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

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): November 9, 2023

CAPSTONE GREEN ENERGY CORPORATION

(Exact name of registrant as specified in its charter)

Delaware	001-15957	95-4180883
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)
16640 Stagg Street, Van Nuys, California		91406
(Address of principal executive offices)		(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 $.001 per share	CGRNQ	OTC Markets
Series B Junior Participating Preferred Stock Purchase Rights		

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. ☐

Item 1.01 Entry into a Material Definitive Agreement

On November 15, 2023, the Company entered into the First Amendment (the "First Amendment") to Super-Priority Senior Secured Debtor-In-Possession Note Purchase Agreement (the "DIP Note Purchase Agreement") among the Company, as a Chapter 11 Debtor and Debtor-in-Possession, Capstone Turbine International, Inc. and Capstone Turbine Financial Services, LLC, each as a Chapter 11 Debtor and Debtor-in Possession and as a Guarantor, Broad Street Credit Holdings LLC (the "Purchaser") as Purchaser, and Goldman Sachs Specialty Lending Group, L.P. as collateral agent for the Purchaser (the "Collateral Agent"). The First Amendment provides for (i) waiver by the Purchaser and the Collateral Agent of the Company's breach of the covenant to have achieved certain milestones with respect of the Chapter 11 Cases (as defined below) and (ii) amended certain milestones, specifically that the Bankruptcy Court shall have entered the Final Order approving the DIP Note Purchase Agreement and shall have held a confirmation hearing and entered a Confirmation Order (as defined below) by no later than November 15, 2023 and that the Plan (as defined below) shall become effective by no later than November 30, 2023.

On November 15, 2023, the Company issued, and the Purchaser funded, $3.0 million in new money debtor-in-possession notes ("New Money DIP Notes"). The proceeds of the New Money DIP Notes will be used to fund restructuring expenses, for working capital and general corporate purposes. Borrowings under the DIP Note Purchase Agreement bear interest at a rate of the SOFR Rate plus 8.75% per annum, which is payable in kind by capitalizing the amount of such interest accrued and adding such accrued amounts to the outstanding principal of the New Money DIP Notes. The New Money DIP Notes mature on the earlier of (i) forty-two (42) calendar days after the Petition Date, (ii) the date that is thirty-five (35) calendar days after the Petition Date if the Final Order has not been entered by the Bankruptcy Court on or before such date; (iii) the date of consummation of any sale of all or substantially all of the assets of any of the Debtors pursuant to section 363 of the Bankruptcy Code; (iv) the occurrence and continuation of an Event of Default not waived by Purchaser; (v) the substantial consummation or effective date of any Chapter 11 plan in the Chapter 11 Cases; (vi) the date the Bankruptcy Court enters an order for the conversion of any of the Chapter 11 Cases of any Debtors to a case under chapter 7 of the Bankruptcy Code; and (vii) dismissal of any of the Chapter 11 Cases of any Debtor. Upon the Debtors' emergence from bankruptcy, it is expected that the DIP Note Purchase Agreement will be replaced by the Exit Facility described in the Current Report on Form 8-K filed by the Company on September 28, 2023 (the "Prior 8-K").

The DIP Note Purchase Agreement includes protections customary for financings of this type and size, including the reaffirmation of superpriority claims and priming liens on the Debtors' assets, liens on previously unencumbered assets, in each case subject to certain Permitted Liens, and other protections set forth in the order approving the DIP Note Purchase Agreement. The DIP Note Purchase Agreement also includes conditions precedent, representations and warranties, affirmative and negative covenants, events of default, and other customary provisions.

The foregoing description of the First Amendment does not purport to be complete and is qualified in its entirety by reference to the copy of the First Amendment filed as Exhibit 4.1 hereto and incorporated herein by reference.

Item 1.03 Bankruptcy or Receivership

As previously disclosed, on September 28, 2023 (the "Petition Date"), Capstone Green Energy Corporation (the "Company") and its wholly-owned subsidiaries, Capstone Turbine International, Inc. ("Capstone Turbine International") and Capstone Turbine Financial Services, LLC (together with Capstone Turbine International and the Company, 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 are being 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 TSA, as applicable.

The TSA and Plan contemplate the Debtors effectuating certain transactions (collectively, the "Restructuring"), pursuant to which, among other things, the Company shall become a private company ("Reorganized PrivateCo") that shall continue to own assets consisting of (i) all of the Company's right, title, and interest in and to certain trademarks of the Company and (ii) all assets owned by the Company relating to distributor support services (the "Retained Assets"), and Capstone Turbine International shall be re-named Capstone Green Energy Holdings, Inc. and expects to be a successor to the Company for purposes of Securities and Exchange Commission reporting following emergence. We also expect that certain income tax attributes will remain with Reorganized PrivateCo. All liabilities and assets other than those directly related to the Retained Assets and otherwise described in the Plan will be transferred to a newly formed subsidiary of Reorganized PublicCo ("New Subsidiary"), which shall be named Capstone Green Energy LLC and shall be the primary operating entity.

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, which included, among other things, (i) a valuation of the Reorganized Debtors, (ii) a schedule of rejected Executory Contracts and Unexpired Leases, (iii) a schedule of Assumed Executory Contracts and Unexpired Leases, (iv) a description of Retained Causes of Action, and (v) identification of the officers and board members for New Subsidiary and Reorganized PublicCo. The foregoing description of the Plan Supplement does not purport to be complete and is qualified in its entirety by reference to the full text of the Plan Supplement previously disclosed.

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. A copy of the Confirmation Order, with a copy of the Plan as confirmed attached thereto, is attached as Exhibit 2.1 to this Current Report on Form 8-K and is incorporated herein by reference.

The Plan provides for $7.0 million of new money exit financing, an increase from the originally contemplated $5.0 million of new money exit financing.

The Plan, the Plan Supplement, and related documents are available free of charge on the restructuring website administrated by the Debtors' claims and noticing agent, Kroll Restructuring Administration LLC ("Kroll"), at https://cases.ra.kroll.com/capstone (the "Claims Agent Website"), which contains important information about the Chapter 11 Cases. The Company does not plan to file a Current Report on Form 8-K each time information, including any Plan supplement, is filed with the Bankruptcy Court or is made available at such website.

The Claims Agent Website contains third-party content and is provided for convenience only. The documents and other information available on the Claims Agent Website are not incorporated by reference into, and do not constitute a part of, this Current Report on Form 8-K.

Cautionary Note Regarding Trading in the Company's Securities

The Company cautions that trading in its securities during the pendency of the Chapter 11 Cases is highly speculative and poses substantial risks. Following delisting from Nasdaq, the common stock of the Company is currently traded on the "Expert Market" of the OTC Markets Group, which only provides for unsolicited customer orders, and quotations in Expert Market securities are restricted from public viewing and are only available to certain eligible investors.

Additional Information on the Chapter 11 Cases

Court filings and information about the Chapter 11 Cases can be found at the Claims Agent Website or by contacting Kroll at 1-844-642-1256 (Toll Free), +1-646-651-1164 (International) or by e-mail at capstoneinfo@ra.kroll.com. The documents and other information available via such website or elsewhere are not part of this Current Report on Form 8-K and shall not be deemed incorporated herein.

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 below under Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

Item 7.01 Regulation FD Disclosure

On November 9, 2023, the Debtors filed certain additional exhibits to the Plan Supplement, including (i) a description of Retained Assets and Retained Contracts, (ii) an amended list of the officers and board members for the Reorganized Debtors, (iii) certain organizational documents of the Reorganized Debtors, and (iv) a Trademark License Agreement. The foregoing description of the additional Plan Supplement materials does not purport to be complete and is qualified in its entirety by reference to the Notice of Filing of Additional Exhibits to Plan Supplement, which is filed as Exhibit 99.1 hereto and is incorporated herein by reference.

On November 14, 2023, the Company issued a press release announcing the Bankruptcy Court's entry of the Confirmation Order. A copy of the press release is attached as Exhibit 99.2 to this Current Report on Form 8-K and is incorporated herein by reference.

The information contained in this Item 7.01, including Exhibits 99.1 and 99.2, shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (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 Chapter 11 Cases and 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: risks attendant to the Chapter 11 bankruptcy process, including the effects of Chapter 11, including increased legal and other professional costs necessary to execute the Chapter 11 process and on the Company's liquidity and results of operations (including the availability of operating capital during the pendency of Chapter 11); the length of time that the Company will operate under Chapter 11 protection and the continued availability of operating capital during the pendency of Chapter 11; the consummation of the transactions contemplated by the TSA and the Plan, including the ability of the parties to negotiate definitive agreements with respect to the matters covered by the term sheets included in the TSA, the Plan or otherwise, the occurrence of events that may give rise to a right of any of the parties to terminate the TSA, and the ability of the parties thereto to satisfy the other conditions of the TSA or the Plan, as applicable, including satisfying the milestones specified in the TSA and the DIP Note Purchase Agreement; the Company's ability to meet its financial obligations during the Chapter 11 process and to maintain contracts that are critical to its operations; the Company's ability to comply with the restrictions imposed by the terms and conditions of the DIP Note Purchase Agreement and other financing arrangements; the effects of Chapter 11 on the interests of various constituents and financial stakeholders; the effect of the Chapter 11 filings on the Company's relationships with vendors, regulatory authorities, employees and other third parties; possible proceedings that may be brought by third parties in connection with the Chapter 11 process and risks associated with third-party motions in Chapter 11; employee attrition and the Company's ability to retain senior management and other key personnel due to the distractions and uncertainties; the impact and timing of any cost-savings measures and related local law requirements in various jurisdictions; the impact of litigation and regulatory proceedings; risks related to the restatement previously announced by the Company (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 the amended 10-K and amended 10-Q's due to the Company's efforts to complete the restatement; the time, costs and expenses associated with the restatement; potential inquiries from the SEC and/or Nasdaq; the potential material adverse effect on the price of the Company's common stock and possible stockholder lawsuits); and expectations regarding financial performance, strategic and operational plans, and other related matters. 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.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	Description
2.1	Findings of Fact, Conclusions of Law, and Order (I) Approving the Disclosure Statement; (II) Confirming the Joint Prepackaged Chapter 11 Plan of Reorganization of Capstone Green Energy Corporation and Its Debtor Affiliates; and (III) Granting Related Relief, dated November 14, 2023.
4.1	First Amendment to Super-Priority Senior Secured Debtor-In-Possession Note Purchase Agreement, dated as of November 15, 2023, among Capstone Green Energy Corporation, as a Chapter 11 Debtor and Debtor-in-Possession, the other debtors party thereto from time to time, each as a Chapter 11 Debtor and Debtor-in-Possession and as a Guarantor, Broad Street Credit Holdings LLC, as Purchaser, and Goldman Sachs Specialty Lending Group, L.P., as Collateral Agent.
99.1	Notice of Filing of Additional Exhibits to Plan Supplement, dated as of November 9, 2023.
99.2	Press Release, dated November 14, 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 CORPORATION

Date: November 17, 2023

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

EXHIBIT 2.1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	**Chapter 11**
CAPSTONE GREEN ENERGY CORPORATION, *et al*.,	:	**Case No. 23-11634 (LSS)**
	:	**(Jointly Administered)**
Debtors.[1]	:	
	:	**Re: Docket Nos. 17, 18, 70, 71, 90, 97, 98, 113, 115**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER (I) APPROVING THE DISCLOSURE STATEMENT; (II) CONFIRMING THE JOINT PREPACKAGED CHAPTER 11 PLAN OF REORGANIZATION OF CAPSTONE GREEN ENERGY CORPORATION AND ITS DEBTOR AFFILIATES; AND (III) GRANTING RELATED RELIEF

The above-captioned debtors and debtors in possession (collectively, the "***Debtors***") having:

a. distributed, through Kroll Restructuring Administration LLC (the "***Claims and Noticing Agent***"), on or about September 27, 2023 (i) the *Disclosure Statement for the Joint Prepackaged Chapter 11 Plan of Reorganization of Capstone Green Energy Corporation and its Debtor Affiliates* [Docket. No. 18] (as may be amended, supplemented, or modified from time to time, the "***Disclosure Statement***"); (ii) the *Joint Prepackaged Chapter 11 Plan of Reorganization of Capstone Green Energy Corporation and its Debtor Affiliates* [Docket No. 17] (the "***Plan***"); and (iii) a ballot (the "***Ballot***") for voting on the Plan to each holder of a Class 2 Pre-Petition Secured Claim in accordance with title 11 of the United States Code (the "***Bankruptcy Code***"), the Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***"), the Local Rules for the United States Bankruptcy Court for the District of Delaware (the "***Local Rules***"), and applicable nonbankruptcy law, as evidenced by the *Declaration of Alex Orchowski of Kroll Restructuring Administration LLC Regarding the Solicitation of the Ballot Cast on the Joint Prepackaged Chapter 11 Plan of Reorganization of Capstone Green Energy Corporation and its Debtor Affiliates* [Docket No. 90] (the "***Voting Declaration***");

1 The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number are: Capstone Green Energy Corporation (0883); Capstone Turbine International, Inc. (4270); and Capstone Turbine Financial Services, LLC (N/A). The Debtors' mailing address is 16640 Stagg Street, Van Nuys, California 91406.

b. commenced these Chapter 11 Cases by filing voluntary petitions for relief under the chapter 11 of the Bankruptcy Code on September 28, 2023 (the "***Petition Date***") in the United States Bankruptcy Court for the District of Delaware (the "***Bankruptcy Court***");

c. continued to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

d. filed, on the Petition Date, the Plan;[2]

e. filed, on the Petition Date, the Disclosure Statement;

f. filed, on the Petition Date, the Transaction Support Agreement, attached to the Disclosure Statement as Exhibit B thereto;

g. filed, on the Petition Date, the *Motion of Debtors for Entry of an Order (I) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing, (II) Approving Related Dates, Deadlines, Notices, and Procedures, (III) Approving the Solicitation Procedures and Related Dates, Deadlines, and Notices, (IV) Conditionally Waiving the Requirements that (A) the U.S. Trustee Convene a Meeting of Creditors and (B) the Debtors File Schedules of Assets and Liabilities, Statements of Financial Affairs, and Rule 2015.3 Financial Reports, and (V) Granting Related Relief* [Docket No. 14] (the "***Scheduling Motion***");

h. filed, on the Petition Date, the notice, setting forth, among other things, the date and time set for the hearing to consider the adequacy of the Disclosure Statement and the Confirmation of the Plan (the "***Combined Hearing***"), and the deadlines for filing objections to the Plan and the Disclosure Statement (the "***Combined Hearing Notice***") on the Claims and Noticing Agent's public website for these Chapter 11 Cases [Docket No. 51];

i. caused the Publication Notice to be published on October 5, 2023 in *The New York Times* (national edition), and on October 6, 2023 in *USA Today* (collectively, the "***Publication Notice***");[3]

j. filed, on October 24, 2023, a revised version of the Plan with certain non-material revisions to address informal comments made by the Office of the United States Trustee for the District of Delaware (the "***U.S. Trustee***"), along with other minor technical modifications [Docket No. 70], a copy of which is attached hereto as **Exhibit A**;

k. filed, on October 24, 2023, the *Plan Supplement to Joint Prepackaged Chapter 11 Plan of Reorganization of Capstone Green Energy Corporation and Its Debtor Affiliates* [Docket No. 71] (the "***Plan Supplement***");

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2 Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Plan.

3 *See Certificate of Publication* [Docket No. 56].

l. filed, on November 2, 2023, the Voting Declaration, which detailed the solicitation of holders of Class 2 Pre-Petition Secured Claims and the results of such Class's voting to accept or reject the Plan;

m. filed, on November 2, 2023, the *Memorandum of Law in Support of the Joint Prepackaged Chapter 11 Plan of Capstone Green Energy Corporation and Its Debtor Affiliates* [Docket No. 97] (the "***Confirmation Brief***");

n. filed, on November 9, 2023, the *Notice of Filing of Additional Exhibits to Plan Supplement* [Docket No. 113] (the "***Amended Plan Supplement***" and together with the Plan Supplement, the "***Plan Supplements***");

o. filed, on November 13, 2023, a revised version of the Plan with certain non-material revisions to address informal comments made by the U.S. Trustee and United States Securities and Exchange Commission [Docket No. 115]; and

p. filed, on November 13, 2023 the *Declaration of John Juric of Capstone Green Energy Corporation in Support of Approval of the Debtors' Disclosure Statement for and Confirmation of the Joint Prepackaged Chapter 11 Plan of Capstone Green Energy Corporation and Its Debtor Affiliates* [Docket No. 116] (the "***Confirmation Declaration***").

The Bankruptcy Court having:

a. entered, on September 29, 2023, the *Order (I) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing, (II) Approving Related Dates, Deadlines, Notices, and Procedures, (III) Approving the Solicitation Procedures and Related Dates, Deadlines, and Notices, (IV) Conditionally Waiving the Requirements that (A) the U.S. Trustee Convene a Meeting of Creditors, and (B) the Debtors Files Schedules of Assets and Liabilities, Statements of Financial Affairs, and Rule 2015.3 Financial Reports, and (V) Granting Related Relief* [Docket No. 48] (the "***Scheduling Order***"), which, among other things, approved the Debtors' prepetition solicitation and tabulation procedures (the "***Solicitation Procedures***");

b. set September 27, 2023, as the voting record date (the "***Voting Record Date***") for Holders of Class 2 Pre-Petition Secured Claims;

c. set September 27, 2023, as the date by which the Debtors must commence solicitation (the "***Solicitation Commencement Date***");

d. set October 2, 2023, at 4:00 p.m. (prevailing Eastern Time) as the deadline by which Ballots must be received by the Debtors' Claims and Noticing Agent (the "***Voting Deadline***");

e. set October 31, 2023, at 4:00 p.m. (prevailing Eastern Time) as the deadline by which objections to the Plan and the Disclosure Statement must be filed (the "***Plan Objection Deadline***");

f. set November 2, 2023, as the deadline by which the Debtors shall file the Voting Declaration;

g. set November 2, 2023, as the date by which the Debtors must file a reply to objections to the Plan and the Disclosure Statement and the Confirmation Brief;

h. set November 13, 2023, at 2:00 p.m. (prevailing Eastern Time) as the date and time for the Combined Hearing pursuant to Bankruptcy Rules 3017 and 3018 and sections 1126, 1128, and 1129 of the Bankruptcy Code, subject to adjournment;

i. reviewed the Plan, the Confirmation Brief, the Plan Supplements, the Voting Declaration, the Confirmation Declaration, the Disclosure Statement, and all pleadings, exhibits, statements, responses, and comments regarding Confirmation, including any and all objections, statements, and reservations of rights filed by parties in interest on the docket of these Chapter 11 Cases;

j. held the Combined Hearing;

k. heard the statements, arguments, and objections, if any, made by counsel in respect of Confirmation of the Plan and approval of the Disclosure Statement;

l. considered all oral representations, testimony, documents, filings, and other evidence regarding Confirmation of the Plan and approval of the Disclosure Statement; and

m. overruled any and all objections to the Plan, Confirmation, the adequacy of the Disclosure Statement, and all statements and reservations of right not consensually resolved or withdrawn unless otherwise indicated herein.

NOW, **THEREFORE**, the Bankruptcy Court having found that notice of the Combined Hearing and the opportunity for any party in interest to object to final approval of the Disclosure Statement and Confirmation have been adequate and appropriate as to all parties affected or to be affected by the Plan and the transactions contemplated thereby, and the legal and factual bases set forth in the documents filed in support of Confirmation and all evidence proffered, admitted, or adduced by counsel at the Combined Hearing establish just cause for the relief granted herein; and after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby makes and issues the following Findings of Fact and Conclusions of Law, and Orders:

IT IS HEREBY DETERMINED, FOUND, ADJUDGED, DECREED, AND ORDERED THAT:

A. Findings and Conclusions.

1. The findings and conclusions set forth herein and on the record of the Combined Hearing constitute the Bankruptcy Court's findings of fact and conclusions of law under Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, or vice versa, they are adopted as such.

B. Jurisdiction, Venue, and Core Proceeding.

2. The Bankruptcy Court has jurisdiction over these Chapter 11 Cases pursuant to section 1334 of title 28 of the United States Code. The Bankruptcy Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed. Venue is proper in this district pursuant to sections 1408 and 1409 of title 28 of the United States Code. Confirmation of the Plan is a core proceeding within the meaning of section 157(b)(2) of title 28 of the United States Code, and the Bankruptcy Court may enter a final order consistent with Article III of the United States Constitution.

C. Eligibility for Relief.

3. The Debtors were and are entities eligible for relief under section 109 of the Bankruptcy Code.

D. Commencement and Joint Administration of These Chapter 11 Cases.

4. On the Petition Date, each Debtor commenced a chapter 11 case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code. By prior order of the Bankruptcy Court, these Chapter 11 Cases were consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015 [Docket No. 36]. The Debtors have

operated their businesses and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No official committee, trustee or examiner has been appointed in these Chapter 11 Cases.

E. Pre-Petition Marketing and Good Faith.

5. In the events leading up to these Chapter 11 Cases, the Debtors explored a variety of alternatives with the goal of maximizing the value of the Debtors' Estates. The Debtors' officers, directors, financial advisors, attorneys, investment bankers and other professionals that were involved with the formulation, negotiation, documentation, and approval of the filing of these Chapter 11 Cases, the Plan, and the Transaction Support Agreement, and who pursued, analyzed, negotiated, and documented the transactions contemplated thereunder, acted in good faith and made informed decisions in connection therewith, including the decision to implement the Restructuring. The Pre-Petition Secured Party, the NPA Collateral Agent, the DIP Purchaser, the DIP Agent and each of their respective partners, officers, directors, employees, advisors and professionals acted in good faith in negotiating, formulating and proposing, where applicable, the Plan and the Transaction Support Agreement, and the agreements, compromises, settlements, transactions and transfers contemplated thereby.

F. Notice.

6. Notice of the Plan and the Combined Hearing, together with the deadlines for voting to accept or reject the Plan as well as objecting to the Plan, has been provided in accordance with the Scheduling Order, as set forth in the Voting Declaration.

7. Such notice was appropriate and satisfactory based upon the facts and circumstances of these Chapter 11 Cases and pursuant to sections 1125 and 1128 of the Bankruptcy Code, Bankruptcy Rules 2002, 3017, 3018, and 3020, and other applicable law and rules. Because such transmittal and service were adequate and sufficient, no other or further notice is necessary

or shall be required, and due, proper, timely, and adequate notice of the Combined Hearing has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable non-bankruptcy law.

G. Solicitation.

8. Prior to the Petition Date, the Plan, the Disclosure Statement, and the Ballot (collectively, the "***Solicitation Package***") were transmitted and served in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Solicitation Procedures approved by the Bankruptcy Court via the Scheduling Order, and all other applicable rules, laws, and regulations applicable to such solicitation. Transmission and service of the Solicitation Package was timely, adequate and sufficient. No further notice is required.

9. As set forth in the Voting Declaration, on September 27, 2023, prior to the Petition Date, the Solicitation Package was transmitted to and served on the eligible holders of Class 2 Pre-Petition Secured Claims, which was the only Class of Claims entitled to vote to accept or reject the Plan (the "***Voting Class***").

10. Each eligible holder of a Claim in the Voting Class received a Ballot. The form of the Ballots adequately addressed the particular needs of these Chapter 11 Cases and was appropriate for the holders of Claims in the Voting Class. The instructions on each Ballot advised that for the Ballot to be counted, the Ballot had to be properly executed, completed, and delivered to the Claims and Noticing Agent so that it was actually received by the Claims and Noticing Agent on or before the applicable Voting Deadline. The period during which the Debtors solicited acceptance of the Plan was a reasonable period of time for holders of Claims in the Voting Class to make an informed decision to accept or reject the Plan.

11. The Debtors were not required to solicit votes from the holders of Claims in Class 1 (Secured Tax Claims), Class 3 (Other Secured Claims), Class 4 (Other Priority Claims),

Class 5 (General Unsecured Claims) and Class 7 (Intercompany Interests), as well as certain holders of Claims in Class 6 (Intercompany Claims) (collectively, the "***Unimpaired Classes***"), as each such Class is Unimpaired under the Plan and thus presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

12. The Debtors were not required to solicit votes from holders of Claims or Interests in Class 9 (Section 510(b) Claims) and certain holders of Claims in Class 6 (Intercompany Claims), as the holders of Claims or Interests in such Classes are Impaired and not entitled to receive distributions on account of their Claims or Interests under the Plan and, thus, are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code.

13. The Debtors were not required to solicit votes from holders of Interests in Class 8 (Equity Interests), as the holders of Interests in such Class (together with the holders of Claims or Interests in Class 9 and certain holders of Claims in Class 6, the "***Deemed Rejecting Classes***") are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code.

14. As described in and as evidenced by the Voting Declaration, the transmittal and service of the Solicitation Packages (all of the foregoing, the "***Solicitation***") was timely, adequate, and sufficient under the circumstances and no other or further Solicitation was or shall be required. The Solicitation complied with the Solicitation Procedures, was appropriate and satisfactory based upon the circumstances of these Chapter 11 Cases, was conducted in good faith and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Scheduling Order, and any other applicable rules, laws, and regulations.

H. Adequacy of the Disclosure Statement.

15. The Disclosure Statement (a) contains sufficient information of a kind necessary to satisfy the disclosure requirements of all applicable non-bankruptcy rules, laws, and regulations, including the Securities Act, and (b) contains "adequate information" (as such term is defined in

section 1125(a) of the Bankruptcy Code and used in section 1126(b)(2) of the Bankruptcy Code) with respect to the Debtors, the Plan, and the transactions contemplated therein.

I. Voting.

16. The Voting Declaration filed with the Bankruptcy Court certifies the method and results of the Ballots tabulated for the Voting Class. As of the Voting Deadline, one-hundred percent (100%) in number and one-hundred percent (100%) in dollar amount of the holders of Claims in Class 2 (Pre-Petition Secured Claims) that timely voted, voted to accept the Plan, without counting the votes of any insider (as such term is defined in section 101(31) of the Bankruptcy Code). As evidenced by the Voting Declaration, votes to accept or reject the Plan have been solicited and tabulated fairly, in good faith, and in a manner consistent with the Bankruptcy Code, the Bankruptcy Rules, the Solicitation Procedures, and the Local Rules.

J. Plan Supplements.

17. On October 24, 2023, the Debtors filed the Plan Supplement, consisting of a valuation of the Reorganized Debtors, a schedule of Rejected Executory Contracts and Unexpired Leases, a schedule of Assumed Executory Contracts and Unexpired Leases, a description of Retained Causes of Action, and the identities of the officers and board members for New Subsidiary and Reorganized PublicCo [Docket No. 71]. On November 9, 2023, the Debtors filed the Amended Plan Supplement, consisting of a description of the Retained Assets and Retained Contracts, the identities of additional directors and officers of the Reorganized Debtors and Reorganized PrivateCo, certain organizational documents of the Reorganized Debtors, and a Trademark License Agreement.

18. All such materials comply with the terms of the Plan, and the filing and notice of the Plan Supplements was proper and in accordance with the Plan, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and all applicable law and no other or further notice is or shall

be required. All documents included in the Plan Supplements are integral to, part of, and incorporated by reference into the Plan as if set forth in full therein.

K. Modifications of the Plan.

19. Pursuant to and in compliance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtors proposed certain modifications to the Plan as reflected herein, in the Plan Supplements, and/or in the Plan filed with the Bankruptcy Court prior to entry of this Confirmation Order (collectively, the "***Plan Modifications***"). In accordance with Bankruptcy Rule 3019, the Plan Modifications do not (a) constitute material modifications of the Plan under section 1127 of the Bankruptcy Code, (b) cause the Plan to fail to meet the requirements of sections 1122 or 1123 of the Bankruptcy Code, (c) materially and adversely change the treatment of any Claims, (d) require re-solicitation of any holders of any Claims or Interests, or (e) require that holders of Claims in the Voting Class be afforded an opportunity to change their previously cast acceptances of the Plan. Under the circumstances, the form and manner of notice of the proposed Plan Modifications are adequate, and no other or further notice of the proposed Plan Modifications is necessary or required. In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all holders of Claims who voted to accept the Plan or who are conclusively presumed to have accepted the Plan are deemed to have accepted the Plan as modified by the Plan Modifications. The holders of Claims in the Voting Class are not permitted to change their respective acceptances to rejections as a consequence of the Plan Modifications.

L. Burden of Proof: Confirmation of the Plan.

20. The Debtors, as proponents of the Plan, have met their burden of proving the applicable elements of sections 1129(a) and 1129(b) of the Bankruptcy Code by a preponderance of the evidence, which is the applicable evidentiary standard for Confirmation.

M. Compliance with Bankruptcy Code Requirements: Section 1129(a)(1).

21. The Plan complies with all applicable provisions of the Bankruptcy Code as required by section 1129(a)(1) of the Bankruptcy Code, including, more particularly:

(i) Proper Classification: Sections 1122 and 1123(a)(1).

22. Article III of the Plan provides for the separate classification of Claims and Interests into nine Classes. Valid business, factual, and legal reasons exist for the separate classification of such Classes of Claims and Interests. The classifications reflect no improper purpose and do not unfairly discriminate between, or among, holders of Claims or Interests. Each Class of Claims and Interests contains only Claims or Interests that are substantially similar to other Claims or Interests within that Class. The Plan therefore satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

(ii) Specified Unimpaired Classes: Section 1123(a)(2).

23. Article III of the Plan specifies that Claims in the following Classes are Unimpaired under the Plan, thereby satisfying section 1123(a)(2) of the Bankruptcy Code:

Class	Claim or Interest
1	Secured Tax Claims
3	Other Secured Claims
4	Other Priority Claims
5	General Unsecured Claims
6	Intercompany Claims[4]
7	Intercompany Interests

(iii) Specified Treatment of Impaired Classes: Section 1123(a)(3).

24. Article III of the Plan specifies that the Claims in the following Classes are Impaired under the Plan, and describes the treatment of such Classes, thereby satisfying section 1123(a)(3) of the Bankruptcy Code:

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4 Holders of Class 6 Intercompany Claims are either Unimpaired and presumed to accept the Plan or Impaired and deemed to reject the Plan.

Class	Claim or Interest
2	Pre-Petition Secured Claims
6	Intercompany Claims
8	Equity Interests
9	Section 510(b) Claims

(iv) No Discrimination: Section 1123(a)(4).

25. Article III of the Plan provides for the same treatment by the Debtors for each Claim or Interest in each respective Class unless the holder of a particular Claim or Interest has agreed to a less favorable treatment of such Claim or Interest in accordance with the Plan, thereby satisfying section 1123(a)(4) of the Bankruptcy Code.

(v) Adequate Means for Plan Implementation: Section 1123(a)(5).

26. The Plan, including the various documents and agreements in the Plan Supplements, provides adequate and proper means for implementation of the Plan, including, without limitation: (a) the satisfaction of Claims and Interests; (b) the occurrence of transactions on or after the Effective Date to effect the Restructuring; (c) the creation and funding of the New Debt Facility; (d) the offering and issuance of certain securities pursuant to, among other things, section 1145 of the Bankruptcy Code; (e) the vesting of assets in the Reorganized Debtors as described in the Plan; (f) the cancellation of notes, instruments, Certificates, and other documents; (g) the amendment of the charter and bylaws of the Reorganized Debtors and other corporate actions; (h) the assumption of Employment Obligations by Reorganized PublicCo and/or New Subsidiary, as applicable; (i) the preservation of Causes of Action; (j) the payment of the reasonable fees and expenses (including attorneys' fees and financial advisors' fees) of the Pre-Petition Secured Party in connection with the Restructuring; and (k) the reinstatement of Intercompany Claims against Reorganized PublicCo or New Subsidiary, as applicable, or the discharge and satisfaction of such Intercompany Claims.

(vi) Voting Power of Equity Securities: Section 1123(a)(6).

27. The Plan satisfies the requirements of section 1123(a)(6) of the Bankruptcy Code. To the extent required by section 1123(a)(6) of the Bankruptcy Code, the Reorganized Debtors' certificates of incorporation shall include, among other things, provisions prohibiting the issuance of non-voting Equity Securities.

(vii) Designation of Directors and Officers: Section 1123(a)(7).

28. The Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code. Section 4.13 of the Plan contains provisions regarding the manner of selection of the Reorganized Debtors' directors and officers that are consistent with the interests of all holders of Claims and Interests and public policy.

(viii) Impairment / Unimpairment of Classes: Section 1123(b)(1).

29. The Plan is consistent with section 1123(b)(1) of the Bankruptcy Code. Specifically, Article III of the Plan impairs or leaves Unimpaired each Class of Claims and Interests.

(ix) Assumption and Rejection of Executory Contracts and Unexpired Leases: Section 1123(b)(2).

30. The Plan is consistent with section 1123(b)(2) of the Bankruptcy Code. Article V of the Plan provides for the assumption of the Debtors' Executory Contracts and Unexpired Leases on the Effective Date. In accordance with the provisions of sections 365 and 1123(b)(2) of the Bankruptcy Code, except as otherwise provided in the Plan, the Plan Supplements, or this Confirmation Order, (i) no Executory Contract or Unexpired Lease shall be assumed by Reorganized PrivateCo unless listed as "assumed" by Reorganized PrivateCo in the Plan Supplements, and (ii) each Executory Contract and Unexpired Lease shall be deemed assumed by Capstone and/or the applicable Debtor counterparty (excluding, for the avoidance of doubt,

Reorganized PrivateCo) and assigned to Reorganized PublicCo or New Subsidiary, as applicable, without the need for any further notice to, or action, order, or approval of, the Bankruptcy Court, as of the Effective Date under section 365 of the Bankruptcy Code, unless any such Executory Contract or Unexpired Lease: (a) is a Retained Contract; (b) is listed on the Rejection Schedule; (c) has been previously assumed or rejected by the Debtors by Final Order or has been assumed or rejected by the Debtors by order of the Bankruptcy Court as of the Effective Date, which order becomes a Final Order after the Effective Date; or (d) is the subject of a motion to assume or reject pending as of the Effective Date. Reorganized PrivateCo shall have no liability with respect to, relating to, or in connection with any of the Debtors' Executory Contracts and Unexpired Leases, except with respect to Retained Contracts (if any).

(x) Compromise of Pre-Petition Secured Claims, Releases, Exculpation, Injunction, and Preservation of Claims and Causes of Action: Section 1123(b)(3).

31. The Plan is consistent with section 1123(b)(3) of the Bankruptcy Code. The compromise of the Pre-Petition Secured Party's Claims and Interests relating to the contractual, subordination, and other legal rights that the Pre-Petition Secured Party may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest, is made in good faith, is in the best interests of the Debtors, their Estates, and holders of Claims and Interests and is fair, equitable, and reasonable.

32. Section 8.2 of the Plan describes certain releases granted by the Debtors and their Estates (the "***Debtor Releases***"). The Debtors have satisfied the applicable standard in this district with respect to the propriety of the Debtor Releases. For the reasons set forth on the record of these Chapter 11 Cases and the evidence proffered, admitted, or adduced at the Combined Hearing, such releases are a necessary and integral part of the Plan. The Debtor Releases are "fair and equitable" and "in the best interests of the estate" and the holders of Claims and Interests.

33. Section 8.3 of the Plan describes certain releases granted by the Releasing Parties (the "***Non-Debtor Releases***"). The Ballots sent to all holders of Claims in the Voting Class unambiguously stated that the Plan contains the Non-Debtor Releases and set forth the terms of the Non-Debtor Releases.

34. The Non-Debtor Releases are (1) consensual and in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith compromise of the Claims and Causes of Action released by such releases; (3) in the best interests of the Debtors and their Estates; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; (6) an essential component of the Plan and the Restructuring; and (7) a bar to any of the Releasing Parties asserting any Claim or Cause of Action released pursuant to such releases.

35. The exculpation, described in Section 8.4 of the Plan (the "***Exculpation***"), is appropriate under applicable law because it was proposed in good faith and is appropriately limited in scope. The Exculpated Parties (to the extent applicable) have, and upon completion of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of, and distribution of, consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

36. The injunction provision set forth in Section 8.5 of the Plan is necessary to implement, preserve, and prevent actions against the Debtors, the Exculpated Parties, or the Released Parties and by extension the compromises and settlements upon which the Plan is founded, and is narrowly tailored to achieve this purpose.

37. Section 4.15 of the Plan appropriately provides that in accordance with section 1123(b) of the Bankruptcy Code, but subject in all respects to Article VIII of the Plan, the Reorganized Debtors will retain, and may enforce, all rights to commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, unless any such Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or by a Final Order. Notwithstanding the foregoing or anything to the contrary in the Plan, pursuant to Section 4.6 of the Plan, any Causes of Action (except with respect to the Retained Assets) shall be assigned to and/or vest in Reorganized PublicCo or New Subsidiary as determined by the Reorganized Debtors.

38. The release of all mortgages, deeds of trust, Liens, pledges, or other security interests against the property of the Estates described in Section 8.8 of the Plan (the "***Lien Release***") is necessary to implement the Plan.

(xi) Modification of Rights: Section 1123(b)(5).

39. The Plan modifies the rights of holders of Claims or Interests, as applicable, in Class 2 (Pre-Petition Secured Claims), Class 6 (Intercompany Claims), Class 7 (Intercompany Interests), Class 8 (Equity Interests) and Class 9 (Section 510(b) Claims), as permitted by section 1123(b)(5) of the Bankruptcy Code.

(xii) Additional Plan Provisions: Section 1123(b)(6).

40. The other discretionary provisions of the Plan are appropriate and consistent with the applicable provisions of the Bankruptcy Code, including provisions for (a) distributions to holders of Claims and Interests, (b) resolution of Disputed Claims, (c) allowance of certain Claims, and (d) retention of Court jurisdiction, thereby satisfying section 1123(b)(6) of the Bankruptcy Code. The failure to address any provisions of the Bankruptcy Code specifically in this Confirmation Order shall not diminish or impair the effectiveness of this Confirmation Order.

(xiii) Cure of Defaults: Section 1123(d).

41. The Debtors have cured, or provided adequate assurance that the Debtors will cure, defaults (if any) under or relating to each of the Executory Contracts that are being assumed and assigned pursuant to the Plan. In addition, the Debtors, New Subsidiary and Reorganized PublicCo, as applicable, have provided adequate assurance of future performance under such Executory Contracts being assumed and assigned.

N. Debtor Compliance with the Bankruptcy Code: Section 1129(a)(2).

42. The Debtors have complied with the applicable provisions of the Bankruptcy Code and, thus, satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code. Specifically, each Debtor:

a. is an eligible debtor under section 109 of the Bankruptcy Code, and a proper proponent of the Plan under section 1121(a) of the Bankruptcy Code;

b. has complied with applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of the Bankruptcy Court; and

c. complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, any applicable non-bankruptcy law, rule and regulation, the Scheduling Order, and all other applicable law, in transmitting the Solicitation Packages and related documents and notices, and in soliciting and tabulating the votes on the Plan.

O. Plan Proposed in Good Faith: Section 1129(a)(3).

43. The Debtors have negotiated, developed, and proposed the Plan (including the Plan Supplements and all other documents and agreements necessary to effectuate the Plan) in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In so determining, the Bankruptcy Court has considered the facts and record of these Chapter 11 Cases, the Disclosure Statement, and the evidence proffered, admitted, or adduced at the Combined Hearing, and examined the totality of the circumstances surrounding the filing of these Chapter 11 Cases, the Plan, and the process leading to Confirmation. The Chapter

11 Cases were filed, and the Plan was proposed, with the legitimate purpose of allowing the Debtors to implement the Restructuring, reorganize, and emerge from chapter 11 with a deleveraged capital structure. The Plan (including all documents necessary to effectuate the Plan) and the Plan Supplements were negotiated in good faith and at arm's length among the Debtors and their key stakeholders, including the Pre-Petition Secured Party, the NPA Collateral Agent, the DIP Purchaser, and the DIP Agent. The Restructuring, as embodied in the Plan, was negotiated in good faith and at arm's length and reflects the best possible outcome that could be reached given the facts and circumstances surrounding the Debtors and these Chapter 11 Cases. Further, the Plan's classification, indemnification, exculpation, release, and injunction provisions have been negotiated in good faith and at arm's length, are consistent with sections 105, 1122, 1123(b)(3)(A), 1123(b)(6), 1129, and 1142 of the Bankruptcy Code, and are each integral to the Plan, and necessary for the Debtors' successful implementation of the Plan.

P. Payment for Services or Costs and Expenses: Section 1129(a)(4).

44. The Debtors have satisfied section 1129(a)(4) of the Bankruptcy Code. Any payment made or to be made by the Debtors for services or for costs and expenses of the Debtors' professionals in connection with these Chapter 11 Cases, or in connection with the Plan and incident to these Chapter 11 Cases, has been approved by, or is subject to the approval of, the Bankruptcy Court as reasonable. All such costs and expenses of the Debtors' professionals shall be paid in accordance with the Plan.

Q. Directors, Officers, and Insiders: Section 1129(a)(5).

45. The Debtors have complied with the requirements of section 1129(a)(5) of the Bankruptcy Code. From and after the Effective Date, each director or officer of the Reorganized Debtors shall serve pursuant to the terms of their charter and bylaws or other constituent documents, and applicable state law. To the extent known, the Plan Supplements disclose, or will

disclose prior to the Effective Date, the identity and affiliations of the members of the board of directors of the Reorganized Debtors and any Person proposed to serve as an officer of the Reorganized Debtors.

R. No Rate Changes: Section 1129(a)(6).

46. Section 1129(a)(6) of the Bankruptcy Code is not applicable to these Chapter 11 Cases. The Plan proposes no rate change subject to the jurisdiction of any governmental regulatory commission.

S. Best Interest of Creditors: Section 1129(a)(7).

47. The Plan satisfies section 1129(a)(7) of the Bankruptcy Code. The liquidation analysis attached to the Disclosure Statement as Exhibit C and the Confirmation Declaration and the other evidence related thereto in support of the Plan that was proffered, admitted, or adduced at the Combined Hearing: (a) are reasonable, persuasive, and credible as of the dates such analyses or evidence was prepared, presented, or proffered; (b) utilize reasonable and appropriate methodologies and assumptions; (c) have not been controverted by other evidence; and (d) establish that each holder of an Impaired Claim or Interest against a Debtor either has accepted the Plan or will receive or retain under the Plan, on account of such Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain if such Debtors were hypothetically liquidated under chapter 7 of the Bankruptcy Code as of the Effective Date.

T. Acceptance by Certain Classes: Section 1129(a)(8).

48. The Unimpaired Classes are Unimpaired by the Plan and, accordingly, holders of Claims in such Classes are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. The Voting Class is Impaired and each holder in the Voting Class has voted to accept the Plan, as established by the Voting Declaration.

49. The Deemed Rejecting Classes are not entitled to vote to accept or reject the Plan. Notwithstanding the foregoing, the Plan is confirmable because it satisfies sections 1129(a)(10) of the Bankruptcy Code because Class 2 has voted to accept the Plan, and, with respect to the Deemed Rejecting Classes, section 1129(b) of the Bankruptcy Code is satisfied as set forth below.

U. Treatment of Claims Entitled to Priority Under Section 507(a) of the Bankruptcy Code: Section 1129(a)(9).

50. The treatment of Administrative Expense Claims, Professional Claims, Priority Tax Claims, DIP Claims, and the statutory fees imposed by 28 U.S.C. § 1930 under Article II of the Plan, satisfy the requirements of, and comply in all respects with, section 1129(a)(9) of the Bankruptcy Code.

V. Acceptance by At Least One Impaired Class: Section 1129(a)(10).

51. The Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code. As evidenced by the Voting Declaration, Class 2, which is Impaired, voted to accept the Plan in accordance with section 1126 of the Bankruptcy Code, determined without including any acceptance of the Plan by any insider (as that term is defined in section 101(31) of the Bankruptcy Code).

W. Feasibility: Section 1129(a)(11).

52. The Plan satisfies the requirements of section 1129(a)(11) of the Bankruptcy Code. The evidence supporting Confirmation of the Plan proffered, admitted, or adduced by the Debtors at or prior to the Combined Hearing: (a) is reasonable, persuasive, and credible as of the dates such evidence was prepared, presented, or proffered; (b) utilizes reasonable and appropriate methodologies and assumptions; (c) has not been controverted by other evidence; (d) establishes that the Plan is feasible and Confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization of the Debtors or any successor to the Debtors

under the Plan, except as provided for under the Plan; and (e) establishes that the Debtors will have sufficient funds available to meet their obligations under the Plan.

X. Payment of Fees: Section 1129(a)(12).

53. The Plan satisfies the requirements of section 1129(a)(12) of the Bankruptcy Code. Section 12.2 of the Plan provides for the payment of all fees payable by the Debtors under 28 U.S.C. § 1930(a).

Y. Continuation of Employee Benefits: Section 1129(a)(13).

54. The Plan satisfies the requirements of section 1129(a)(13) of the Bankruptcy Code. From and after the Effective Date, all retiree benefits (as that term is defined in section 1114 of the Bankruptcy Code), if any, shall be an obligation of Reorganized PublicCo or New Subsidiary in accordance with applicable law. Other than employees employed by Reorganized PrivateCo, New Subsidiary shall be the successor to Capstone with respect to the employment of the directors, officers, and employees of all the Debtors or relating to any Employment Obligations (as defined in the Plan). Reorganized PrivateCo shall have no liability with respect to, relating to, or in connection with the Employment Obligations or any Claims against any Debtor.

Z. Non-Applicability of Certain Sections: 1129(a)(14), (15), and (16).

55. Sections 1129(a)(14), 1129(a)(15), and 1129(a)(16) of the Bankruptcy Code do not apply to these Chapter 11 Cases. The Debtors (a) are not required by a judicial or administrative order, or by statute, to pay a domestic support obligation, (b) are not individuals, and (c) are each a moneyed, business, or commercial corporation.

AA. "Cram Down" Requirements: Section 1129(b).

56. The Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code. Notwithstanding the fact that Class 8 (Equity Interests) and Class 9 (Section 510(b) Claims), as well as certain holders of Claims in Class 6 (Intercompany Claims), are deemed to reject the Plan,

the Plan may be confirmed pursuant to section 1129(b) of the Bankruptcy Code. The evidence in support of the Plan that was proffered, admitted, or adduced at or prior to the Combined Hearing is reasonable, persuasive, and credible, and has not been controverted by other evidence, and establishes that the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code. *First*, all of the requirements of section 1129(a) of the Bankruptcy Code other than section 1129(a)(8) have been met. *Second*, the Plan is fair and equitable with respect to such Classes. The Plan has been proposed in good faith, is reasonable, and meets the requirements that (a) the holder of the Class 2 Pre-Petition Secured Claim has consented to allowing holders of Claims or Interests that are junior to Class 2 Claims to receive or retain any property under the Plan on account of such junior Claim or Interest and (b) no holder of a Claim or Interest in a Class senior to such Classes is receiving more than 100% on account of its Claim. *Third*, the Plan does not discriminate unfairly with respect to such Classes because similarly situated holders of Claims and Interests will receive substantially similar treatment on account of their Claims and Interests irrespective of Class. Accordingly, the Plan satisfies the requirement of section 1129(b)(1) and (2) of the Bankruptcy Code. The Plan may therefore be confirmed despite the fact that not all Impaired Classes have voted to accept the Plan.

BB. Only One Plan: Section 1129(c).

57. The Plan satisfies the requirements of section 1129(c) of the Bankruptcy Code. The Plan is the only chapter 11 plan filed with respect to each Debtor in each of these Chapter 11 Cases.

CC. Principal Purpose of the Plan: Section 1129(d).

58. The Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act.

DD. Not Small Business Cases: Section 1129(e).

59. These Chapter 11 Cases are not small business cases, and accordingly section 1129(e) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

EE. Good Faith Solicitation: Section 1125(e).

60. Based on the record before the Bankruptcy Court in these Chapter 11 Cases, including evidence proffered, admitted, or adduced at or prior to the Combined Hearing, the Debtors and the other Exculpated Parties (i) have acted in "good faith" within the meaning of section 1125(e) of the Bankruptcy Code in compliance with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, the Local Rules, the Solicitation Procedures, and any applicable non-bankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with the development of the Plan, all their respective activities relating to the solicitation of acceptances to the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and (ii) shall be deemed to have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code in the offer and issuance of any securities under the Plan, and therefore are not, and on account of such offer, issuance, and solicitation will not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or the offer and issuance of the securities under the Plan, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and the Exculpation set forth in Section 8.4 of the Plan.

FF. Implementation.

61. The terms of the Plan, including the Plan Supplements and all exhibits and schedules thereto, and all other documents filed in connection with the Plan (collectively, the "***Plan Documents***") constitute essential elements of the Plan. Consummation of each such Plan Document is in the best interests of the Debtors, the Debtors' Estates, and holders of Claims and

Interests, and such Plan Documents are hereby approved. The Debtors have exercised reasonable business judgment in determining to enter into the Plan Documents, and the Plan Documents have been negotiated in good faith, at arm's-length, and shall, upon completion of documentation and execution, be valid, binding, and enforceable agreements and not be in conflict with any federal or state law.

GG. Authority to Pursue, Settle, or Abandon Retained Causes of Action.

62. Unless expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or by a Final Order, in accordance with section 1123(b) of the Bankruptcy Code, Reorganized PublicCo or New Subsidiary, as applicable, shall retain and may enforce all rights to commence and pursue any and all Causes of Action (except with respect to the Retained Assets), whether arising before or after the Petition Date, and Reorganized PublicCo's and New Subsidiary's rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date.

HH. Good Faith.

63. The Debtors, the Pre-Petition Secured Party, the NPA Collateral Agent, the DIP Purchaser, the DIP Agent, and other Released Parties, the Exculpated Parties, and their respective successors, predecessors, control persons, affiliates, directors, officers, members, managers, shareholders, partners, employees, attorneys, investment bankers, advisors and agents, as applicable, acted in good faith to develop, negotiate, propose, and consummate the Plan and the agreements, compromises, and transactions contemplated thereby. The entry of the Confirmation Order shall constitute the Bankruptcy Court's finding and determination that (a) each Released Party's in-court or out-of-court efforts to develop, negotiate, and propose the Plan were, with respect to each other Released Party and any other Person, in good faith and not by any means forbidden by law and (b) the compromises of the Pre-Petition Secured Party's Claims and Interests

reflected in the Plan are (i) in the best interests of the Debtors and their Estates, (ii) fair, equitable, and reasonable, and (iii) approved by the Bankruptcy Court pursuant to sections 105(a) and 363 of the Bankruptcy Code and Bankruptcy Rule 9019.

II. Retention of Jurisdiction.

64. The Bankruptcy Court shall retain jurisdiction over all matters arising in or related to, these Chapter 11 Cases, including the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

ORDER

IT IS ORDERED, ADJUDGED, DECREED, AND DETERMINED THAT:

1. **Final Approval of Disclosure Statement**. The Disclosure Statement (i) contains adequate information of a kind generally consistent with the disclosure requirements of all applicable non-bankruptcy law, including the Securities Act, (ii) contains "adequate information" (as such term is defined in section 1125(a)(1) and used in section 1126(b)(2) of the Bankruptcy Code) with respect to the Debtors, the Plan, and the transactions contemplated therein, and (iii) is approved on a final basis in all respects.

2. **Confirmation of the Plan**. The Plan is approved in its entirety and **CONFIRMED** under section 1129 of the Bankruptcy Code. The Plan Documents are hereby authorized and approved, and the Debtors or Reorganized Debtors (as applicable) are authorized to execute any and all Plan Documents. The terms of the Plan are an integral part of this Confirmation Order. The failure to specifically describe, include, or to refer to any particular article, section, or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Bankruptcy Court that the Plan is confirmed in its entirety, except as expressly modified herein, the Plan Documents are approved in their entirety.

3. **Objections**. All objections to Confirmation of the Plan or final approval of the Disclosure Statement and other responses, comments, statements, or reservation of rights, if any, in opposition to the Plan or Disclosure Statement that have not been withdrawn, waived, or otherwise resolved by the Debtors prior to entry of this Confirmation Order are overruled on the merits.

4. **Plan Classification Controlling**. The terms of the Plan shall solely govern the classification of Claims and Interests for purposes of the distributions to be made thereunder. The classification set forth on the Ballots tendered to or returned by the holders of Claims in connection with voting on the Plan: (a) were set forth thereon solely for purposes of voting to accept or reject the Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of Claims and Interests under the Plan for distribution purposes; (c) may not be relied upon by any holder of a Claim or Interest as representing the actual classification of such Claim or Interest under the Plan for distribution purposes; and (d) shall not be binding on the Debtors except for voting purposes.

5. **Plan Modifications**. The modifications, amendments, and supplements made to the Plan following the solicitation of votes thereon constitute technical changes and do not materially adversely affect or change the proposed treatment of any Claims or Interests. After giving effect to such modifications, the Plan continues to satisfy the requirements of sections 1122 and 1123 of the Bankruptcy Code. The filing of the non-material modifications to the Plan and the proposed form of this Confirmation Order with the Bankruptcy Court, which contains such modifications, and the disclosure of such modifications on the record at the Combined Hearing constitute due and sufficient notice thereof. Accordingly, such modifications do not require additional disclosure or re-solicitation of votes under sections 1125, 1126, or 1127 of the

Bankruptcy Code or Bankruptcy Rule 3019, nor do they require that the holders of Claims in the Voting Class be afforded an opportunity to change their previously cast votes on the Plan. The holders of Claims in the Voting Class who voted to accept the solicitation version of the Plan are deemed to accept the Plan as modified. The Plan, as modified, is, therefore, properly before this Court and all votes cast with respect to the Plan prior to such modification shall be binding and shall apply with respect to the Plan.

6. **No Action Required.** No action of the respective directors, equity holders, managers, or members of the Debtors or Reorganized Debtors (as applicable) is required to authorize the Debtors or Reorganized Debtors (as applicable) to enter into, execute, deliver, file, adopt, amend, restate, consummate, or effectuate, as the case may be, the Plan, or any contract, assignment, certificate, instrument, or other document to be executed, delivered, adopted, or amended in connection with the implementation of the Plan or other Plan Documents.

7. **Binding Effect**. On the date of and after entry of this Confirmation Order, in accordance with section 1141(a) of the Bankruptcy Code and subject to the occurrence of the Effective Date and notwithstanding Bankruptcy Rules 3020(e), 6004(d), 6004(h), or otherwise, the terms of the Plan, the Plan Documents, and this Confirmation Order shall be immediately effective (and/or adopted, where applicable) and enforceable and deemed binding upon the Debtors or Reorganized Debtors (as applicable), and any and all holders of Claims or Interests and such holder's respective successors and assigns (regardless of whether or not (a) the holders of such Claims or Interests voted to accept or reject, or are deemed to have accepted or rejected, the Plan or (b) the holders of such Claims or Interests are entitled to a distribution under the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases (including the releases set forth in Article VIII of the Plan), waivers, discharges, exculpations, and injunctions

provided for in the Plan, each Entity acquiring property under the Plan or this Confirmation Order, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases. All Claims and debts shall be fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any holder of a Claim or debt has voted on the Plan. The Plan and the Plan Documents constitute legal, valid, binding, and authorized obligations of the respective parties thereto and shall be enforceable in accordance with their terms. Pursuant to section 1142(a) of the Bankruptcy Code, the Plan and the Plan Documents, and any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law.

8. **Effectiveness of All Actions**. All actions contemplated by the Plan, including all actions pursuant to, in accordance with, or in connection with the Plan Documents, are hereby effective and authorized to be taken on, prior to, or after the Effective Date, as applicable, under this Confirmation Order, without further application to, or order of the Bankruptcy Court, or further action by the Debtors or Reorganized Debtors (as applicable).

9. **Plan Implementation**.

(a) Pursuant to section 1123(a)(5)(D) of the Bankruptcy Code, on, or, unless specifically provided otherwise herein or in the Plan, prior to the Effective Date, or as soon thereafter as is reasonably practicable, the Debtors, in accordance with Article IV of the Plan, may take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan including (a) the execution and delivery of appropriate agreements or other documents containing terms that are consistent with or reasonably necessary to implement the terms of the Plan and that satisfy the requirements of applicable law; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any property, right, liability, duty, or obligation on terms consistent

with the terms of the Plan; and (c) all other actions that the Debtors determine are necessary or appropriate and that are not inconsistent with the Plan.

(b) Except as set forth in the Plan, all actions authorized to be taken pursuant to the Plan, the Plan Supplements, and the Plan Documents shall be effective prior to, on, or after the Effective Date pursuant to this Confirmation Order, without further notice, application to, or order of this Court, or further action by the Debtors or Reorganized Debtors (as applicable). All documents necessary to implement the Plan and all other relevant and necessary documents in respect of the Restructuring, including any documents related to the New Debt Facility, have been negotiated in good faith and at arm's length and shall, upon completion of the documentation and execution thereof, be valid, binding, and enforceable agreements.

(c) The Debtors or Reorganized Debtors, as applicable, are authorized to enter into and effectuate the transactions contemplated by the Restructuring, as described in Section 4.2 of the Plan or otherwise, and may take any actions as may be necessary or appropriate to effect the Restructuring, as and to the extent provided in the Plan and this Confirmation Order. Any transfers of assets effected through the Plan are hereby approved and shall not constitute fraudulent conveyances or fraudulent transfers or otherwise be subject to avoidance. Each Debtor, as reorganized, as applicable, shall continue to exist after the Effective Date as a separate corporate entity or limited liability company as the case may be, with all the powers of a corporation or limited liability company, as the case may be, under the applicable law in the jurisdiction in which such applicable Debtor is incorporated or formed.

(d) To the extent that, under applicable non-bankruptcy law, any of the foregoing actions would otherwise require the consent or approval of the Debtors or Reorganized Debtors (as applicable), this Confirmation Order shall, pursuant to section 1123(a)(5)(D) of the

Bankruptcy Code, constitute such consent or approval, and such actions are deemed to have been taken by unanimous action of the Debtors or Reorganized Debtors (as applicable).

10. **New Debt Facility.** This Confirmation Order constitutes (i) approval of the New Debt Facility, the New Debt Facility Term Sheet, and all transactions contemplated thereby, including the payment of all fees, indemnities, and expenses provided for therein, and (ii) authorization of Reorganized PublicCo and New Subsidiary to enter into, execute and perform under the New Debt Facility Term Sheet and use New Debt Facility Net Proceeds in accordance with the terms of the New Debt Facility Term Sheet. On the Effective Date, all of the Liens and security interests to be granted as set forth in the New Debt Facility Term Sheet (i) shall be deemed to have been approved by Reorganized PublicCo and New Subsidiary and their applicable subsidiaries, (ii) shall be legal, binding, and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the New Debt Facility Term Sheet, and (iii) shall be deemed perfected upon Reorganized PublicCo and New Subsidiary's entry into the New Debt Facility, subject only to such Liens and security interests as may be permitted as set forth in the New Debt Facility Term Sheet.

11. **Cancellation of Existing Securities and Agreements**. On the Effective Date, except to the extent otherwise provided herein or in the Plan, all notes, instruments, Certificates, including without limitation, all equity grants, warrants, and/or restricted units and any agreement with respect to the foregoing, including the Rights Agreement (as defined below), and other documents evidencing Claims or Interests shall be cancelled and the obligations of the Debtors or Reorganized Debtors and the non-Debtors' Affiliates thereunder or in any way related thereto shall be discharged; *provided, however*, that notwithstanding Confirmation or the occurrence of the Effective Date, (i) any agreement that governs the rights of the holder of a Claim or Interest shall

continue in effect solely for purposes of (a) allowing holders of Claims or Interests to receive distributions under the Plan and (b) allowing and preserving the rights of Reorganized PublicCo or New Subsidiary, as applicable, to make distributions on account of Claims and Interests as provided in Article VI of the Plan and (ii) the Note Documents shall continue in effect solely for the purposes of allowing the NPA Collateral Agent and the DIP Agent to (a) receive payment of its fees and expenses as provided under the Note Documents and the DIP Documents, as applicable, and (b) have the benefit of all the rights and protections for the NPA Collateral Agent and the DIP Agent under the Note Documents and DIP Documents, as applicable, including, but not limited to, the preservation of any indemnification rights. Holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or relating to such instruments, Securities, and other documentation, or the cancellation thereof, except the rights provided for pursuant to the Plan.

12. **Offering and Issuance of Securities**. The offering, issuance, distribution, and exercise (as applicable) of any Securities, including, without limitation, the Reorganized PublicCo Equity, the Reorganized PrivateCo Equity, the New Subsidiary Common Units and the New Subsidiary Preferred Units, pursuant to the Plan will be in compliance with the registration requirements of the Securities Act or exempt from the registration requirements of section 5 therein to the maximum extent permitted thereunder pursuant to section 1145 of the Bankruptcy Code, section 4(a)(2) of the Securities Act, or any other available exemption from registration under the Securities Act, as applicable. In addition, under section 1145 of the Bankruptcy Code, if applicable, any Securities issued under the Plan shall be freely transferable under the Securities Act by the recipients thereof, subject to: (1) the provisions of section 1145(b)(1) of the Bankruptcy Code relating to the definition of an underwriter in section 2(a)(11) of the Securities Act, and

compliance with any applicable state or foreign securities laws, if any, and the rules and regulations of the United States Securities and Exchange Commission (the "***SEC***"), if any, applicable at the time of any future transfer of such Securities or instruments; (2) the restrictions, if any, on the transferability of such Securities and instruments; and (3) any other applicable regulatory approval.

13. **Section 1146(a) Exemption**. To the maximum extent permitted pursuant to section 1146(a) of the Bankruptcy Code and applicable law, the issuance, transfer, or exchange of a security, or the making or delivery of an instrument or transfer under the Plan, may not be taxed under any law imposing a stamp tax or similar tax, and upon entry of this Confirmation Order, the appropriate state or local governmental officials or age shall forgo the collection of any such tax and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax.

14. **Preservation of Causes of Action**. In accordance with section 1123(b) of the Bankruptcy Code, but subject in all respects to Section 4.15 of the Plan, unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or by a Final Order, the Reorganized Debtors shall retain and may enforce all rights to commence and pursue any and all Causes of Action, whether arising before or after the Petition Date, and the Reorganized Debtors' rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date.

15. Notwithstanding the foregoing or anything to the contrary herein, all Avoidance Actions against non-Insiders of the Debtors shall be waived upon the Effective Date. No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplements, or the Disclosure Statement to any Causes of Action against it as any indication that the Debtors or the Reorganized Debtors, as applicable, will not pursue any and all available Causes of Action against it. The

Debtors or the Reorganized Debtors, as applicable, expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the Plan. Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Court order, including pursuant to Article VIII of the Plan, the Debtors or Reorganized Debtors, as applicable, expressly reserve all Causes of Action for later adjudication.

16. **Substitution in Pending Legal Actions.** On the Effective Date, Reorganized PrivateCo shall be deemed to be substituted as the party to any litigation relating to the Retained Assets in which the Debtors are a party, and Reorganized PublicCo shall be deemed to be substituted as the party to all other litigation (not relating to the Retained Assets) in which the Debtors are a party, including, in each case (but not limited to) (i) pending contested matters or adversary proceedings in the Bankruptcy Court, (ii) any appeals of orders of the Bankruptcy Court and (iii) any state or federal court or state or federal administrative proceedings pending as of the Petition Date. The Debtors or Reorganized Debtors are not required to, but may, take such steps as are appropriate to provide notice of such substitution.

17. **Professional Compensation**. The provisions governing compensation of Professionals set forth in Section 2.2 of the Plan are approved in their entirety. All final requests for Professional Claims through and including the Effective Date shall be filed no later than thirty (30) days after the Effective Date. Any objections to Professional Claims shall be served and filed no later than twenty-eight (28) days after the filing of such final applications for payment of Professional Claims.

18. **Payment of Professional Claims**. In accordance with Section 2.2 of the Plan, Reorganized PublicCo or New Subsidiary shall pay Professional Claims in Cash in the amount the

Bankruptcy Court Allows. From and after the Confirmation Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtors may employ and pay any Professional in the ordinary course of business without any further notice to, or action, order, or approval of, the Bankruptcy Court.

19. **Subordination**. The allowance, classification, and treatment of all Claims and Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors or Reorganized Debtors, (as applicable) reserve the right to reclassify any Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

20. **Release of Liens.** Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, on the Effective Date concurrently and consistent with the treatment provided for Claims and Interests in Article III of the Plan, all mortgages, deeds of trust, Liens against, security interests in, or other encumbrances or interests in property of any Estate shall be deemed fully released and discharged.

21. **Rejection of Contracts and Leases.** On the Effective Date, except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document entered into in connection with the Plan, the Plan shall serve as a motion under sections 365 and 1123(b)(2) of the Bankruptcy Code to assume, assume and assign, or reject Executory Contracts and

Unexpired Leases, and all Executory Contracts or Unexpired Leases shall be assumed by Capstone and/or the applicable Debtor counterparty (excluding, for the avoidance of doubt, Reorganized PrivateCo) and assigned to Reorganized PublicCo or New Subsidiary, as applicable, as of the Effective Date without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease: (i) is a Retained Contract; (ii) is listed on the Rejection Schedule; (iii) has been previously assumed or rejected by the Debtors by Final Order or has been assumed or rejected by the Debtors by order of the Bankruptcy Court as of the Effective Date, which order becomes a Final Order after the Effective Date; or (iv) is the subject of a motion to assume or reject pending as of the Effective Date. In accordance with Section 5.1 of the Plan, no Executory Contract or Unexpired Lease shall be assumed by Reorganized PrivateCo unless such Executory Contract or Unexpired Lease is listed as "assumed" by Reorganized PrivateCo in the Plan Supplements. Reorganized PrivateCo shall have no liability with respect to, relating to, or in connection with any of the Debtors' Executory Contracts and Unexpired Leases, except with respect to Retained Contracts (if any).

22. **Distributions**. All distributions pursuant to the Plan shall be made in accordance with Article VI of the Plan, and such methods of distribution are approved.

23. **Compromise of Claims, Interests, and Controversies.** The entry of this Confirmation Order constitutes approval of the compromise of the Pre-Petition Secured Party's Claims and Interests, as well as a finding by the Bankruptcy Court that such compromise is in good faith and in the best interests of the Debtors, their Estates, and holders of Claims and Interests and are fair, equitable, and reasonable.

24. **Claims**. All Allowed Claims against the Debtors shall be paid in the ordinary course by Reorganized PublicCo or New Subsidiary, except to the extent that a holder of an

Allowed Claim agrees to a less favorable treatment. All Claims shall be obligations of Reorganized PublicCo and/or New Subsidiary, and Claims asserted against Reorganized PrivateCo (other than with respect to the Retained Assets) shall be deemed Claims against Reorganized PublicCo and/or New Subsidiary. Notwithstanding anything to the contrary in the Plan, Reorganized PrivateCo shall have no liability with respect to, relating to, or in connection with any Claims (including, without limitation, Secured Tax Claims, Other Secured Claims, Other Priority Claims, General Unsecured Claims, Intercompany Claims and Section 510(b) Claims) against, or Interests (including, without limitation, Intercompany Interest and Equity Interests) in, any Debtor.

25. **Unimpaired Claims**. Holders of Unimpaired Claims shall not be required to file a Proof of Claim with the Bankruptcy Court, except for Claims for damages related to the rejection of Executory Contracts and Unexpired Leases ("Rejection Damages Claims"). Holders of Unimpaired Claims other than those holding Rejection Damages Claims shall not be subject to any Claims resolution process in the Bankruptcy Court in connection with their Claims, and shall retain all of their rights under applicable non-bankruptcy law to pursue their Claims against the Debtors or Reorganized Debtors or other Entity in any forum with jurisdiction over the parties. The Debtors and Reorganized Debtors shall retain all defenses, counterclaims, rights to setoff, and rights to recoupment as to Unimpaired Claims. If the Debtors or the Reorganized Debtors dispute any Unimpaired Claim, such dispute shall be determined, resolved or adjudicated in the manner as if the Chapter 11 Cases had not been commenced, except with respect to Rejection Damages Claims, which shall be determined, resolved or adjudicated as set forth in Article V of the Plan.

26. **510(b) Claims**. "*Section 510(b) Claims*" include any Claim against the Debtors arising from rescission of a purchase or sale of a security of the Debtors or an Affiliate, for damages

arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under section 502 of the Bankruptcy Code on account of such a Claim, including, without limitation, any Claims against the Debtors relating to, arising under, or in connection with that certain Rights Agreement dated as of May 6, 2019 (the "***Rights Agreement***") between Capstone and Broadridge Financial Solutions, Inc., as Rights Agent.

27. **Release, Discharge, Exculpation, and Injunction Provisions**. All discharge, injunction, release, and exculpation provisions set forth in the Plan, including but not limited to those contained in Sections 8.1, 8.2, 8.3, and 8.4 of the Plan, are approved and shall be effective and binding on all Persons and Entities to the extent provided therein.

28. Notwithstanding any provision in the Plan, the Plan Supplements, this Confirmation Order or other Plan Documents: Nothing discharges or releases the Debtors, the Reorganized Debtors, or any non-Debtor from any right, Claim, liability, defense or Cause of Action of the United States or any State or impairs the ability of the United States or any State to pursue any right, Claim, liability, defense, or Cause of Action against any Debtor, Reorganized Debtor or non-Debtor. Contracts, purchase orders, agreements, leases, covenants, guaranties, indemnifications, operating rights agreements or other interests of or with the United States or any State shall be, subject to any applicable legal or equitable rights or defenses of the Debtors or Reorganized Debtors under applicable non-bankruptcy law, paid, treated, determined and administered in the ordinary course of business as if the Debtors' bankruptcy cases were never filed and the Debtors and Reorganized Debtors shall comply with all applicable non-bankruptcy law. All rights, Claims, liabilities, defenses or Cause of Action, of or to the United States or any State shall survive the Chapter 11 Cases as if they had not been commenced and be determined in the ordinary course of business, including in the manner and by the administrative or judicial

tribunals in which such rights, Claims, liabilities, defenses or Causes of Action would have been resolved or adjudicated if the Chapter 11 Cases had not been commenced; *provided*, that nothing in the Plan Documents shall alter any legal or equitable rights or defenses of the Debtors or the Reorganized Debtors under non-bankruptcy law with respect to any such Claim, liability, or Cause of Action. Without limiting the foregoing, for the avoidance of doubt, nothing shall: (i) require the United States or any State to file any proofs of Claim or Administrative Claims in the Chapter 11 Cases for any right, Claim, liability, defense, or Cause of Action; (ii) affect or impair the exercise of the United States' or any State's police and regulatory powers against the Debtors, the Reorganized Debtors or any non-Debtor; (iii) be interpreted to set cure amounts or to require the United States or any State to novate or otherwise consent to the transfer of any federal or state contracts, purchase orders, agreements, leases, covenants, guaranties, indemnifications, operating rights agreements or other interests; (iv) affect or impair the United States' or any State's rights and defenses of setoff and recoupment, or ability to assert setoff or recoupment against the Debtors or the Reorganized Debtors and such rights and defenses are expressly preserved; (v) constitute an approval or consent by the United States or any State without compliance with all applicable legal requirements and approvals under non-bankruptcy law; or (vi) relieve any party from compliance with all licenses and permits issued by governmental units in accordance with non-bankruptcy law.

29. **Preservation of SEC Police and Regulatory Powers**. Notwithstanding any provision to the contrary, nothing in the Plan, the Plan Supplements, the Disclosure Statement, or this Confirmation Order shall (i) release, enjoin, or discharge any monetary or non-monetary Claim, right, or Cause of Action of the SEC, acting in its police and regulatory capacity, against any Released Party (including any Debtor, Reorganized Debtor or New Subsidiary) or any other non-Debtor Person or non-Debtor Entity, or (ii) prevent, restrict, limit, enjoin, or impair the SEC

from commencing or continuing any investigation, action or proceeding, in its police and regulatory capacity, against any Released Party (including any Debtor, Reorganized Debtor, or New Subsidiary) or any other non-Debtor Person or non-Debtor Entity in any nonbankruptcy forum. For the avoidance of doubt, the SEC shall not be a Released Party or Releasing Party under the Plan.

30. **Books and Records**. The Debtors shall maintain copies of their books and records. Nothing in this Confirmation Order shall affect the obligations of the Debtors and/or any transferee or custodian to maintain all books and records that are subject to any governmental subpoena, document preservation letter, or other investigative request from a governmental agency.

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

this Plan to the contrary, (a) each holder of an Allowed Claim shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Unit, including income, withholding and other tax obligations, on account of such distribution, and (b) no distribution shall be made to or on behalf of such holder pursuant to the Plan unless and until such holder has made arrangements satisfactory to the Reorganized Debtors for the payment and satisfaction of such tax obligations.

32. **Payment of Statutory Fees**. All fees payable pursuant to 28 U.S. § 1930(a) shall be paid for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or a Final Decree is issued, whichever occurs first.

33. **Documents, Mortgages and Instruments**. Each federal, state, local, foreign or other governmental agency is authorized to accept any and all documents, mortgages or instruments necessary or appropriate to effectuate, implement or consummate the Plan.

34. **Filing and Recording.** This Confirmation Order is binding upon and shall govern the acts of all persons or entities including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required, by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any document or instrument. Each and every federal, state, and local government agency is hereby authorized to accept any and all documents and instruments necessary, useful, or appropriate (including financing statements under the applicable uniform commercial code) to effectuate, implement, and consummate the transactions contemplated by the Plan and this Confirmation Order without payment of any stamp tax or similar tax imposed by state or local law.

35. **Continued Effect of Stays and Injunctions**. Unless otherwise provided in the Plan, the Confirmation Order, or in a Final Order, all injunctions or stays arising under or entered during the Chapter 11 Cases under section 362 of the Bankruptcy Code or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date set forth in the order providing for such injunction or stay.

36. **Authorization to Consummate**. The Debtors are authorized to consummate the Plan and the Restructuring at any time after entry of this Confirmation Order subject to satisfaction, or waiver in accordance with Section 9.2 of the Plan, of the conditions precedent to the Effective Date set forth in Section 9.1 of the Plan.

37. **Nonseverability of Plan Provisions Upon Confirmation**. Each provision of the Plan is: (a) valid and enforceable in accordance with its terms; (b) integral to the Plan and may not be deleted or modified without the Debtors' consent (and subject to other consents and consultation rights set forth in the Plan) in accordance with the terms set forth in the Plan; and (c) nonseverable and mutually dependent.

38. **Post-Confirmation Modifications**. Subject to the terms of the Plan and without need for further order or authorization of the Bankruptcy Court, the Debtors or Reorganized Debtors, as applicable, are authorized and empowered to make any and all modifications to any and all Plan Documents that are necessary to effectuate the Plan that do not materially modify the terms of such documents and are consistent with the Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, the Debtors and Reorganized Debtors reserve their respective rights prior to the Effective Date to withdraw, alter, amend, or modify materially the Plan with respect to such Debtor or Reorganized Debtor, as applicable, and, to the

extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, or this Confirmation Order, as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Section 10.1 of the Plan.

39. **Waiver of Filings**. Any requirement under section 521 of the Bankruptcy Code or Bankruptcy Rule 1007 obligating the Debtors to file any list, schedule, or statement with the Bankruptcy Court or the U.S. Trustee (except for monthly operating reports or any other post-confirmation reporting obligation to the U.S. Trustee) is hereby waived as to any such list, schedule, or statement not filed as of the Confirmation Date.

40. **Notice of Entry of the Confirmation Order and Effective Date**. In accordance with Bankruptcy Rules 2002 and 3020(c), as soon as reasonably practicable after the Effective Date, the Debtors shall serve notice of the entry of this Confirmation Order and notice of the Effective Date to all parties who hold a Claim or Interest in these Chapter 11 Cases, the U.S. Trustee, and other parties in interest. Such notice is hereby approved in all respects and shall be deemed good and sufficient notice of confirmation of the Plan, entry of this Confirmation Order, and the occurrence of the Effective Date. The Debtors and/or the Reorganized Debtors are authorized and directed to serve on parties in interest—including by filing with the SEC—the notice of entry of this Confirmation Order in the form attached as **Exhibit B** hereto.

41. **Waiver of Stay**. The Confirmation Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. Sufficient cause has been shown to waive the stays contemplated by Bankruptcy Rule 3020(e) or any other Bankruptcy Rule.

42. **References to Particular Plan Provisions**. References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan or this Confirmation Order.

43. **Headings.** Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

44. **Effect of Conflict**. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, then, solely to the extent of such inconsistency, the terms of this Confirmation Order govern and control.

45. **Final Order**. This Confirmation Order is a Final Order and the period in which an appeal must be filed shall commence upon the entry hereof.

46. **Retention of Jurisdiction**. Except as set forth in the Plan or this Confirmation Order, the Bankruptcy Court shall retain jurisdiction over all matters arising out of, and related to, these Chapter 11 Cases, including the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

Wilmington, Delaware
Dated: November 14, 2023

*/s/ Laurie Selber Silverstein*_____
LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

Plan

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	**Chapter 11**
CAPSTONE GREEN ENERGY CORPORATION, *et al.*,	:	**Case No. 23-11634 (LSS)**
Debtors.[1]	:	**(Jointly Administered)**

JOINT PREPACKAGED CHAPTER 11 PLAN OF REORGANIZATION OF CAPSTONE GREEN ENERGY CORPORATION AND ITS DEBTOR AFFILIATES

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

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Proposed Co-Counsel for the Debtors and Debtors in Possession

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number are: Capstone Green Energy Corporation (0883); Capstone Turbine International, Inc. (4270); and Capstone Turbine Financial Services, LLC (N/A). The Debtors' mailing address is 16640 Stagg Street, Van Nuys, California 91406.

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INTRODUCTION

Capstone Green Energy Corporation ("Capstone") and its Debtor subsidiaries in the above-captioned Chapter 11 Cases jointly propose this Plan. Although proposed jointly for administrative purposes, the Plan constitutes a separate Plan for each Debtor for the resolution of outstanding claims against and interests in each Debtor pursuant to the Bankruptcy Code. Each Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code. The classifications of claims and interests set forth in Article III shall be deemed to apply separately with respect to each Plan proposed by each Debtor, as applicable. The Plan contemplates no substantive consolidation of any of the Debtors. Reference is made to the Disclosure Statement for a discussion of the Debtors' history, business, properties and operations, projections, risk factors, and a summary and analysis of this Plan and certain related matters.

ARTICLE I

DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW, AND OTHER REFERENCES

1.1 Defined Terms

1. "*Administrative Claim*" means a Claim for costs and expenses of administration of the Chapter 11 Cases pursuant to sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including (a) the actual and necessary costs and expenses incurred on or after the Petition Date until and including the Effective Date of preserving the Estate and operating the business of the Debtors; (b) Allowed Professional Claims; and (c) all fees and charges assessed against the Estate pursuant to section 1930 of chapter 123 of title 28 of the United States Code.

2. "*Affiliate*" has the meaning set forth in section 101(2) of the Bankruptcy Code.

3. "*Allowed*" means, as to a Claim or an Interest, a Claim or Interest or any portion thereof, specifically allowed under the Plan, the Bankruptcy Code, or by a Final Order.

4. "*Avoidance Actions*" means any and all avoidance, recovery, subordination, or other claims, actions, or remedies that may be brought by or on behalf of the Debtors or their Estates or other authorized parties in interest under the Bankruptcy Code or applicable non-bankruptcy law, including actions or remedies under sections 502,510, 542, 544, 545, and 547 through and including 553 of the Bankruptcy Code.

5. "*Ballot*" means each of the ballots distributed to each holder of an Impaired Claim that is entitled to vote to accept or reject the Plan and on which such holder is to indicate, among other things, acceptance or rejection of the Plan.

6. "*Bankruptcy Code*" means Title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as may be amended from time to time.

7. "*Bankruptcy Court*" means the United States Bankruptcy Court for the District of Delaware or such other court having jurisdiction over the Chapter 11 Cases.

8. "*Bankruptcy Rules*" means, as may be amended from time to time, the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, 28 U.S.C. § 2075, as applicable to the Chapter 11 Cases and the general, local, and chambers rules of the Bankruptcy Court.

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

10. "*Branch Office – UK*" means that certain branch office located in the United Kingdom.

11. "*Capstone*" has the meaning set forth in the Introduction hereof.

12. "*Capstone Subsidiary*" means each subsidiary of Capstone.

13. "*Capstone Trademarks*" means all trademarks, service marks, brand names, trade names, corporate names, d/b/a names, Internet domain names, social media names and accounts, logos, and all other identifiers or designations of source or origin or goodwill, in any jurisdiction and whether registered or unregistered, that consist of, incorporate or contain "Capstone", and all variations and derivatives thereof, including all registrations and applications for registration thereof.

14. "*Capstone Turbine International Equity*" means Capstone's Equity Interests in Capstone Turbine International.

15. "*Cash*" means the legal tender of the United States of America or the equivalent thereof, including bank deposits and checks.

16. "*Causes of Action*" means any and all claims, actions, causes of action, choses in action, suits, debts, damages, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, judgments, remedies, rights of set-off, third-party claims, subrogation claims, contribution claims, reimbursement claims, indemnity claims, counterclaims, and crossclaims (including all claims and any avoidance, recovery, subordination, or other actions against Insiders and/or any other Entities under the Bankruptcy Code, including Avoidance Actions) of any of the Debtors and/or the Estates, whether known or unknown, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, that are or may be pending on the Effective Date or commenced by the Reorganized Debtors after the Effective Date against any Entity, based in law or equity, including under the Bankruptcy Code, whether direct, indirect, derivative, or otherwise and whether asserted or unasserted as of the date of entry of the Confirmation Order.

17. "*Certificate*" means any instrument evidencing a Claim or an Interest.

18. "*Chapter 11 Cases*" means the Chapter 11 Cases pending with respect to the Debtors in the Bankruptcy Court.

19. "*Claim*" has the meaning set forth in section 101(5) of the Bankruptcy Code.

20. "*Claims and Noticing Agent*" means the claims and noticing agent the Debtors may retain in the Chapter 11 Cases pursuant to an order of the Bankruptcy Court.

21. "*Claims Register*" means the official register of Claims against or Interests in the Debtors maintained by the Claims and Noticing Agent.

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

23. "*Confirmation*" means the entry of the Confirmation Order on the docket of the Chapter 11 Cases.

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

25. "*Confirmation Hearing*" means the hearing(s) before the Bankruptcy Court under section 1128 of the Bankruptcy Code at which the Debtors seek entry of the Confirmation Order.

26. "*Confirmation Order*" means the order of the Bankruptcy Court confirming the Plan under section 1129 of the Bankruptcy Code and approving the Disclosure Statement.

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

28. "*Creditor*" has the meaning set forth in section 101(10) of the Bankruptcy Code.

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

30. "*Debtors*" means, collectively, each of Capstone Green Energy Corporation, Capstone Turbine Financial Services, LLC, and Capstone Turbine International.

31. "*DIP Agent*" means Goldman Sachs Specialty Lending Group, L.P., in such capacity.

32. "*DIP Claim*" means all Claims pursuant to the DIP Note Purchase Agreement.

33. "*DIP Claims Equitization Percentage*" means a fraction where the numerator is $10 million of the DIP Pre-Petition Roll Up Notes (plus accrued and unpaid interest thereon) and the denominator is the Total Amount of Claims Equitized.

34. "*DIP New Money Notes*" means up to $12 million of new money notes issued pursuant to the DIP Note Purchase Agreement.

35. "*DIP Note Purchase Agreement*" means that certain *Super-priority Senior Secured Debtor-in-Possession Note Purchase Agreement* dated [•], 2023.

36. "*DIP Pre-Funding Roll Up Notes*" means a $3 million roll up of the principal amount of Pre-Funding Notes in the form of notes issued pursuant to the DIP Note Purchase Agreement.

37. "*DIP Pre-Petition Roll Up Notes*" means a $15 million roll up of certain Pre-Petition Secured Debt in the form of notes issued pursuant to the DIP Note Purchase Agreement.

38. "*DIP Purchaser*" means Broad Street Credit Holdings LLC, in such capacity.

39. "*Disclosure Statement*" means the disclosure statement for the Plan as may be amended, supplemented, or modified from time to time, including all exhibits and schedules thereto.

40. "*Disputed*" means as to a Claim or Interest, or any portion thereof, that (a) is not Allowed; (b) is not disallowed under the Plan, the Bankruptcy Code, or a Final Order; (c) is the subject of an objection or request for estimation filed in the Bankruptcy Court and which objection or request for estimation has not been withdrawn or overruled by a Final Order of the Bankruptcy Court, or (d) is otherwise disputed by the Debtors or the Reorganized Debtors in accordance with applicable law, which dispute has not been withdrawn, resolved or overruled by Final Order.

41. "*Distribution Agent*" means Reorganized PublicCo, in such capacity, or any delegee thereof.

42. " *Distributor Support Services*" means the program and set of services originally funded by Capstone's distributors that, as of the Petition Date, provides distributor training to distributors, and undertakes website development and company branding and strategic marketing activities for Capstone and to the benefit of Capstone's distributors.

43. "*Effective Date*" means the date that is a Business Day selected by the Debtors, subject to the prior written consent of the Pre-Petition Secured Party, after the Confirmation Date on which all conditions precedent to the occurrence of the Effective Date set forth in Section 9.1 hereof have been satisfied or waived in accordance with Section 9.2 hereof; *provided that* such date shall occur on or before forty-two (42) days after the Petition Date unless a later date is consented to in writing by the Pre-Petition Secured Party.

44. "*EIP*" means the Key Individual Retention Shares and any equity incentive plan entered into by the Debtors, Reorganized PublicCo Board and/or the members of New Subsidiary, as applicable, each in form and substance acceptable to DIP Purchaser and Purchaser, in connection with or following the Effective Date.

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

46. "*Equity Interest*" means any and all equity securities (as defined in section 101(16) of the Bankruptcy Code) in a Debtor, including all shares, common stock, preferred stock, or other instrument evidencing any fixed or contingent ownership interest in any Debtor, including any option, warrant, or other right, contractual or otherwise, to acquire any such interest in a Debtor, whether or not transferable and whether fully vested or vesting in the future, that existed immediately before the Effective Date.

47. "*Equity Security*" has the meaning set forth in section 101(16) of the Bankruptcy Code.

48. "*Estate*" means the bankruptcy estate of any Debtor created under sections 301 and 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Cases.

49. "*Exculpated Claim*" means any Claim arising out of or related to any act or omission in connection with (a) the Debtors' in-court or out-of-court efforts to implement the Restructuring, the Chapter 11 Cases, the DIP Financing, or the Transaction Support Agreement; (b) the formulation, preparation, solicitation, dissemination, negotiation, or filing of the Disclosure Statement or Plan or any contract, instrument, release, or other agreement or document created or entered into in connection with or pursuant to the Transaction Support Agreement, the Disclosure Statement, the DIP Financing, or the Plan; (c) the filing of the Chapter 11 Cases; (d) the pursuit of Confirmation; (e) the pursuit of Consummation; (f) the administration and implementation of the Plan; or (g) the distribution of property under the Plan; *provided that* "Exculpated Claims" do not include any obligations of the Exculpated Parties arising on or after the Effective Date under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

50. "*Exculpated Party*" means each of the following in its capacity as such: (a) the Debtors; (b) the Reorganized Debtors; (c) the directors, managers, and officers of the Debtors and/or Reorganized Debtors who served in such capacity between the Petition Date and Effective Date; and (d) each Entity employed in the Chapter 11 Cases in accordance with sections 327 and 1103 of the Bankruptcy Code and to be compensated for services rendered prior to or on the Confirmation Date pursuant to sections 327, 328, 329, 330, and 331 of the Bankruptcy Code.

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

52. "*Exit Facility New Money Tranche*" means a $7 million committed revolving loan tranche.

53. "*Exit Facility Roll Up Tranche 1*" means a roll up tranche of up to $12 million (plus any accrued interest) of the DIP New Money Notes outstanding.

54. "*Exit Facility Roll Up Tranche 2*" means a roll up tranche of $5 million (plus any accrued interest) of the DIP Pre-Petition Roll Up Notes.

55. "*Exit Facility Roll Up Tranche 3*" means a roll up tranche of $3 million (plus any accrued interest) of the DIP Pre-Funding Roll Up Notes.

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

57. "*Final Order*" means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter, which has not been reversed, stayed, modified, or amended, and as to which the time to appeal or seek certiorari has expired and no appeal or petition for certiorari has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be filed has been resolved

by the highest court to which the order or judgment could be appealed or from which certiorari could be sought or the new trial, reargument, or rehearing shall have been denied, resulted in no modification of such order, or has otherwise been dismissed with prejudice.

58. "*General Unsecured Claim*" means any Claim other than an Administrative Claim, Professional Claim, Priority Tax Claim, Secured Tax Claim, Other Secured Claim, Other Priority Claim, Pre-Petition Secured Claim, DIP Claim, or Section 510(b) Claim.

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

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

61. "*Insider*" has the meaning set forth in section 101(31) of the Bankruptcy Code.

62. *"Intercompany Claim"* means any Claim by a Debtor against another Debtor that is reflected in the Debtors' books and records.

63. "*Intercompany Contract*" means a contract between or among two or more Debtors.

64. "*Intercompany Interest*" means an Interest held by a Debtor.

65. "*Interest*" means any Equity Security in a Debtor existing immediately prior to the Effective Date.

66. "*IP Assignment Agreement*" means an agreement between Capstone and the Capstone Subsidiaries pursuant to which each Capstone Subsidiary assigns, transfers, conveys and delivers to Capstone all of its right, title and interest in and to the Capstone Trademarks, including all common law rights thereto and all goodwill of the business connected with the use of and symbolized thereby.

67. "*Key Individual Retention Shares*" means certain nonvoting common shares of Capstone Turbine International issued to certain employees and directors of Capstone prior to the Petition Date.

68. "*License Agreement*" means an agreement between Reorganized PrivateCo and Reorganized PublicCo pursuant to which Reorganized PrivateCo will grant Reorganized PublicCo a non-exclusive, limited license to use the Capstone Trademarks pursuant to the terms and conditions therein.

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

70. "*New Debt Facility*" means a financing facility, entered into by New Subsidiary as borrower and Reorganized PublicCo as guarantor on the Effective Date in an aggregate amount of up to $25 million, comprised of Exit Facility Roll Up Tranche 1, Exit Facility Roll Up Tranche 2, Exit Facility Roll Up Tranche 3 and Exit Facility New Money Tranche, all on the same terms as or better terms for New Subsidiary than those set forth in the New Debt Facility Term Sheet.

71. "*New Debt Facility Term Sheet*" means the term sheet attached to the Transaction Support Agreement as Exhibit B, as it may be amended, supplemented, or modified from time to time.

72. "*New Subsidiary*" means a newly formed subsidiary of Capstone that shall be formed on or prior to the Effective Date. References to New Subsidiary include each of New Subsidiary's subsidiaries and controlled affiliates, unless the context clearly requires otherwise.

73. "*New Subsidiary Common Units*" means common units of New Subsidiary issued on or about the Effective Date in an amount equal to a sixty-two and one-half percent (62.5%) ownership share of New Subsidiary.

74. " *New Subsidiary Preferred Units*" means Series A preferred units of New Subsidiary issued on or about the Effective Date in accordance with the New Subsidiary Preferred Units Term Sheet in an amount equal to a thirty-seven and one-half percent (37.5%) ownership share of New Subsidiary.

75. "*New Subsidiary Preferred Units Term Sheet*" means that certain term sheet with respect to the New Subsidiary Preferred Units attached to the Transaction Support Agreement as Exhibit C.

76. "*Note Documents*" has the meaning ascribed to such term in the NPA.

77. "*NPA*" means the Amended and Restated Note Purchase Agreement, by and among certain affiliates of Capstone, the Pre-Petition Secured Party, and the NPA Collateral Agent, dated as of October 1, 2020 (as amended, supplemented, or modified from time to time).

78. "*NPA Collateral Agent*" means Goldman Sachs Specialty Lending Group, L.P. in its capacity as collateral agent under the NPA.

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

80. "*Other Secured Claim*" means any Secured Claim other than a Pre-Petition Secured Claim, DIP Claim or a Secured Tax Claim. For the avoidance of doubt, Other Secured Claims includes any Claim arising under, derived from, or based upon any letter of credit issued in favor of the Debtors, the reimbursement obligation for which is either secured by a Lien on collateral or subject to a valid right of setoff.

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

82. "*Petition Date*" means the date on which the Debtors filed their petition for relief commencing the Chapter 11 Cases.

83. "*Plan*" means this chapter 11 plan, as it may be altered, amended, modified, or supplemented from time to time, including the Plan Supplement and all exhibits, supplements, appendices, and schedules.

84. "*Plan Supplement*" means any compilation of documents and forms of documents, agreements, schedules, and exhibits to the Plan, which shall be filed by the Debtors prior to the date scheduled for the Confirmation Hearing or such later date as may be approved by the Bankruptcy Court on notice to parties in interest, and additional documents filed with the Bankruptcy Court prior to the Effective Date as amendments to the Plan Supplement.

85. "*Pre-Funding Notes*" means the Pre-Funding Notes (as defined in the NPA).

86. "*Pre-Petition Claims Equitization Percentage*" means a fraction where the numerator is $35 million of principal of the Pre-Petition Secured Claim, plus accrued and unpaid interest with respect to the principal of the Pre-Petition Secured Claim as of the Effective Date and the denominator is the Total Amount of Claims Equitized.

87. "*Pre-Petition Secured Claim*" means any claim arising under the NPA excluding any DIP Claim on account of the DIP Roll Up Notes.

88. "*Pre-Petition Secured Debt*" means the Obligations (as defined in the NPA) incurred prior to the Petition Date.

89. "*Pre-Petition Secured Party*" means Broad Street Credit Holdings LLC.

90. "*Pre-Petition Warrants*" means the warrants in Capstone held by Special Situations Investing Group II, LLC, or an affiliate thereof.

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

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

93. "*Professional*" means an Entity (a) employed in the Chapter 11 Cases in accordance with sections 327 and 1103 of the Bankruptcy Code and to be compensated for services rendered prior to or on the Confirmation Date pursuant to sections 327, 328, 329, 330, and 331 of the Bankruptcy Code, or (b) for which compensation and reimbursement has been Allowed by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

94. "*Professional Claim*" means a Claim by a Professional seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date under sections 330, 331, 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code.

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

96. "*Rejection Schedule*" means the schedule of Executory Contracts and Unexpired Leases in the Plan Supplement, as may be amended from time to time, setting forth certain

Executory Contracts and Unexpired Leases for rejection as of the Effective Date under section 365 of the Bankruptcy Code.

97. "*Released Party*" means each of the following in its/their capacity as such: (a) the Debtors; (b) the Pre-Petition Secured Party; (c) the NPA Collateral Agent; (d) the DIP Purchaser; (e) the DIP Agent; and (f) with respect to each of the foregoing Entities in clauses (a) through (e), in their capacities as such, such Entity's successors, assigns, direct and indirect subsidiaries, affiliates, and funds, and current and former members, partners, managers, managing members, and current as of the Petition Date officers, directors, employees, advisors, principals, attorneys, professionals, accountants, investment bankers, consultants, agents, and other representatives of any of the foregoing, *provided*, however, that such releases with respect to any Debtor's officers and/or directors who are currently the subject of the ongoing investigation by an independent law firm shall be subject to the completion of such investigation.

98. "*Releasing Parties*" means each of the following in its/their capacity as such: (a) the Debtors; (b) the Pre-Petition Secured Party; (c) the NPA Collateral Agent; (d) the DIP Purchaser; and (e) the DIP Agent.

99. "*Reorganized Capstone*" means, on and after the Effective Date, the Reorganized Debtors and New Subsidiary.

100. "*Reorganized Debtor*" means a Debtor (or any successor thereto by merger, consolidation, or otherwise) on and after the Effective Date.

101. "*Reorganized PrivateCo*" means Capstone on and after the Effective Date.

102. "*Reorganized PrivateCo Equity*" means common equity of Reorganized PrivateCo.

103. "*Reorganized PublicCo*" means Capstone Turbine International on and after the Effective Date.

104. "*Reorganized PublicCo Board*" means the board of directors of Reorganized PublicCo identified in the Plan Supplement.

105. "*Reorganized PublicCo Equity*" means common equity of Reorganized PublicCo and shall include the Key Individual Retention Shares.

106. "*Restructuring*" means the reorganization and restructuring of the Debtors as contemplated by the Plan, including all related transactions occurring before and after the Petition Date.

107. "*Retained Assets*" means (i) all of Capstone's right, title, and interest in and to the Capstone Trademarks (and including those that are assigned to Capstone pursuant to the IP Assignment Agreement); and (ii) all assets, including cash, accounts receivable, tangible assets and intangible assets, owned by Capstone as of the Petition Date, that relate solely to Distributor Support Services, as will be described in more detail in the Plan Supplement; provided, however, that notwithstanding the foregoing, no Executory Contracts or unexpired leases other than Retained Contracts shall be Retained Assets.

108. "*Retained Contracts*" means the Executory Contracts and unexpired leases identified in the Plan Supplement as Retained Contracts.

109. "*Section 510(b) Claim*" means any Claim against the Debtors arising from rescission of a purchase or sale of a security of the Debtors or an Affiliate, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under section 502 of the Bankruptcy Code on account of such a Claim, including any Claims against the Debtors relating to, arising under or in connection with that certain Rights Agreement dated as of May 6, 2019 (the "*Rights Agreement*") between the Company and Broadridge Financial Solutions, Inc., as Rights Agent (the "*Rights Agent*").

110. "*Secured Claim*" means a Claim (a) secured by a Lien on property of an Estate to the extent of the value of such property, as determined in accordance with section 506(a) of the Bankruptcy Code, or (b) subject to a valid right of setoff.

111. "*Secured Tax Claim*" means any Secured Claim that, absent its secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code.

112. "*Securities Act*" means, as may be amended from time to time, the Securities Act of 1933, 15 U.S.C. §§ 77a–77aa, and any similar federal, state, or local law. References herein to specific provisions of the Securities Act include any similar provisions of federal, state, or local law.

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

114. "*Services Agreement*" means one or more agreements between Reorganized PrivateCo and Reorganized PublicCo (or its subsidiaries) by which, among other things, the parties will provide services to each other, each on terms to be disclosed in the Plan Supplement.

115. "*Total Amount of Claims Equitized*" means $10 million of the DIP Roll Up Notes (plus accrued and unpaid interest thereon) plus $35 million of principal of the Pre-Petition Secured Claim (plus accrued and unpaid interest with respect to the principal of the Pre-Petition Secured Claim as of the Effective Date).

116. "*Transaction Support Agreement*" means that certain Transaction Support Agreement, dated as of September 28, 2023, by and among the Debtors and the Pre-Petition Secured Party, as may be amended, supplemented, or modified from time to time.

117. "*Unclaimed Distribution*" means any distribution under the Plan on account of an Allowed Claim or Interest to a holder that has not: (a) accepted a particular distribution or, in the case of distributions made by check, negotiated such check; (b) given notice to the Reorganized Debtors of an intent to accept a particular distribution; (c) responded to the Debtors' or Reorganized Debtors' requests for information necessary to facilitate a particular distribution; or (d) taken any other action necessary to facilitate such distribution.

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

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

120. "*Voting Deadline*" means 4:00 P.M. prevailing Eastern Time on October 2, 2023, as such date may be extended by the Debtors with consent of the Pre-Petition Secured Party.

1.2 Rules of Interpretation

(a) For purposes of the Plan, the following rules of interpretation apply: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (b) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; (c) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit, shall mean such document, schedule, or exhibit, as it may have been or may be amended, modified, or supplemented; (d) unless otherwise specified, all references herein to "Articles" are references to Articles hereof or hereto; (e) the words "herein," "hereof," and "hereto" refer to the Plan in its entirety rather than to any particular portion of the Plan; (f) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (g) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; and (h) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

(b) The rule of "contra proferentum" does not apply to the interpretation of the Plan. The Plan is the product of extensive negotiations between and among the Debtors, the Pre-Petition Secured Party, and the NPA Collateral Agent. Each of the foregoing, including the Debtors, was represented by independent counsel of their choice who either (i) participated in the formulation and documentation of or (ii) was afforded the opportunity to review and provide comments on, the Plan, the Disclosure Statement, and the documents ancillary thereto. Accordingly, unless explicitly stated otherwise, the general rule of contract construction known as "contra proferentum" shall not apply to the construction or interpretation of any provision of this Plan, the Disclosure Statement, or any exhibit, schedule, contract, instrument, release, or other document generated in connection therewith as concerns such parties identified above.

1.3 Computation of Time

Bankruptcy Rule 9006(a) applies in computing any period of time prescribed or allowed herein.

1.4 Governing Law

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

governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to conflict-of-laws principles.

1.5 Reference to Monetary Figures

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

1.6 Reference to the Debtors or Reorganized Debtors

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

ARTICLE II

ADMINISTRATIVE AND PRIORITY CLAIMS

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

2.1 Administrative Claims

Unless otherwise agreed to by the holder of an Allowed Administrative Claim and the Debtors or Reorganized Debtors, as applicable, each holder of an Allowed Administrative Claim (other than holders of Professional Claims and Claims for fees and expenses pursuant to 28 U.S.C. § 1930) will receive in full and final satisfaction of its Administrative Claim an amount of Cash equal to the amount of such Allowed Administrative Claim at one of the following times, as applicable: (a) on the Effective Date, or as soon as practicable thereafter; (b) if the Administrative Claim is not Allowed as of the Effective Date, then no later than thirty (30) days after the date on which an order Allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; or (c) if the Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date, then in accordance with the terms and conditions of the particular transaction giving rise to such Allowed Administrative Claims, without any further action by the holders of such Allowed Administrative Claims.

2.2 Professional Claims

All requests for payment of Professional Claims for services rendered and reimbursement of expenses incurred prior to the Confirmation Date must be filed no later than thirty (30) days after the Effective Date, and any holder of a Professional Claim that does not file and serve such application by such date shall be forever barred from asserting such Claim against the Debtors, Reorganized Debtors, or their respective properties, and such Claims shall be deemed discharged as of the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code, *provided* that objections to any Professional Claim must be filed and served

on the Reorganized Debtors and counsel to the Reorganized Debtors no later than twenty-eight (28) days after the filing of such request for payment of Professional Claims (unless otherwise agreed by the party requesting compensation of a Professional Claim). Reorganized PublicCo or New Subsidiary shall pay Professional Claims in Cash in the amount the Court Allows. From and after the Confirmation Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtors may employ and pay any Professional in the ordinary course of business without any further notice to, or action, order, or approval of, the Bankruptcy Court.

2.3 Priority Tax Claims

Each holder of an Allowed Priority Tax Claim due and payable on or before the Effective Date shall receive on the Effective Date, or as soon as practicable thereafter, from the respective Debtor liable for such Allowed Priority Tax Claim, payment in Cash in an amount equal to the amount of such Allowed Priority Tax Claim. To the extent any Allowed Priority Tax Claim is not due and owing on the Effective Date, such Claim shall be paid in full in Cash in accordance with the terms of any agreement between the Debtors and the holder of such Claim, or as may be due and payable under applicable non-bankruptcy law, or in the ordinary course of business.

2.4 DIP Claims

Notwithstanding anything to the contrary herein, in full and final satisfaction, settlement, release, and discharge of, and in exchange for release of all Allowed DIP Claims, on the Effective Date, each holder of an Allowed DIP Claim shall receive its Pro Rata share of: (i) the DIP Claims Equitization Percentage of Reorganized PrivateCo Equity issued on the Effective Date in full and final satisfaction, settlement, release, and discharge of $10 million of the DIP Pre-Petition Roll Up Notes (plus any accrued unpaid interest thereon); (ii) principal under the New Debt Facility in an amount equal to, and in exchange for, one hundred percent (100%) of the principal amount of the DIP New Money Notes outstanding on the Effective Date (including accrued interest in respect of the DIP New Money Notes, the DIP Pre-Petition Roll Up Notes and the DIP Pre-Funding Notes) on a dollar-for-dollar basis; (iii) principal under the New Debt Facility in an amount equal to, and in exchange for, $5 million of the principal amount of the DIP Pre-Petition Roll Up Notes (plus any accrued unpaid interest thereon) outstanding on the Effective Date on a dollar-for-dollar basis; (iv) principal under the New Debt Facility in an amount equal to, and in exchange for, $3 million of the principal amount of the DIP Pre-Funding Roll Up Notes (plus any accrued unpaid interest thereon) outstanding on the Effective Date on a dollar-for-dollar basis; (v) indirect ownership of the New Subsidiary Preferred Units issued to Reorganized PrivateCo; and/or (vi) such other treatment as agreed by the Debtors and the applicable holder of DIP Claims.

2.5 Payment of Fees and Expenses

The fees and expenses of the Pre-Petition Secured Party and the DIP Purchaser, and their respective professionals, shall be paid in connection with this Plan or any applicable orders entered by the Bankruptcy Court, on the Effective Date, or, with the consent of the Pre-Petition Secured Party and the DIP Purchaser, as applicable, as soon as reasonably practicable thereafter. Nothing herein shall require the professionals for the Pre-Petition Secured Party or the DIP Purchaser to

file applications with, or otherwise seek approval of, the Bankruptcy Court as a condition to the payment of such fees and expenses.

ARTICLE III

CLASSIFICATION, TREATMENT, AND VOTING OF CLAIMS AND INTERESTS

3.1 Classification of Claims and Interests

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

Below is a chart assigning each Class a number for purposes of identifying each separate Class.

Class	Claim or Interest	Status	Voting Rights
1	Secured Tax Claims	Unimpaired	Presumed to Accept
2	Pre-Petition Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Presumed to Accept
4	Other Priority Claims	Unimpaired	Presumed to Accept
5	General Unsecured Claims	Unimpaired	Presumed to Accept
6	Intercompany Claims	Unimpaired/Impaired	Presumed to Accept/Deemed to Reject
7	Intercompany Interests	Unimpaired	Deemed to Accept
8	Equity Interests	Impaired	Deemed to Reject
9	Section 510(b) Claims	Impaired	Deemed to Reject

3.2 Treatment of Classes of Claims and Interests

This Plan is a joint plan but constitutes a separate Plan for each Debtor. Except to the extent that a holder of an Allowed Claim or Interest, as applicable, agrees to a less favorable treatment, such holder shall receive under the Plan the treatment described below in full and final satisfaction, settlement, release, and discharge of and in exchange for such holder's Allowed Claim against or Interest in the Debtors, as applicable. Unless otherwise indicated, the holder of an Allowed Claim or Interest, as applicable, shall receive such treatment on the Effective Date, or as soon as practicable thereafter.

(a) **Class 1 — Secured Tax Claims**

(1) *Classification:* Class 1 consists of any Secured Tax Claims against any Debtor.

(2) *Treatment:* Each holder of an Allowed Secured Tax Claim shall receive, as applicable:

A. If the Allowed Secured Tax Claim is due and payable on or before the Effective Date, Cash in an amount equal to such Allowed Secured Tax Claim; or

B. If the Allowed Secured Tax Claim is not due and payable on or before the Effective Date, such Claim shall be paid in full in Cash in accordance with the terms of any agreement between the Debtors and the holder of such Claim or as may be due and payable under applicable non-bankruptcy law or in the ordinary course of business, *provided that* to the extent the Allowed Secured Tax Claim is secured by an interest in property of an Estate, the holder of such Claim shall retain such interest in such property until paid in full therefor.

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

(b) **Class 2 — Pre-Petition Secured Claim**

(1) *Classification:* Class 2 consists of any Pre-Petition Secured Claim.

(2) *Allowance:* On the Effective Date, the Pre-Petition Secured Claim shall be Allowed Claims secured by the Collateral (as defined in the Note Documents), and shall not be subject to avoidance, objection, challenge, deduction, subordination, recharacterization, reclassification or offset, in the aggregate amount of (a) $35 million of principal of the Pre-Petition Secured Claim, plus (b) accrued and unpaid interest with respect to the principal of the Pre-Petition Secured Claim as of the Effective Date.

(3) *Treatment:* Each holder of an Allowed Pre-Petition Secured Claim shall receive, in full satisfaction and discharge of all of such holder's Allowed Pre-Petition Secured Claim: (i) its Pro Rata amount of the Pre-Petition Claims Equitization Percentage of Reorganized PrivateCo Equity issued on the Effective Date, and (ii) indirect ownership of the New Subsidiary Preferred Units issued to Reorganized PrivateCo.

(4) *Voting:* Class 2 is Impaired. Holders of an Allowed Pre-Petition Secured Claim are entitled to vote to accept or reject the Plan.

(c) **Class 3 — Other Secured Claims**

(1) *Classification:* Class 3 consists of any Other Secured Claims against any Debtor.

(2) *Treatment:* Each holder of an Allowed Other Secured Claim shall, at the sole option of the Debtors or the Reorganized Debtors, as applicable:

A. Have its Allowed Other Secured Claim reinstated and rendered Unimpaired in accordance with section 1124(2) of the Bankruptcy Code; or

B. To the extent the Allowed Other Secured Claim is secured by an interest in property of an Estate, receive the property securing its Allowed Other Secured Claim and any interest on such Allowed Other Secured Claim required to be paid pursuant to section 506(b) of the Bankruptcy Code: *provided that* the holder of such Claim shall retain such interest in such property until paid in full therefor.

(3) *Voting:* Class 3 is Unimpaired. Holders of Allowed Other Secured Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Other Secured Claims are not entitled to vote to accept or reject the Plan.

(d) **Class 4 — Other Priority Claims**

(1) *Classification:* Class 4 consists of any Other Priority Claims against the Debtors.

(2) *Treatment:* Each holder of an Allowed Other Priority Claim shall be paid in full in Cash.

(3) *Voting:* Class 4 is Unimpaired. Holders of Allowed Other Priority Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Other Priority Claims are not entitled to vote to accept or reject the Plan.

(e) **Class 5 — General Unsecured Claims**

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

(2) *Treatment:* Each holder of an Allowed General Unsecured Claim shall receive Cash in an amount equal to such Allowed General Unsecured Claim on the later of the Effective Date or in the ordinary course of business in accordance with the terms and conditions of the particular transaction giving rise to such Allowed General Unsecured Claim. Each General

Unsecured Claim shall be deemed Allowed unless specifically objected to or disallowed by a Final Order.

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

(f) **Class 6 — Intercompany Claims**

(1) *Classification*: Class 6 consists of all Intercompany Claims.

(2) *Treatment*: Intercompany Claims shall be, either: (i) reinstated as of the Effective Date or (ii) in the case of any Intercompany Claim against Capstone, (x) reinstated as Claims against Reorganized PublicCo or New Subsidiary, as applicable, or (y) cancelled, and no distribution shall be made on account of such Claims.

(3) *Voting*: Holders of Intercompany Claims are either Unimpaired, and such holders of Intercompany Claims conclusively are presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code, or Impaired, and such holders of Intercompany Interests are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, each holder of an Intercompany Claim will not be entitled to vote to accept or reject the Plan.

(g) **Class 7 — Intercompany Interests**

(1) *Classification:* Class 7 consists of any Intercompany Interests.

(2) *Treatment:* Each holder of an Allowed Intercompany Interest has agreed to have its Allowed Intercompany Interest restructured in accordance with the terms of the Restructuring. Reorganized PublicCo shall receive a contribution of the New Subsidiary Common Units from Reorganized PrivateCo and Reorganized PrivateCo shall receive the New Subsidiary Preferred Units. All liabilities and assets of Capstone (other than the Capstone Turbine International Equity, Pre-Petition Secured Debt, obligations under the DIP Note Purchase Agreement and those liabilities and assets directly related to the Retained Assets) shall be transferred to the New Subsidiary. The Capstone Turbine International Equity shall be extinguished, provided that any Key Individual Retention Shares shall remain outstanding and shall become shares in Reorganized PublicCo. New Subsidiary shall own one hundred percent (100%) of the membership units of Capstone Financial Services, LLC and Branch Office – UK.

(3) *Voting:* Class 7 is Unimpaired as Intercompany Interests are being consensually restructured pursuant to the Restructuring. Holders of Intercompany Interests are conclusively deemed to have accepted the Plan

pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

(h) **Class 8 — Equity Interests**

(1) *Classification:* Class 8 consists of any Equity Interests in Capstone.

(2) *Treatment:* Each shareholder in Capstone shall have its Equity Interest fully extinguished and discharged and shall receive its Pro Rata share of one hundred percent (100%) of the Reorganized PublicCo Equity, subject to dilution from any shares issued pursuant to the EIP in accordance with this Plan. All other Equity Interests, except as otherwise set forth in the Plan, including, without limitation, all warrants, including the Pre-Petition Warrants, and restricted stock units or similar contractual equity rights shall be cancelled and terminated and receive no distribution.

(3) *Voting:* Class 8 is Impaired. Holders of Equity Interests in Capstone are conclusively presumed to have rejected the Plan and are not entitled to vote to accept or reject the Plan.

(i) **Class 9 — Section 510(b) Claims**

(1) *Classification:* Class 9 consists of any Section 510(b) Claims against any Debtor.

(2) *Allowance:* Notwithstanding anything in the Plan to the contrary, a Section 510(b) Claim (if any) may only become Allowed by Final Order of the Bankruptcy Court.

(3) *Treatment:* On the Effective Date, all Allowed Section 510(b) Claims shall be fully extinguished and discharged without any further action. No holder of Allowed Section 510(b) Claims shall be entitled to receive or retain any property under the Plan.

(4) *Voting:* Class 9 is Impaired. Holders (if any) of Allowed Section 510(b) Claims are conclusively presumed to have rejected the Plan and are not entitled to vote to accept or reject the Plan.

3.3 Special Provision Governing Unimpaired Claims

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

ARTICLE IV

PROVISIONS FOR IMPLEMENTATION OF THE PLAN

4.1 [Reserved]

4.2 Transactions On or After the Effective Date

On the Effective Date and in accordance with Section 6.3(a) hereof, the Debtors or the Reorganized Debtors, as the case may be, the Pre-Petition Secured Party, and any other Entity party to the Restructuring shall take all actions that are necessary or appropriate to effect the Restructuring, including, but not limited to:

(1) Capstone and the Capstone Subsidiaries will enter into an IP Assignment Agreement;

(2) All of Capstone's liabilities and assets (other than the Capstone Turbine International Equity, obligations under the DIP Note Purchase Agreement, Pre-Petition Secured Debt and those liabilities and assets directly related to the Retained Assets and described in the Plan Supplement) shall be transferred to New Subsidiary;

(3) New Subsidiary shall issue the New Subsidiary Preferred Units and the New Subsidiary Common Units to Capstone;

(4) Capstone shall contribute all New Subsidiary Common Units to Capstone Turbine International;

(5) Capstone Turbine International shall contribute all assets held by Branch Office - UK to New Subsidiary;

(6) Capstone Turbine International shall become a public company and shall be re-named Capstone Green Energy Holdings, Inc. and be the successor to Capstone with respect to its businesses and/or assets and related liabilities (other than the Capstone Turbine International Equity, Pre-Petition Secured Debt, obligations under the DIP Note Purchase Agreement and those liabilities and assets directly related to the Retained Assets), and is intended to be the successor to Capstone for purposes of Securities and Exchange Commission registration, and shall be the successor with respect to any Claims against, or Interest in, Capstone and any Debtor subsidiary; provided that, for the avoidance of doubt Capstone Turbine International shall not be the successor to Capstone for United States federal, state or local income tax purposes and shall not be the successor to Capstone with respect to the employment of the directors, officers, and employees of the Debtors or relating to any Employment Obligations (as defined in the Plan);

(7) Capstone shall become a private company that shall continue to own the Retained Assets and the New Subsidiary Preferred Units and have no

liabilities relating to, arising under or in connection with any Claims against, or Interest in, any Debtor;

(8) The Pre-Petition Secured Party shall receive one hundred percent (100%) of the equity interests in Reorganized PrivateCo in exchange for an agreed-upon portion of its Pre-Petition Secured Claim and, in its capacity as DIP Purchaser, an agreed-upon portion of its DIP Claim, in accordance with the terms herein;

(9) Existing shareholders of Capstone shall receive one hundred (100%) percent of the Reorganized PublicCo Equity, subject to any dilution from any stock issued pursuant to the EIP, including the Key Individual Retention Shares;

(10) Reorganized PrivateCo and Reorganized PublicCo will enter into the License Agreement; and;

(11) Reorganized PrivateCo and Reorganized PublicCo and/or New Subsidiary will enter into the Services Agreement.

4.3 New Debt Facility

Confirmation of the Plan shall constitute (i) approval by the Reorganized PublicCo and/or New Subsidiary of the New Debt Facility, the New Debt Facility Term Sheet, and all transactions contemplated thereby, including the payment of all fees, indemnities, and expenses provided for therein, and (ii) authorization of Reorganized PublicCo and New Subsidiary to enter into, execute and perform under the New Debt Facility Term Sheet and use New Debt Facility Net Proceeds in accordance with the terms of the New Debt Facility Term Sheet. On the Effective Date, all of the Liens and security interests to be granted as set forth in the New Debt Facility Term Sheet (i) shall be deemed to have been approved by New Subsidiary and its applicable subsidiaries, (ii) shall be legal, binding, and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the New Debt Facility Term Sheet, (iii) shall be deemed perfected upon New Subsidiary's entry into the New Debt Facility, subject only to such Liens and security interests as may be permitted as set forth in the New Debt Facility Term Sheet, and (iv) shall not be subject to recharacterization or equitable subordination for any purposes whatsoever and shall not constitute preferential transfers or fraudulent conveyances under the Bankruptcy Code or any applicable non-bankruptcy law.

4.4 Offering and Issuance of Securities

The offering, issuance, distribution, and exercise (as applicable) of any Securities, including, without limitation, the Reorganized PublicCo Equity, the Reorganized PrivateCo Equity, the New Subsidiary Common Units and the New Subsidiary Preferred Units, pursuant to the Plan will be in compliance with the registration requirements of the Securities Act or exempt from the registration requirements of section 5 therein pursuant to section 1145 of the Bankruptcy Code, section 4(2) of the Securities Act, or any other available exemption from registration under the Securities Act, as applicable. In addition, under section 1145 of the Bankruptcy Code, if applicable, any Securities issued under the Plan will be freely transferable under the Securities Act

by the recipients thereof, subject to: (1) the provisions of section 1145(b)(1) of the Bankruptcy Code relating to the definition of an underwriter in section 2(a)(11) of the Securities Act, and compliance with any applicable state or foreign securities laws, if any, and the rules and regulations of the United States Securities and Exchange Commission, if any, applicable at the time of any future transfer of such Securities or instruments; (2) the restrictions, if any, on the transferability of such Securities and instruments; and (3) any other applicable regulatory approval.

The issuance of the Reorganized PublicCo Equity, the Reorganized PrivateCo Equity, the New Subsidiary Common Units and the New Subsidiary Preferred Units and any other options and associated equity awards is authorized without the need for any further corporate action or without any further action by the Debtors or the Reorganized Debtors, as applicable. All such Reorganized PublicCo Equity, the Reorganized PrivateCo Equity, New Subsidiary Common Units and New Subsidiary Preferred Units issued and distributed pursuant to the Plan shall be duly authorized, validly issued, fully paid, and non-assessable.

4.5 Subordination

The allowance, classification, and treatment of all Claims and Interests under the Plan shall conform to and with the respective contractual, legal, and equitable subordination rights of such Claims and Interests, and the Plan shall recognize and implement any such rights. Pursuant to section 510 of the Bankruptcy Code, except where otherwise provided herein, the Reorganized Debtors reserve the right, after notice and a hearing, to re-classify any Allowed Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

4.6 Vesting of Assets in the Reorganized Debtors

Except as otherwise provided herein or in any agreement, instrument or other document incorporated in the Plan, on the Effective Date, all property in each Estate, all Causes of Action, and any property acquired by the Debtors under the Plan, in each case, other than the Retained Assets or Equity Interests cancelled pursuant to the Plan, shall vest in the Reorganized PublicCo or New Subsidiary, as applicable. Except as otherwise provided herein or in any agreement, instrument or other document incorporated in the Plan, on the Effective Date, the Retained Assets and any Causes of Action related to the Retained Assets shall vest in the Reorganized PrivateCo. On and after the Effective Date, except as otherwise provided in the Plan, each Reorganized Debtor may operate its business and use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. Notwithstanding anything to the contrary in the Plan, Reorganized PrivateCo shall have no liability with respect to, relating to, or in connection with any Claims (including, without limitation, Secured Tax Claims, Other Secured Claims, Other Priority Claims, General Unsecured Claims, Intercompany Claims and Section 510(b) Claims) against, or Interests (including, without limitation, Intercompany Interest and Equity Interests) in, any Debtor.

4.7 Cancellation of Notes, Instruments, Certificates, and Other Documents

On the Effective Date, except to the extent otherwise provided herein, all notes, instruments, Certificates, including without limitation, all equity grants, warrants, and/or restricted

units and any agreement with respect to the foregoing, and other documents evidencing Claims or Interests shall be cancelled and the obligations of the Debtors or Reorganized Debtors and the non-Debtors' Affiliates thereunder or in any way related thereto shall be discharged; *provided, however,* that notwithstanding Confirmation or the occurrence of the Effective Date, (i) any agreement that governs the rights of the holder of a Claim or Interest shall continue in effect solely for purposes of (a) allowing holders of Claims or Interests to receive distributions under the Plan and (b) allowing and preserving the rights of Reorganized PublicCo or New Subsidiary, as applicable, to make distributions on account of Claims and Interests as provided in Article VI and (ii) the Note Documents shall continue in effect solely for the purposes of allowing the NPA Collateral Agent to (a) receive payment of its fees and expenses as provided under the Note Documents and (b) have the benefit of all the rights and protections for the NPA Collateral Agent under the Note Documents, including, but not limited to, the preservation of any indemnification rights.

4.8 Issuance of New Securities; Execution of Plan Documents

Except as otherwise provided herein, on the Effective Date, or as soon as practicable thereafter, the Reorganized Debtors shall issue all Securities, notes, instruments, Certificates, and other documents required to be issued under the Plan.

4.9 Corporate Action

Each of the matters provided for by the Plan involving the corporate structure of the Debtors or corporate or related actions to be taken by or required of the Reorganized Debtors, whether taken prior to or as of the Effective Date, shall be authorized without the need for any further corporate action or without any further action by the Debtors or the Reorganized Debtors, as applicable. Such actions may include the following: (a) the adoption and filing of charters and bylaws; (b) the appointment of directors and officers; (c) entry into and performance under the New Debt Facility; and (d) the authorization, issuance, and distribution of the Reorganized PublicCo Equity, the Reorganized PrivateCo Equity, the New Subsidiary Common Units and the New Subsidiary Preferred Units pursuant to the Plan. For the avoidance of doubt, Confirmation of the Plan shall satisfy any shareholder vote requirements in accordance with section 303 of the Delaware General Corporation Law, 8 Del. C. 1953, § 303.

4.10 Charter and Bylaws

The certificates of incorporation and bylaws of the Reorganized Debtors (and other formation documents relating to limited liability companies, as applicable) shall be amended as may be required to be consistent with the provisions of the Plan and the Bankruptcy Code. The Reorganized Debtors' certificates of incorporation shall include, among other things (and only to the extent required by section 1123(a)(6) of the Bankruptcy Code), provisions prohibiting the issuance of non-voting Equity Securities. After the Effective Date, the Reorganized Debtors may amend and restate their certificates of incorporation and other constituent documents as permitted by the laws of their respective jurisdictions of formation and their respective charters and bylaws. The corporate governance policies of the Reorganized Debtors shall be updated to comply with the requirements of the applicable listing exchange upon the completion of the listing.

4.11 Effectuating Documents; Further Transactions

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

4.12 Section 1146(a) Exemption

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property under the Plan, including any transfer of property to Reorganized PublicCo and New Subsidiary, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee or governmental assessment.

4.13 Directors, Officers, and Management

From and after the Effective Date, each director or officer of the Reorganized Debtors shall serve pursuant to the terms of their charters and bylaws or other constituent documents, and applicable state corporation law. Additionally, in accordance with section 1129(a)(5) of the Bankruptcy Code, the identities and affiliations of the members of the board of directors of the Reorganized Debtors and any Person proposed to serve as an officer of the Reorganized Debtors shall be disclosed in the Plan Supplement.

4.14 Incentive Plans and Employee and Retiree Benefits

Except as otherwise provided herein, on and after the Effective Date, subject to any Final Order, Reorganized PublicCo and/or New Subsidiary, as applicable, shall (a) amend, adopt, assume, and/or honor in the ordinary course of business, any contracts, agreements, policies, programs, and plans, in accordance with their respective terms, for, among other things, compensation, including any incentive plan, health care benefits, disability benefits, deferred compensation benefits, savings, severance benefits, retirement benefits, welfare benefits, workers' compensation insurance, and accidental death and dismemberment insurance for the directors, officers, and employees of the Debtors who served in such capacity from and after the Petition Date (collectively, the " Employment Obligations"), and (b) honor, in the ordinary course of business, Claims of employees employed as of the Effective Date for accrued vacation time arising prior to the Petition Date and not otherwise paid pursuant to a Bankruptcy Court order, provided that the Reorganized PublicCo and/or New Subsidiary shall not be required to provide cash payments in respect of the value of accrued vacation time due to the Restructuring. Notwithstanding the foregoing, pursuant to section 1129(a)(13) of the Bankruptcy Code, from and after the Effective Date, all retiree benefits (as that term is defined in section 1114 of the

Bankruptcy Code), if any, shall continue to be paid in accordance with applicable law. Aside from employees that will remain at Capstone to support the Retained Assets, New Subsidiary shall be the successor to Capstone with respect to the employment of the directors, officers, and employees of the Debtors or relating to any Employment Obligations (as defined in the Plan). Reorganized PrivateCo shall have no liability with respect to, relating to, or in connection with the Employment Obligations or any Claims against any Debtor.

4.15 Preservation of Rights of Action

Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or by a Final Order, in accordance with section 1123(b) of the Bankruptcy Code, subject to Section 4.6 herein, the Reorganized Debtors shall retain and may enforce all rights to commence and pursue any and all Causes of Action, whether arising before or after the Petition Date, and the Reorganized Debtors' rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. **No Entity may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Cause of Action against them as any indication that the Debtors or the Reorganized Debtors will not pursue any and all available Causes of Action against them. The Debtors and the Reorganized Debtors expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the Plan.** Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or Bankruptcy Court order, the Reorganized Debtors expressly reserve all Causes of Action for later adjudication and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise), or laches shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

The Reorganized Debtors reserve and shall retain Causes of Action notwithstanding the rejection of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. In accordance with sections 1123(b)(3) and 1141(b) of the Bankruptcy Code, any Causes of Action that the Debtors may hold against any Entity shall vest in the Reorganized Debtors. The Reorganized Debtors, through its authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Reorganized Debtors shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, or to decline to do any of the foregoing, without the consent or approval of any third party or any further notice to, or action, order or approval of, the Bankruptcy Court.

4.16 Pre-Petition Secured Party's Fees

Subject to entry of the Confirmation Order, and without in any way limiting the payment obligations under any existing engagement letter or any applicable order entered in the Chapter 11 Cases, the reasonable fees and expenses (including attorneys' fees and financial advisors' fees) of the Pre-Petition Secured Party in connection with the Restructuring, including, but not limited to, the reasonable fees and expenses of (i) Cleary Gottlieb Steen & Hamilton LLP, and (ii) Deloitte Transactions & Business Analytics LLP , will be paid in full in Cash by the Reorganized PublicCo,

without further notice to, or action, order, or approval of the Bankruptcy Court, no later than thirty (30) days after the Effective Date.

4.17 Intercompany Claims.

Notwithstanding anything in this Plan to the contrary, on the Effective Date, the Intercompany Claims shall be reinstated, or discharged and satisfied by contributions, distributions or otherwise, at the option of the Reorganized Debtors; provided, all Intercompany Claims against Capstone shall be either (x) reinstated as claims against Reorganized PublicCo or New Subsidiary, as applicable, or (y) deemed discharged and satisfied on the Effective Date, in either case at the election of Reorganized PublicCo. In no event shall Reorganized PrivateCo have any liabilities relating to, arising under, or in connection with Intercompany Claims.

4.18 Rejection Damages Claims.

Holders of Unimpaired Claims shall not be required to file a Proof of Claim with the Bankruptcy Court, except for claims for damages related to the rejection of Executory Contracts and Unexpired Leases (any such Claims, "Rejection Damages Claims"). Holders of Unimpaired Claims other than those holding Rejection Damages Claims shall not be subject to any Claims resolution process in the Bankruptcy Court in connection with their Claims, and shall retain all of their rights under applicable non-bankruptcy law to pursue their Claims against the Debtors or Reorganized Debtors or other Entity in any forum with jurisdiction over the parties. The Debtors and Reorganized Debtors shall retain all defenses, counterclaims, rights to setoff, and rights to recoupment as to Unimpaired Claims. If the Debtors or the Reorganized Debtors dispute any Unimpaired Claim, such dispute shall be determined, resolved or adjudicated in the manner as if the Chapter 11 Cases had not been commenced, except with respect to Rejection Damages Claims, which shall be determined, resolved or adjudicated as set forth in Article V of the Plan.

ARTICLE V

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

5.1 Assumption of Executory Contracts and Unexpired Leases

No Executory Contract and Unexpired Lease shall be assumed by Reorganized PrivateCo unless such Executory Contract and Unexpired Lease is listed as "assumed" by Reorganized PrivateCo in the Plan Supplement. Except as otherwise provided herein, each Executory Contract and Unexpired Lease shall be deemed assumed by Capstone and/or the applicable Debtor counterparty (excluding, for the avoidance of doubt, Reorganized PrivateCo) and assigned to Reorganized PublicCo or New Subsidiary, as applicable, without the need for any further notice to, or action, order, or approval of, the Bankruptcy Court, as of the Effective Date under section 365 of the Bankruptcy Code, unless any such Executory Contract or Unexpired Lease: (a) is a Retained Contract; (b) is listed on the Rejection Schedule; (c) has been previously assumed or rejected by the Debtors by Final Order or has been assumed or rejected by the Debtors by order of the Bankruptcy Court as of the Effective Date, which order becomes a Final Order after the Effective Date; or (d) is the subject of a motion to assume or reject pending as of the Effective Date. The assumption of Executory Contracts and Unexpired Leases hereunder may include the

assignment of certain of such contracts to Affiliates. The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, assignments and rejections.

Except as otherwise provided herein or agreed to by the Debtors with the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated hereunder. Modifications, amendments, supplements and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith.

5.2 Cure of Defaults and Objections to Assumption

Reorganized PublicCo or New Subsidiary, as applicable, shall pay Cures in the ordinary course after the Effective Date. Any dispute regarding a Cure shall be resolved in the ordinary course in an appropriate nonbankruptcy forum. Any Cure shall be deemed fully satisfied, released, and discharged upon payment by Reorganized PublicCo or New Subsidiary, as applicable, of the Cure. Reorganized PublicCo or New Subsidiary, as applicable, also may settle any Cure without any further notice to, or action, order or approval of, the Bankruptcy Court.

Any objection to the assumption of an Executory Contract or Unexpired Lease pursuant to the Plan on grounds other than Cure must be filed with the Bankruptcy Court by the deadline established for filing objections to the Plan. Any such objection will be scheduled to be heard by the Bankruptcy Court. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely object to the proposed assumption of any Executory Contract or Unexpired Lease will be deemed to have consented to such assumption.

If there is a dispute regarding the ability of Reorganized PublicCo or New Subsidiary, as applicable, or any assignee to provide "adequate assurance of future performance" within the meaning of section 365 of the Bankruptcy Code, or any other matter pertaining to assumption, then payment of Cure shall occur as soon as practicable after entry of a Final Order resolving such dispute, approving such assumption (and, if applicable, assignment), or as may be agreed upon by Reorganized PublicCo or New Subsidiary, as applicable, and the counterparty to the Executory Contract or Unexpired Lease. Reorganized PublicCo or New Subsidiary, as applicable, reserves the right either to reject or nullify the assumption of any Executory Contract or Unexpired Lease within forty-five (45) days after entry of a Final Order resolving an objection to assumption or determining the Cure or any request for adequate assurance of future performance required to assume such Executory Contract or Unexpired Lease.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed

Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. Any and all Claims based upon Executory Contracts or Unexpired Leases that have been assumed in the Chapter 11 Cases, including pursuant to the Confirmation Order, shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to, or action, order or approval of, the Bankruptcy Court; provided, however, any Claim relating to a Cure shall be deemed disallowed and expunged as of the Effective Date only upon payment of the Cure or as otherwise agreed by the Reorganized Debtors and the applicable claimant.

5.3 Pre-existing Payment and Other Obligations

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of pre-existing obligations owed to the Debtors or Reorganized Debtors, as applicable, under such contract or lease. In particular, to the extent permissible under applicable non-bankruptcy law, the Reorganized Debtors expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide (a) payment to the contracting Debtors or Reorganized Debtors, as applicable, of outstanding and future amounts owing thereto under or in connection with rejected Executory Contracts or Unexpired Leases or (b) maintenance of, or to repair or replace, goods previously purchased by the contracting Debtors or Reorganized Debtors, as applicable.

5.4 Rejection Damages Claims and Objections to Rejection

Pursuant to section 502(g) of the Bankruptcy Code, counterparties to Executory Contracts or Unexpired Leases that are rejected shall have the right to assert Claims, if any, on account of the rejection of such contracts and leases. All Allowed Claims (excluding the Pre-Petition Secured Claim) arising from the rejection of Executory Contracts and Unexpired Leases shall be classified as Class 5 — General Unsecured Claims against the Debtor(s) counterparty thereto.

5.5 Contracts, Intercompany Contracts, and Leases Entered Into After the Petition Date

Contracts, Intercompany Contracts and leases entered into after the Petition Date by the Debtors and any Executory Contracts and Unexpired Leases assumed by the Debtors may be performed by Reorganized PublicCo and/or New Subsidiary, as applicable, in the ordinary course of business.

5.6 Reservation of Rights

Neither the exclusion nor inclusion of any contract or lease in the Plan Supplement, nor anything contained in the Plan, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that the Reorganized Debtors have any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors or Reorganized Debtors, as applicable, shall have forty-five (45) days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

ARTICLE VI

PROVISIONS GOVERNING DISTRIBUTIONS

6.1 Distributions on Account of Claims and Interests Allowed as of the Effective Date

(a) **Delivery of Distributions in General**

Except as otherwise provided in the Plan, a Final Order, or as otherwise agreed to by the Debtors or the Reorganized Debtors (as the case may be) and the holder of the applicable Claim or Interest, on the Effective Date or as soon as practicable thereafter, Reorganized PublicCo or New Subsidiary, as applicable, shall make initial distributions under the Plan on account of Claims and Interests Allowed on or before the Effective Date, subject to the Reorganized Debtors' right to object to Claims and Interests; *provided*, *however*, that (a) Allowed Administrative Claims with respect to liabilities incurred by the Debtors in the ordinary course of business during the Chapter 11 Cases or assumed by the Debtors prior to the Effective Date shall be paid or performed in the ordinary course of business in accordance with the terms and conditions of any controlling agreements, course of dealing, course of business, or industry practice, (b) Allowed Priority Tax Claims and Allowed Secured Tax Claims shall be paid in accordance with Sections 2.3 and 3.2(a) hereof, respectively. To the extent any Allowed Priority Tax Claim or Allowed Secured Tax Claim is not due and owing on the Effective Date, such Claim shall be paid in full in Cash in accordance with the terms of any agreement between the Debtors and the holder of such Claim or as may be due and payable under applicable non-bankruptcy law or in the ordinary course of business. For the avoidance of doubt, distributions to holders of an Allowed Pre-Petition Secured Claim will be made on the Effective Date.

6.2 Special Rules for Distributions to Holders of Disputed Claims and Interests

Notwithstanding any provision otherwise in the Plan and except as otherwise agreed by the relevant parties, (a) no partial payments and no partial distributions shall be made with respect to a Disputed Claim or Interest until all such disputes in connection with such Disputed Claim or Interest have been resolved by settlement or Final Order, and (b) any Entity that holds both an Allowed Claim or Interest and a Disputed Claim or Interest shall not receive any distribution on the Allowed Claim or Interest unless and until all objections to the Disputed Claim or Interest have been resolved by settlement or Final Order or the Claims or Interests have been Allowed or expunged. Until a prepetition Unimpaired Claim has been (1) paid in full in accordance with applicable law, or on terms agreed to between the holder of such Claim and the applicable Reorganized Debtor(s), or in accordance with the terms and conditions of the particular transaction giving rise to such Claim, or (2) otherwise satisfied or disposed of as determined by a court of competent jurisdiction (the occurrence of (1) or (2), an "Unimpaired Claim Resolution"), (a) the provisions of Article VIII.1–VIII.5 of the Plan shall not apply or take effect with respect to such Claim; (b) such Claim shall not be deemed settled, satisfied, resolved, released, discharged, barred, or enjoined; (c) the property of the applicable Debtor's or Debtors' Estates that vests in the applicable Reorganized Debtor(s) pursuant to the Plan shall not be free and clear of such Claim; and (d) any Liens of securing such Claim shall not be deemed released (subclauses (a) through (d), collectively, the "Unimpaired Claim Carve Out"). Upon the occurrence of an Unimpaired Claim Resolution with respect to a prepetition Unimpaired Claim, the Unimpaired Claim Carve Out shall

cease to apply to such Claim. Any dividends or other distributions arising from property distributed to holders of Allowed Claims or Interests, as applicable, in a Class and paid to such holders under the Plan shall be paid also, in the applicable amounts, to any holder of a Disputed Claim or Interest, as applicable, in such Class that becomes an Allowed Claim or Interest after the date or dates that such dividends or other distributions were earlier paid to holders of Allowed Claims or Interests in such Class.

6.3 Delivery of Distributions

On the Effective Date, distributions under the Plan shall be delivered by the Distribution Agent to each holder of such Interests. The Debtors, the Reorganized Debtors, the Pre-Petition Secured Party, the NPA Collateral Agent, and the Distribution Agent, as applicable, shall not incur any liability whatsoever on account of any distributions under the Plan except for gross negligence or willful misconduct.

(a) **Accrual of Dividends and Other Rights**

For purposes of determining the accrual of dividends or other rights after the Effective Date, Reorganized PublicCo Equity, Reorganized PrivateCo Equity, New Subsidiary Common Units and New Subsidiary Preferred Units issued under the Plan shall be deemed distributed as of the Effective Date regardless of the date on which it is actually issued, dated, authenticated, or distributed.

(b) **Compliance Matters**

In connection with the Plan, to the extent applicable, the Reorganized Debtors and the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Reorganized Debtors and the Distribution Agent shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Reorganized Debtors reserve the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances. All Persons holding Claims shall be required to provide any information necessary to effect information reporting and the withholding of such taxes. Notwithstanding any other provision of this Plan to the contrary, (a) each holder of an Allowed Claim shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Unit, including income, withholding and other tax obligations, on account of such distribution, and (b) no distribution shall be made to or on behalf of such holder pursuant to the Plan unless and until such holder has made arrangements satisfactory to the Reorganized Debtors for the payment and satisfaction of such tax obligations.

(c) **Foreign Currency Exchange Rate**

Except as otherwise provided in a Bankruptcy Court order, as of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in *The Wall Street Journal*, *National Edition*, on the Effective Date.

(d) **Fractional, Undeliverable, and Unclaimed Distributions**

(1) *No Fractional Distributions.* The Distribution Agent may not make distributions of fractions of shares of Reorganized PublicCo Equity, Reorganized PrivateCo Equity, New Subsidiary Common Units or New Subsidiary Preferred Units, as applicable. Whenever fractional distributions would otherwise be called for, the actual distributions may reflect a rounding down of such fractions.

(2) *Undeliverable Distributions.* If any distribution to a holder of an Allowed Claim or Interest is returned to a Distribution Agent as undeliverable, no further distributions shall be made to such holder unless and until such Distribution Agent is notified in writing of such holder's then-current address or other necessary information for delivery, at which time all currently due missed distributions shall be made to such holder as soon as practicable. Undeliverable distributions shall remain in the possession of Reorganized PublicCo or New Subsidiary, as applicable, until such time as a distribution becomes deliverable, or such distribution reverts to Reorganized PublicCo or New Subsidiary or is cancelled pursuant to Section 6.3(e)(3) hereof, and shall not be supplemented with any interest, dividends, or other accruals of any kind.

(3) *Reversion.* The Debtors shall use commercially reasonable efforts and cooperate as needed with those holding Allowed Claims to ensure distributions are received. Any distribution under the Plan that is an Unclaimed Distribution for a period of six months after distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and such Unclaimed Distribution shall revest in the Reorganized Debtors and, to the extent such Unclaimed Distribution is a New Subsidiary Common Unit or a New Subsidiary Preferred Unit, shall be deemed cancelled. Upon such revesting, the Claim or Interest of any holder or its successors with respect to such property shall be cancelled, discharged, and forever barred notwithstanding any applicable federal or state escheat, abandoned or unclaimed property laws, or any provisions in any document governing the distribution that is an Unclaimed Distribution, to the contrary.

(e) **Surrender of Cancelled Instruments or Securities**

On the Effective Date or as soon as practicable thereafter, each holder of a Certificate shall surrender such Certificate to the Distribution Agent. Such Certificate shall be cancelled solely

with respect to the Debtors, and such cancellation shall not alter the obligations or rights of any non-Debtors third parties vis-a-vis one another with respect to such Certificate. No distribution of property pursuant to the Plan shall be made to or on behalf of any such holder unless and until such Certificate is received by the Distribution Agent or the unavailability of such Certificate is reasonably established to the satisfaction of the Distribution Agent pursuant to the provisions of Section 6.3(f) hereof. Any holder who fails to surrender or cause to be surrendered such Certificate or fails to execute and deliver an affidavit of loss and indemnity acceptable to the Distribution Agent prior to the first anniversary of the Effective Date shall have its Claim or Interest discharged with no further action, be forever barred from asserting any such Claim or Interest against the relevant Entity in the Reorganized Debtors or its property, be deemed to have forfeited all rights and Claims and Interests with respect to such Certificate, and not participate in any distribution under the Plan; furthermore, all property with respect to such forfeited distributions, including any dividends or interest attributable thereto, shall revert to the Reorganized Debtors notwithstanding any federal or state escheat, abandoned or unclaimed property law to the contrary. Notwithstanding the foregoing paragraph, this Section 6.3(e) shall not apply to any Claims and Interests reinstated pursuant to the terms of the Plan.

(f) **Lost, Stolen, Mutilated, or Destroyed Securities**

Any holder of Allowed Claims or Interests evidenced by a Certificate that has been lost, stolen, mutilated, or destroyed shall, in lieu of surrendering such Certificate, deliver to the Distribution Agent an affidavit of loss acceptable to the Distribution Agent setting forth the unavailability of the Certificate and such additional indemnity as may be required reasonably by the Distribution Agent to hold the Distribution Agent harmless from any damages, liabilities, or costs incurred in treating such holder as a holder of an Allowed Claim or Interest. Upon compliance with this procedure by a holder of an Allowed Claim or Interest evidenced by such a lost, stolen, mutilated, or destroyed Certificate, such holder shall, for all purposes pursuant to the Plan, be deemed to have surrendered such Certificate.

6.4 Claims Paid or Payable by Third Parties

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

6.5 Setoffs

Except as otherwise expressly provided for herein (including with respect to any Pre-Petition Secured Claim with respect to letters of credit as provided in the definition of Other Secured Claims), the Reorganized Debtors, pursuant to the Bankruptcy Code (including section

553 of the Bankruptcy Code), applicable nonbankruptcy law, or as may be agreed to by the holder of a Claim, may set off against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Allowed Claim (before any distribution is made on account of such Allowed Claim), any Claims, rights, and Causes of Action of any nature that the Debtors or Reorganized Debtors, as applicable, may hold against the holder of such Allowed Claim, to the extent such Claims, rights, or Causes of Action against such holder have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to the Plan or otherwise): *provided*, *however*, that neither the failure to effect such a setoff nor the allowance of any Claim pursuant to the Plan shall constitute a waiver or release by such Reorganized Debtors of any such Claims, rights, and Causes of Action that such Reorganized Debtors may possess against such holder.

6.6 Allocation Between Principal and Accrued Interest

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

ARTICLE VII

PROCEDURES FOR RESOLVING DISPUTED CLAIMS AND INTERESTS

7.1 Disputed Claims Process

All Allowed Claims against the Debtors shall be paid in the ordinary course by Reorganized PublicCo or New Subsidiary. All Claims shall be asserted against Reorganized PublicCo and/or New Subsidiary, and Claims asserted against Reorganized PrivateCo shall be deemed Claims against Reorganized PublicCo and/or New Subsidiary. Parties are not required to file Proofs of Claim. In the event that one or more parties files a Proof of Claim, the Debtors or Reorganized Debtors, as applicable, reserve all rights to contest any such Proof of Claim. Except as otherwise provided herein, if a party files a Proof of Claim and the Debtors or Reorganized Debtors, as applicable, do not determine in their discretion, and without the need for notice to, or action, order or approval of, the Bankruptcy Court, that the Claim subject to such Proof of Claim is Allowed, such Claim shall be Disputed unless Allowed or disallowed by a Final Order or as otherwise set forth in this Article VII. For the avoidance of doubt, on and after the Effective Date, the Reorganized Debtors may negotiate and settle any Claims, including Claims for which a Proof of Claim has been filed, without further notice to or approval of the Bankruptcy Court, the Claims and Noticing Agent or any other party.

7.2 Prosecution of Objections to Claims and Interests

Except insofar as a Claim or Interest is Allowed under the Plan, the Debtors, the Reorganized Debtors, or any other party in interest shall be entitled to object to the Claim or Interest. Any objections to Claims and Interests shall be served and filed on or before the 120th day after the Effective Date or by such later date as ordered by the Bankruptcy Court. Notwithstanding anything to the contrary herein, the Reorganized Debtors may prosecute, adjudicate or otherwise resolve Claims and Interests in non-bankruptcy forums after the expiration

of such 120-day period. For the avoidance of doubt, except as otherwise provided in the Plan, from and after the Effective Date, the Reorganized Debtors shall have and retain any and all rights and defenses such Debtors had immediately prior to the Effective Date with respect to any Disputed Claim or Interest, including the Causes of Action retained pursuant to Section 4.15 hereof.

7.3 No Interest

Unless otherwise specifically provided for in the Plan or by order of the Bankruptcy Court, post-petition interest shall not accrue or be paid on Claims, and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim or right. Additionally, and without limiting the foregoing, interest shall not accrue or be paid on any Disputed Claim with respect to the period from the Effective Date to the date a final distribution is made on account of such Disputed Claim, if and when such Disputed Claim becomes an Allowed Claim.

7.4 Disallowance of Claims and Interests

All Claims and Interests of any Entity from which property is sought by the Debtors under section 542, 543, 550, or 553 of the Bankruptcy Code or that the Debtors or the Reorganized Debtors allege is a transferee of a transfer that is avoidable under section 522(t), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code shall be disallowed if (a) the Entity, on the one hand, and the Debtors or the Reorganized Debtors, on the other hand, agree, or the Bankruptcy Court has determined by Final Order, that such Entity or transferee is liable to turn over any property or monies under any of the aforementioned sections of the Bankruptcy Code and (b) such Entity or transferee has failed to turn over such property by the date set forth in such agreement or Final Order.

ARTICLE VIII

EFFECT OF CONFIRMATION OF THE PLAN

8.1 Discharge of Claims and Termination of Interests

Except as otherwise provided for herein and effective as of the Effective Date: (a) the rights afforded in the Plan and the treatment of all Claims and Interests shall be in exchange for and in complete satisfaction, discharge, and release of all Claims and Interests of any nature whatsoever against the Debtors or any of their assets, property, or Estates; (b) the Plan shall bind all holders of Claims and Interests, notwithstanding whether any such holders failed to vote to accept or reject the Plan or voted to reject the Plan; (c) all Claims and Interests shall be satisfied, discharged, and released in full, and the Debtors' liability with respect thereto shall be extinguished completely, including any liability of the kind specified under section 502(g) of the Bankruptcy Code; and (d) all Entities shall be precluded from asserting against the Debtors, the Debtors' Estates, the Reorganized Debtors, their successors and assigns, and their assets and properties any other Claims or Interests based upon any documents, instruments, or any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date.

8.2 Releases by the Debtors

Pursuant to section 1123(b) of the Bankruptcy Code, and except as otherwise specifically provided for herein, for good and valuable consideration, on and after the Effective Date, the Released Parties are deemed released and discharged by the Debtors, the Reorganized Debtors, and the Estates from any and all Claims, obligations, rights, and liabilities whatsoever, whether for tort, contract, violations of federal or state securities laws, including, but not limited to, any Claims asserted or arising from that certain class action complaint for alleged violations of federal securities laws filed in the United States District Court Central District of California (Case No. 2:23-cv-08659) and any and all allegations contained therein, Avoidance Actions, including any derivative Claims, asserted or that could possibly have been asserted directly or indirectly on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, and any and all Causes of Action asserted or that could possibly have been asserted on behalf of the Debtors, that the Debtors, the Reorganized Debtors, the Estates, or Affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtors or its Affiliates, the Chapter 11 Cases, the New Debt Facility, the Restructuring, the distribution, issuance, purchase, sale, or rescission of any Security of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between the Debtors and any Released Party, prepetition contracts and agreements with the Debtors (including the NPA), the Transaction Support Agreement, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, solicitation, or preparation of the Plan and Disclosure Statement or related agreements, instruments, or other documents, or any other act or omission, transaction, agreement, event, or other occurrence taking place before the Effective Date, other than Claims or liabilities arising out of or related to any contractual or fixed monetary obligation owed to the Debtors or the Reorganized Debtors, *provided* that Claims and Causes of Action for fraud, gross negligence, or willful misconduct shall not be so released.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the release set forth in this Section 8.2, which includes by reference each of the related provisions and definitions contained herein, and further, shall constitute the Bankruptcy Court's finding that such release is: (a) in exchange for the good and valuable consideration provided by the Released Parties; (b) a good faith settlement and compromise of the Claims released by this Section 8.2; (c) in the best interests of the Debtors and all holders of Claims and Interests; (d) fair, equitable, and reasonable; (e) given and made after due notice and opportunity for hearing; and (f) a bar to the Debtors asserting any Claim or Cause of Action released by this Section 8.2.

8.3 Releases by Certain Holders of Claims

As of the Effective Date, the Releasing Parties shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever, released and discharged the Released Parties from any and all Claims, Interests, obligations, rights, liabilities, actions, causes of

action, choses in action, suits, debts, damages, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, remedies, rights of set-off, third-party claims, subrogation claims, contribution claims, reimbursement claims, indemnity claims, counterclaims, and crossclaims (including all claims and actions against any Entities under the Bankruptcy Code) whatsoever, whether for tort, contract, violations of federal or state securities laws, Avoidance Actions, including any derivative Claims, asserted or that could be asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or in any way relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' restructuring, the Chapter 11 Cases, the New Debt Facility, the Restructuring, the distribution, issuance, purchase, sale, or rescission of any Security of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between the Debtors and any Released Party, prepetition contracts and agreements with the Debtors (including the NPA), the Transaction Support Agreement, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, solicitation, or preparation of the Plan, the Disclosure Statement, or related agreements, instruments, or other documents, or any other act or omission, transaction, agreement, event, or other occurrence taking place before the Effective Date of the Plan; *provided* that Claims and Causes of Action for fraud, gross negligence, or willful misconduct shall not be so released. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any obligations arising on or after the Effective Date of any party under the Plan, or any document, instrument, or agreement executed to implement the Plan.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the release set forth in this Section 8.3, which includes by reference each of the related provisions and definitions contained herein, and further, shall constitute the Bankruptcy Court's finding that such release is: (a) in exchange for the good and valuable consideration provided by the Debtors, the Reorganized Debtors, the Estate, and the Released Parties; (b) a good faith settlement and compromise of the Claims released by this Section 8.3; (c) in the best interests of the Debtors and all holders of Claims and Interests; (d) fair, equitable, and reasonable; (e) given and made after due notice and opportunity for hearing; and (f) a bar to any Entity granting a release under this Section 8.3 from asserting any Claim or Cause of Action released by this Section 8.3.

8.4 Exculpation

No Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated from any Exculpated Claim or any obligation, Cause of Action, or liability for any Exculpated Claim; *provided*, *however*, that the foregoing "exculpation" shall have no effect on the liability of any Entity that results from any act or omission that is determined in a Final Order to have constituted fraud, gross negligence, or willful misconduct. The Exculpated Parties have, and upon Confirmation shall be deemed to have, participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation of acceptances and rejections of the Plan

and the making of distributions pursuant to the Plan and, therefore, are not and shall not be liable at any time for the violation of any applicable, law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

8.5 Injunction

Except as otherwise provided herein or for obligations issued pursuant hereto, all Entities that have held, hold, or may hold Claims or Interests that have been released pursuant to Section 8.2 or Section 8.3 hereof, discharged pursuant to Section 8.1 hereof, or are subject to exculpation pursuant to Section 8.4 hereof, are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, the Released Parties, or the Exculpated Parties: (a) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (c) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or Estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; (d) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property or Estates of such Entities on account of or in connection with or with respect to any such Claims or Interests unless such holder has filed a motion requesting the right to perform such setoff on or before the Confirmation Date; and (e) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests released, exculpated, or settled pursuant to the Plan.

8.6 Protection Against Discriminatory Treatment

In accordance with section 525 of the Bankruptcy Code, and consistent with paragraph 2 of Article VI of the United States Constitution, no Governmental Unit shall discriminate against the Reorganized Debtors or any Entity with which the Reorganized Debtors has been or is associated, solely because the Reorganized Debtors were Debtors under chapter 11, may have been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before the Debtors were granted a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

8.7 Indemnification

On and from the Effective Date, and except as prohibited by applicable law, Reorganized PublicCo shall assume or reinstate, as applicable, all indemnification obligations in place as of the Effective Date (whether in bylaws, certificates of incorporation, board resolutions, contracts, or otherwise) for the current and former directors, officers, managers, employees, attorneys, other professionals, and agents of the Debtors and the respective Affiliates of such current and former directors, officers, managers, and employees. In no event shall Reorganized PrivateCo have any

liabilities relating to, arising under, or in connection with the foregoing indemnification obligations.

Reorganized PublicCo agrees to indemnify Reorganized PrivateCo, its affiliates and its respective officers, partners, directors, trustees, employees and agents (each, an "Indemnitee Agent Party") for and against any and all liabilities, obligations, losses, damages, penalties, fees, fines, actions, judgments, suits, costs, reasonable and documented expenses (including attorneys' 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 any way relating to or arising out of events occurring prior to the Effective Date, including any governmental or regulatory agency fees, fines or penalties or any Claims, including any Section 510(b) Claims, 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, Reorganized PublicCo shall not be liable for any portion of such liabilities, obligations, losses, damages, penalties, fees, fines, 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. The foregoing notwithstanding, (i) any and all taxes resulting from the Restructuring due and owing by Reorganized PrivateCo shall be the sole and exclusive responsibility of Reorganized PrivateCo and shall not be the responsibility of New Subsidiary and/or Reorganized PublicCo or covered by any indemnification provision in this Section 8.7 or otherwise, and (ii) any and all taxes resulting from the Restructuring due and owing by Reorganized PublicCo and New Subsidiary shall be the sole and exclusive responsibility of Reorganized PublicCo and New Subsidiary, as applicable.

8.8 Release of Liens

Except (a) with respect to the Liens securing the Secured Tax Claims or Other Secured Claims (depending on the treatment of such Claims), or (b) as otherwise provided herein or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estate shall be fully released and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtors and its successors and assigns.

ARTICLE IX

CONDITIONS PRECEDENT TO THE EFFECTIVE DATE

9.1 Conditions Precedent to the Effective Date

It shall be a condition to the Effective Date that the following conditions shall have been satisfied or waived pursuant to Section 9.2 hereof:

(a) the Confirmation Order shall have been entered and such order shall be materially consistent with the Transaction Support Agreement and shall be in form and substance reasonably satisfactory to the Pre-Petition Secured Party, the NPA Collateral Agent, and the Debtors;

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

(c) all documents and agreements necessary to implement the Plan: (1) shall have all conditions precedent to such documents and agreements satisfied or waived pursuant to the terms of such documents or agreements; (2) shall have been tendered for delivery to the required parties and, to the extent required, filed with and approved by any applicable Governmental Units in accordance with applicable laws; and (3) shall have been effected or executed;

(d) the Effective Date shall occur no later than forty-two (42) calendar days after the Petition Date; and

(e) all other actions necessary for the occurrence of the Effective Date shall have been taken.

9.2 Waiver of Conditions Precedent

The Debtors may, with the written consent of the Pre-Petition Secured Party and in consultation with the NPA Collateral Agent, waive any of the conditions to the Effective Date set forth in Section 9.1 hereof without any notice to any other parties in interest and without any further notice to, or action, order or approval of, the Bankruptcy Court, and without any formal action other than proceeding to confirm or consummate the Plan.

9.3 Effect of Non-Occurrence of Conditions to Consummation

If prior to Consummation, the Confirmation Order is vacated pursuant to a Final Order, then except as provided in any order of the Bankruptcy Court vacating the Confirmation Order, the Plan will be null and void in all respects, and nothing contained in the Plan or Disclosure Statement shall: (a) constitute a waiver or release of any Claims, Interests or Causes of Action; (b) prejudice in any manner the rights of the Debtors or any other Entity; or (c) constitute an admission, acknowledgment, offer, or undertaking of any sort by the Debtors or any other Entity.

ARTICLE X

MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN

10.1 Modification of Plan

Effective as of the date hereof, (a) the Debtors reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify the Plan before the entry of the Confirmation Order, subject to the limitations set forth herein and the Transaction Support Agreement; and (b) after the entry of the Confirmation Order, the Debtors or the Reorganized Debtors, as applicable, may amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, remedy any defect or omission, or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan, this clause (b) being subject in all cases to the limitations set forth herein and in the Transaction Support Agreement.

10.2 Revocation or Withdrawal of Plan

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

10.3 Confirmation of the Plan

The Debtors request Confirmation of the Plan under section 1129(b) of the Bankruptcy Code with respect to any Impaired Class that does not accept the Plan pursuant to section 1126 of the Bankruptcy Code. Subject to the terms of the Transaction Support Agreement, the Debtors reserve the right to amend the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification.

ARTICLE XI

RETENTION OF JURISDICTION

Pursuant to sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising under the Bankruptcy Code or arising in, or related to, the Chapter 11 Cases, to the fullest extent permitted by law, including, among other things, jurisdiction to:

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

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

3. resolve any matters related to Executory Contracts or Unexpired Leases, including: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which any Debtor is party or with respect to which any Debtor may be liable and to hear, determine and, if necessary, liquidate, any Cure or Claims arising therefrom, including pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; (c) the Reorganized Debtors' amendment, modification, or supplement, after the Effective Date, pursuant to Article V, of the list of Executory

Contracts and Unexpired Leases to be rejected or otherwise; and (d) any dispute regarding whether a contract or lease is or was executory or expired;

4. ensure that distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan and adjudicate any and all disputes arising from or relating to distributions under the Plan;

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

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

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

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

9. hear, determine, and resolve any applications for allowance and payment of any Professional Claim;

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

11. hear, determine, and resolve any cases, matters, controversies, suits, disputes, or Causes of Action in connection with or in any way related to the Chapter 11 Cases, including: (a) with respect to the repayment or return of distributions and the recovery of additional amounts owed by the holder of a Claim or Interest for amounts not timely repaid pursuant to Section 6.4 hereof; (b) with respect to the releases, injunctions, and other provisions contained in Article VIII, including entry of such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions; (c) that may arise in connection with the Consummation, interpretation, implementation, or enforcement of the Plan or the Confirmation Order, or any Entity's obligations incurred in connection with the Plan or the Confirmation Order, including those arising under agreements, documents, or instruments executed in connection with the Plan; or (d) related to section 1141 of the Bankruptcy Code;

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

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

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

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

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

17. hear any other matter not inconsistent with the Bankruptcy Code.

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.1 Additional Documents

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

12.2 Payment of Statutory Fees

All fees payable pursuant to 28 U.S.C. § 1930(a) shall be paid for each quarter (including any fraction thereof) until the Chapter 11 Cases is converted, dismissed, or a Final Decree is issued, whichever occurs first.

12.3 Reservation of Rights

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

12.4 Elimination of Vacant Classes

Any Class of Claims that does not have a holder of an Allowed Claim or a Claim temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section l129(a)(8) of the Bankruptcy Code.

12.5 Successors and Assigns

The rights, benefits, and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign,

affiliate, officer, director, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

12.6 Service of Documents

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

Debtors and Reorganized Debtors:	**CAPSTONE GREEN ENERGY CORPORATION**, a Delaware Corporation 16640 Stagg Street Van Nuys, California 91406 Attention: John Juric, Chief Financial Officer Telephone: (818) 734-5300
with a copy to:	**YOUNG CONAWAY STARGATT & TAYLOR, LLP** Matthew B. Lunn Shane M. Reil Rodney Square 1000 North King Street Wilmington, Delaware 19801 Telephone: (302) 571-6600 Facsimile: (302) 571-1253 mlunn@ycst.com sreil@ycst.com **KATTEN MUCHIN ROSENMAN LLP** Peter A. Siddiqui Ethan D. Trotz Kenneth N. Hebeisen 525 West Monroe Street Chicago, Illinois 60661 Telephone: (312) 902-5200 Facsimile: (312) 902-1061 peter.siddiqui@katten.com ethan.trotz@katten.com ken.hebeisen@katten.com
Pre-Petition Secured Party:	**BROAD STREET CREDIT HOLDINGS LLC,** a Delaware Limited Liability Company
with a copy to:	**CLEARY GOTTLIEB STEEN & HAMILTON LLP** Sean A. O'Neal John Veraja

One Liberty Plaza
New York, NY 10006
Telephone: (212) 225-2000
soneal@cgsh.com
jveraja@cgsh.com

12.7 Term of Injunctions or Stays

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

12.8 Entire Agreement

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

12.9 Non-Severability

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is (a) valid and enforceable pursuant to its terms; (b) integral to the Plan and may not be deleted or modified without the Debtors' consent; and (c) nonseverable and mutually dependent.

Dated: November 13, 2023

Capstone Green Energy Corporation
on behalf of itself and the other Debtors

*_/s/ John Juric*_____
Name: John Juric
Title: Chief Financial Officer

Exhibit B

Proposed Confirmation Order Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	**Chapter 11**
CAPSTONE GREEN ENERGY CORPORATION, *et al.*,	:	**Case No. 23-11634 (LSS)**
Debtors.[1]	:	**(Jointly Administered)**
	:	**Re: Docket Nos. 17, 18, 70, 71, 90, 97, 98, 113, 115**

NOTICE OF ENTRY OF ORDER (I) APPROVING THE DISCLOSURE STATEMENT; (II) CONFIRMING THE JOINT PREPACKAGED CHAPTER 11 PLAN OF REORGANIZATION OF CAPSTONE GREEN ENERGY CORPORATION AND ITS DEBTOR AFFILIATES; AND (III) GRANTING RELATED RELIEF

PLEASE TAKE NOTICE that on [●], the Honorable Laurie Selber Silverstein, United States Bankruptcy Judge for the United States Bankruptcy Court for the District of Delaware (the "***Bankruptcy Court***"), entered the order [Docket No. [●]] (the "***Confirmation Order***") confirming the *Joint Prepackaged Chapter 11 Plan of Reorganization of Capstone Green Energy Corporation and its Debtor Affiliates* [Docket No. 70] (as amended, modified, or supplemented, the "***Plan***").[2]

PLEASE TAKE FURTHER NOTICE that copies of the Confirmation Order and the Plan, as well as other documents filed in these Chapter 11 Cases can be found on the docket of these Chapter 11 Cases and can also be downloaded free of charge from the website of the Debtors' Claims and Noticing Agent, Kroll Restructuring Administration LLC, at https://cases.ra.kroll.com/capstone.

PLEASE TAKE FURTHER NOTICE that the Bankruptcy Court has approved certain release, exculpation, injunction, and related provisions in Article VIII of the Plan.

PLEASE TAKE FURTHER NOTICE that the Plan and Confirmation Order, and the provisions thereof, are binding on the Debtors, the Reorganized Debtors, any holder of a Claim against or Interest in the Debtors and such holder's respective successors, assigns, and designees, whether or not the Claim or Interest of such holder is Impaired under the Plan and whether or not such holder or entity voted to accept the Plan.

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1 The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number are: Capstone Green Energy Corporation (0883); Capstone Turbine International, Inc. (4270); and Capstone Turbine Financial Services, LLC (N/A). The Debtors' mailing address is 16640 Stagg Street, Van Nuys, California 91406.

2 Unless otherwise defined in this notice, capitalized terms used in this notice shall have the meanings ascribed to them in the Plan or the Confirmation Order, as applicable.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Plan and the Confirmation Order, the deadline for filing requests for payment of Professional Claims shall be [●].[3]

PLEASE TAKE FURTHER NOTICE that holders of Unimpaired Claims shall not be required to file a Proof of Claim with the Bankruptcy Court, except for Claims for damages related to the rejection of Executory Contracts and Unexpired Leases ("Rejection Damages Claims"). Holders of Unimpaired Claims other than those holding Rejection Damages Claims shall not be subject to any Claims resolution process in the Bankruptcy Court in connection with their Claims, and shall retain all of their rights under applicable non-bankruptcy law to pursue their Claims against the Debtors or Reorganized Debtors or other Entity in any forum with jurisdiction over the parties. The Debtors and Reorganized Debtors shall retain all defenses, counterclaims, rights to setoff, and rights to recoupment as to Unimpaired Claims. If the Debtors or the Reorganized Debtors dispute any Unimpaired Claim, such dispute shall be determined, resolved or adjudicated in the manner as if the Chapter 11 Cases had not been commenced, except with respect to Rejection Damages Claims, which shall be determined, resolved or adjudicated as set forth in Article V of the Plan

PLEASE TAKE FURTHER NOTICE that from and after this date, if you wish to receive notice of filings in this case, you must request such notice with the clerk of the Bankruptcy Court and serve a copy of such request for notice on counsel to the Reorganized Debtors. You must do this even if you filed such a notice prior to the Effective Date.

PLEASE TAKE FURTHER NOTICE that the Plan and the Confirmation Order contain other provisions that may affect your rights. You are encouraged to review the Plan and the Confirmation Order in their entirety.

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3 The deadline for filing requests for payment of Professional Claims shall be 30 days after the Effective Date.

Dated: [●] _____
Wilmington, DE

*/s/ DRAFT*_____

Matthew B. Lunn (No. 4119)
Shane M. Reil (No. 6195)
YOUNG CONAWAY STARGATT & TAYLOR, LLP
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253
Email: mlunn@ycst.com
sreil@ycst.com

- and -

Peter A. Siddiqui (admitted *pro hac vice*)
Ethan D. Trotz (admitted *pro hac vice*)
Kenneth N. Hebeisen (admitted *pro hac vice*)
KATTEN MUCHIN ROSENMAN LLP
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PROPOSED COUNSEL FOR THE DEBTORS AND DEBTORS IN POSSESSION

EXHIBIT 4.1

FIRST AMENDMENT TO SUPER-PRIORITY SENIOR SECURED DEBTOR-IN-POSSESSION NOTE PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO SUPER-PRIORITY SENIOR SECURED DEBTOR-IN-POSSESSION NOTE PURCHASE AGREEMENT (this "First Amendment") is entered into as of November [ ], 2023 by and among CAPSTONE GREEN ENERGY CORPORATION, a Delaware corporation (the "Company"), the Guarantors signatory hereto, the Purchaser signatory hereto and GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., as collateral agent for the Purchaser (in such capacity, the "Collateral Agent").

RECITALS

A. The Company, certain subsidiaries of the Company, the Purchaser and the Collateral Agent are parties to a certain Super-Priority Senior Secured Debtor-in-Possession Note Purchase Agreement, dated as of October 2, 2023 (as amended, restated, supplemented or otherwise modified from time to time, the "DIP Note Purchase Agreement"; capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the DIP Note Purchase Agreement), pursuant to which the Purchaser has agreed to purchase the DIP Notes issued by Company;

B. The Company has informed the Collateral Agent and the Purchaser that an Event of Default has occurred and is continuing pursuant to Section 8.1 of the DIP Note Purchase Agreement as a result of its failure to satisfy (i) the requirement that the Bankruptcy Court shall have entered the Final Order approving the DIP Note Documents, which order shall be in form and substance acceptable to Purchaser, no later than thirty-five (35) calendar days after the Petition Date, as set forth in Section 5.18 and (ii) the requirement that the Bankruptcy Court shall have held a hearing (the "Confirmation Hearing") and entered an order confirming the Plan and approving the Disclosure Statement (the "Confirmation Order"), which Confirmation Order shall be in form and substance acceptable to Purchaser, no later than thirty-five (35) calendar days after the Petition Date as set forth in Section 5.18 (collectively, the "Designated Events of Default");

C. The DIP Note Parties have requested that the Purchaser waive the Designated Events of Default and amend the DIP Note Purchase Agreement as set forth herein and, subject to the terms and conditions hereof, the Purchaser executing this First Amendment is willing to do so; NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, and intending to be legally bound, the parties hereto agree as follows:

A. AMENDMENTS

1. Section 5.18 of the DIP Note Purchase Agreement is hereby deleted in its entirety and replaced with:
"5.18 Milestones. Company shall achieve the following milestones by the dates indicated

below:

Milestone	Deadline
1. The Debtors shall file (i) the Plan (as defined in the TSA), (ii) the Disclosure Statement (as defined in the TSA), (iii) a motion seeking approval of the DIP Note Documents (to be requested to be heard on shortened time), and (iv) any "first day" motions, each of which shall be in form and substance acceptable to Purchaser.	No later than the Petition Date
2. The Bankruptcy Court shall have entered the Interim Order approving the DIP Note Documents, which order shall be in form and substance acceptable to Purchaser.	No later than three (3) calendar days after the Petition Date
3. The Bankruptcy Court shall have entered the Final Order approving the DIP Note Documents, which order shall be in form and substance acceptable to Purchaser.	No later than November 15, 2023
4. The Bankruptcy Court shall have held a hearing (the "**Confirmation Hearing**") and entered an order confirming the Plan and approving the Disclosure Statement (the "**Confirmation Order**"), which Confirmation Order shall be in form and substance acceptable to Purchaser.	No later than November 15, 2023
5. The Plan shall become effective (the "**Plan Effective Date**").	No later than November 30, 2023
6. Company shall have delivered the Approved Budget to Collateral Agent.	On the Closing Date and on each Friday of every other calendar week thereafter
7. Company shall have delivered a Variance Report to Collateral Agent.	On each Variance Report Date

B. WAIVER OF DESIGNATED EVENTS OF DEFAULT

Subject to the terms and conditions of this First Amendment and in reliance upon the representations of the DIP Note Parties set forth in Section D below, Collateral Agent and the Purchaser hereby permanently waive the Designated Events of Default and their right to take any action under the DIP Note Purchase Agreement or the other DIP Note Documents that they may otherwise have or have had as a result of the occurrence of the Designated Events of Default, including the right to charge interest at the default rate due to the occurrence of the Designated Events of Default. This is a limited, one-time waiver and, except as expressly set forth herein, shall not be deemed to: (a) constitute a waiver of any other Event of Default or any other breach of the DIP Note Purchase Agreement or any of the other DIP Note Documents, whether now existing or hereafter arising, (b) constitute a waiver of any right or remedy of Collateral Agent or the Purchaser under the DIP Note Documents which does not arise as a result of the Designated Events of Default, or (c) establish a custom or course of dealing or conduct between Collateral Agent and

the Purchaser, on the one hand, and the DIP Note Parties on the other hand.

C. CONDITIONS TO EFFECTIVENESS

Notwithstanding any other provision of this First Amendment and without affecting in any manner the rights of the Purchaser hereunder, it is understood and agreed that this First Amendment shall not become effective, and the DIP Note Parties shall have no rights under this First Amendment, until:

1. The Purchaser shall have received the following documents, in form and substance satisfactory to the Purchaser: executed counterparts to this First Amendment from the Company, each other DIP Note Party and the Purchaser.

D. REPRESENTATIONS

Each DIP Note Party hereby represents and warrants to the Purchaser and the Collateral Agent that:

1. Each of the DIP Note Parties and its Subsidiaries (a) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, (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 DIP 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; and

2. The execution, delivery and performance of this First Amendment has been duly authorized by all necessary action on the part of each DIP Note Party that is a party hereto.

E. OTHER AGREEMENTS

1. Continuing Effectiveness of DIP Note Documents. As amended hereby, all terms of the DIP Note Purchase Agreement and the other DIP Note Documents shall be and remain in full force and effect and shall constitute the legal, valid, binding and enforceable obligations of the DIP Note Parties party thereto. To the extent any terms and conditions in any of the other DIP Note Documents shall contradict or be in conflict with any terms or conditions of the DIP Note Purchase Agreement, after giving effect to this First Amendment, such terms and conditions are hereby deemed modified and amended accordingly to reflect the terms and conditions of the DIP Note Purchase Agreement as modified and amended hereby. Upon the effectiveness of this First Amendment such terms and conditions are hereby deemed modified and amended accordingly to reflect the terms and conditions of the DIP Note Purchase Agreement as modified and amended hereby.

2. Reaffirmation of Guaranty. Each Guarantor consents to the execution and delivery by the DIP Note Parties of this Amendment and the consummation of the transactions described herein, and ratifies and confirms the terms of the Guaranty to which such Guarantor is a

party with respect to the indebtedness now or hereafter outstanding under the DIP Note Purchase Agreement as amended hereby and all promissory notes issued thereunder. Each Guarantor acknowledges that, notwithstanding anything to the contrary contained herein or in any other document evidencing any indebtedness of the DIP Note Parties to the Purchaser or any other obligation of the DIP Note Parties, or any actions now or hereafter taken by the Purchaser with respect to any obligation of the DIP Note Parties, the Guaranty to which such Guarantor is a party (i) is and shall continue to be a primary obligation of such Guarantor, (ii) is and shall continue to be an absolute, unconditional, continuing and irrevocable guaranty of payment, and (iii) is and shall continue to be in full force and effect in accordance with its terms. Nothing contained herein to the contrary shall release, discharge, modify, change or affect the original liability of any Guarantor under the Guaranty to which such Guarantor is a party.

3. Acknowledgment of Perfection of Security Interest. Each DIP Note Party hereby acknowledges that, as of the date hereof, the security interests and liens granted to Collateral Agent and the Purchaser under the DIP Note Purchase Agreement and the other DIP Note Documents are in full force and effect, are properly perfected and are enforceable in accordance with the terms of the DIP Note Purchase Agreement and the other DIP Note Documents.

4. Effect of Agreement. Except as set forth expressly herein, all terms of the DIP Note Purchase Agreement, as amended hereby, and the other DIP Note Documents shall be and remain in full force and effect and shall constitute the legal, valid, binding and enforceable obligations of the DIP Note Parties to the Purchaser and Collateral Agent. The execution, delivery and effectiveness of this First Amendment shall not operate as a waiver of any right, power or remedy of the Purchaser under the DIP Note Purchase Agreement, nor constitute a waiver of any provision of the DIP Note Purchase Agreement, in each case, except as expressly provided herein. This First Amendment shall constitute a DIP Note Document for all purposes of the DIP Note Purchase Agreement.

5. Governing Law. This First Amendment shall be governed by, and construed in accordance with, the internal laws of the State of New York and all applicable federal laws of the United States of America.

6. No Novation. This First Amendment is not intended by the parties to be, and shall not be construed to be, a novation of the DIP Note Purchase Agreement and the other DIP Note Documents or an accord and satisfaction in regard thereto.

7. Costs and Expenses. The DIP Note Parties agrees to pay on demand all costs and expenses of Purchaser and Collateral Agent in connection with the preparation, execution and delivery of this Amendment, including, without limitation, the reasonable fees and out-of-pocket expenses of outside counsel for Purchaser and Collateral Agent with respect thereto.

8. Counterparts. This First Amendment may be executed by one or more of the parties hereto in any number of separate counterparts, each of which shall be deemed an original and all of which, taken together, shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of this First Amendment by facsimile transmission, electronic transmission (including delivery of an executed counterpart in .pdf format) shall be as effective as delivery of a manually executed counterpart hereof.

9. Binding Nature. This First Amendment shall be binding upon and inure to the benefit of the parties hereto, their respective successors, successors-in-titles, and assigns. No third party beneficiaries are intended in connection with this First Amendment.

10. Entire Understanding. This First Amendment sets forth the entire understanding of the parties with respect to the matters set forth herein, and shall supersede any prior negotiations or agreements, whether written or oral, with respect thereto.

11. Release. (a) Each DIP Note Party hereby releases, acquits, and forever discharges Collateral Agent and the Purchaser, and each and every past and present subsidiary, affiliate, stockholder, officer, director, agent, servant, employee, representative, and attorney of Collateral Agent and the Purchaser (each a "Releasee"), from any and all claims, causes of action, suits, debts, liens, obligations, liabilities, demands, losses, costs and expenses (including attorneys' fees) of any kind, character, or nature whatsoever, known or unknown, fixed or contingent, which such DIP Note Party may have or claim to have now or which may hereafter arise out of or connected with any act of commission or omission of Releasee existing or occurring on or prior to the date of this First Amendment or any instrument executed on or prior to the date of this First Amendment including, without limitation, any claims, liabilities or obligations arising with respect to the DIP Note Purchase Agreement or the other of the DIP Note Documents. The provisions of this paragraph shall be binding upon each DIP Note Party and shall inure to the benefit of Releasees, and their respective heirs, executors, administrators, successors and assigns, and the other released parties set forth herein. No DIP Note Party is aware of any claim or offset against, or defense or counterclaim to, any DIP Note Party's obligations or liabilities under the DIP Note Purchase Agreement or any other DIP Note Document. The provisions of this Section shall survive payment in full of the Obligations, full performance of the terms of this First Amendment and the DIP Note Documents, and/or Collateral Agent's or Purchaser's actions to exercise any remedy available under the DIP Note Documents or otherwise. Each DIP Note Party warrants and represents that such DIP Note Party is the sole and lawful owner of all right, title and interest in and to all of the claims released hereby and each DIP Note Party has not heretofore voluntarily, by operation of law or otherwise, assigned or transferred or purported to assign or transfer to any person any such claim or any portion thereof.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, this First Amendment has been duly executed as of the date first written above.

CAPSTONE GREEN ENERGY CORPORATION, as the Company and as a DIP Note Party

By: ____/s/ John Juric_____
Name: John Juric
Title: Chief Financial Officer

Guarantors:

CAPSTONE TURBINE INTERNATIONAL, 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 First Amendment to DIP Note Purchase Agreement]

BROAD STREET CREDIT HOLDINGS LLC as Purchaser

By: /s/ Gregg Watts
Name: Gregg Watts
Title: Authorized Signatory

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

By: /s/ Gregg Watts
Name: Greg Watts
Title: Authorized Signatory

EXHIBIT 99.1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

NOTICE OF FILING OF ADDITIONAL EXHIBITS TO PLAN SUPPLEMENT

PLEASE TAKE NOTICE that, on September 28, 2023, the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed the *Joint Prepackaged Chapter 11 Plan of Reorganization of Capstone Green Energy Corporation and Its Debtor Affiliates* [Docket No. 17, revised at Docket No. 70] (as may be amended, supplemented, or modified from time to time, the "Plan") and the related *Disclosure Statement for the Joint Prepackaged Chapter 11 Plan of Reorganization of Capstone Green Energy Corporation and Its Debtor Affiliates* (as may be amended, supplemented, or modified from time to time, the "Disclosure Statement") [Docket No. 18].

PLEASE TAKE FURTHER NOTICE that, on October 24, 2023, the Debtors filed the *Notice of Filing of Plan Supplement to Joint Prepackaged Chapter 11 Plan of Reorganization of Capstone Green Energy Corporation and Its Debtor Affiliates* [Docket No. 71] (the "Plan Supplement Notice").

PLEASE TAKE FURTHER NOTICE that, as indicated in the Plan Supplement Notice, the Debtors reserved their rights to amend, revise, or supplement the Plan Supplement and any of the documents and designations contained therein. Also as indicated in the Plan Supplement Notice, certain materials were omitted therefrom and were to be filed as soon as practicable prior to the Confirmation Hearing. Accordingly, the Debtors hereby file the following exhibits, (collectively, the " Additional Exhibits"), which, along with the exhibits attached to the original Plan Supplement Notice, comprise the Plan Supplement:

Exhibit	Plan Supplement Document
E	Description of Retained Assets and Retained Contracts
F	Directors and Officers of the Reorganized Debtors (Amended)
F-1	Redline to Exhibit F, filed October 24, 2023
G	Organizational Documents of the Reorganized Debtors
I	Trademark License Agreement

PLEASE TAKE FURTHER NOTICE that the Plan Supplement, the Plan, the Disclosure Statement, and related materials can be obtained free of charge at the Debtors' public restructuring website maintained by Kroll Restructuring Administration LLC (the "Claims and Noticing Agent") at https://cases.ra.kroll.com/capstone or by contacting the Claims and Noticing Agent at (844) 642-1256 (Toll-free from US / Canada) or +1 (646) 651-1164 (International). In addition, such documents are available for inspection for a fee on the Court's website at www.deb.uscourts.gov and are on file with the Clerk of the Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801, where they are available for review between the hours of 8:00 a.m. to 4:00 p.m., prevailing Eastern Time.

PLEASE TAKE FURTHER NOTICE that, subject to the terms and conditions of the Plan, the Debtors reserve all rights to amend, supplement or modify the Plan Supplement and any of the documents and designations contained therein, including the Additional Exhibits, none of which shall be deemed final or binding on the Debtors prior to the Effective Date of the Plan.

Dated: November 9, 2023
Wilmington, Delaware

/s/ Shane Reil

YOUNG CONAWAY STARGATT & TAYLOR, LLP
Matthew B. Lunn (No. 4119)
Shane M. Reil (No. 6195)
Rodney Square
1000 North King Street
Wilmington, DE 19801
Telephone: (302) 571-6600
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Email: mlunn@ycst.com
sreil@ycst.com

-and-

KATTEN MUCHIN ROSENMAN LLP
Peter A. Siddiqui (admitted *pro hac vice*)
Ethan D. Trotz (admitted *pro hac vice*)
Kenneth N. Hebeisen (admitted *pro hac vice*)
525 W. Monroe Street
Chicago, IL 60661
Telephone: (312) 902-5200
Facsimile: (312) 902-1061
Email: peter.siddiqui@katten.com
ethan.trotz@katten.com
ken.hebeisen@katten.com

Proposed Attorneys for the Debtors
and Debtors in Possession

Exhibit E

Description of Retained Assets and List of Retained Contracts

"Retained Assets" means (i) all of Capstone's right, title, and interest in and to the Capstone Trademarks (including those that are assigned to Capstone pursuant to the IP Assignment Agreement); and (ii) all assets, including cash, accounts receivable, tangible assets and intangible assets, owned by Capstone as of the Petition Date, that relate solely to Distributor Support Services, which include certain computer equipment, software, trade show displays and contracts for the provision of Distributor Support Services to be entered into with certain distributors on or following the Effective Date; *provided*, *however*, that notwithstanding the foregoing, no Executory Contracts or Unexpired Leases existing prior to the Effective Date, other than Retained Contracts, shall be Retained Assets.

List of Retained Contracts: None.

Exhibit F

Directors and Officers of the Reorganized Debtors (Amended)

As of the Effective Date, the Reorganized PublicCo Board shall be appointed in accordance with the organizational documents of Reorganized PublicCo, the other constituent documents of the Reorganized Debtors, and the Plan. On the Effective Date, the Reorganized PublicCo Board shall consist of the following five members, all of whom served on the board of directors of Capstone Green Energy Corporation as of the Petition Date:

- **Robert C. Flexon**: Mr. Flexon has decades of experience in the energy industry. He currently serves as Chair of the Board of PG&E Corporation and sits on the ERCOT Board of Directors, among other public company directorships. Prior to joining Capstone, Mr. Flexon served as: President and Chief Executive Officer of Dynegy Inc., an independent power producer and electricity marketer; Chief Financial Officer of UGI Corporation, a distributor and marketer of energy products and services; Chief Financial Officer and Chief Operating Officer of NRG Energy, Inc., a power generation and electricity marketer; and Chief Executive Officer of Foster Wheeler, a Swiss global engineering conglomerate.

- **Ping Fu**: Ms. Fu is the co-founder of Geomagic and served as its Chief Executive Officer until 2013. The 3D imaging and 3D printing technologies she created fundamentally changed the way products are designed and manufactured around the world. She also served as part of the team in creating the NCSA Mosaic software and HTTP server software that led to the exponential growth of the internet. She was the Chief Strategy and Chief Entrepreneur Officer at 3D Systems from 2013 to 2016, and has served on the boards of other public companies including Live Nation Entertainment, the Long Now Foundation, and the Burning Man Project.

- **Yon Y. Jorden** : Ms. Jorden is a seasoned board and audit committee member who has historically held strategic senior management and board positions in the energy, automation, and healthcare sectors. Today, Ms. Jorden serves as a director for public companies including Cohu, Inc. and Alignment Healthcare, Inc., as well as Methodist Health System, a not-for-profit Texas-based hospital system. Ms. Jorden previously was an independent director for Maxwell Technologies, Magnetek Incorporated, Bioscrip Incorporated, and U.S. Oncology Corporation. She also served as Chief Financial Officer of four publicly traded companies and non-profit organizations, including AdvancePCS, Informix Corporation, Oxford Health Plans, Inc., and WellPoint, Inc.

- **Robert F. Powelson**: Mr. Powelson is a highly respected leader in the power and energy regulatory industry. He has served as President and Chief Executive Officer of the National Association of Water Companies since 2018. Previously, Mr. Powelson served as Commissioner for the Federal Energy Regulatory Commission from 2017 to 2018, and President of the National Association of Regulatory Utility Commissioners in 2017. He also served on the Pennsylvania Public Utility Commission from 2008 to 2017, which he led as Chairman from 2011 to 2015.

- **Denise Wilson**: From 2011 to 2016, Ms. Wilson served as Executive Vice President and President of New Business for NRG Energy, Inc., an independent power company with generation, energy retail business and cleantech ventures. Ms. Wilson also served as Executive Vice President and Chief Administrative Officer of NRG from 2008 to 2011, among various other roles at NRG from 2000 to 2007. Further, Ms. Wilson has served in executive leadership roles in human resources for Nash-Finch Company, Metris Companies Inc., and General Electric ITS.

Further, as of the Effective Date, the officers of the Reorganized Debtors shall be appointed in accordance with the organizational documents of the Reorganized Debtors and the Plan. On the Effective Date, the officers of both Reorganized PublicCo and New Subsidiary shall be as follows:

- **Interim President and Chief Executive Officer**[1] **– Robert C. Flexon**: Mr. Flexon brings years of industry experience to his interim role, including serving as Interim President and CEO of Capstone Green Energy Corporation since August 2023. As discussed above, Mr. Flexon brings both directorship and executive leadership in finance and accounting in the energy, chemicals and oil and gas sectors, plus safety, workforce organization, and turnarounds.

- **Chief Financial Officer – John J. Juric**: Mr. Juric, a Certified Public Accountant, has more than 25 years of experience in finance and business management, including serving as Capstone Green Energy Corporation's CFO since March 2023. Before joining Capstone, Mr. Juric held several senior finance positions in prominent industries including: USALCO, LLC; Fiberweb, PLC; CIBA Specialty Chemicals; and Arco Chemical Company.

Finally, on the Effective Date, the directors and officers of Reorganized PrivateCo shall be as follows:

- **Executive Director and Marketing Manager – Maria Silva**: Ms. Silva is the former Marketing Manager of Capstone Green Energy Corporation and has been at Capstone for nearly 12 years.

- **Director – Matt Carter**: Mr. Carter is a Vice President at Goldman Sachs and a senior member of the private credit investing team within Goldman Sachs Asset and Wealth Management. Prior to joining Goldman Sachs in 2014, Mr. Carter worked at Barclays Capital and began his career at Lehman Brothers. Mr. Carter earned a B.S. in Economics from the Spears School of Business at Oklahoma State University.

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[1] An executive search for a permanent President and Chief Executive Officer of the Reorganized Debtors is currently underway but has not yet been completed. The Debtors expect the search to be completed following the Effective Date.

Exhibit F-1

Redline to Exhibit F, filed October 24, 2023

Exhibit F

Directors and Officers of the Reorganized Debtors (Amended)

As of the Effective Date, the Reorganized PublicCo Board shall be appointed in accordance with the organizational documents of Reorganized PublicCo, the other constituent documents of the Reorganized Debtors, and the Plan. On the Effective Date, the Reorganized PublicCo Board shall consist of the following five members, all of whom served on the board of directors of Capstone Green Energy Corporation as of the Petition Date:

- **Robert C. Flexon**: Mr. Flexon has decades of experience in the energy industry. He currently serves as Chair of the Board of PG&E Corporation and sits on the ERCOT Board of Directors, among other public company directorships. Prior to joining Capstone, Mr. Flexon served as: President and Chief Executive Officer of Dynegy Inc., an independent power producer and electricity marketer; Chief Financial Officer of UGI Corporation, a distributor and marketer of energy products and services; Chief Financial Officer and Chief Operating Officer of NRG Energy, Inc., a power generation and electricity marketer; and Chief Executive Officer of Foster Wheeler, a Swiss global engineering conglomerate.

- **Ping Fu**: Ms. Fu is the co-founder of Geomagic and served as its Chief Executive Officer until 2013. The 3D imaging and 3D printing technologies she created fundamentally changed the way products are designed and manufactured around the world. She also served as part of the team in creating the NCSA Mosaic software and HTTP server software that led to the exponential growth of the internet. She was the Chief Strategy and Chief Entrepreneur Officer at 3D Systems from 2013 to 2016, and has served on the boards of other public companies including Live Nation Entertainment, the Long Now Foundation, and the Burning Man Project.

- **Yon Y. Jorden** : Ms. Jorden is a seasoned board and audit committee member who has historically held strategic senior management and board positions in the energy, automation, and healthcare sectors. Today, Ms. Jorden serves as a director for public companies including Cohu, Inc. and Alignment Healthcare, Inc., as well as Methodist Health System, a not-for-profit Texas-based hospital system. Ms. Jorden previously was an independent director for Maxwell Technologies, Magnetek Incorporated, Bioscrip Incorporated, and U.S. Oncology Corporation. She also served as Chief Financial Officer of four publicly traded companies and non-profit organizations, including AdvancePCS, Informix Corporation, Oxford Health Plans, Inc., and WellPoint, Inc.

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also served on the Pennsylvania Public Utility Commission from 2008 to 2017, which he led as Chairman from 2011 to 2015.

- **Denise Wilson**: From 2011 to 2016, Ms. Wilson served as Executive Vice President and President of New Business for NRG Energy, Inc., an independent power company with generation, energy retail business and cleantech ventures. Ms. Wilson also served as Executive Vice President and Chief Administrative Officer of NRG from 2008 to 2011, among various other roles at NRG from 2000 to 2007. Further, Ms. Wilson has served in executive leadership roles in human resources for Nash-Finch Company, Metris Companies Inc., and General Electric ITS.

Further, as of the Effective Date, the officers of the Reorganized Debtors shall be appointed in accordance with the organizational documents of the Reorganized Debtors and the Plan.[1] On the Effective Date, the officers of both Reorganized PublicCo and New Subsidiary shall be as follows:

- **Interim President and Chief Executive Officer[2]Officer[1] – Robert C. Flexon**: Mr. Flexon brings years of industry experience to his interim role, including serving as Interim President and CEO of Capstone Green Energy Corporation since August 2023. As discussed above, Mr. Flexon brings both directorship and executive leadership in finance and accounting in the energy, chemicals and oil and gas sectors, plus safety, workforce organization, and turnarounds.

- **Chief Financial Officer – John J. Juric**: Mr. Juric, a Certified Public Accountant, has more than 25 years of experience in finance and business management, including serving as Capstone Green Energy Corporation's CFO since March 2023. Before joining Capstone, Mr. Juric held several senior finance positions in prominent industries including: USALCO, LLC; Fiberweb, PLC; CIBA Specialty Chemicals; and Arco Chemical Company.

[1] TheFinally, on the Effective Date, the directors and officers of Reorganized PrivateCo will be filed as soon as reasonably practicable prior to the Confirmation Hearing.shall be as follows:

- **Executive Director and Marketing Manager – Maria Silva**: Ms. Silva is the former Marketing Manager of Capstone Green Energy Corporation and has been at Capstone for nearly 12 years.

- **Director – Matt Carter**: Mr. Carter is a Vice President at Goldman Sachs and a senior member of the private credit investing team within Goldman Sachs Asset and Wealth Management. Prior to joining Goldman Sachs in 2014, Mr. Carter worked at Barclays Capital and began his career at Lehman Brothers. Mr. Carter earned a B.S. in Economics from the Spears School of Business at Oklahoma State University.

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[2] An executive search for a permanent President and Chief Executive Officer of the Reorganized Debtors is

currently underway but has not yet been completed. The Debtors expect the search to be completed following the Effective Date.

Summary report: Litera Compare for Word 11.3.1.3 Document comparison done on 11/9/2023 3:27:23 PM	
Style name: Adds Double Underline, Delete Strikethrough	
Intelligent Table Comparison: Active	
Original filename: D&O 1.pdf	
Modified filename: D&O 2.pdf	
Changes:	
Add	8
Delete	5
Move From	0
Move To	0
Table Insert	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	13

Exhibit G

Organizational Documents of the Reorganized Debtors

AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT

among

CAPSTONE GREEN ENERGY LLC

and

THE MEMBERS NAMED HEREIN

dated as of

[●], 2023

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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 [●], 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.

"**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.

"**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).

"**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.

"**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.

"**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.

"**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.

"**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.

"**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 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 (6^{th}) 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(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 A.

"**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 PrivateCo Services Agreement**" means [●].

"**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 [●].

"**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 A.

"**Sanctioned Territory**" has the meaning set forth in Section 1(b) of Annex A.

"**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.

"**Selling Member**" has the meaning set forth in Section 10.05(a).

"**SEF**" means a swap execution facility as defined in CFTC Regulation 40.1(f).

"**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 [66,182,466] Units designated as Common Units. As of the date hereof, [27,866,301] 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) **Procedure for Conversion.**

(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 (30^{th}) 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 (2^{nd}) 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 sale 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 sale, 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.

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 less than all of the Preferred Units held by such Preferred Member in one transaction or a series of related transactions to 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, 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.

[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:_____
Name:
Title:

The Members:

CAPSTONE GREEN ENERGY HOLDINGS, INC. (f/k/a Capstone Turbine International, Inc.)

By:_____
Name:
Title:

CAPSTONE GREEN ENERGY CORPORATION

By:_____
Name:
Title:

[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, and each Preferred Member shall have the right to review and consult with the Company regarding such policy, 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 HSR Act, 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

[FORM OF JOINDER AGREEMENT]

SCHEDULE A

MEMBERS SCHEDULE

[DATE]

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	[ ]
Total:	[ ]

Preferred Members

Member Name, Address and Email	**Preferred Units**
[Reorganized PrivateCo] 2001 Ross Avenue, Suite 2800 Dallas, TX 85201 [EMAIL]	[ ]
Total:	[ ]

MANAGERS SCHEDULE

[DATE]

[Manager Names]

Exhibit I

Trademark License Agreement

Trademark License Agreement

This Trademark License Agreement, dated as of [●], 2023 (such date, the "Effective Date", and such agreement, this "Agreement"), is entered into by and between [Reorganized PrivateCo], a Delaware corporation, formerly known as Capstone Green Energy Corporation ("Licensor") and Capstone Green Energy LLC, a Delaware limited liability company ("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 business], 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, revocable, 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 [$●], 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.

Section 2.4 No Use as Corporate Name, Domain Name or Social Media Handle. Licensee shall not use, or permit, direct or encourage its sublicensees or a third party to use, the Capstone Trademarks or any Trademark or name confusingly similar to such Trademark in or as part of (i) any legal entity name, trade name, corporate name, "d/b/a" or business name, except as set forth in Schedule 2 of this Agreement, to be amended from time to time by the Parties, or (ii) any domain name or social media handle, except as set forth in Schedule 3 of this Agreement, to be amended from time to time by the Parties.

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. In addition, this Agreement shall terminate, automatically and immediately, (i) upon any change in Control of Licensee (including the sale of all or substantially all of the ownership interests in Licensee in a single transaction or a series of related transactions, and any direct or indirect acquisition, consolidation or merger of Licensee by, with or into any third party) and (ii) if Licensor no longer has an equity interest in Licensee, in which case, all of Licensor's right, title and interest in and to the Capstone Trademarks shall be promptly assigned to Licensee prior to Licensor's divestiture of such equity interest.

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 or the domain names or social media accounts set forth on Schedule 3 (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:

[●]

if to Licensee:

[●]

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 Licensee without the prior written consent of Licensor.

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.

[Reorganized PrivateCo.]

By:
Name:
Title:

CAPSTONE GREEN ENERGY LLC

By:
Name:
Title:

Schedule 1

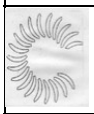
to the License Agreement

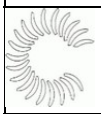
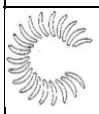
Trademarks

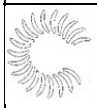
Trademark	Application No.	Filing Date	Registration No.	Registration Date	Record Owner (and with Legal Owner, if Different)	Jurisdiction
	App 90721315	App 19-MAY-2021	Reg 6731274	Reg 24-MAY-2022	CAPSTONE GREEN ENERGY CORPORATION	United States
	App 90721331	App 19-MAY-2021	Reg 6731275	Reg 24-MAY-2022	CAPSTONE GREEN ENERGY CORPORATION	United States
	App 90721347	App 19-MAY-2021	Reg 6731276	Reg 24-MAY-2022	CAPSTONE GREEN ENERGY CORPORATION	United States
CAPSTONE	App 90716194	App 17-MAY-2021	Reg 6730899	Reg 24-MAY-2022	CAPSTONE GREEN ENERGY CORPORATION	United States
CAPSTONE	App 90716203	App 17-MAY-2021	Reg 6730901	Reg 24-MAY-2022	CAPSTONE GREEN ENERGY CORPORATION	United States
CAPSTONE ENERGY FINANCE	App 86722457	App 12-AUG-2015	Reg 5219152	Reg 06-JUN-2017	CAPSTONE GREEN ENERGY CORPORATION	United States
	App 78975666	App 20-SEP-2002	Reg 2940243	Reg 12-APR-2005	CAPSTONE GREEN ENERGY CORPORATION	United States
CAPSTONE	App 75357665	App 16-SEP-1997	Reg 2487869	Reg 11-SEP-2001	CAPSTONE GREEN ENERGY CORPORATION	United States
CAPSTONE	App 75351980	App 04-SEP-1997	Reg 2201317	Reg 03-NOV-1998	CAPSTONE GREEN ENERGY CORPORATION	United States

Trademark	Application No.	Filing Date	Registration No.	Registration Date	Record Owner (and with Legal Owner, if Different)	Jurisdiction
CAPSTONE	App 75306958	App 11-JUN-1997	Reg 2248687	Reg 01-JUN-1999	CAPSTONE GREEN ENERGY CORPORATION	United States
	App 75191384	App 01-NOV-1996	Reg 2144240	Reg 17-MAR-1998	CAPSTONE GREEN ENERGY CORPORATION	United States
CAPSTONE	App 74732798	App 22-SEP-1995	Reg 2058307	Reg 29-APR-1997	CAPSTONE GREEN ENERGY CORPORATION	United States
	App 78166520	App 20-SEP-2002	Reg 2993044	Reg 06-SEP-2005	CAPSTONE GREEN ENERGY CORPORATION	United States
CAPSTONE MICROTURBINE	App 78166522	App 20-SEP-2002	Reg 2956871	Reg 31-MAY-2005	CAPSTONE GREEN ENERGY CORPORATION	United States
CAPSTONE	App 870563	App 26-FEB-1998	Reg TMA563894	Reg 21-JUN-2002	CAPSTONE GREEN ENERGY CORPORATION A CALIFORNIA CORPORATION	Canada
	App 870564	App 26-FEB-1998	Reg TMA504764	Reg 30-NOV-1998	CAPSTONE GREEN ENERGY CORPORATION A CALIFORNIA CORPORATION	Canada
CAPSTONE	App 324506 (324506T)	App 04-MAR-1998	Reg 576585	Reg 18-MAY-1998	CAPSTONE TURBINE CORPORATION (United States of America)[2]	Mexico

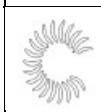
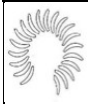
[2] Information regarding Mexican marks based on publicly available information as of 10/30/23.

Trademark	Application No.	Filing Date	Registration No.	Registration Date	Record Owner (and with Legal Owner, if Different)	Jurisdiction
CAPSTONE	App 324509 (324509T)	App 04-MAR-1998	Reg 582024	Reg 28-JUL-1998	CAPSTONE TURBINE CORPORATION (United States of America)	Mexico
CAPSTONE	App 324508 (324508T)	App 04-MAR-1998	Reg 577332	Reg 25-MAY-1998	CAPSTONE TURBINE, CORPORATION (United States of America)	Mexico
	App 324510 (324510T)	App 04-MAR-1998	Reg 578232	Reg 29-MAY-1998	CAPSTONE TURBINE CORPORATION (United States of America)	Mexico
CAPSTONE	App 324507 (324507T)	App 04-MAR-1998	Reg 579612	Reg 29-JUN-1998	CAPSTONE TURBINE CORPORATION (United States of America)	Mexico
	App 324512 (324512T)	App 04-MAR-1998	Reg 582025	Reg 28-JUL-1998	CAPSTONE TURBINE CORPORATION (United States of America)	Mexico
CAPSTONE	App 824638859	App 04-JUN-2002	Reg 824638859	Reg 20-NOV-2007	CAPSTONE GREEN ENERGY CORPORATION (United States of America)	Brazil
	App 98042776N	App 28-JUL-1998	Reg 34968	Reg 12-FEB-1999	CAPSTONE GREEN ENERGY CORPORATION (United States of America)	Bulgaria
CAPSTONE	App 98042777N	App 28-JUL-1998	Reg 7397Y	Reg 26-MAR-1999	CAPSTONE GREEN ENERGY CORPORATION (United States of America)	Bulgaria
CAPSTONE	App 98042775N	App 28-JUL-1998	Reg 34967	Reg 12-FEB-1999	CAPSTONE GREEN ENERGY CORPORATION (United States of America)	Bulgaria
CAPSTONE	App 130446	App 25-FEB-1998	Reg 228042	Reg 20-NOV-2000	Capstone Green Energy Corporation (United States of America)	Czech Republic

Trademark	Application No.	Filing Date	Registration No.	Registration Date	Record Owner (and with Legal Owner, if Different)	Jurisdiction
	App 130447	App 25-FEB-1998	Reg 228043	Reg 20-NOV-2000	Capstone Green Energy Corporation (United States of America)	Czech Republic
CAPSTONE	App 128352	App 11-DEC-1997	Reg 218818	Reg 26-JUL-1999	Capstone Green Energy Corporation (United States of America)	Czech Republic
CAPSTONE	App 128353	App 11-DEC-1997	Reg 218819	Reg 26-JUL-1999	Capstone Green Energy Corporation (United States of America)	Czech Republic
CAPSTONE	App 128183	App 05-DEC-1997	Reg 212315	Reg 25-AUG-1998	Capstone Green Energy Corporation (United States of America)	Czech Republic
	App 9800434	App 04-MAR-1998	Reg 29394	Reg 03-SEP-1999	Capstone Green Energy Corporation (United States of America)	Estonia
CAPSTONE	App 9800433	App 04-MAR-1998	Reg 29393	Reg 03-SEP-1999	Capstone Green Energy Corporation (United States of America)	Estonia
CAPSTONE	App 9702761	App 05-DEC-1997	Reg 28852	Reg 26-MAY-1999	Capstone Green Energy Corporation (United States of America)	Estonia
CAPSTONE	App 9702762	App 05-DEC-1997	Reg 28853	Reg 26-MAY-1999	Capstone Green Energy Corporation (United States of America)	Estonia
	App M9800529	App 16-FEB-1998	Reg 155107	Reg 22-DEC-1998	Capstone Green Energy Corporation (California államban bejegyzett cég) (United States of America)	Hungary
CAPSTONE	App M9800530	App 16-FEB-1998	Reg 155108	Reg 22-DEC-1998	Capstone Green Energy Corporation (California államban bejegyzett cég) (United States of America)	Hungary
CAPSTONE	App M9704089	App 06-NOV-1997	Reg 157005	Reg 06-JUL-1999	Capstone Green Energy Corporation (California államban bejegyzett cég) (United States of America)	Hungary

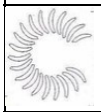
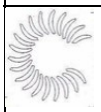
Trademark	Application No.	Filing Date	Registration No.	Registration Date	Record Owner (and with Legal Owner, if Different)	Jurisdiction
CAPSTONE	App 184099	App 02-MAR-1998	Reg 128663	Reg 03-APR-2001	CAPSTONE GREEN ENERGY CORPORATION (United States of America)	Poland
	App 183816	App 24-FEB-1998	Reg 130098	Reg 15-JUN-2001	CAPSTONE GREEN ENERGY CORPORATION (United States of America)	Poland
CAPSTONE	App 180350	App 20-NOV-1997	Reg 125456	Reg 03-NOV-2000	CAPSTONE GREEN ENERGY CORPORATION (United States of America)	Poland
CAPSTONE	App 50051	App 16-MAR-1998	Reg 35291	Reg 15-DEC-1999	CAPSTONE GREEN ENERGY CORPORATION (United States of America)	Romania
	App 50052	App 16-MAR-1998	Reg 35292	Reg 15-DEC-1999	CAPSTONE TURBINE CORPORATION (United States of America)[3]	Romania
CAPSTONE	App 47388	App 09-DEC-1997	Reg 34319	Reg 04-NOV-1999	CAPSTONE TURBINE CORPORATION (United States of America)	Romania
CAPSTONE	App 97718654	App 05-DEC-1997	Reg 174403	Reg 20-APR-1999	CAPSTONE GREEN ENERGY CORPORATION (United States of America) Кэпстоун Грин Энерджи Корпорейшн	Russian Federation
CAPSTONE	App 97718655	App 05-DEC-1997	Reg 173434	Reg 24-MAR-1999	CAPSTONE GREEN ENERGY CORPORATION (United States of America) Кэпстоун Грин Энерджи Корпорейшн	Russian Federation
CAPSTONE	App 97718656	App 05-DEC-1997	Reg 173435	Reg 24-MAR-1999	CAPSTONE GREEN ENERGY CORPORATION (United States of	Russian Federation

[3] Information regarding Romanian marks based on publicly available information as of 10/30/23.

Trademark	Application No.	Filing Date	Registration No.	Registration Date	Record Owner (and with Legal Owner, if Different)	Jurisdiction
					America) Кэпстоун Грин Энерджи Корпорейшн	
CAPSTONE	App 98702564	App 18-FEB-1998	Reg 176654	Reg 25-JUN-1999	CAPSTONE GREEN ENERGY CORPORATION (United States of America) Кэпстоун Грин Энерджи Корпорейшн	Russian Federation
	App 98702573	App 18-FEB-1998	Reg 176655	Reg 25-JUN-1999	CAPSTONE GREEN ENERGY CORPORATION (United States of America) Кэпстоун Грин Энерджи Корпорейшн	Russian Federation
	App 98020714	App 98020714	Reg 20655	Reg 17-SEP-2001	CAPSTONE GREEN ENERGY CORPORATION (United States of America) Кепстоун Турбін Корпорейшн, корпорація штату Каліфорнія	Ukraine
CAPSTONE	App 98020713	App 23-FEB-1998	Reg 20994	Reg 15-OCT-2001	CAPSTONE GREEN ENERGY CORPORATION (United States of America) Кепстоун Грін Енерджі Корпорейшн	Ukraine
	App 500-1998	App 27-FEB-1998	Reg 191068	Reg 19-JUN-2000	Capstone Green Energy Corporation (United States of America)	Slovak Republic
CAPSTONE	App 499-1998	App 27-FEB-1998	Reg 191841	Reg 23-AUG-2000	Capstone Green Energy Corporation (United States of America)	Slovak Republic
CAPSTONE	App 3643-1997	App 11-DEC-1997	Reg 189134	Reg 20-JAN-2000	Capstone Green Energy Corporation (United States of America)	Slovak Republic
CAPSTONE	App 3655-1997	App 11-DEC-1997	Reg 188650	Reg 15-DEC-1999	Capstone Green Energy Corporation (United States of America)	Slovak Republic

Trademark	Application No.	Filing Date	Registration No.	Registration Date	Record Owner (and with Legal Owner, if Different)	Jurisdiction
CAPSTONE	App 3656-1997	App 11-DEC-1997	Reg 188651	Reg 15-DEC-1999	Capstone Green Energy Corporation (United States of America)	Slovak Republic
	App 9870249	App 26-FEB-1998	Reg 9870249	Reg 18-NOV-1998	Capstone Green Energy Corporation (United States of America)	Slovenia
CAPSTONE	App 9870250	App 26-FEB-1998	Reg 9870250	Reg 21-JAN-1999	Capstone Green Energy Corporation (United States of America)	Slovenia
CAPSTONE	App 9771850	App 11-DEC-1997	Reg 9771850	Reg 11-FEB-1999	Capstone Green Energy Corporation (United States of America)	Slovenia
CAPSTONE	App 4728/2002	App 27-MAY-2002	Reg P-502265	Reg 21-AUG-2002	Capstone Green Energy Corporation (United States of America)	Switzerland
CAPSTONE	App 745109	App 13-FEB-1998	Reg 745109	Reg 28-JAN-2000	Capstone Green Energy Corporation (United States of America)	EU trade marks
CAPSTONE	App 637082	App 23-SEP-1997	Reg 637082	Reg 16-MAR-1999	Capstone Green Energy Corporation (United States of America)	EU trade marks
	App 524306	App 29-APR-1997	Reg 524306	Reg 28-MAY-1999	Capstone Green Energy Corporation (United States of America)	EU trade marks
CAPSTONE	App 117832	App 15-FEB-1998	Reg 117832[4]		CAPSTONE GREEN ENERGY CORPORATION (United States of America)	Israel
CAPSTONE	App 115027	App 23-SEP-1997	Reg 115027		CAPSTONE GREEN ENERGY CORPORATION (United States of America)	Israel
CAPSTONE	App 115028	App 23-SEP-1997	Reg 115028		CAPSTONE GREEN ENERGY CORPORATION (United States of America)	Israel

[4] Information as to all Israeli filings based on publicly available information as of 10/30/23.

Trademark	Application No.	Filing Date	Registration No.	Registration Date	Record Owner (and with Legal Owner, if Different)	Jurisdiction
CAPSTONE	App 115029	App 23-SEP-1997	Reg 115029		CAPSTONE GREEN ENERGY CORPORATION (United States of America)	Israel
	App 112062	App 30-APR-1997			CAPSTONE GREEN ENERGY CORPORATION (United States of America)	Israel
	App 112063	App 30-APR-1997			CAPSTONE GREEN ENERGY CORPORATION (United States of America)	Israel
	App TP84670/04	App 04-FEB-2004			CAPSTONE TURBINE CORPORATION (United States of America)[5]	Nigeria
	App TP84671/2004	App 04-FEB-2004			CAPSTONE TURBINE CORPORATION (United States of America)	Nigeria
CAPSTONE	App TP84672/04	App 04-FEB-2004			CAPSTONE TURBINE CORPORATION (United States of America)	Nigeria
CAPSTONE	App TP84673/2004	App 04-FEB-2004			CAPSTONE TURBINE CORPORATION (United States of America)	Nigeria
CASTONE	App 98/02524	App 20-FEB-1998	Reg 1998/02524	Reg 03-OCT-2001	CAPSTONE GREEN ENERGY CORPORATION (United States of America)	South Africa

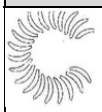
[5] Information as to all Nigerian filings based on publicly available information as of 10/30/23.

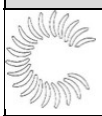
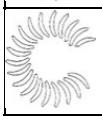
Trademark	Application No.	Filing Date	Registration No.	Registration Date	Record Owner (and with Legal Owner, if Different)	Jurisdiction
CAPSTONE	App 98/02522	App 20-FEB-1998	Reg 1998/02522	Reg 03-OCT-2001	CAPSTONE GREEN ENERGY CORPORATION (United States of America)	South Africa
CAPSTONE	App 98/02525	App 20-FEB-1998	Reg 1998/02525	Reg 03-OCT-2001	CAPSTONE GREEN ENERGY CORPORATION (United States of America)	South Africa
CAPSTONE	App 1301274	App 03-MAR-1998	Reg 1301274	Reg 07-AUG-1999	CAPSTONE TURBINE CORPORATION (United States of America)[6]	China
CAPSTONE	App 1299981	App 03-MAR-1998	Reg 1299981	Reg 28-JUL-1999	CAPSTONE TURBINE CORPORATION (United States of America)	China
CAPSTONE	App 1291874	App 03-MAR-1998	Reg 1291874	Reg 07-JUL-1999	CAPSTONE TURBINE CORPORATION (United States of America)	China
	App 1284495	App 03-MAR-1998	Reg 1284495	Reg 14-JUN-1999	CAPSTONE TURBINE CORPORATION (United States of America)	China
CAPSTONE	App 1284494	App 03-MAR-1998	Reg 1284494	Reg 14-JUN-1999	CAPSTONE TURBINE CORPORATION (United States of America)	China
CAPSTONE	App 769311	App 23-SEP-1997	Reg 769311	Rnw 23-SEP-2007	CAPSTONE TURBINE CORPORATION (United States of America)[7]	India
	App 769314	App 23-SEP-1997	Reg 769314	Rnw 23-SEP-2007	CAPSTONE TURBINE CORPORATION (United States of America)	India

[6] Information as to all Chinese filings based on publicly available information as of 10/30/23.

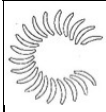
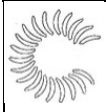
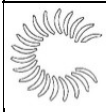
[7] Information as to all Indian filings based on publicly available information as of 10/30/23.

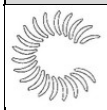
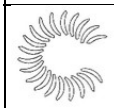
Trademark	Application No.	Filing Date	Registration No.	Registration Date	Record Owner (and with Legal Owner, if Different)	Jurisdiction
CAPSTONE	App R002012010153	App 05-JUL-2012	Reg IDM000376969	Reg 28-NOV-2012	CAPSTONE GREEN ENERGY CORPORATION (United States of America)	Indonesia
CAPSTONE	App H10-017382	App 03-MAR-1998	Reg 4414046	Reg 01-SEP-2000	CAPSTONE GREEN ENERGY CORPORATION (United States of America) キャプストン　グリーン　エナジー　コーポレイション	Japan
CAPSTONE	App H09-174425	App 06-NOV-1997	Reg 4413826	Reg 01-SEP-2000	CAPSTONE GREEN ENERGY CORPORATION (United States of America) キャプストン　グリーン　エナジー　コーポレイション	Japan
	App H09-112736	App 01-MAY-1997	Reg 4378971	Reg 21-APR-2000	CAPSTONE GREEN ENERGY CORPORATION (United States of America) キャプストン　グリーン　エナジー　コーポレイション	Japan
CAPSTONE	App H05-077077	App 22-JUL-1993	Reg 3179900	Reg 31-JUL-1996	CAPSTONE GREEN ENERGY CORPORATION (United States of America) キャプストン　グリーン　エナジー　コーポレイション	Japan
CAPSTONE	App 98002655	App 04-MAR-1998	Reg 98002655	Reg 29-OCT-2002	CAPSTONE GREEN ENERGY CORPORATION (United States of America)	Malaysia
	App 98002656	App 04-MAR-1998	Reg 98002656	Reg 19-JUN-2002	CAPSTONE GREEN ENERGY CORPORATION (United States of America)	Malaysia

Trademark	Application No.	Filing Date	Registration No.	Registration Date	Record Owner (and with Legal Owner, if Different)	Jurisdiction
	App 98002657	App 04-MAR-1998	Reg 98002657	Reg 02-SEP-2003	CAPSTONE GREEN ENERGY CORPORATION (United States of America)	Malaysia
CAPSTONE	App 98002658	App 04-MAR-1998	Reg 98002658	Reg 19-OCT-2002	CAPSTONE GREEN ENERGY CORPORATION (United States of America)	Malaysia
CAPSTONE	App 98002659	App 04-MAR-1998	Reg 98002659	Reg 16-OCT-2001	CAPSTONE GREEN ENERGY CORPORATION (United States of America)	Malaysia
CAPSTONE	App 98002660	App 04-MAR-1998	Reg 98002660	Reg 03-SEP-2002	CAPSTONE GREEN ENERGY CORPORATION (United States of America)	Malaysia
CAPSTONE	App 755739	App 23-FEB-1998	Reg 755739	Reg 23-FEB-1998	Capstone Green Energy Corporation a California corporation (United States of America)	Australia
CAPSTONE	App 289011 (00289011)	App 26-FEB-1998	Reg 289011	Reg 27-AUG-1998	CAPSTONE GREEN ENERGY CORPORATION (United States of America)	New Zealand
CAPSTONE	App 289012 (00289012)	App 26-FEB-1998	Reg 289012	Reg 27-AUG-1998	CAPSTONE GREEN ENERGY CORPORATION (United States of America)	New Zealand
CAPSTONE	App 289013 (00289013)	App 26-FEB-1998	Reg 289013	Reg 27-AUG-1998	CAPSTONE GREEN ENERGY CORPORATION (United States of America)	New Zealand
CAPSTONE	App 289014 (00289014)	App 26-FEB-1998	Reg 289014	Reg 12-JAN-2000	CAPSTONE GREEN ENERGY CORPORATION (United States of America)	New Zealand

Trademark	Application No.	Filing Date	Registration No.	Registration Date	Record Owner (and with Legal Owner, if Different)	Jurisdiction
	App 289015 (00289015)	App 26-FEB-1998	Reg 289015	Reg 01-SEP-1998	CAPSTONE GREEN ENERGY CORPORATION (United States of America)	New Zealand
	App 289016 (00289016)	App 26-FEB-1998	Reg 289016	Reg 01-SEP-1998	CAPSTONE GREEN ENERGY CORPORATION (United States of America)	New Zealand
CAPSTONE	App 51-2009-0000891	App 17-FEB-2009	Reg 4100595730000[8]	Reg 17-JUN-2009	CAPSTONE GREEN ENERGY CORPORATION 캡스톤 그린 에너지 코포레이션	South Korea
CAPSTONE	App 41-1998-0009567	App 20-NOV-1998	Reg 4100595730000	Reg 15-FEB-2000	CAPSTONE GREEN ENERGY CORPORATION 캡스톤 그린 에너지 코포레이션	South Korea
CAPSTONE	App 51-2009-0000892	App 17-FEB-2009	Reg 4100549950000	Reg 27-JUL-2009	CAPSTONE GREEN ENERGY CORPORATION 캡스톤 그린 에너지 코포레이션	South Korea
CAPSTONE	App 40-1997-0052390	App 11-NOV-1997	Reg 4004389250000	Reg 22-JAN-1999	CAPSTONE GREEN ENERGY CORPORATION 캡스톤 그린 에너지 코포레이션	South Korea
CAPSTONE	App 56-2008-0026545	App 04-DEC-2008	Reg 4004389250000	Reg 06-APR-2009	CAPSTONE GREEN ENERGY CORPORATION 캡스톤 그린 에너지 코포레이션	South Korea

[8] Information as to all South Korean filings based on publicly available information as of 10/30/23.

Trademark	Application No.	Filing Date	Registration No.	Registration Date	Record Owner (and with Legal Owner, if Different)	Jurisdiction
CAPSTONE	App 50-2008-0024797	App 04-DEC-2008	Reg 4004389250000	Reg 25-MAR-2009	CAPSTONE GREEN ENERGY CORPORATION 캡스톤 그린 에너지 코포레이션	South Korea
CAPSTONE	App 56-2008-0013176	App 11-JUN-2008	Reg 4004309900000	Reg 21-JAN-2009	CAPSTONE GREEN ENERGY CORPORATION 캡스톤 그린 에너지 코포레이션	South Korea
CAPSTONE	App 50-2008-0011907	App 11-JUN-2008	Reg 4004309900000	Reg 26-AUG-2008	CAPSTONE GREEN ENERGY CORPORATION 캡스톤 그린 에너지 코포레이션	South Korea
CAPSTONE	App 40-1997-0052389	App 11-NOV-1997	Reg 4004309900000	Reg 25-NOV-1998	CAPSTONE GREEN ENERGY CORPORATION 캡스톤 그린 에너지 코포레이션	South Korea
	App 56-2008-0013174	App 11-JUN-2008	Reg 4004274010000	Reg 01-DEC-2008	CAPSTONE GREEN ENERGY CORPORATION 캡스톤 그린 에너지 코포레이션	South Korea
	App 50-2008-0011905	App 11-JUN-2008	Reg 4004274010000	Reg 07-OCT-2008	CAPSTONE GREEN ENERGY CORPORATION 캡스톤 그린 에너지 코포레이션	South Korea
	App 50-2008-0011906	App 11-JUN-2008	Reg 4004309620000	Reg 26-AUG-2008	CAPSTONE GREEN ENERGY CORPORATION 캡스톤 그린 에너지 코포레이션	South Korea

Trademark	Application No.	Filing Date	Registration No.	Registration Date	Record Owner (and with Legal Owner, if Different)	Jurisdiction
	App 56-2008-0013175	App 11-JUN-2008	Reg 4004309620000	Reg 21-JAN-2009	CAPSTONE GREEN ENERGY CORPORATION 캡스톤 그린 에너지 코포레이션	South Korea
	App 40-1997-0045931	App 30-SEP-1997	Reg 4004309620000	Reg 25-NOV-1998	CAPSTONE GREEN ENERGY CORPORATION 캡스톤 그린 에너지 코포레이션	South Korea
	App 40-1997-0045930	App 30-SEP-1997	Reg 4004274010000	Reg 28-OCT-1998	CAPSTONE GREEN ENERGY CORPORATION 캡스톤 그린 에너지 코포레이션	South Korea

Schedule 2

to the License Agreement

Capstone Green Energy Corporation

Capstone Turbine Financial Services, LLC

Capstone Energy Finance LLC

Capstone Green Energy LLC

[●]

Schedule 3

to the License Agreement

Domain Names[1]

Domain Name	*Expiration Date*
capstoneenergysales.com	4/10/2024
capstonefinance.com	5/11/2025
capstonefinance.net	11/7/2025
capstonegreenenergy.com	2/19/2024
capstonegreenenergy.net	2/19/2024
capstonegreenenergy.org	2/19/2024
capstonegreenenergycorporation.com	2/19/2024
capstonegreenenergycorporation.net	2/19/2024
capstonegreenenergycorporation.org	2/19/2024
capstonegrn.com	3/11/2024
capstonegrn.net	3/11/2024
capstonegrn.org	3/11/2024
capstonerental.com	10/29/2026
capstonerentalpower.com	10/29/2026
capstoneturbine.com	5/17/2028
cgrnenergy.com	3/24/2024
microturbine.com	1/1/2027
microturbine.online	11/17/2024
shifttogreen.com	9/25/2026

[1] All domains are scheduled for autorenewal. Licensor is in the process of securing the domain name cge.com.

Active Social Media Accounts[2]

Instagram: @CGRNenergy
Threads: @CGRNenergy
YouTube: youtube.com/c/CapstoneGreenEnergy (@Capstone Green Energy)
LinkedIn: linkedin.com/company/capstone-green-energy
X: @CGRNenergy
Facebook: @Capstone Green Energy

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[2] Account handles subject to change.

EXHIBIT 99.1

CAPSTONE GREEN ENERGY CORPORATION RECEIVES COURT APPROVAL OF JOINT PREPACKAGED PLAN OF REORGANIZATION - *PAVING THE WAY FOR EMERGENCE*

LOS ANGELES, CA / BUSINESS WIRE / NOVEMBER 14, 2023 / Capstone Green Energy Corporation (OTC: CGRNQ) (the "Company" or "Capstone") announced today that the U.S. Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") has confirmed the Joint Prepackaged Chapter 11 Plan of Capstone Green Energy Corporation and its Debtor Affiliates (the "Plan"), paving the way for the Company's business to emerge from chapter 11 on stronger financial footing.

Under the Plan, the Capstone business will emerge from bankruptcy within the next several weeks with a substantially strengthened capital structure and improved liquidity, helping to ensure it is best equipped to continue to execute its strategy and further enhance its market leadership as a microgrid solutions and on-site energy technology systems provider. The Plan contemplates $7.0 million of new money exit financing, an increase from the originally contemplated $5.0 million of new money exit financing.

"Today's Plan confirmation by the Bankruptcy Court represents an important milestone for the Company. We are one step closer to achieving our goal of long-term financial stability. Notably, the Plan provides that the Company's public stockholders will receive their pro rata share of one hundred percent (100%) of the equity in Capstone Green Energy Holdings, Inc., which will hold a majority interest in a new entity that will operate the Company's business, subject to dilution from equity incentive compensation pursuant to equity incentive plans. We thank our investors, distributors, suppliers and employees for their support throughout this process, and we are excited to continue building energy-saving and cost-efficient products for our customers," stated Robert Flexon, Executive Chairman and Interim President and CEO. Mr. Flexon continued, "Capstone will emerge better positioned to advance our strategic priorities, continue to innovate and pursue new growth opportunities."

Additional Information

All Bankruptcy Court filings and related information about the chapter 11 cases can be found at a website maintained by the Debtors' claims and noticing agent, Kroll Restructuring Administration LLC ("Kroll"), at https://cases.ra.kroll.com/capstone or by contacting Kroll at 1-844-642-1256 (Toll-Free), +1-646-651-1164 (International) or by e-mail at capstoneinfo@ra.kroll.com. Additional details regarding the chapter 11 cases are included in, and the description above is qualified in its entirety by, the Company's Current Reports on Form 8-K filed with the SEC on September 28, 2023, October 3, 2023 and October 25, 2023.

About Capstone Green Energy

Capstone Green Energy (OTC: CGRNQ) is a leading provider of customized microgrid solutions, and on-site energy technology systems focused on helping customers around the globe meet their environmental, energy savings, and resiliency goals. Capstone Green Energy focuses on four key business lines. Through its Energy as a Service (EaaS) business, it offers rental solutions

utilizing its microturbine energy systems and battery storage systems, comprehensive Factory Protection Plan (FPP) service contracts that guarantee life-cycle costs, as well as aftermarket parts. Energy Generation Technologies (EGT) are driven by the Company's industry-leading, highly efficient, low-emission, resilient microturbine energy systems offering scalable solutions in addition to a broad range of customer-tailored solutions, including hybrid energy systems and larger frame industrial turbines. The Energy Storage Solutions (ESS) business line designs and installs microgrid storage systems, creating customized solutions using a combination of battery technologies and monitoring software. Through Hydrogen & Sustainable Products (H2S), Capstone Green Energy offers customers a variety of hydrogen products, including the Company's microturbine energy systems.

To date, Capstone has shipped over 10,000 units to 83 countries and 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.

For customers with limited capital or short-term needs, Capstone offers rental systems; 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 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: risks attendant to the chapter 11 bankruptcy process, including the effects of chapter 11, including increased legal and other professional costs necessary to execute the chapter 11 process and on the Company's liquidity and results of operations (including the availability of operating capital during the pendency of chapter 11); the length of time that the Company will operate under chapter 11 protection and the continued availability of operating capital during the pendency of chapter 11; the consummation of the transactions contemplated by the Transaction Support Agreement (the "TSA") and the Plan, including the ability of the parties to negotiate definitive agreements with respect to the matters covered by the term sheets included in the TSA, the Plan or otherwise, the occurrence of events that may give rise to a right of any of the parties to terminate the TSA, and the ability of the parties thereto to satisfy the other conditions of the TSA or the Plan, as applicable, including satisfying the milestones specified in the TSA and the DIP Note Purchase Agreement; the Company's ability to meet its financial obligations during the chapter 11 process and to maintain contracts that are critical to its operations; the Company's ability to comply with the

restrictions imposed by the terms and conditions of the DIP Facility and other financing arrangements; the effects of chapter 11 on the interests of various constituents and financial stakeholders; the effect of the chapter 11 filings on the Company's relationships with vendors, regulatory authorities, employees and other third parties; possible proceedings that may be brought by third parties in connection with the chapter 11 process and risks associated with third-party motions in chapter 11; employee attrition and the Company's ability to retain senior management and other key personnel due to the distractions and uncertainties; the impact and timing of any cost-savings measures and related local law requirements in various jurisdictions; the impact of litigation and regulatory proceedings; risks related to the restatement previously announced by the Company (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 the amended 10-K and amended 10-Q's due to the Company's efforts to complete the restatement; the time, costs and expenses associated with the restatement; potential inquiries from the SEC and/or Nasdaq; the potential material adverse effect on the price of the Company's common stock and possible stockholder lawsuits); and expectations regarding financial performance, strategic and operational plans, and other related matters. 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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818-407-3628
ir@CGRNenergy.com