does not qualify or is not intended to qualify as an Incentive Stock Option.

"**Officer**" means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

"**Option**" means an Incentive Stock Option or a Non-qualified Stock Option granted pursuant to the Plan.

"**Optionholder**" means a person to whom an Option is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Option.

"**Option Exercise Price**" means the price at which a share of Common Stock may be purchased upon the exercise of an Option.

"Other Equity-Based Award" means an Award that is not an Option, Stock Appreciation Right, Restricted Stock, Restricted Stock Unit, or Performance Share Award that is granted under Section 10 and is payable by delivery of Common Stock and/or which is measured by reference to the value of Common Stock.

"**Participant**" means an eligible person to whom an Award is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Award.

"**Performance Goals**" means, for a Performance Period, the one or more goals established by the Committee for the Performance Period based upon business criteria or other performance measures determined by the Committee in its discretion.

"**Performance Period**" means the one or more periods of time, as the Committee may select, over which the attainment of one or more Performance Goals will be

measured for the purpose of determining a Participant's right to and the payment of a Performance Share Award or a Cash Award.

"**Performance Share Award**" means any Award granted pursuant to Section 9 hereof.

"**Performance Share**" means the grant of a right to receive a number of shares of Common Stock or share units based upon the performance of the Company during a Performance Period, as determined by the Committee.

"**Permitted Transferee**" means: (a) a member of the Optionholder's immediate family (child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships), any person sharing the Optionholder's household (other than a tenant or employee), a trust in which these persons have more than 50% of the beneficial interest, a foundation in which these persons (or the Optionholder) control the management of assets, and any other entity in which these persons (or the Optionholder) own more than 50% of the voting interests; (b) third parties designated by the Committee in connection with a program established and approved by the Committee pursuant to which Participants may receive a cash payment or other consideration in consideration for the transfer of a Non-qualified Stock Option; and (c) such other transferees as may be permitted by the Committee in its sole discretion.

"Person" means a person as defined in Section 13(d)(3) of the Exchange Act.

"**Plan**" means this Capstone Green Energy Holdings, Inc. 2023 Equity Incentive Plan, as amended and/or amended and restated from time to time.

"**Related Rights**" has the meaning set forth in Section 7.

"**Restricted Award**" means any Award granted pursuant to Section 8.

"**Restricted Period**" has the meaning set forth in Section 8.

"**Rule 16b-3**" means Rule 16b-3 promulgated under the Exchange Act or any successor to Rule 16b-3, as in effect from time to time.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Stock Appreciation Right**" means the right pursuant to an Award granted under Section 7 to receive, upon exercise, an amount payable in cash or shares equal to the number of shares subject to the Stock Appreciation Right that is being exercised multiplied by the excess of (a) the Fair Market Value of a share of Common Stock on the date the Award is exercised, over (b) the exercise price specified in the Stock Appreciation Right Award Agreement.

"**Stock for Stock Exchange**" has the meaning set forth in Section 6.4.

"Substitute Award" has the meaning set forth in Section 4.6.

"**Ten Percent Stockholder**" means a person who owns (or is deemed to own pursuant to Section 424(d) of the Code) stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or of any of its Affiliates.

"Total Share Reserve" has the meaning set forth in Section 4.1.

3. Administration.

3.1 Authority of Committee. The Plan shall be administered by the Committee or, in the Board's sole discretion, by the Board. Subject to the terms of the Plan, the Committee's charter and Applicable Laws, and in addition to other express powers and authorization conferred by the Plan, the Committee shall have the authority:

(a) to construe and interpret the Plan and apply its provisions;

(b) to promulgate, amend, and rescind rules relating to the administration of the Plan;

(c) to authorize any person to execute, on behalf of the Company, any instrument required to carry out the purposes of the Plan;

(d) to delegate its authority to one or more Officers of the Company with respect to Awards that do not involve "insiders" within the meaning of Section 16 of the Exchange Act;

(e) to determine when Awards are to be granted under the Plan and the applicable Grant Date;

(f) from time to time to select, subject to the limitations set forth in the Plan, those eligible Award recipients to whom Awards shall be granted;

(g) to determine the number of shares of Common Stock to be made subject to each Award;

(h) to determine whether each Option is to be an Incentive Stock Option or a Non-qualified Stock Option;

(i) to prescribe the terms and conditions of each Award, including, without limitation, the exercise price and medium of payment and vesting provisions, and to specify the provisions of the Award Agreement relating to such grant;

(j) to determine the target number of Performance Shares to be granted pursuant to a Performance Share Award, the performance measures that will be used to establish the Performance Goals, the Performance Period(s) and the number of Performance Shares earned by a Participant;

(k) to amend any outstanding Awards, including for the purpose of modifying the time or manner of vesting, or the term of any outstanding Award; *provided, however*, that if any such amendment impairs a Participant's rights or increases a Participant's obligations under his or her Award or creates or increases a Participant's federal income tax liability with respect to an Award, such amendment shall also be subject to the Participant's consent;

(l) to determine the duration and purpose of leaves of absences which may be granted to a Participant without constituting termination of their employment for purposes of the Plan, which periods shall be no shorter than the periods generally applicable to Employees under the Company's employment policies;

(m) to make decisions with respect to outstanding Awards that may become necessary upon a change in corporate control or an event that triggers anti-dilution adjustments;

(n) to interpret, administer, reconcile any inconsistency in, correct any defect in and/or supply any omission in the Plan and any instrument or agreement relating to, or Award granted under, the Plan; and

(o) to exercise discretion to make any and all other determinations which it determines to be necessary or advisable for the administration of the Plan.

The Committee may also modify the purchase price or the exercise price of any outstanding Award; *provided that,* without stockholder approval, no amendment may be made to the Plan or any Award Agreement that would be considered a "repricing" of an Option under the applicable listing standards of the national exchange on which the Common Stock is listed (if any). The term "repricing" includes (i) changing the terms of an Option to lower its exercise price and (ii) cancelling an Option when the exercise price is higher than the Fair Market Value of the underlying shares subject to such Option and exchanging it for another Award with a lower exercise price.

3.2 Committee Decisions Final. All decisions made by the Committee pursuant to the provisions of the Plan shall be final and binding on the Company and the Participants, unless such decisions are determined by a court having jurisdiction to be arbitrary and capricious.

3.3 Delegation. The Committee shall be the Compensation Committee or, if no such Committee has been appointed, the Board may delegate administration of the Plan to a committee or committees of one or more members of the Board, and the term "**Committee**" shall apply to any person or persons to whom such authority has been delegated. The Committee shall have the power to delegate to a subcommittee any of the administrative powers the Committee is authorized to exercise (and references in the Plan to the Board or the Committee shall thereafter be to the committee or subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. The Board may abolish the Committee at any time and revest in the Board the administration of the Plan. The members of the Committee shall be appointed by and serve

at the pleasure of the Board. From time to time, the Board may increase or decrease the size of the Committee, add additional members to, remove members (with or without cause) from, appoint new members in substitution therefor, and fill vacancies, however caused, in the Committee. The Committee shall act pursuant to a vote of the majority of its members or, in the case of a Committee comprised of only two members, the unanimous consent of its members, whether present or not, or by the written consent of the majority of its members and minutes shall be kept of all of its meetings and copies thereof shall be provided to the Board. Subject to the limitations prescribed by the Plan and the Board, the Committee may establish and follow such rules for the conduct of its business as it may determine to be advisable.

3.4 Committee Composition. Except as otherwise determined by the Board, the Committee shall consist solely of two or more Non-Employee Directors. The Board shall have discretion to determine whether or not it intends to comply with the exemption requirements of Rule 16b-3. However, if the Board intends to satisfy such exemption requirements, with respect to any insider subject to Section 16 of the Exchange Act, the Committee shall be a compensation committee of the Board that at all times consists solely of two or more Non-Employee Directors. Within the scope of such authority, the Board or the Committee may delegate to a committee of one or more members of the Board who are not Non-Employee Directors the authority to grant Awards to eligible persons who are not then subject to Section 16 of the Exchange Act. Nothing herein shall create an inference that an Award is not validly granted under the Plan in the event Awards are granted under the Plan by a compensation committee of the Board that does not at all times consist solely of two or more Non-Employee Directors.

3.5 Indemnification. In addition to such other rights of indemnification as they may have as Directors or members of the Committee, and to the extent allowed by Applicable Laws, the Committee shall be indemnified by the Company against the reasonable expenses, including attorneys' fees, actually incurred in connection with any action, suit or proceeding or in connection with any appeal therein, to which the Committee may be party by reason of any action taken or failure to act under or in connection with the Plan or any Award granted under the Plan, and against all amounts paid by the Committee in settlement thereof (*provided, however*, that the settlement has been approved by the Company, which approval shall not be unreasonably withheld) or paid by the Committee in satisfaction of a judgment in any such action, suit or proceeding, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Committee did not act in good faith and in a manner which such person reasonably believed to be in the best interests of the Company, or in the case of a criminal proceeding, had no reason to believe that the conduct complained of was unlawful; *provided, however*, that within sixty (60) days after the institution of any such action, suit or proceeding, such Committee shall, in writing, offer the Company the opportunity at its own expense to handle and defend such action, suit or proceeding.

4. Shares Subject to the Plan.

4.1 Subject to adjustment in accordance with Section 14 , no more than 3,000,000 shares of Common Stock shall be available for the grant of Awards under the Plan (the "**Total Share Reserve**"). During the terms of the Awards, the Company shall keep available at all times the number of shares of Common Stock required to satisfy such Awards.

4.2 Shares of Common Stock available for distribution under the Plan may consist, in whole or in part, of authorized and unissued shares, treasury shares or shares reacquired by the Company in any manner.

4.3 Subject to adjustment in accordance with Section 14, no more than 3,000,000 shares of Common Stock may be issued in the aggregate pursuant to the exercise of Incentive Stock Options (the "**ISO Limit**").

4.4 The aggregate value of Awards granted during a single Fiscal Year to any Non-Employee Director, together with any cash fees paid or to be paid to such Non-Employee Director during the Fiscal Year and the value of awards granted to such Non-Employee Director under any other equity compensation plan of the Company during the Fiscal Year, shall not exceed a total value of $300,000 (calculating the value of any Awards based on the grant date fair value for financial reporting purposes).

4.5 Any shares of Common Stock subject to an Award that expires or is canceled, forfeited or terminated without issuance of the full number of shares of Common Stock to which the Award related will again be available for issuance under the Plan. Notwithstanding anything to the contrary contained herein: shares subject to an Award under the Plan shall not again be made available for issuance or delivery under the Plan if such shares are (a) shares tendered in payment of an Option, (b) shares delivered or withheld by the Company to satisfy any tax withholding obligation, or (c) shares covered by a stock-settled Stock Appreciation Right or other Awards that were not issued upon the settlement of the Award.

4.6 Awards may, in the sole discretion of the Committee, be granted under the Plan in assumption of, or in substitution for, outstanding awards previously granted by an entity acquired by the Company or with which the Company combines ("**Substitute Awards**"). Substitute Awards shall not be counted against the Total Share Reserve; *provided, that*, Substitute Awards issued in connection with the assumption of, or in substitution for, outstanding options intended to qualify as Incentive Stock Options shall be counted against the ISO limit. Subject to applicable stock exchange requirements, available shares under a stockholder-approved plan of an entity directly or indirectly acquired by the Company or with which the Company combines (as appropriately adjusted to reflect such acquisition or transaction) may be used for Awards under the Plan and shall not count toward the Total Share Reserve.

5. Eligibility.

5.1 Eligibility for Specific Awards. Incentive Stock Options may be granted only to Employees. Awards other than Incentive Stock Options may be granted to Employees, Consultants and Directors.

5.2 Ten Percent Stockholder. A Ten Percent Stockholder shall not be granted an Incentive Stock Option unless the Option Exercise Price is at least 110% of the Fair Market Value of the Common Stock on the Grant Date and the Option is not exercisable after the expiration of five (5) years from the Grant Date.

6. Option Provisions. Each Option granted under the Plan shall be evidenced by an Award Agreement. Each Option so granted shall be subject to the conditions set forth in this Section 6, and to such other conditions not inconsistent with the Plan as may be reflected in the applicable Award Agreement. Each Option shall be separately designated as an Incentive Stock Option or Non-qualified Stock Option at the time of grant, and, if certificates are issued, a separate certificate or certificates will be issued for shares of Common Stock purchased on exercise of each type of Option. Each Option intended to qualify as an Incentive Stock Option shall be subject to approval of the Plan by the Company's stockholders within twelve (12) months following the date the Plan is adopted as described in Section 422(b)(1) of the Code. To the extent that any Option does not qualify as an Incentive Stock Option (whether because of its provisions or the time or manner of its exercise or otherwise), such Option or the portion thereof which does not so qualify shall constitute a separate Non-qualified Stock Option. Notwithstanding the foregoing, the Company shall have no liability to any Participant or any other person if an Option designated as an Incentive Stock Option fails to qualify as such at any time or if an Option is determined to constitute "nonqualified deferred compensation" within the meaning of Section 409A of the Code and the terms of such Option do not satisfy the requirements of Section 409A of the Code. The provisions of separate Options need not be identical, but each Option shall include (through incorporation of provisions hereof by reference in the Option or otherwise) the substance of each of the following provisions:

6.1 Term. Subject to the provisions of Section 5.2 regarding Ten Percent Stockholders, no Option shall be exercisable after the expiration of ten (10) years from the Grant Date.

6.2 Exercise Price of an Incentive Stock Option. Subject to the provisions of Section 5.2 regarding Ten Percent Stockholders, the Option Exercise Price of each Incentive Stock Option shall be not less than 100% of the Fair Market Value of the Common Stock subject to the Option on the Grant Date. Notwithstanding the foregoing, an Incentive Stock Option may be granted with an Option Exercise Price lower than that set forth in the preceding sentence if such Option is granted pursuant to an assumption or substitution for another option in a manner satisfying the provisions of Section 424(a) of the Code.

6.3 Exercise Price of a Non-qualified Stock Option. The Option Exercise Price of each Non-qualified Stock Option shall be not less than 100% of the Fair Market Value of the Common Stock subject to the Option on the Grant Date. Notwithstanding the foregoing, a Non-qualified Stock Option may be granted with an Option Exercise Price lower than that set forth in the preceding sentence if such Option is granted pursuant to an assumption or substitution for another option in a manner satisfying the provisions of Section 409A of the Code.

6.4 Consideration. The Option Exercise Price of Common Stock acquired pursuant to an Option shall be paid, to the extent permitted by applicable statutes and regulations, either (a) in cash or by certified or bank check at the time the Option is exercised or (b) in the discretion of the Committee, upon such terms as the Committee shall approve (as set forth in an Award Agreement or otherwise): (i) by delivery to the Company of other Common Stock, duly endorsed for transfer to the Company, with a Fair Market Value on the date of delivery equal to the Option Exercise Price (or portion thereof) due for the number of shares being

acquired, or by means of attestation whereby the Participant identifies for delivery specific shares of Common Stock that have an aggregate Fair Market Value on the date of attestation equal to the Option Exercise Price (or portion thereof) and receives a number of shares of Common Stock equal to the difference between the number of shares thereby purchased and the number of identified attestation shares of Common Stock (a "**Stock for Stock Exchange**"); (ii) a "cashless" exercise program established with a broker; (iii) by reduction in the number of shares of Common Stock otherwise deliverable upon exercise of such Option with a Fair Market Value equal to the aggregate Option Exercise Price at the time of exercise; (iv) by any combination of the foregoing methods; or (v) in any other form of legal consideration that may be acceptable to the Committee. Unless otherwise specifically provided in the Option, the exercise price of Common Stock acquired pursuant to an Option that is paid by delivery (or attestation) to the Company of other Common Stock acquired, directly or indirectly from the Company, shall be paid only by shares of the Common Stock of the Company that have been held for more than six (6) months (or such longer or shorter period of time required to avoid a charge to earnings for financial accounting purposes). Notwithstanding the foregoing, an exercise by a Director or Officer that involves or may involve a direct or indirect extension of credit or arrangement of an extension of credit by the Company, directly or indirectly, in violation of Section 402(a) of the Sarbanes-Oxley Act of 2002 shall be prohibited with respect to any Award under the Plan.

6.5 Transferability of an Incentive Stock Option. An Incentive Stock Option shall not be transferable except by will or by the laws of descent and distribution and shall be exercisable during the lifetime of the Optionholder only by the Optionholder. Notwithstanding the foregoing, the Optionholder may, by delivering written notice to the Company, in a form satisfactory to the Company, designate a third party who, in the event of the death of the Optionholder, shall thereafter be entitled to exercise the Option.

6.6 Transferability of a Non-qualified Stock Option. A Non-qualified Stock Option may, in the sole discretion of the Committee, be transferable to a Permitted Transferee, upon written approval by the Committee to the extent provided in the Award Agreement. If the Non-qualified Stock Option does not provide for transferability, then the Non-qualified Stock Option shall not be transferable except by will or by the laws of descent and distribution and shall be exercisable during the lifetime of the Optionholder only by the Optionholder. Notwithstanding the foregoing, the Optionholder may, by delivering written notice to the Company, in a form satisfactory to the Company, designate a third party who, in the event of the death of the Optionholder, shall thereafter be entitled to exercise the Option.

6.7 Vesting of Options. Other than with respect to an Award granted to a Non-Employee Director, each Option shall vest and therefore become exercisable no earlier than one (1) year after the Grant Date. No Option may be exercised for a fraction of a share of Common Stock. The Committee may, but shall not be required to, provide for an acceleration of vesting and exercisability in the terms of any Award Agreement upon the occurrence of a specified event.

6.8 Termination of Continuous Service. Unless otherwise provided in an Award Agreement or other agreement between the Company or an Affiliate and the Participant (the terms of which have been approved by the Committee), in the event an Optionholder's

Continuous Service terminates (other than upon the Optionholder's death or Disability), the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise such Option as of the date of termination) but only within such period of time ending on the earlier of (a) the date three (3) months following the termination of the Optionholder's Continuous Service or (b) the expiration of the term of the Option as set forth in the Award Agreement; *provided that*, if the termination of Continuous Service is by the Company for Cause, all outstanding Options (whether or not vested) shall immediately terminate and cease to be exercisable. If, after termination, the Optionholder does not exercise his or her Option within the time specified in the Award Agreement, the Option shall terminate.

6.9 Extension of Termination Date. An Optionholder's Award Agreement or other agreement between the Company or an Affiliate and the Participant (the terms of which have been approved by the Committee) may also provide that, if the exercise of the Option following the termination of the Optionholder's Continuous Service for any reason would be prohibited at any time because the issuance of shares of Common Stock would violate the registration requirements under the Securities Act or any other state or federal securities law or the rules of any securities exchange, then the Option shall terminate on the earlier of (a) the expiration of the term of the Option in accordance with Section 6.1 or (b) the expiration of a period after termination of the Participant's Continuous Service that is three (3) months after the end of the period during which the exercise of the Option would be in violation of such registration or other securities law requirements.

6.10 Disability of Optionholder. Unless otherwise provided in an Award Agreement or other agreement between the Company or an Affiliate and the Participant (the terms of which have been approved by the Committee), in the event that an Optionholder's Continuous Service terminates as a result of the Optionholder's Disability, the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise such Option as of the date of termination), but only within such period of time ending on the earlier of (a) the date twelve (12) months following such termination or (b) the expiration of the term of the Option as set forth in the Award Agreement. If, after termination, the Optionholder does not exercise his or her Option within the time specified herein or in the Award Agreement, the Option shall terminate.

6.11 Death of Optionholder. Unless otherwise provided in an Award Agreement or other agreement between the Company or an Affiliate and the Participant (the terms of which have been approved by the Committee), in the event an Optionholder's Continuous Service terminates as a result of the Optionholder's death, then the Option may be exercised (to the extent the Optionholder was entitled to exercise such Option as of the date of death) by the Optionholder's estate, by a person who acquired the right to exercise the Option by bequest or inheritance or by a person designated to exercise the Option upon the Optionholder's death, but only within the period ending on the earlier of (a) the date twelve (12) months following the date of death or (b) the expiration of the term of such Option as set forth in the Award Agreement. If, after the Optionholder's death, the Option is not exercised within the time specified herein or in the Award Agreement, the Option shall terminate.

6.12 Incentive Stock Option $100,000 Limitation. To the extent that the aggregate Fair Market Value (determined at the time of grant) of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any Optionholder during any calendar year (under all plans of the Company and its Affiliates) exceeds $100,000, the Options or portions thereof which exceed such limit (according to the order in which they were granted) shall be treated as Non-qualified Stock Options.

7. Stock Appreciation Rights. Each Stock Appreciation Right granted under the Plan shall be evidenced by an Award Agreement. Each Stock Appreciation Right so granted shall be subject to the conditions set forth in this Section 7, and to such other conditions not inconsistent with the Plan as may be reflected in the applicable Award Agreement. A Stock Appreciation Right may be granted alone (" **Free Standing Rights**") or in tandem with an Option granted under the Plan ("**Related Rights**").

7.1 Grant Requirements for Related Rights. Any Related Right that relates to a Non-qualified Stock Option may be granted at the same time the Option is granted or at any time thereafter but before the exercise or expiration of the Option. Any Related Right that relates to an Incentive Stock Option must be granted at the same time the Incentive Stock Option is granted.

7.2 Term. The term of a Stock Appreciation Right granted under the Plan shall be determined by the Committee; *provided, however*, no Stock Appreciation Right shall be exercisable later than the tenth (10th) anniversary of the Grant Date.

7.3 Vesting. Other than with respect to an Award granted to a Non-Employee Director, each Stock Appreciation Right shall vest and therefore become exercisable no earlier than one (1) year after the Grant Date. No Stock Appreciation Right may be exercised for a fraction of a share of Common Stock. The Committee may, but shall not be required to, provide for an acceleration of vesting and exercisability in the terms of any Award Agreement upon the occurrence of a specified event.

7.4 Exercise and Payment. Upon exercise of a Stock Appreciation Right, the holder shall be entitled to receive from the Company an amount equal to the number of shares of Common Stock subject to the Stock Appreciation Right that is being exercised multiplied by the excess of (i) the Fair Market Value of a share of Common Stock on the date the Award is exercised, over (ii) the exercise price specified in the Stock Appreciation Right or related Option. Payment with respect to the exercise of a Stock Appreciation Right shall be made on the date of exercise. Payment shall be made in the form of shares of Common Stock (with or without restrictions as to substantial risk of forfeiture and transferability, as determined by the Committee in its sole discretion), cash or a combination thereof, as determined by the Committee.

7.5 Exercise Price. The exercise price of a Free Standing Right shall be determined by the Committee, but shall not be less than 100% of the Fair Market Value of one share of Common Stock on the Grant Date of such Stock Appreciation Right. A Related Right granted simultaneously with or subsequent to the grant of an Option and in conjunction therewith or in the alternative thereto shall have the same exercise price as the related Option, shall be

transferable only upon the same terms and conditions as the related Option, and shall be exercisable only to the same extent as the related Option; *provided, however*, that a Stock Appreciation Right, by its terms, shall be exercisable only when the Fair Market Value per share of Common Stock subject to the Stock Appreciation Right and related Option exceeds the exercise price per share thereof, and no Stock Appreciation Rights may be granted in tandem with an Option unless the Committee determines that the requirements of Section 7.1 are satisfied.

7.6 Reduction in the Underlying Option Shares. Upon any exercise of a Related Right, the number of shares of Common Stock for which any related Option shall be exercisable shall be reduced by the number of shares for which the Stock Appreciation Right has been exercised. The number of shares of Common Stock for which a Related Right shall be exercisable shall be reduced upon any exercise of any related Option by the number of shares of Common Stock for which such Option has been exercised.

8. Restricted Awards. A Restricted Award is an Award of shares of Common Stock (" **Restricted Stock**") or Common Stock units, each of which represents a notional share of Common Stock ("**Restricted Stock Units**"), having a value equal to the Fair Market Value of an identical number of shares of Common Stock, which may, but need not, provide that such Restricted Award may not be sold, assigned, transferred or otherwise disposed of, pledged or hypothecated as collateral for a loan or as security for the performance of any obligation or for any other purpose for such period (the "**Restricted Period**") as the Committee shall determine. Each Restricted Award granted under the Plan shall be evidenced by an Award Agreement. Each Restricted Award so granted shall be subject to the conditions set forth in this Section 8, and to such other conditions not inconsistent with the Plan as may be reflected in the applicable Award Agreement.

8.1 Restricted Stock and Restricted Stock Units.

(a) Each Participant granted Restricted Stock shall execute and deliver to the Company an Award Agreement with respect to the Restricted Stock setting forth the restrictions and other terms and conditions applicable to such Restricted Stock. If the Committee determines that the Restricted Stock shall be held by the Company or in escrow rather than delivered to the Participant pending the release of the applicable restrictions, the Committee may require the Participant to additionally execute and deliver to the Company (A) an escrow agreement satisfactory to the Committee, if applicable and (B) an appropriate blank stock power with respect to the Restricted Stock covered by such agreement. If a Participant fails to execute an agreement evidencing an Award of Restricted Stock and, if applicable, an escrow agreement and stock power, the Award shall be null and void. Subject to the restrictions set forth in the Award Agreement, the Participant generally shall have the rights and privileges of a stockholder as to such Restricted Stock, including the right to vote such Restricted Stock and the right to receive dividends; *provided that*, any cash dividends and stock dividends with respect to the Restricted Stock shall be withheld by the Company for the Participant's account, and interest may be credited on the amount of the cash dividends withheld at a rate and subject to such terms as determined by the Committee. The cash dividends or stock dividends so withheld by the Committee and attributable to any

particular share of Restricted Stock (and earnings thereon, if applicable) shall be distributed to the Participant in cash or, at the discretion of the Committee, in shares of Common Stock having a Fair Market Value equal to the amount of such dividends, if applicable, upon the release of restrictions on such share and, if such share is forfeited, the Participant shall have no right to such dividends.

(b) The terms and conditions of a grant of Restricted Stock Units shall be reflected in an Award Agreement. No shares of Common Stock shall be issued at the time a Restricted Stock Unit is granted, and the Company will not be required to set aside funds for the payment of any such Award. A Participant shall have no voting rights with respect to any Restricted Stock Units granted hereunder. The Committee may also grant Restricted Stock Units with a deferral feature, whereby settlement is deferred beyond the vesting date until the occurrence of a future payment date or event set forth in an Award Agreement (" **Deferred Stock Units**"). At the discretion of the Committee, each Restricted Stock Unit or Deferred Stock Unit (representing one share of Common Stock) may be credited with an amount equal to the cash and stock dividends paid by the Company in respect of one share of Common Stock ("**Dividend Equivalents**"). Dividend Equivalents shall be withheld by the Company and credited to the Participant's account, and interest may be credited on the amount of cash Dividend Equivalents credited to the Participant's account at a rate and subject to such terms as determined by the Committee. Dividend Equivalents credited to a Participant's account and attributable to any particular Restricted Stock Unit or Deferred Stock Unit (and earnings thereon, if applicable) shall be distributed in cash or, at the discretion of the Committee, in shares of Common Stock having a Fair Market Value equal to the amount of such Dividend Equivalents and earnings, if applicable, to the Participant upon settlement of such Restricted Stock Unit or Deferred Stock Unit and, if such Restricted Stock Unit or Deferred Stock Unit is forfeited, the Participant shall have no right to such Dividend Equivalents.

8.2 Restrictions.

(a) Restricted Stock awarded to a Participant shall be subject to the following restrictions until the expiration of the Restricted Period, and to such other terms and conditions as may be set forth in the applicable Award Agreement: (A) if an escrow arrangement is used, the Participant shall not be entitled to delivery of the stock certificate; (B) the shares shall be subject to the restrictions on transferability set forth in the Award Agreement; (C) the shares shall be subject to forfeiture to the extent provided in the applicable Award Agreement; and (D) to the extent such shares are forfeited, the stock certificates shall be returned to the Company, and all rights of the Participant to such shares and as a stockholder with respect to such shares shall terminate without further obligation on the part of the Company.

(b) Restricted Stock Units and Deferred Stock Units awarded to any Participant shall be subject to (A) forfeiture until the expiration of the Restricted Period, and satisfaction of any applicable Performance Goals during such period, to the extent provided in the applicable Award Agreement, and to the extent such Restricted Stock Units or Deferred Stock Units are forfeited, all rights of the Participant to such

Restricted Stock Units or Deferred Stock Units shall terminate without further obligation on the part of the Company and (B) such other terms and conditions as may be set forth in the applicable Award Agreement.

(c) The Committee shall have the authority to remove any or all of the restrictions on the Restricted Stock, Restricted Stock Units and Deferred Stock Units whenever it may determine that, by reason of changes in Applicable Laws or other changes in circumstances arising after the date the Restricted Stock or Restricted Stock Units or Deferred Stock Units are granted, such action is appropriate.

8.3 Restricted Period. Other than with respect to an Award granted to a Non-Employee Director, the Restricted Period shall commence on the Grant Date and end no earlier than one (1) year after the Grant Date. No Restricted Award may be granted or settled for a fraction of a share of Common Stock. The Committee may, but shall not be required to, provide for an acceleration of vesting in the terms of any Award Agreement upon the occurrence of a specified event.

8.4 Delivery of Restricted Stock and Settlement of Restricted Stock Units. Upon the expiration of the Restricted Period with respect to any shares of Restricted Stock, the restrictions set forth in Section 8.2 and the applicable Award Agreement shall be of no further force or effect with respect to such shares, except as set forth in the applicable Award Agreement. If an escrow arrangement is used, upon such expiration, the Company shall deliver to the Participant, or his or her beneficiary, without charge, the stock certificate evidencing the shares of Restricted Stock which have not then been forfeited and with respect to which the Restricted Period has expired (to the nearest full share) and any cash dividends or stock dividends credited to the Participant's account with respect to such Restricted Stock and the interest thereon, if any. Upon the expiration of the Restricted Period with respect to any outstanding Restricted Stock Units, or at the expiration of the deferral period with respect to any outstanding Deferred Stock Units, the Company shall deliver to the Participant, or his or her beneficiary, without charge, one share of Common Stock for each such outstanding vested Restricted Stock Unit or Deferred Stock Unit ("**Vested Unit**") and cash equal to any Dividend Equivalents credited with respect to each such Vested Unit in accordance with Section 8.1(b) hereof and the interest thereon or, at the discretion of the Committee, in shares of Common Stock having a Fair Market Value equal to such Dividend Equivalents and the interest thereon, if any; *provided, however*, that, if explicitly provided in the applicable Award Agreement, the Committee may, in its sole discretion, elect to pay cash or part cash and part Common Stock in lieu of delivering only shares of Common Stock for Vested Units. If a cash payment is made in lieu of delivering shares of Common Stock, the amount of such payment shall be equal to the Fair Market Value of the Common Stock as of the date on which the Restricted Period lapsed in the case of Restricted Stock Units, or the delivery date in the case of Deferred Stock Units, with respect to each Vested Unit.

8.5 Stock Restrictions. Each certificate or book-entry statement representing Restricted Stock awarded under the Plan shall bear a legend in such form as the Company deems appropriate.

9. Performance Share Awards. Each Performance Share Award granted under the Plan shall be evidenced by an Award Agreement. Each Performance Share Award so granted shall be subject to the conditions set forth in this Section 9, and to such other conditions not inconsistent with the Plan as may be reflected in the applicable Award Agreement. The Committee shall have the discretion to determine: (i) the number of shares of Common Stock or stock-denominated units subject to a Performance Share Award granted to any Participant; (ii) the Performance Period applicable to any Award; (iii) the conditions that must be satisfied for a Participant to earn an Award; and (iv) the other terms, conditions and restrictions of the Award.

9.1 Earning Performance Share Awards. The number of Performance Shares earned by a Participant will depend on the extent to which the performance goals established by the Committee are attained within the applicable Performance Period, as determined by the Committee.

10. Other Equity-Based Awards and Cash Awards. The Committee may grant Other Equity-Based Awards, either alone or in tandem with other Awards, in such amounts and subject to such conditions as the Committee shall determine in its sole discretion. Each Equity-Based Award shall be evidenced by an Award Agreement and shall be subject to such conditions, not inconsistent with the Plan, as may be reflected in the applicable Award Agreement. The Committee may grant Cash Awards in such amounts and subject to such Performance Goals, other vesting conditions, and such other terms as the Committee determines in its discretion. Cash Awards shall be evidenced in such form as the Committee may determine.

11. Securities Law Compliance. Each Award Agreement shall provide that no shares of Common Stock shall be purchased, issued or sold thereunder unless and until (a) any then applicable requirements of state or federal laws and regulatory agencies have been fully complied with to the satisfaction of the Company and its counsel, and (b) if required to do so by the Company, the Participant has executed and delivered to the Company a letter of investment intent in such form and containing such provisions as the Committee may require.

12. Use of Proceeds from Stock. Proceeds from the sale of Common Stock pursuant to Awards, or upon exercise thereof, shall constitute general funds of the Company.

13. Miscellaneous.

13.1 Acceleration of Exercisability and Vesting. The Committee shall have the power to accelerate the time at which an Award may first be exercised or the time during which an Award or any part thereof will vest in accordance with the Plan, notwithstanding the provisions in the Award Agreement stating the time at which it may first be exercised or the time during which it will vest.

13.2 Stockholder Rights. Except as provided in the Plan or an Award Agreement, no Participant shall be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Common Stock subject to such Award unless and until such Participant has satisfied all requirements for exercise or settlement of the Award pursuant to its terms, and no adjustment shall be made for dividends (ordinary or extraordinary, whether in cash, securities or other property) or distributions of other rights for which the record date

is prior to the date such Common Stock certificate is issued, except as provided in Section 14 hereof.

13.3 No Employment or Other Service Rights. Nothing in the Plan or any instrument executed or Award granted pursuant thereto shall confer upon any Participant any right to continue to serve the Company or an Affiliate in the capacity in effect at the time the Award was granted or shall affect the right of the Company or an Affiliate to terminate (a) the employment of an Employee with or without notice and with or without Cause or (b) the service of a Director pursuant to the by-laws of the Company or an Affiliate and any applicable provisions of the corporate law of the state in which the Company or the Affiliate is incorporated, as the case may be.

13.4 Transfer; Approved Leave of Absence. For purposes of the Plan, no termination of employment by an Employee shall be deemed to result from either (a) a transfer of employment to the Company from an Affiliate or from the Company to an Affiliate, or from one Affiliate to another, or (b) an approved leave of absence for military service or sickness, or for any other purpose approved by the Company, if the Employee's right to reemployment is guaranteed either by a statute or by contract or under the policy pursuant to which the leave of absence was granted or if the Committee otherwise so provides in writing, in either case, except to the extent inconsistent with Section 409A of the Code if the applicable Award is subject thereto.

13.5 Withholding Obligations. To the extent provided by the terms of an Award Agreement and subject to the discretion of the Committee, the Participant may satisfy any federal, state or local tax withholding obligation relating to the exercise or acquisition of Common Stock under an Award by any of the following means (in addition to the Company's right to withhold from any compensation paid to the Participant by the Company) or by a combination of such means: (a) tendering a cash payment; (b) authorizing the Company to withhold shares of Common Stock from the shares of Common Stock otherwise issuable to the Participant as a result of the exercise or acquisition of Common Stock under the Award, *provided* that no shares of Common Stock are withheld with a value exceeding the maximum amount of tax required to be withheld by law; or (c) delivering to the Company previously owned and unencumbered shares of Common Stock of the Company.

14. Adjustments Upon Changes in Stock. In the event of changes in the outstanding Common Stock or in the capital structure of the Company by reason of any stock or extraordinary cash dividend, stock split, reverse stock split, an extraordinary corporate transaction such as any recapitalization, reorganization, merger, consolidation, combination, exchange, or other relevant change in capitalization occurring after the Grant Date of any Award, Awards granted under the Plan and any Award Agreements, the exercise price of Options and Stock Appreciation Rights, the Performance Goals to which Performance Share Awards and Cash Awards are subject, the maximum number of shares of Common Stock subject to all Awards stated in Section 4 will be equitably adjusted or substituted, as to the number, price and/or kind of a share of Common Stock and/or other consideration subject to such Awards to the extent necessary to preserve the economic intent of such Awards. In the case of adjustments made pursuant to this Section 14, unless the Committee specifically determines that such adjustment is in the best interests of the Company or its Affiliates, the Committee shall, in the case of Incentive Stock Options, ensure that any

adjustments under this Section 14 will not constitute a modification, extension or renewal of the Incentive Stock Options within the meaning of Section 424(h)(3) of the Code and, in the case of Non-qualified Stock Options, ensure that any adjustments under this Section 14 will not constitute a modification of such Non-qualified Stock Options within the meaning of Section 409A of the Code. Any adjustments made under this Section 14 shall be made in a manner which does not adversely affect the exemption provided pursuant to Rule 16b-3. The Company shall give each Participant notice of an adjustment hereunder and, upon notice, such adjustment shall be conclusive and binding for all purposes.

15. Effect of Change in Control.

15.1 Unless otherwise provided in an Award Agreement or other agreement between the Company or an Affiliate and the Participant (the terms of which have been approved by the Committee), notwithstanding any provision of the Plan to the contrary:

(a) In the event of a Participant's termination of Continuous Service without Cause during the twelve (12) month period following a Change in Control, notwithstanding any provision of the Plan or any applicable Award Agreement to the contrary, all outstanding Options and Stock Appreciation Rights shall become immediately exercisable with respect to 100% of the shares subject to such Options or Stock Appreciation Rights, and/or the Restricted Period shall expire immediately with respect to 100% of the outstanding shares of Restricted Stock or Restricted Stock Units as of the date of the Participant's termination of Continuous Service.

(b) With respect to Performance Share Awards and Cash Awards, in the event of a Participant's termination of Continuous Service without Cause during the twelve (12) month period following a Change in Control, all Performance Goals or other vesting criteria will be deemed achieved at 100% of target levels and all other terms and conditions will be deemed met as of the date of the Participant's termination of Continuous Service.

To the extent practicable, any actions taken by the Committee under the immediately preceding clauses (a) and (b) shall occur in a manner and at a time which allows affected Participants the ability to participate in the Change in Control with respect to the shares of Common Stock subject to their Awards.

15.2 In addition, in the event of a Change in Control, the Committee may in its discretion and upon at least ten (10) days' advance notice to the affected persons, cancel any outstanding Awards and pay to the holders thereof, in cash or stock, or any combination thereof, the value of such Awards based upon the price per share of Common Stock received or to be received by other stockholders of the Company in the event. In the case of any Option or Stock Appreciation Right with an exercise price that equals or exceeds the price paid for a share of Common Stock in connection with the Change in Control, the Committee may cancel the Option or Stock Appreciation Right without the payment of consideration therefor.

15.3 The obligations of the Company under the Plan shall be binding upon any successor corporation or organization resulting from the merger, consolidation or other

reorganization of the Company, or upon any successor corporation or organization succeeding to all or substantially all of the assets and business of the Company and its Affiliates, taken as a whole.

16. Amendment of the Plan and Awards.

16.1 Amendment of the Plan. The Board at any time, and from time to time, may amend or terminate the Plan. However, except as provided in Section 14 relating to adjustments upon changes in Common Stock and Section 16.3, no amendment shall be effective unless approved by the stockholders of the Company to the extent stockholder approval is necessary to satisfy any Applicable Laws. At the time of such amendment, the Board shall determine, upon advice from counsel, whether such amendment will be contingent on stockholder approval.

16.2 Stockholder Approval. The Board may, in its sole discretion, submit any other amendment to the Plan for stockholder approval if such approval is required.

16.3 Contemplated Amendments. It is expressly contemplated that the Board may amend the Plan in any respect the Board deems necessary or advisable to provide eligible Employees, Consultants and Directors with the maximum benefits provided or to be provided under the provisions of the Code and the regulations promulgated thereunder relating to Incentive Stock Options or to the nonqualified deferred compensation provisions of Section 409A of the Code and/or to bring the Plan and/or Awards granted under it into compliance therewith.

16.4 No Impairment of Rights. Rights under any Award granted before amendment of the Plan shall not be impaired by any amendment of the Plan unless (a) the Company requests the consent of the Participant and (b) the Participant consents in writing.

16.5 Amendment of Awards. The Committee at any time, and from time to time, may amend the terms of any one or more Awards; *provided, however*, that the Committee may not affect any amendment which would otherwise constitute an impairment of the rights under any Award unless (a) the Company requests the consent thereto of the Participant and (b) the Participant consents thereto in writing.

17. General Provisions.

17.1 Forfeiture Events. The Committee may specify in an Award Agreement that the Participant's rights, payments and benefits with respect to an Award shall be subject to reduction, cancellation, forfeiture or recoupment upon the occurrence of certain events, in addition to applicable vesting conditions of an Award. Such events may include, without limitation, breach of non-competition, non-solicitation, confidentiality, or other restrictive covenants that are contained in the Award Agreement or other agreement between the Company or an Affiliate and the Participant or otherwise applicable to the Participant, a termination of the Participant's Continuous Service for Cause, or other conduct by the Participant that is detrimental to the business or reputation of the Company and/or its Affiliates.

17.2 Clawback. Notwithstanding any other provisions in the Plan, the Company may cancel any Award, require reimbursement of any Award by a Participant, and effect any other right of recoupment of equity or other compensation provided under the Plan in accordance with any Company policies that may be adopted and/or modified from time to time (**"Clawback Policy"**). In addition, a Participant may be required to repay to the Company previously paid compensation, whether provided pursuant to the Plan or an Award Agreement, in accordance with the Clawback Policy. By accepting an Award, the Participant is agreeing to be bound by the Clawback Policy, as in effect or as may be adopted and/or modified from time to time by the Company in its discretion (including, without limitation, to comply with Applicable Laws).

17.3 Other Compensation Arrangements. Nothing contained in the Plan shall prevent the Board from adopting other or additional compensation arrangements, subject to stockholder approval if such approval is required, and any such arrangements may be either generally applicable or applicable only in specific cases.

17.4 Sub-Plans. The Committee may from time to time establish sub-plans under the Plan for purposes of satisfying securities, tax or other laws of various jurisdictions in which the Company intends to grant Awards. Any sub-plans shall contain such limitations and other terms and conditions as the Committee determines are necessary or desirable. All sub-plans shall be deemed a part of the Plan, but each sub-plan shall apply only to the Participants in the jurisdiction for which the sub-plan was designed.

17.5 Deferral of Awards. The Committee may establish one or more programs under the Plan to permit selected Participants the opportunity to elect to defer receipt of consideration upon exercise of an Award, satisfaction of performance criteria, or other event that absent the election would entitle the Participant to payment or receipt of shares of Common Stock or other consideration under an Award. The Committee may establish the election procedures, the timing of such elections, the mechanisms for payments of, and accrual of interest or other earnings, if any, on amounts, shares or other consideration so deferred, and such other terms, conditions, rules and procedures that the Committee deems advisable for the administration of any such deferral program.

17.6 Unfunded Plan. The Plan shall be unfunded. Neither the Company, the Board nor the Committee shall be required to establish any special or separate fund or to segregate any assets to assure the performance of its obligations under the Plan.

17.7 Recapitalizations. Each Award Agreement shall contain any provisions required to reflect the provisions of Section 14.

17.8 Delivery. Upon exercise of a right granted under the Plan, the Company shall issue Common Stock or pay any amounts due within a reasonable period of time thereafter. Subject to any statutory or regulatory obligations the Company may otherwise have, for purposes of the Plan, thirty (30) days shall be considered a reasonable period of time.

17.9 No Fractional Shares. No fractional shares of Common Stock shall be issued or delivered pursuant to the Plan. The Committee shall determine whether cash, additional

Awards or other securities or property shall be issued or paid in lieu of fractional shares of Common Stock or whether any fractional shares should be rounded, forfeited or otherwise eliminated.

17.10 Other Provisions. The Award Agreements authorized under the Plan may contain such other provisions not inconsistent with the Plan, including, without limitation, restrictions upon the exercise of Awards, as the Committee may deem advisable.

17.11 Section 409A. The Plan is intended to comply with Section 409A of the Code to the extent subject thereto, and, accordingly, to the maximum extent permitted, the Plan shall be interpreted and administered to be in compliance therewith. Any payments described in the Plan that are due within the "short-term deferral period" as defined in Section 409A of the Code shall not be treated as deferred compensation unless Applicable Laws require otherwise. Notwithstanding anything to the contrary in the Plan, to the extent required to avoid accelerated taxation and tax penalties under Section 409A of the Code, amounts that would otherwise be payable and benefits that would otherwise be provided pursuant to the Plan during the six (6) month period immediately following the Participant's termination of Continuous Service shall instead be paid on the first payroll date after the six (6) month anniversary of the Participant's separation from service (or the Participant's death, if earlier). Notwithstanding the foregoing, neither the Company nor the Committee shall have any obligation to take any action to prevent the assessment of any additional tax or penalty on any Participant under Section 409A of the Code and neither the Company nor the Committee will have any liability to any Participant for such tax or penalty.

17.12 Disqualifying Dispositions. Any Participant who shall make a "disposition" (as defined in Section 424 of the Code) of all or any portion of shares of Common Stock acquired upon exercise of an Incentive Stock Option within two (2) years from the Grant Date of such Incentive Stock Option or within one (1) year after the issuance of the shares of Common Stock acquired upon exercise of such Incentive Stock Option (a "**Disqualifying Disposition**") shall be required to immediately advise the Company in writing as to the occurrence of the sale and the price realized upon the sale of such shares of Common Stock.

17.13 Section 16. It is the intent of the Company that the Plan satisfy, and be interpreted in a manner that satisfies, the applicable requirements of Rule 16b-3 as promulgated under Section 16 of the Exchange Act so that Participants will be entitled to the benefit of Rule 16b-3, or any other similar rule promulgated under Section 16 of the Exchange Act, and will not be subject to short-swing liability under Section 16 of the Exchange Act. Accordingly, if the operation of any provision of the Plan would conflict with the intent expressed in this Section 17.13, such provision to the extent possible shall be interpreted and/or deemed amended so as to avoid such conflict.

17.14 Beneficiary Designation. Each Participant under the Plan may from time to time name any beneficiary or beneficiaries by whom any right under the Plan is to be exercised in case of such Participant's death. Each designation will revoke all prior designations by the same Participant, shall be in a form reasonably prescribed by the Committee and shall be effective only when filed by the Participant in writing with the Company during the Participant's lifetime.

17.15 Expenses. The costs of administering the Plan shall be paid by the Company.

17.16 Severability. If any of the provisions of the Plan or any Award Agreement is held to be invalid, illegal or unenforceable, whether in whole or in part, such provision shall be deemed modified to the extent, but only to the extent, of such invalidity, illegality or unenforceability and the remaining provisions shall not be affected thereby.

17.17 Plan Headings. The headings in the Plan are for purposes of convenience only and are not intended to define or limit the construction of the provisions hereof.

17.18 Non-Uniform Treatment. The Committee's determinations under the Plan need not be uniform and may be made by it selectively among persons who are eligible to receive, or actually receive, Awards. Without limiting the generality of the foregoing, the Committee shall be entitled to make non-uniform and selective determinations, amendments and adjustments, and to enter into non-uniform and selective Award Agreements.

18. Effective Date of the Plan. The Plan shall become effective as of December 7, 2023.

19. Termination or Suspension of the Plan. The Plan shall terminate automatically on the tenth (10th) anniversary of the Effective Date. No Award shall be granted pursuant to the Plan after such date, but Awards theretofore granted may extend beyond that date. The Board may suspend or terminate the Plan at any earlier date pursuant to Section 16.1 hereof. No Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

20. Choice of Law. The law of the State of Delaware shall govern all questions concerning the construction, validity and interpretation of the Plan, without regard to such state's conflict of law rules.

As adopted by the Board of Directors of Capstone Green Energy Holdings, Inc. on December 7, 2023.

EXHIBIT 99.1

Capstone Green Energy Completes Financial Restructuring Plan, Emerges From Chapter 11

Company Secures Additional $7 Million in New Financing at Exit, Bolstering Financial Resources for Enhanced Market Leadership in The On-Site Power Generation Industry

LOS ANGELES, CA / BUSINESS WIRE / DECEMBER 7, 2023 / Capstone Green Energy Holdings, Inc. (the "Company"), the public successor to Capstone Green Energy Corporation (Predecessor Capstone), announced the successful completion of the restructuring of the Capstone business and emergence from Chapter 11 bankruptcy.

At emergence the Capstone business has significantly reduced its indebtedness and obtained an additional $7 million of new money financing. As a result of the restructuring transactions, the Company will operate the Capstone business through a 62.5% controlling interest in a newly formed subsidiary. Further, the outstanding common stock of Predecessor Capstone has been canceled, and common stockholders of Predecessor Capstone will receive one (1) share of common stock of the Company in exchange for each share of Predecessor Capstone that has been canceled.

The Company, as the public successor to Predecessor Capstone (CGRN) for SEC reporting purposes, continues to work to complete its restatement of previously issued financial statements and intends to complete such restatement as soon as possible. Following the completion of the restatement, the Company expects that it will list its common stock on the OTC Pink Market. The CUSIP number for the Company's common stock following the reorganization transactions is 14067D607 and the ISIN number is US14067D6076.

"With Chapter 11 behind us and a much stronger financial position, we can now fully focus on working with our distribution partners and dramatically improve how our business runs and operates," stated Robert Flexon, Chairman and Interim President and CEO. Mr. Flexon continued, "With a newly strengthened capital structure and improved liquidity, the Company will be much better equipped to pursue market opportunities and further enhance its market leadership as a microgrid and on-site power generation solution provider."

John Juric, Chief Financial Officer of the Company, said, "I would like to express my appreciation to our customers, vendors, and business partners for their patience and support. I am also deeply grateful to our entire Capstone team for their hard work in continuing to execute the Company's strategies throughout the restructuring."

Board of Directors and Management

Capstone also announced that its board composition has remained the same following emergence. It appointed Robert Flexon as Chairman, Denise Wilson as Lead Independent Director and Yon Jorden, Ping Fu, and Robert Powelson as directors.

The Company continues to operate under its current management team, led by its Interim President and CEO, Robert Flexon and its CFO, John Juric.

Advisors

Katten Muchin Rosenman LLP served as legal counsel, and Riveron LLP served as financial advisor to the Company.

About Capstone Green Energy

For over three decades, Capstone Green Energy has been at the forefront of microturbine technology, revolutionizing how businesses manage their energy supply. In partnership with our worldwide team of dedicated distributors, we have shipped over 10,000 units to 83 countries, providing environmentally friendly and highly efficient on-site energy systems and microgrid solutions.

Today, our commitment to a greener future is unwavering. We offer customers a range of commercial, industrial and utility scale options tailored to their specific needs ranging from 65kW to multiple MWs. Capstone's product portfolio not only showcases our core microturbine technology but also includes flexible Energy-as-a-Service (EaaS) rental and service contracts.

In our pursuit of cutting-edge solutions, we've forged strategic partnerships to extend our impact. Through these collaborations, we proudly offer biomass and heat recovery solutions that enhance the sustainability and efficiency of our client's operations, contributing to a cleaner and more responsible energy landscape.

Capstone estimates that in FY23, it saved customers over $169 million in annual energy costs and approximately 362,000 tons of carbon. Total savings over the last five years are estimated to be approximately $1.08 billion in energy savings and approximately 1.9 million tons of carbon savings.

Capstone offers fast, turnkey power rental solutions for customers with limited capital or short-term needs; for more information, contact: rentals@CGRNenergy.com**.**

For more information about the Company, please visit www.CapstoneGreenEnergy.com. Follow Capstone Green Energy on Twitter, LinkedIn, Instagram, Facebook, and YouTube.

Cautionary Note Regarding Forward-Looking Statements

This release contains forward-looking statements as defined in the Private Securities Litigation Reform Act of 1995, including statements regarding the anticipated benefits of the restructuring and the other statements regarding the Company's expectations, beliefs, plans, intentions, and strategies. The Company has tried to identify these forward-looking statements by using words such as "expect," "anticipate," "believe," "could," "should," "estimate," "intend," "may," "will," "plan," "goal" and similar terms and phrases, but such words, terms and phrases are not the exclusive means of identifying such statements. Actual results, performance and achievements could differ materially from those expressed in, or implied by, these forward-looking statements due to a variety of risks, uncertainties and other factors, including, but not limited to, the following: the Company's ability to realize the anticipated benefits of the financial restructuring; the Company's ability to comply with the restrictions imposed by covenants contained in the exit financing and

the new subsidiary limited liability company agreement; employee attrition and the Company’s ability to retain senior management and other key personnel following the restructuring; the Company's ability to develop new products and enhance existing products; product quality issues, including the adequacy of reserves therefor and warranty cost exposure; intense competition; financial performance of the oil and natural gas industry and other general business, industry and economic conditions; the impact of litigation and regulatory proceedings; risks related to the previously announced restatement previously announced (including discovery of additional information relevant to the financial statements subject to restatement; changes in the effects of the restatement on the Company’s financial statements or financial results and delay in the filing of late 10-K’s and 10-Q’s due to the Company’s efforts to complete the restatement; the time, costs and expenses associated with the restatement; inquiries from the SEC; the potential material adverse effect on the price of the Company’s common stock and stockholder lawsuits). For a detailed discussion of factors that could affect the Company’s future operating results, please see the Company’s filings with the Securities and Exchange Commission, including the disclosures under “Risk Factors” in those filings. Except as expressly required by the federal securities laws, the Company undertakes no obligation to update or revise any forward-looking statements, whether as a result of new information, changed circumstances or future events or for any other reason.

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