

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

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In re:	: Chapter 11
	:
EXGEN TEXAS POWER, LLC, <u>et al.</u> ,	: Case No. 17-12377 (BLS)
	:
Debtors. <sup>1</sup>	: Jointly Administered
	:
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**JOINT PLAN OF REORGANIZATION FOR EXGEN TEXAS POWER, LLC, EXGEN TEXAS POWER HOLDINGS, LLC, WOLF HOLLOW I POWER, LLC, COLORADO BEND I POWER, LLC, HANDLEY POWER, LLC, MOUNTAIN CREEK POWER, LLC, AND LAPORTE POWER, LLC UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

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Dated: November 7, 2017

**THIS DRAFT PLAN HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT AND IS STILL SUBJECT TO REVIEW BY THE DEBTORS, THE SPONSOR AND THE AD HOC COMMITTEE.**

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: ExGen Texas Power, LLC (4129), ExGen Texas Power Holdings, LLC (2209), Wolf Hollow I Power, LLC (6945), Colorado Bend I Power, LLC (9083), Handley Power, LLC (4091), Mountain Creek Power, LLC (6288), and LaPorte Power, LLC (5101). The mailing address of each of the Debtors, solely for purposes of notices and communications, is: 1310 Point Street, Baltimore, MD 2123



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**JOINT PLAN OF REORGANIZATION FOR EXGEN TEXAS POWER, LLC; EXGEN TEXAS POWER HOLDINGS, LLC; WOLF HOLLOW I POWER, LLC; COLORADO BEND I POWER, LLC; HANDLEY POWER, LLC; MOUNTAIN CREEK POWER, LLC; AND LAPORTE POWER, LLC UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

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ExGen Texas Power, LLC (“**EGTP**”); ExGen Texas Power Holdings, LLC (“**Parent**”); Wolf Hollow I Power, LLC (“**Wolf Hollow I**”); Colorado Bend I Power, LLC (“**Colorado Bend I**”); Handley Power, LLC (“**Handley**”); Mountain Creek Power, LLC (“**Mountain Creek**”); and LaPorte Power, LLC (“**LaPorte**”), as debtors and debtors-in-possession (each a “**Debtor**” and, collectively, the “**Debtors**”), jointly propose the following plan of reorganization (the “**Plan**”) for the resolution of the outstanding Claims (as defined below) against, and Equity Interests (as defined below) in, each of the Debtors. Although proposed jointly for administrative purposes, the Plan constitutes a separate Plan for each Debtor for the resolution of outstanding Claims against and Equity Interests in each Debtor pursuant to the Bankruptcy Code. The Debtors are the proponents of this Plan within the meaning of section 1129 of the Bankruptcy Code (as defined below). Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtors’ history, business, results of operations, historical financial information, and projections, and for a summary and analysis of this Plan, including the treatment provided for herein, associated risk factors and certain related matters. There also are other agreements and documents, which will be filed with the Bankruptcy Court (as defined below), that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Schedules. All such Exhibits and Plan Schedules are incorporated into and are a part of this Plan as if set forth in full herein. Subject to certain restrictions and requirements set forth in 11 U.S.C. § 1127, Fed. R. Bankr. P. 3019 and the terms and conditions set forth in this Plan, the Debtors reserve the right to alter, amend, modify, revoke or withdraw this Plan prior to its substantial consummation.

**ARTICLE I.**

**RULES OF INTERPRETATION, COMPUTATION OF TIME AND DEFINED TERMS**

*A. Rules of Interpretation; Computation of Time*

For purposes herein: (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) any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced item shall be substantially in that form or substantially on those terms and conditions; (c) except as otherwise provided herein, any reference herein to an existing or to be Filed contract, lease, instrument, release, indenture, or other agreement or document shall mean as it may be amended, modified or supplemented from time to time; (d) any reference to an Entity as a Holder of Claim or Equity Interest includes that Entity’s successors and assigns; (e) unless otherwise specified, all references herein to “Articles”, “Sections”, “Exhibits” and “Plan Schedules” are references to Articles, Sections, Exhibits and Plan Schedules hereof or hereto; (f) unless otherwise stated, the words “herein,” “hereof,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (g) subject to the provisions of any contract, certificate of incorporation, by-law, instrument, release, indenture, or other agreement or document entered into in connection with this Plan and except as expressly provided in Article XII.C of this Plan, the rights and obligations arising pursuant to this Plan shall be governed by, and construed and enforced in accordance with the applicable federal law, including the Bankruptcy Code and Bankruptcy Rules; (h) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (i) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply to this Plan; (j) references to a specific article, section, or

subsection of any statute, rule, or regulation expressly referenced herein shall, unless otherwise specified, include any amendments to or successor provisions of such article, section, or subsection; (k) 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 that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; (l) all references to docket numbers of documents Filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court's CM/ECF system; (m) references to "stockholders," "shareholders," "directors," and/or "officers" shall also include "members" and/or "managers," as applicable, as such terms are defined under the applicable state limited liability company laws; (n) references to "corporate," "incorporate," "stock" or other terms associated with corporations under applicable state corporation laws shall also include "entity," "limited liability company," "form," "organize," "limited liability company interests" or other terms, as applicable, that have meanings under applicable state limited liability company laws or other state laws governing other entity forms that are similar to such corporate terms; and (o) all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Cases, unless otherwise stated. Except as otherwise specifically provided in this Plan to the contrary, references in this Plan to "the Debtors" or to "the Reorganized Debtors" shall mean "the Debtors and the Reorganized Debtors", as applicable, to the extent the context requires.

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. If the date on which a transaction may occur pursuant to this Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day.

#### *B. Defined Terms*

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

"*510(b) Equity Claim*" means any Claim subordinated pursuant to section 510(b) of the Bankruptcy Code.

"*Accrued Professional Compensation*" means, with respect to a particular Professional, an Administrative Claim of such Professional for compensation for services rendered or reimbursement of costs, expenses or other charges incurred on or after the Petition Date and prior to and including the Effective Date.

"*Ad Hoc Committee*" means that certain ad hoc committee of Prepetition Lenders, including, but not limited to, those funds or accounts that hold, or are the investment advisors or managers for funds or accounts that hold, in the aggregate, claims against or interests in the Debtors arising from certain loans under the Prepetition Credit Agreement, including, but not limited to: (i) Fidelity Management & Research Company; (ii) Fortress Credit Advisors, LLC; (iii) GSO / Blackstone Debt Funds Management LLC; (iv) Guggenheim Corporate Funding, LLC; (v) Oppenheimer Funds, Inc.; and (vi) PineBridge Investments LLC.

"*Ad Hoc Committee Fees and Expenses*" means all unpaid reasonable and documented costs, fees, disbursements, charges and out-of-pocket expenses of the Ad Hoc Committee incurred in connection with the Chapter 11 Cases, including, but not limited to, the reasonable and documented costs, fees, disbursements, charges and out-of-pocket expenses of the Ad Hoc Committee Professionals.



“*Ad Hoc Committee Professionals*” means, collectively, (i) Wachtell, Lipton, Rosen & Katz, (ii) RPA Advisors, LLC, (iii) Morris, Nichols, Arsht & Tunnell LLP, (iv) Bracewell LLP and (v) any other professional retained by the Ad Hoc Committee during the Chapter 11 Cases.

“*Administrative Claim*” means a Claim that is timely Filed pursuant to the deadline and procedure set forth in the Plan or Confirmation Order for costs and expenses of administration of the Chapter 11 Cases that are Allowed under sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including, without limitation: (a) any actual and necessary costs and expenses incurred on or after the Petition Date and through the Effective Date of preserving the Estates and operating the businesses of the Debtors; (b) Professional Fee Claims and any other compensation for legal, financial, advisory, accounting, and other services and reimbursement of expenses Allowed by the Bankruptcy Court under sections 328, 330, 331 or 503(b) of the Bankruptcy Code to the extent incurred on or after the Petition Date and through the Effective Date; (c) all fees and charges assessed against the Estates under section 1930, chapter 123, of title 28, United States Code; (d) the Ad Hoc Committee Fees and Expenses; (e) the Prepetition Agent Fees and Expenses; (f) the Cure Claim Amounts; (g) the Commodity Hedge Agreement Claims; and (h) unless alternative treatment is directed by the Prepetition Administrative Agent (after having obtained the approval of Prepetition Lenders constituting Required Lenders) subject to, and in accordance with, the terms of the Cash Collateral Orders, the Cash Collateral Adequate Protection Claims.

“*Administrative Claims Bar Date*” means, collectively, the Initial Administrative Claims Bar Date and the Final Administrative Claims Bar Date.

“*Administrative Claims Order*” means that certain [*Order Setting Administrative Bar Date*,] entered by the Bankruptcy Court on [\_\_\_\_], 2017 (Docket No. [\_\_\_\_]), as amended, amended and restated, supplemented or otherwise modified from time to time.

“*Affiliate*” means an “affiliate”, as defined in section 101(2) of the Bankruptcy Code.

“*Allowed*” means, with respect to any Claim, an Allowed Claim in a particular Class or category specified. Any reference herein to the allowance of a particular Allowed Claim includes both the secured and unsecured portions of such Claim (unless the context indicates to the contrary).

“*Allowed Claim*” means any Claim that is not a Disputed Claim or a Disallowed Claim and (a) for which a Proof of Claim has been timely Filed by the applicable Claims Bar Date and as to which no objection to allowance thereof has been timely interposed within the applicable period of time fixed by this Plan, the Bankruptcy Code, the Bankruptcy Rules or order of the Bankruptcy Court; (b) that has been listed by the Debtors in their Schedules as liquidated in a specified amount and is not disputed or contingent and for which no contrary Proof of Claim has been timely Filed; or (c) that is expressly Allowed pursuant to the terms of this Plan or a Final Order of the Bankruptcy Court. The term “Allowed Claim” shall not, for purposes of computing distributions under this Plan, include interest, fees (including attorneys’ fees), costs or charges on such Claim from and after the Petition Date, except as provided in sections 506(b) or 511 of the Bankruptcy Code or as otherwise expressly set forth in this Plan or a Final Order of the Bankruptcy Court.

“*Allowed \_\_\_\_\_ Claim*” means an Allowed Claim of the type described.

“*Amended Colorado Bend O&M Agreement*” means the agreement, in substantially the form Filed with the Plan Supplement, which agreement shall contain terms and conditions in accordance with the Term Sheet annexed to the Disclosure Statement as Exhibit G and otherwise reasonably acceptable to

the Debtors, the Sponsor, and the Required Lenders, with respect to the operation and maintenance of shared assets used by each of Colorado Bend I and Colorado Bend II.

“*Amended Colorado Bend Reciprocal Easement Agreement*” means the agreement, in substantially the form Filed with the Plan Supplement, which agreement shall contain terms and conditions in accordance with the Term Sheet annexed to the Disclosure Statement as Exhibit G and otherwise reasonably acceptable to the Debtors, the Sponsor, and the Required Lenders, with respect to certain easements and rights to use the assets of each of Colorado Bend I and Colorado Bend II.

“*Amended Colorado Bend Shared Assets and Services Agreement*” means the agreement, in substantially the form Filed with the Plan Supplement, which agreement shall contain terms and conditions in accordance with the Term Sheet annexed to the Disclosure Statement as Exhibit G and otherwise reasonably acceptable to the Debtors, the Sponsor, and the Required Lenders, with respect to the allocation and use of shared assets used by each of Colorado Bend I and Colorado Bend II.

“*Amended Hedge Agreement*” means the Secured Commodity Hedge Agreements (as defined in the Prepetition Intercreditor Agreement), as amended pursuant to that certain Amendment to ISDA and Consent and Agreement, dated as of November 7, 2017, between EGTP, the Prepetition Administrative Agent and the Commodity Hedge Counterparty, entered into and assumed pursuant to the Final Cash Collateral Order.

“*Amended Shared Assets Agreements*” means, collectively, the Amended Colorado Bend O&M Agreement, the Amended Colorado Bend Reciprocal Easement Agreement, the Amended Colorado Bend Shared Assets and Services Agreement, the Amended Wolf Hollow O&M Agreement, the Amended Wolf Hollow Reciprocal Easement Agreement and the Amended Wolf Hollow Shared Assets and Services Agreement.

“*Amended Wolf Hollow O&M Agreement*” means the agreement, in substantially the form Filed with the Plan Supplement, which agreement shall contain terms and conditions in accordance with the Term Sheet annexed to the Disclosure Statement as Exhibit G and otherwise reasonably acceptable to the Debtors, the Sponsor, and the Required Lenders, with respect to the operation and maintenance of shared assets used by each of Wolf Hollow I and Wolf Hollow II.

“*Amended Wolf Hollow Reciprocal Easement Agreement*” means the agreement, in substantially the form Filed with the Plan Supplement, which agreement shall contain terms and conditions in accordance with the Term Sheet annexed to the Disclosure Statement as Exhibit G and otherwise reasonably acceptable to the Debtors, the Sponsor, and the Required Lenders, with respect to certain easements and rights to use the assets of each of Wolf Hollow I and Wolf Hollow II.

“*Amended Wolf Hollow Shared Assets and Services Agreement*” means the agreement, in substantially the form Filed with the Plan Supplement, which agreement shall contain terms and conditions in accordance with the Term Sheet annexed to the Disclosure Statement as Exhibit G and otherwise reasonably acceptable to the Debtors, the Sponsor, and the Required Lenders, with respect to the allocation and use of shared assets used by each of Wolf Hollow I and Wolf Hollow II.

“*Avoidance Actions*” means any and all avoidance, recovery, subordination or similar actions or remedies that may be brought by and on behalf of the Debtors or their Estates under the Bankruptcy Code or applicable non-bankruptcy law, including, without limitation, actions or remedies arising under chapter 5 of the Bankruptcy Code.

“*Ballots*” means the ballots accompanying the Disclosure Statement, which were approved by the Disclosure Statement Order (modified, as necessary, based upon the applicable voting party in accordance with the Disclosure Statement Order).

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

“*Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware, or any other court having jurisdiction over the Chapter 11 Cases.

“*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, in each case as amended from time to time and as applicable to the Chapter 11 Cases.

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

“*Cash*” means the legal tender of the United States of America or the equivalent thereof.

“*Cash Collateral Adequate Protection Claims*” means any Adequate Protection Super-Priority Claims (as defined in the Cash Collateral Orders).

“*Cash Collateral Orders*” means the Interim Cash Collateral Order and the Final Cash Collateral Order.

“*Causes of Action*” means any claims, causes of action (including Avoidance Actions), demands, actions, suits, obligations, liabilities, cross-claims, counterclaims, offsets, or setoffs of any kind or character whatsoever, in each case whether known or unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, foreseen or unforeseen, direct or indirect, choate or inchoate, existing or hereafter arising, under statute, in contract, in tort, in law, or in equity, or pursuant to any other theory of law, federal or state, whether asserted or assertable directly or derivatively in law or equity or otherwise by way of claim, counterclaim, cross-claim, third party action, action for indemnity or contribution or otherwise, based in whole or in part upon any act or omission or other event occurring prior to the Petition Date or during the course of the Chapter 11 Cases, including through the Effective Date now owned or hereafter acquired by the Debtors and/or their Estates.

“*Chapter 11 Case(s)*” means (a) when used with reference to a particular Debtor, the case under chapter 11 of the Bankruptcy Code commenced by such Debtor in the Bankruptcy Court, and (b) when used with reference to all Debtors, the cases under chapter 11 of the Bankruptcy Code commenced by the Debtors in the Bankruptcy Court being jointly administered under Case No. [\_\_\_\_\_].

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

“*Claims Bar Date*” means the last date for filing a Proof of Claim in these Chapter 11 Cases, as provided in the Claims Bar Date Order.

“*Claims Bar Date Order*” means that certain [*Order Pursuant to Bankruptcy Rule 3003(c)(3) and Local Rule 2002-1(e) Establishing Bar Dates and Related Procedures for Filing Proofs of Claim (Including for Administrative Expense Claims Arising Under Section 503(b)(9) of the Bankruptcy Code) and Approving the Form and Manner of Notice Thereof,*] entered by the Bankruptcy Court on [\_\_\_\_],

2017 (Docket No. [\_\_\_]), as amended, amended and restated, supplemented or otherwise modified from time to time.

“*Claims Objection Deadline*” means, with respect to any Claim, the latest of (a) one hundred eighty (180) days after the Effective Date; or (b) such other date as may be specifically fixed by Final Order of the Bankruptcy Court for objecting to such Claim.

“*Claims Register*” means the official register of Claims maintained by the Voting and Claims Agent.

“*Class*” means a category of Holders of Claims or Equity Interests as set forth in Article III hereof pursuant to section 1122(a) of the Bankruptcy Code.

“*CM/ECF*” means the Bankruptcy Court’s Case Management and Electronic Case Filing system.

“*Collateral*” means any property or interest in property of the Debtors’ Estates that is subject to a valid and enforceable Lien to secure a Claim.

“*Colorado Bend IP*” means Colorado Bend II Power, LLC, an Affiliate of the Sponsor.

“*Commission*” means the U.S. Securities and Exchange Commission.

“*Committee*” means any official committee of the Debtors appointed by the United States Trustee in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code, if appointed and as reconstituted from time to time.

“*Commodity Hedge Agreement Claims*” means any and all Claims arising from, under or in connection with the Amended Hedge Agreement.

“*Commodity Hedge Counterparty*” means Merrill Lynch Commodities, Inc., as counterparty under the Amended Hedge Agreement, together with its successors and assigns.

“*Confirmation*” means the occurrence of the Confirmation Date, subject to all conditions specified in Article IX of this Plan having been satisfied or waived pursuant to Article IX of this Plan.

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

“*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

“*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code, including all exhibits, appendices, supplements and related documents, which order shall be in form and substance acceptable to the Debtors and the Required Lenders and shall approve of the release and exculpation provisions contained in this Plan.

“*Consummation*” means the occurrence of the Effective Date.

“*Contribution Agreements*” means the agreements, in substantially the forms Filed with the Plan Supplement, which agreements shall contain terms and conditions in accordance with the Term Sheet annexed to the Disclosure Statement as Exhibit G and otherwise reasonably acceptable to the Debtors, the

Sponsor and the Required Lenders, with respect to the contribution to the Reorganized Debtors of shared assets previously used by (i) each of Colorado Bend I and Colorado Bend II; and (ii) each of Wolf Hollow I and Wolf Hollow II.

“*Cure Claim Amount*” has the meaning set forth in Article VI.B of this Plan.

“*Debtor(s)*” means, individually, any of the above-captioned debtors and debtors-in-possession and, collectively, all of the above-captioned debtors and debtors-in-possession.

“*Debtor Release*” has the meaning set forth in Article X.B hereof.

“*Debtor Releasing Parties*” has the meaning set forth in Article X.B hereof.

“*Description of Structure*” means a description of any changes to the corporate and/or capital structure of the Reorganized Debtors (to the extent known) to be made on the Effective Date as determined by the Debtors and the Required Lenders, to be Filed with the Plan Supplement. For the avoidance of doubt, changes to the corporate and/or capital structure may include, but are not limited to, (i) the conversion of one or more of the Debtors into corporations or other Persons or Entities, (ii) the creation of one or more newly formed Entities and/or holdings companies with respect to the Reorganized Debtors, (iii) the issuance of intercompany liabilities and/or intercompany equity, (iv) any election to treat one or more of the Reorganized Debtors as a “corporation” for United States federal income tax purposes and (v) the abandonment of any Debtor or any or all of the assets of any Debtor.

“*Disallowed Claim*” means a Claim, or any portion thereof, that (a) has been disallowed by a Final Order, or (b) (i) is Scheduled at zero, in an unknown amount or as contingent, disputed or unliquidated and (ii) as to which the Claims Bar Date has been established but no Proof of Claim has been timely Filed or deemed timely Filed under applicable law.

“*Disclosure Statement*” means that certain *Disclosure Statement for the Joint Plan Of Reorganization For ExGen Texas Power, LLC, ExGen Texas Power Holdings, LLC, Wolf Hollow I Power, LLC, Colorado Bend I Power, LLC, Handley Power, LLC, Mountain Creek Power, LLC and LaPorte Power, LLC Under Chapter 11 Of The Bankruptcy Code*, dated as of [\_\_\_\_], 2017 (as amended, amended and restated, supplemented or otherwise modified from time to time) that was approved by the Disclosure Statement Order.

“*Disclosure Statement Order*” means that certain [*Order (A) Approving the Disclosure Statement, (B) Establishing the Voting Record Date, Voting Deadline and Other Dates, (C) Approving Procedures for Soliciting, Receiving and Tabulating Votes on the Plan and for Filing Objections to the Plan and (D) Approving the Manner and Form of Notice and Other Related Documents*], entered by the Bankruptcy Court on [\_\_\_\_], 2017 (Docket No. [\_\_\_\_]), as such order may be amended, supplemented, or modified from time to time.

“*Disputed Claim*” means any Claim, or any portion thereof, that is not a Disallowed Claim, that has not been Allowed pursuant to this Plan or a Final Order of the Bankruptcy Court, and

(a) if a Proof of Claim has been timely Filed by the applicable Claims Bar Date, such Claim is designated on such Proof of Claim as unliquidated, contingent or disputed, or in zero or unknown amount, and has not been resolved by written agreement of the parties or a Final Order of the Bankruptcy Court; or

(b) if either (1) a Proof of Claim has been timely Filed by the applicable Claims Bar Date or (2) a Claim has been listed on the Schedules as other than unliquidated, contingent or disputed, or in zero or unknown amount, a Claim (i) as to which any Debtor has timely filed an objection or request for estimation in accordance with this Plan, the Bankruptcy Code, the Bankruptcy Rules, and any orders of the Bankruptcy Court or for which such time period to object or file a request for estimation has not yet expired as of the applicable date of determination or (ii) which is otherwise disputed by any Debtor in accordance with applicable law, in each case which objection, request for estimation or dispute has not been withdrawn, overruled or determined by a Final Order; or

(c) that is the subject of an objection or request for estimation Filed in the Bankruptcy Court and which such objection or request for estimation has not been withdrawn, resolved or overruled by Final Order of the Bankruptcy Court; or

(d) that is otherwise disputed by any Debtor in accordance with the provisions of this Plan or applicable law, which dispute has not been withdrawn, resolved or overruled by Final Order.

“*Distribution Agent*” means the Reorganized Debtors or any party designated by the Reorganized Debtors to serve as distribution agent under this Plan. For purposes of distributions under this Plan to the Holders of Allowed Prepetition Credit Agreement Claims, the Prepetition Administrative Agent, or, as applicable, any successor agent as provided the Prepetition Credit Agreement, respectively, will be and shall act as the Distribution Agent.

“*Distribution Record Date*” means the date for determining which Holders of Claims are eligible to receive distributions under this Plan, which date shall be the Effective Date.

“*Effective Date*” means the first Business Day on which the conditions specified in Article IX of this Plan, have been satisfied or waived in accordance with the terms of Article IX.

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

“*Equity Interest*” means (a) any Equity Security in any Debtor, including, without limitation, all issued, unissued, authorized or outstanding units and other ownership interests, including limited liability company interests, together with (i) any options, warrants or contractual rights to purchase or acquire any such Equity Securities at any time with respect to any Debtor, and all rights arising with respect thereto and (ii) the rights of any Entity to purchase or demand the issuance of any of the foregoing and shall include: (1) conversion, exchange, voting, participation, dividend and distribution rights; (2) liquidation preferences; (3) options, warrants, and call and put rights; (4) share-appreciation rights; and (5) all Unexercised Equity Interests, and (b) any 510(b) Equity Claim, in each case, as in existence immediately prior to the Effective Date.

“*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

“*Estate(s)*” means, individually, the estate of each of the Debtors and, collectively, the estates of all of the Debtors created under section 541 of the Bankruptcy Code.

“*Exchange Act*” means the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a *et seq.*, as now in effect or hereafter amended, and any similar federal, state or local law.

“*Exculpated Parties*” means, collectively, and in each case in their capacity as such: (i) the Debtors and the Reorganized Debtors; (ii) any Committee and the members thereof; (iii) the Ad Hoc Committee and the members thereof; (iv) the Prepetition Agents; (v) the Commodity Hedge Counterparty and (vi) the Sponsor and, with respect to each of the foregoing Entities in clause (i) through (vi), each of their respective Related Persons that served in such capacity.

“*Exculpation*” means the exculpation provision set forth in Article X.E hereof.

“*Executory Contract*” means all contracts and leases to which any Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

“*Exhibit*” means an exhibit annexed to either this Plan or as an appendix to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time).

“*Exit Security Documents*” means the security, pledge, guaranty, mortgage, account control agreement, other collateral agreements or intercreditor agreements providing for the guarantee by each of the Reorganized Debtors of each other Reorganized Debtor’s obligations in respect of the Amended Hedge Agreement and the Letter of Credit Facility and granting liens on certain assets of the Reorganized Debtors as security for the Reorganized Debtors’ obligations in respect of the Amended Hedge Agreement and the Letter of Credit Facility, in substantially the form Filed with the Plan Supplement, which agreements shall (x) contain terms and conditions (including, without limitation, exceptions to the assets constituting collateral thereunder) customary in light of the business and financial condition of the Reorganized Debtors and the nature of transactions contemplated by the Amended Hedge Agreement and the Letter of Credit Facility and (y) otherwise in form and substance reasonably acceptable to each of the Debtors, the Required Lenders, the Commodity Hedge Counterparty and the Letter of Credit Facility Lender. The Exit Security Documents shall provide that the obligations of the Reorganized Debtors under the Amended Hedge Agreement and the Letter of Credit Facility shall be guaranteed and secured *pari passu*; *provided* that, solely to the extent permitted under the Amended Hedge Agreement, certain obligations of the Reorganized Debtors in respect of the Letter of Credit Facility may be senior in priority or right of payment under the terms of the Exit Security Documents to the obligations of the Reorganized Debtors under the Amended Hedge Agreement.

“*Face Amount*” means (a) when used in reference to a Disputed Claim, the full stated amount of the Claim asserted by the applicable Holder in any Proof of Claim timely Filed with the Bankruptcy Court and (b) when used in reference to an Allowed Claim, the Allowed amount of such Claim.

“*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases.

“*Final Administrative Claims Bar Date*” means the last date for Filing requests for payment of Administrative Claims arising in the time period between the Initial Administrative Claims Record Date and the Effective Date, which, except as otherwise provided in Article II.A hereof, shall be thirty (30) days after the Effective Date.

“*Final Cash Collateral Order*” means that certain *Final Order (I) Authorizing Debtors To Utilize Cash Collateral Pursuant to 11 U.S.C. § 363; (II) Granting Adequate Protection to the Secured Parties Pursuant to 11 U.S.C. §§ 361, 362 and 363; and (III) Authorizing the Assumption of the Amended Hedge Agreement Pursuant to 11 U.S.C. § 365 and Granting Related Liens and Superpriority Claims Pursuant to 11 U.S.C. § 364* entered by the Bankruptcy Court on [\_\_\_\_], 2017 (Docket No. [\_\_\_\_]), as amended, supplemented or otherwise modified from time to time.

“*Final Order*” means an order or judgment of the Bankruptcy Court, or court of competent jurisdiction with respect to the subject matter, as entered on the docket in any Chapter 11 Case or the docket of any court of competent jurisdiction, and as to which the time to appeal, or seek certiorari or move for a new trial, reargument, or rehearing has expired and no appeal or petition for certiorari or other proceedings for a new trial, reargument, or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be timely Filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument, or rehearing shall have been denied, resulted in no stay pending appeal of such order, or has otherwise been dismissed with prejudice; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed with respect to such order shall not preclude such order from being a Final Order.

“*General Unsecured Claim*” means any Claim, including, without limitation, the Prepetition Credit Agreement Claims (Unsecured Deficiency Portion) or a Claim held by the Sponsor that is not a Secured Sponsor Claim, that is not a/an: Administrative Claim, Professional Fee Claim, Priority Tax Claim, Secured Tax Claim, Other Priority Claim, Other Secured Claim, Intercompany Claim, Prepetition Credit Agreement Claim (Secured Portion), or 510(b) Equity Claim.

“*General Unsecured Claims Cash Amount*” means the lesser of (i) \$150,000 and (ii) the aggregate Allowed amount of General Unsecured Claims, excluding the Prepetition Credit Agreement Claims (Unsecured Deficiency Portion).

“*General Unsecured Claims Cash Escrow*” means the escrow created by the Debtors or Reorganized Debtors to exclusively hold the General Unsecured Claims Cash Amount.

“*GMSA Agreement*” means that certain Global Management Services Agreement, dated as of September 10, 2014, by and between ExGen Texas Power, LLC and the Sponsor.

“*GMSA Services*” means those certain corporate support services provided by the Sponsor to the Debtors pursuant to the GMSA Agreement.

“*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

“*Handley APA*” means that certain Asset Purchase Agreement, dated as of November [\_\_\_], 2017, by and among ExGen Texas Power, LLC, Handley Power, LLC and the Sponsor.

“*Handley Sale*” means the sale of all or substantially all of the assets of Handley Power, LLC.

“*Handley Sale Order*” means the [*Order (A) Approving and Authorizing Sale of Substantially All of Debtors’ Handley Assets Pursuant to Successful Bidder’s Asset Purchase Agreement, Free and Clear of All Liens, Claims, Encumbrances and Other Interests, (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto, and (C) Granting Related Relief*] [Dkt. No. \_\_\_].

“*Holder*” means an Entity holding a Claim or Equity Interest.

“*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is “impaired” within the meaning of section 1124 of the Bankruptcy Code.



“*Initial Administrative Claims Bar Date*” means the last date for Filing requests for payment of Administrative Claims arising in the time period between the Petition Date and the Initial Administrative Claims Record Date, as provided in the Administrative Claims Order.

“*Initial Administrative Claims Record Date*” means [\_\_\_\_], 2017, as provided in the Administrative Claims Order.

“*Initial Distribution Date*” means the date that is as soon as practicable after the Effective Date, but no later than thirty (30) days after the Effective Date, when, subject to the “Treatment” sections in Article III hereof, distributions under this Plan shall commence to Holders of Allowed Claims; provided that any applicable distributions under this Plan on account of the Prepetition Credit Agreement Claims shall be made to the applicable Distribution Agent on the Effective Date, and such Distribution Agent shall make its respective distributions as soon as practicable thereafter.

“*Intercompany Claim*” means any Claim against any of the Debtors held by another Debtor, other than an Administrative Claim. For avoidance of doubt, Intercompany Claim shall not include the Secured Sponsor Claim or any General Unsecured Claim held by the Sponsor or any of its non-Debtor Affiliates.

“*Interim Cash Collateral Order*” means that certain *Interim Order (I) Authorizing Debtors To Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 (II) Granting Adequate Protection to the Secured Parties Pursuant to 11 U.S.C. §§ 361, 362 and 363; (III) Authorizing the Assumption of the Amended Hedge Agreement Pursuant to 11 U.S.C. § 365 and Granting Related Liens and Superpriority Claims Pursuant to 11 U.S.C. § 364; and (IV) Scheduling A Final Hearing Pursuant to Bankruptcy Rule 4001(B)*, entered by the Bankruptcy Court on [\_\_\_\_], 2017 (Docket No. [\_\_]), as amended, supplemented or otherwise modified from time to time.

“*IRS*” means the Internal Revenue Service of the United States of America.

“*Letter of Credit Facility*” means [\_\_\_\_].

“*Letter of Credit Facility Documents*” means [\_\_\_\_].

“*Letter of Credit Facility Lender*” means [\_\_\_\_].

“*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code, and, with respect to any property or asset, includes, without limitation, any mortgage, deed of trust, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such property or asset.

“*Litigation Claims*” means the claims, rights of action, suits or proceedings, whether in law or in equity, whether known or unknown, that any Debtor or any Estate may hold against any Entity, including, without limitation, any Causes of Action of the Debtors or their Estates, in each case solely to the extent of the Debtors’ or their Estates’ interest therein. A non-exclusive list of the Litigation Claims held by the Debtors as of the Effective Date and not otherwise settled or released pursuant to the Plan is attached hereto as Plan Schedule 1 or to be Filed with the Plan Supplement, which shall be deemed to include any derivative actions filed against any Debtor as of the Effective Date (except to the extent otherwise settled or released pursuant to the Plan).

“*Local Rules*” means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

“*New Board*” means the initial board of managers or directors or other governing or managing Person or Entity of either of the Reorganized Debtors or such other entity contemplated by the Description of Structure, which shall be acceptable to the Required Lenders. The identity of the New Board shall be Filed with the Plan Supplement.

“*New Equity Interests*” means, subject to the Restructuring Transactions, the ownership interests in Reorganized Parent and/or another applicable Person or Entity as set forth in the Description of Structure authorized to be issued pursuant to this Plan and the New Governance Documents.

“*New Equity Interests Pool*” means one hundred percent (100%) of the New Equity Interests issued and outstanding on the Effective Date [prior to dilution by any New Management Incentive Plan Equity].

“*New Governance Documents*” means the new and/or amended or restated organizational documents for each of the Reorganized Debtors and/or any applicable Entity as contemplated by the Description of Structure, which, with respect to each of the foregoing, relate to, among other things, (a) significant corporate actions, and (b) voting rights, in each case subject to regulatory constraints. The New Governance Documents will be in form and substance acceptable to the Required Lenders in all respects. For the avoidance of doubt, the New Governance Documents may include an equityholders agreement.

[“*New Management Incentive Plan*” means a post-Effective Date equity incentive plan, if any, providing for the issuance from time to time, as approved by the New Board in their sole discretion, of New Equity Interests to management and managers of the Reorganized Debtors. The participants in the New Management Incentive Plan, the allocations of the awards to such participants, and the terms and conditions of such awards shall be determined by the New Board in its sole and absolute discretion.]

[“*New Management Incentive Plan Equity*” means the New Equity Interests (if any) issued pursuant to the New Management Incentive Plan.]

“*Non-Debtor Releasing Parties*” means, collectively, the following, in each case in their capacity as such: (i) the Ad Hoc Committee and the members thereof, (ii) the Prepetition Agents, (iii) the Releasing Prepetition Lenders, (iv) the Commodity Hedge Counterparty (other than in connection with its rights under the Amended and Restated Hedge Agreement); (v) Bank of America, N.A., in its capacity as the Secured Financial Hedge Counterparty (as defined in the Prepetition Intercreditor Agreement), (vi) the Sponsor (other than in connection with its rights under (x) the Handley APA, (y) any other agreement entered into on or after the Petition Date in connection with the Handley Sale and (z) to the extent relating to any time after the Effective Date, the Sponsor Compromise) and (vii) the Holders of Unimpaired Claims and those Holders of General Unsecured Claims that (a) vote to accept the Plan or (b) either (i) abstain from voting or (ii) vote to reject the Plan and, in the case of either (b)(i) or (b)(ii), do not opt out of the voluntary release contained in Article X.B.2 of the Plan by checking the opt out box on the Ballot, and returning it in accordance with the instructions set forth thereon, indicating that they opt not to grant the releases provided in the Plan.

“*Notice*” has the meaning set forth in Article XII.J of this Plan.

“*Old Intercompany Interests*” means the Equity Interests in any Debtor held by another Debtor, as in existence immediately prior to the Effective Date.

“*Old Parent Interest*” means the Equity Interests in Parent, as in existence immediately prior to the Effective Date.

“*Ordinary Course Professionals Order*” means that certain [*Order Authorizing the Debtors to Employ and Compensate Certain Professionals in the Ordinary Course of Business Nunc Pro Tunc to the Petition Date*], entered by the Bankruptcy Court on [\_\_\_\_], 2017 (Docket No. [\_\_\_\_]), as amended, supplemented, or otherwise modified from time to time.

“*Other Priority Claim*” means any Claim accorded priority in right of payment under section 507(a) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

“*Other Secured Claim*” means any Secured Claim other than an Administrative Claim, Secured Tax Claim, Prepetition Revolving Facility Claims, Commodity Hedge Agreement Claims, Secured Sponsor Claims or Prepetition Credit Agreement Claim.

“*Parent*” means ExGen Texas Power Holdings, LLC, as debtor-in-possession in these Chapter 11 Cases.

“*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, corporation, general or limited partnership, limited liability company, firm, trust, association, government, governmental agency or other Entity, whether acting in an individual, fiduciary or other capacity.

“*Petition Date*” means November 7, 2017, the date on which the Debtors commenced the Chapter 11 Cases.

“*Plan*” means this *Joint Plan Of Reorganization For Reorganized Debtors Under Chapter 11 Of The Bankruptcy Code*, dated as of [\_\_\_\_], 2017, including the Exhibits and Plan Schedules and all supplements, appendices, and schedules thereto, either in its present form or as the same may be amended, supplemented, or modified from time to time as acceptable to the Debtors and the Required Lenders.

“*Plan Objection Deadline*” means the date and time by which objections to Confirmation and Consummation of the Plan must be Filed with the Bankruptcy Court and served in accordance with the Disclosure Statement Order, which date is [\_\_\_\_], 2017 as set forth in the Disclosure Statement Order.

“*Plan Schedule*” means a schedule annexed to this Plan or an appendix to the Disclosure Statement (as amended, supplemented or otherwise modified from time to time).

“*Plan Securities*” has the meaning set forth in Article V.J of this Plan.

“*Plan Securities and Documents*” has the meaning set forth in Article V.J of this Plan.

“*Plan Supplement*” means, collectively, the compilation of documents, forms of documents and/or term sheets relevant to the implementation of the Plan, and all exhibits, attachments, schedules, agreements, documents and instruments referred to therein, ancillary or otherwise, including, without limitation, the Exhibits and Plan Schedules, to be Filed with the Bankruptcy Court at least fourteen (14) days prior to the Plan Objection Deadline, all of which are incorporated by reference into, and are an integral part of, this Plan. The documents, forms of documents and/or term sheets comprising the Plan Supplement shall include, but shall not be limited to, the Letter of Credit Facility, the Exit Security Documents, the Transition Services Agreement, the Contribution Agreements, the Amended Shared Assets Agreements, Description of Structure, schedule of Litigation Claims, New Governance Documents, schedule of New Board members and schedule of Rejected Executory Contracts and Unexpired Leases.

“*Prepetition Account Agreement*” means that certain Collateral Account Agreement dated as of September 18, 2014, by and among the Debtors, the Prepetition Administrative Agent, and the Prepetition Depositary Agent, as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof prior to the Petition Date.

“*Prepetition Administrative Agent*” means Bank of America, N.A., in its capacity as administrative agent and collateral agent under the Prepetition Credit Agreement.

“*Prepetition Agent Fees and Expenses*” means all unpaid fees and reasonable and documented out-of-pocket costs and expenses (regardless of whether such fees, costs, and expenses were incurred before or after the Petition Date) of the Prepetition Agents, including, without limitation, the reasonable and documented out-of-pocket fees, costs, and expenses of attorneys retained by the Prepetition Agents, that are payable in accordance with the terms of the Prepetition Credit Agreement.

“*Prepetition Agents*” means the Prepetition Administrative Agent and the Prepetition Depositary Agent.

“*Prepetition Credit Agreement*” means that certain Credit Agreement, dated as of September 18, 2014, by and among the Debtors, the Prepetition Agents, and the Prepetition Lenders, as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof prior to the Petition Date.

“*Prepetition Credit Agreement Claims*” means any and all Claims (other than Prepetition Revolving Facility Claims, Commodity Hedge Agreement Claims, Secured Sponsor Claims, Prepetition Agent Fees and Expenses and Ad Hoc Committee Fees and Expenses) arising from, under or in connection with the Prepetition Credit Agreement (including, without limitation, any and all Loans (as defined in the Prepetition Credit Agreement)) or any other Prepetition Loan Document. For the avoidance of doubt, the Prepetition Credit Agreement Claims shall consist of both the Prepetition Credit Agreement Claims (Secured Portion) and the Prepetition Credit Agreement Claims (Unsecured Deficiency Portion).

“*Prepetition Credit Agreement Claims (Secured Portion)*” means the Secured Claims constituting Prepetition Credit Agreement Claims.

“*Prepetition Credit Agreement Claims (Unsecured Deficiency Portion)*” means the Unsecured Deficiency Claims constituting Prepetition Credit Agreement Claims.

“*Prepetition Depositary Agent*” means Wilmington Trust, National Association, in its capacity as depositary agent and securities intermediary under the Prepetition Account Agreement and in its capacity as depositary agent under the Prepetition Credit Agreement.

“*Prepetition Intercreditor Agreement*” means that certain Collateral Agency and Intercreditor Agreement, dated as of September 18, 2014, by and among the Debtors, the Prepetition Administrative Agent, the Sponsor, the Commodity Hedge Counterparty, and each other Person party thereto from time to time, as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof prior to the Petition Date.

“*Prepetition Lenders*” means the lenders party to the Prepetition Credit Agreement from time to time.

“*Prepetition Loan Documents*” means the Financing and Hedge Documents and the Permitted Secured Affiliate Agreements (each as defined in the Prepetition Intercreditor Agreement), in each case as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof prior to the Petition Date.

“*Prepetition Revolving Facility*” means the Revolving Facility (as defined in the Prepetition Credit Agreement).

“*Prepetition Revolving Facility Claims*” means any and all Claims arising from, under or in connection with the Prepetition Revolving Facility; provided that the aggregate outstanding amount of Prepetition Revolving Facility Claims (other than contingent indemnification and reimbursement claims) is \$0.

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

“*Pro Rata*” means the proportion that (a) the Face Amount of a Claim in a particular Class or Classes (or portions thereof, as applicable) bears to (b) the aggregate Face Amount of all Claims (including Disputed Claims, but excluding Disallowed Claims) in such Class or Classes (or portions thereof, as applicable), unless this Plan provides otherwise.

“*Professional*” means any Entity retained by the Debtors or any Committee in the Chapter 11 Cases pursuant to section 327, 328, 363, or 1103 of the Bankruptcy Code (other than an ordinary course professional pursuant to the Ordinary Course Professionals Order).

“*Professional Fee Claim*” means a Claim for Accrued Professional Compensation under sections 328, 330, 331, 503, or 1103 of the Bankruptcy Code.

“*Professional Fees Bar Date*” means the Business Day that is forty-five (45) days after the Effective Date or such other date as approved by Final Order of the Bankruptcy Court.

“*Proof of Claim*” means a proof of Claim Filed against any Debtor in the Chapter 11 Cases.

“*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns and present and former Affiliates (whether by operation of law or otherwise) and each of their respective subsidiaries, and each of their respective current and former officers, directors, principals, employees, shareholders, members (including *ex officio* members and managing members), managers, managed accounts or funds, management companies, fund advisors, advisory board members, partners, agents, financial advisors, attorneys, accountants, investment bankers, investment advisors, consultants, representatives, and other professionals, in each case acting in such capacity at any time on or after the Petition Date, and any Person claiming by or through any of them, including such Related Persons’ respective heirs, executors, estates, servants, and nominees; *provided, however*, that no insurer of any Debtor shall constitute a Related Person of any Debtor or Reorganized Debtor.

“*Release*” means the release given by the Releasing Parties to the Released Parties as set forth in Article X.B hereof.

“*Released Party*” means, collectively, the following, in each case in their capacity as such: (i) the Debtors; (ii) the Reorganized Debtors; (iii) the Ad Hoc Committee and the members thereof; (iv) the Prepetition Agents; (v) the Releasing Prepetition Lenders; (vi) the Commodity Hedge Counterparty (other than in connection with its obligations under the Amended and Restated Hedge Agreement); (vii) Bank of

America, N.A., in its capacity as the Secured Financial Hedge Counterparty (as defined in the Prepetition Intercreditor Agreement; (viii) the Sponsor (other than in connection with its obligations under (x) the Handley APA, (y) any other agreement entered into on or after the Petition Date in connection with the Handley Sale and (z) to the extent relating to any time after the Effective Date, the Sponsor Compromise); and, in each case of (i) to (viii), the respective Related Persons of each of the foregoing Entities (including, for the avoidance of doubt, the Ad Hoc Committee Professionals).

“*Releasing Party*” has the meaning set forth in Article X.B hereof.

“*Releasing Prepetition Lender*” means each Prepetition Lender that (a) votes to accept the Plan or (b) either (i) abstains from voting or (ii) votes to reject the Plan and, in the case of either (b)(i) or (b)(ii), does not opt out of the voluntary release contained in Article X.B.2 of the Plan by checking the opt out box on the Ballot, and returning it in accordance with the instructions set forth thereon, indicating that they opt not to grant the releases provided in the Plan.

“*Reorganized Debtors*” means, subject to the Restructuring Transactions, the Debtors as reorganized pursuant to this Plan on or after the Effective Date, and their respective successors.

“*Reorganized Parent*” means, subject to the Restructuring Transactions, ExGen Texas Power Holdings, LLC, as reorganized pursuant to this Plan on or after the Effective Date, and its successors.

“*Required Lenders*” means the “Required Lenders” as defined in the Prepetition Credit Agreement.

“*Restricted Holders*” has the meaning set forth in Article V.J of this Plan.

“*Restructuring Documents*” means, collectively, the documents and agreements (and the exhibits, schedules, annexes and supplements thereto) necessary to implement, or entered into in connection with, this Plan, including, without limitation, the Plan Supplement, the Exhibits, the Plan Schedules, the New Governance Documents and the Plan Securities and Documents.

“*Restructuring Transaction*” has the meaning ascribed thereto in Article V.A of this Plan.

“*Scheduled*” means with respect to any Claim, the status and amount, if any, of such Claim as set forth in the Schedules.

“*Schedules*” means the schedules of assets and liabilities, schedules of Executory Contracts, and statement of financial affairs Filed by the Debtors pursuant to section 521 of the Bankruptcy Code and the applicable Bankruptcy Rules, as such Schedules they may be amended, modified, or supplemented from time to time.

“*Secured Claim*” means a Claim that is secured by a Lien on property in which any of the Debtors’ Estates have an interest or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim holder’s interest in such Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or, in the case of setoff, pursuant to section 553 of the Bankruptcy Code.

“*Secured Sponsor Claim*” means a Secured Claim (other than an Administrative Claim) of the Sponsor under the Prepetition Loan Documents, including the Permitted Secured Affiliate Agreements (as defined in the Prepetition Intercreditor Agreement), and subject to the limitations provided in the Prepetition Intercreditor Agreement, solely to the extent such Secured Sponsor Claim is not previously

paid in accordance with a Final Order of the Bankruptcy Court authorizing payment of such Secured Sponsor Claim.

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

“*Securities Act*” means the Securities Act of 1933, 15 U.S.C. §§ 77c-77aa, as now in effect or hereafter amended, and any similar federal, state or local law.

“*Settled Claims*” means, solely to the extent that the conditions precedent to a release of the Sponsor and its Related Persons set forth in Article X.A are satisfied, all Claims and Causes of Action, whether direct or derivative, whether known or unknown, made or which could be made against the Sponsor and its Related Persons, which are to be released (subject to the conditions precedent to a release of the Sponsor and its Related Persons set forth in Article X.A being satisfied) pursuant to Article X.B.1 in exchange for the Sponsor Compromise. For the avoidance of doubt, unless the conditions precedent to a release of the Sponsor and its Related Persons set forth in Article X.A are satisfied, no Claims or Causes of Action shall constitute Settled Claims.

“*Sponsor*” means Exelon Generation Company, LLC, owner of 100% of the Equity Interests in Parent.

“*Sponsor Affiliate Agreements*” means the Permitted Secured Affiliate Agreements (as defined in the Prepetition Intercreditor Agreement) and (b) the O&M Agreements (as defined in the Prepetition Credit Agreement).

“*Sponsor Compromise*” shall mean the rights and obligations of the Debtors, the Reorganized Debtors, the Required Lenders and the Sponsor set forth in Article V.D. hereof.

“*Sponsor Compromise Payment*” means the Cash payment to be provided by the Sponsor on the Effective Date, to fund distributions under the Plan, in the aggregate amount equal to the sum of (i) \$15 million and (ii) the amount outstanding under that certain Debt Service Reserve Account Guarantee Agreement, dated as of September 24, 2014, by the Sponsor in favor of the Prepetition Administrative Agent.

“*Stamp or Similar Tax*” means any stamp tax, recording tax, conveyance fee, intangible or similar tax, mortgage tax, personal or real property tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes or fees imposed or assessed by any Governmental Unit.

“*Subsequent Distribution Date*” means the last Business Day of the month following the end of each calendar quarter after the Effective Date; *provided, however*, that if the Effective Date is within thirty (30) days of the end of a calendar quarter, then the first Subsequent Distribution Date will be the last Business Day of the month following the end of the first (1<sup>st</sup>) calendar quarter after the calendar quarter in which the Effective Date falls.

“*Transition Services Agreement*” means the agreement, in substantially the form Filed with the Plan Supplement, which agreement shall contain terms and conditions in accordance with the Term Sheet annexed to the Disclosure Statement as Exhibit H and otherwise reasonably acceptable to the Debtors, the Sponsor, and the Required Lenders, with respect to the provision of transition services by the Sponsor and

its Affiliates to the Reorganized Debtors, and which is further described in Article V.D hereof pursuant to the Sponsor Compromise.

“*Unexercised Equity Interests*” means any and all unexercised options, warrants, calls, rights, puts, awards, commitments, or any other agreements of any character, kind, or nature to acquire an Old Parent Interest, as in existence immediately prior to the Effective Date.

“*Unexpired Lease*” means a lease to which any Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

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

“*Unsecured Deficiency Claim*” means, with respect to a Claim that is secured by a Lien on property in which any Debtor’s Estate has an interest or that is subject to setoff under section 553 of the Bankruptcy Code, the amount by which such Claim exceeds the value of the Claim holder’s interest in such Estate’s interest in such property or the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or, in the case of setoff, pursuant to section 553 of the Bankruptcy Code.

“*Voting and Claims Agent*” means Kurtzman Carson Consultants LLC, in its capacity as solicitation, notice, claims and balloting agent for the Debtors.

“*Voting Classes*” means Classes 6 and 7.

“*Voting Deadline*” means the date and time by which all Ballots must be received by the Voting and Claims Agent in accordance with the Disclosure Statement Order, which date is [\_\_\_\_], 2017 as set forth in the Disclosure Statement Order.

“*Voting Record Date*” means the date for determining which Holders of Claims in the Voting Classes are entitled to receive the Disclosure Statement and to vote to accept or reject this Plan.

“*Wolf Hollow II*” means Wolf Hollow II Power, LLC, an Affiliate of the Sponsor.

## ARTICLE II.

### ADMINISTRATIVE, PRIORITY TAX AND COMMODITY HEDGE CLAIMS

#### A. *Administrative Claims*

Subject to sub-paragraph 1 below, on the later of the Effective Date and the date on which an Administrative Claim becomes an Allowed Administrative Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Claim (other than an Allowed Professional Fee Claim (the treatment of which is set forth in Article II.B) or a Commodity Hedge Agreement Claim (the treatment of which is set forth in Article II.C)) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim either (i) Cash equal to the amount of such Allowed Administrative Claim; or (ii) such other less favorable treatment as to which (x) prior to the Effective Date, the Debtors (with the consent of the Required Lenders) or (y) on or after the Effective Date, the Reorganized Debtors, as applicable, and the Holder of such Allowed Administrative Claim shall have agreed upon; *provided, however*, that Administrative Claims incurred by any Debtor in the ordinary course of business may be paid in the ordinary course of business by such applicable Debtor or



Reorganized Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court.

1. Bar Date for Administrative Claims

Except as otherwise provided in this Article II.A and section 503(b)(1)(D) of the Bankruptcy Code, unless previously Filed or paid, (i) requests for payment of Administrative Claims arising prior to the Initial Administrative Claims Record Date must be Filed and served on the Debtors or the Reorganized Debtors, as applicable, pursuant to the procedures specified in the Administrative Claims Order no later than the Initial Administrative Claims Bar Date, and (ii) requests for payment of Administrative Claims arising in the time period between the Initial Administrative Claims Record Date and the Effective Date must be Filed and served on the Debtors or the Reorganized Debtors, as applicable, pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order or the occurrence of the Effective Date (as applicable) no later than the Final Administrative Claims Bar Date; provided that the foregoing shall not apply to either the Holders of Claims arising under section 503(b)(1)(D) of the Bankruptcy Code or the Bankruptcy Court or United States Trustee as the Holders of Administrative Claims. Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claims that do not File and serve such a request by the applicable Administrative Claims Bar Date shall be forever barred, estopped and enjoined from asserting such Administrative Claims against the Debtors, the Reorganized Debtors and their respective Estates and property and such Administrative Claims shall be deemed discharged as of the Effective Date. All such Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Article X.G hereof. Nothing in this Article II.A shall limit, alter, or impair the terms and conditions of the Claims Bar Date Order with respect to the Claims Bar Date for filing administrative expense claims arising under Section 503(b)(9) of the Bankruptcy Code.

Objections to such requests must be Filed and served on the Reorganized Debtors and the requesting party by the later of (a) the Claims Objection Deadline and (b) 60 days after the Filing of the applicable request for payment of Administrative Claims, if applicable, as the same may be modified or extended from time to time by Final Order of the Bankruptcy Court.

For the avoidance of doubt, all fees and expenses of the (x) Ad Hoc Committee Professionals and (y) Prepetition Agents shall be paid in full, in Cash, on the Effective Date or as soon as reasonably practicable thereafter (to the extent not previously paid during the course of the Chapter 11 Cases) by the Debtors or the Reorganized Debtors, without the requirement to file a fee application with the Bankruptcy Court or a formal request for payment by either Administrative Claims Bar Date.

2. Professional Fee Claims

Professionals asserting a Professional Fee Claim for services rendered before the Effective Date must File and serve on the Reorganized Debtors and such other Entities who are designated in the Confirmation Order an application for final allowance of such Professional Fee Claim no later than the Professional Fees Bar Date; provided that the Reorganized Debtors shall pay Professionals in the ordinary course of business for any work performed after the Effective Date, including those reasonable and documented fees and expenses incurred by Professionals in connection with the implementation and consummation of this Plan, in each case without further application or notice to or order of the Bankruptcy Court; provided, further, that any professional who may receive compensation or reimbursement of expenses pursuant to the Ordinary Course Professionals Order may continue to receive such compensation and reimbursement of expenses from the Debtors and Reorganized Debtors for services rendered before the Effective Date pursuant to the Ordinary Course Professionals Order, in each case without further application or notice to or order of the Bankruptcy Court.

Objections to any Professional Fee Claim must be Filed and served on the Reorganized Debtors and the requesting party by no later than twenty (20) days after the Filing of the applicable final request for payment of the Professional Fee Claim.

Each Holder of an Allowed Professional Fee Claim shall be paid in full in Cash by the Reorganized Debtors, within five (5) Business Days after entry of the order approving such Allowed Professional Fee Claim.

*B. Priority Tax Claims*

Subject to Article VIII hereof, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of (x) prior to the Effective Date, the Debtors (with the consent of the Required Lenders) or (y) on or after the Effective Date, the Reorganized Debtors, as applicable: (A) Cash equal to the amount of such Allowed Priority Tax Claim; (B) such other less favorable treatment as to which the Debtors (with the consent of the Required Lenders) or Reorganized Debtors, as applicable, and the Holder of such Allowed Priority Tax Claim shall have agreed upon in writing; (C) such other treatment such that it will not be Impaired pursuant to section 1124 of the Bankruptcy Code or (D) pursuant to and in accordance with sections 1129(a)(9)(C) and 1129(a)(9)(D) of the Bankruptcy Code, Cash in an aggregate amount of such Allowed Priority Tax Claim payable in regular installment payments over a period ending not more than five (5) years after the Petition Date, plus simple interest at the rate required by applicable non-bankruptcy law on any outstanding balance from the Effective Date, or such lesser rate as is agreed to in writing by a particular taxing authority and the Debtors (with the consent of the Required Lenders) or Reorganized Debtors, as applicable, pursuant to section 1129(a)(9)(C) of the Bankruptcy Code; *provided, however*, that Priority Tax Claims incurred by any Debtor in the ordinary course of business may be paid in the ordinary course of business by such applicable Debtor or Reorganized Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. Any installment payments to be made under clause (C) or (D) above shall be made in equal quarterly Cash payments beginning on the first applicable Subsequent Distribution Date, and continuing on each Subsequent Distribution Date thereafter until payment in full of the applicable Allowed Priority Tax Claim.

*C. Commodity Hedge Agreement Claims*

On the Effective Date, all Commodity Hedge Agreement Claims due and owing by any of the Debtors as of the Effective Date shall be paid in full in Cash.

In accordance with the terms of Articles V.E and V.F hereof, upon the Effective Date, and notwithstanding anything herein to the contrary, the Amended Hedge Agreement shall remain a legal, valid, binding and authorized indebtedness and obligation of the applicable Reorganized Debtors and the Commodity Hedge Counterparty enforceable in accordance with their terms and shall not be discharged or released as a result of the effectiveness of this Plan.

**ARTICLE III.****CLASSIFICATION AND TREATMENT  
OF CLASSIFIED CLAIMS AND EQUITY INTERESTS****A. Summary**

This Plan constitutes a separate plan of reorganization for each Debtor. All Claims and Equity Interests, except Administrative Claims and Priority Tax Claims, are placed in the Classes set forth below. For all purposes under this Plan, each Class will contain sub-Classes for each of the Debtors (*i.e.*, there will be 10 Classes for each Debtor); provided, that any Class that is vacant as to a particular Debtor will be treated in accordance with Article III.D below.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes, including, without limitation, for voting, confirmation and distribution pursuant hereto and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. This Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remaining portion of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released, Disallowed or otherwise settled prior to the Effective Date.

Summary of Classification and Treatment of Classified Claims and Equity Interests

<b>Class</b>	<b>Claim/Equity Interest</b>	<b>Status</b>	<b>Voting Rights</b>
1.	Other Priority Claims	Unimpaired	Deemed to Accept
2.	Other Secured Claims	Unimpaired	Deemed to Accept
3.	Secured Tax Claims	Unimpaired	Deemed to Accept
4.	Prepetition Revolving Facility Claims	Unimpaired	Deemed to Accept
5.	Secured Sponsor Claims	Unimpaired	Deemed to Accept
6.	Prepetition Credit Agreement Claims (Secured Portion)	Impaired	<b><i>Entitled to Vote</i></b>
7.	General Unsecured Claims	Impaired	<b><i>Entitled to Vote</i></b>
8.	Intercompany Claims	Impaired	Deemed to Reject
9.	Old Parent Interests	Impaired	Deemed to Reject
10.	Old Intercompany Interests	Unimpaired	Deemed to Accept

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

1. Class 1 - Other Priority Claims

- (a) *Classification:* Class 1 consists of the Other Priority Claims.
- (b) *Treatment:* Subject to Article VIII hereof, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date if such Class 1 Claim is an Allowed Class 1 Claim as of the Effective Date or (ii) the date on which such Class 1 Claim becomes an Allowed Class 1 Claim, each Holder of an Allowed Class 1 Claim shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of (x) prior to the Effective Date, the Debtors (with the consent of the Required Lenders) or (y) on or after the Effective Date, Reorganized Debtors, as applicable: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtors (with the consent of the Required Lenders) or Reorganized Debtors, as applicable, and the Holder of such Allowed Class 1 Claim shall have agreed upon in writing; or (C) such other treatment such that it will not be impaired pursuant to section 1124 of the Bankruptcy Code; *provided, however*, that Class 1 Claims incurred by any Debtor in the ordinary course of business may be paid in the ordinary course of business by such applicable Debtor or Reorganized Debtor in accordance with the terms and conditions of any agreements relating thereto without further notice to or order of the Bankruptcy Court.
- (c) *Voting:* Class 1 is an Unimpaired Class, and the Holders of Claims in Class 1 are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Claims in Class 1 are not entitled to vote to accept or reject this Plan.

2. Class 2 - Other Secured Claims

- (a) *Classification:* Class 2 consists of the Other Secured Claims. Class 2 consists of separate subclasses for each Other Secured Claim.
- (b) *Treatment:* Subject to Article VIII hereof, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date if such Class 2 Claim is an Allowed Class 2 Claim as of the Effective Date or (ii) the date on which such Class 2 Claim becomes an Allowed Class 2 Claim, each Holder of an Allowed Class 2 Claim shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim, at the election of (x) prior to the Effective Date, the Debtors (with the consent of the Required Lenders) or (y) on or after the Effective Date, the Reorganized Debtors, as applicable: (A) Cash equal to the amount of such Allowed Class 2 Claim; (B) such other less favorable treatment as to which the Debtors (with the consent of the Required Lenders) or Reorganized Debtors, as applicable, and the Holder of such Allowed Class 2 Claim shall have agreed upon in writing; (C) the Collateral securing such Allowed Class 2 Claim; or (D) such other treatment such that it will not be impaired pursuant to section 1124 of the Bankruptcy Code; *provided*,

*however*, that Class 2 Claims incurred by any Debtor in the ordinary course of business may be paid in the ordinary course of business by such applicable Debtor or Reorganized Debtor in accordance with the terms and conditions of any agreements relating thereto without further notice to or order of the Bankruptcy Court.

- (c) *Voting*: Class 2 is an Unimpaired Class, and the Holders of Claims in Class 2 are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Claims in Class 2 are not entitled to vote to accept or reject this Plan.

### 3. Class 3 - Secured Tax Claims

- (a) *Classification*: Class 3 consists of the Secured Tax Claims.
- (b) *Treatment*: Subject to Article VIII hereof, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date if such Class 3 Claim is an Allowed Class 3 Claim as of the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 3 Claim, at the election of (x) prior to the Effective Date, the Debtors (with the consent of the Required Lenders) or (y) on or after the Effective Date, the Reorganized Debtors, as applicable: (A) Cash equal to the amount of such Allowed Class 3 Claim; (B) such other less favorable treatment as to which the Debtors (with the consent of the Required Lenders) or Reorganized Debtors, as applicable, and the Holder of such Allowed Class 3 Claim shall have agreed upon in writing; (C) the Collateral securing such Allowed Class 3 Claim; (D) such other treatment such that it will not be impaired pursuant to section 1124 of the Bankruptcy Code or (E) pursuant to and in accordance with sections 1129(a)(9)(C) and 1129(a)(9)(D) of the Bankruptcy Code, Cash in an aggregate amount of such Allowed Class 3 Claim payable in regular installment payments over a period ending not more than five (5) years after the Petition Date, plus simple interest at the rate required by applicable non-bankruptcy law on any outstanding balance from the Effective Date, or such lesser rate as is agreed to in writing by a particular taxing authority and the Debtors (with the consent of the Required Lenders) or Reorganized Debtors, as applicable, pursuant to section 1129(a)(9)(C) of the Bankruptcy Code; *provided, however*, that Class 3 Claims incurred by any Debtor in the ordinary course of business may be paid in the ordinary course of business by such applicable Debtor or Reorganized Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. Any installment payments to be made under clause (E) above shall be made in equal quarterly Cash payments beginning on the first applicable Subsequent Distribution Date, and continuing on each Subsequent Distribution Date thereafter until payment in full of the applicable Allowed Class 3 Claim.
- (c) *Voting*: Class 3 is an Unimpaired Class, and the Holders of Claims in Class 3 shall be conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Claims in Class 3 are not entitled to vote to accept or reject this Plan.

4. Class 4 – Prepetition Revolving Facility Claims

- (a) *Classification:* Class 4 consists of the Prepetition Revolving Facility Claims.
- (b) *Treatment:* Subject to Article VIII hereof, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date if such Class 4 Claim is an Allowed Class 4 Claim as of the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 4 Claim, at the election of (x) prior to the Effective Date, the Debtors (with the consent of the Required Lenders) or (y) on or after the Effective Date, the Reorganized Debtors, as applicable: (A) Cash equal to the amount of such Allowed Class 4 Claim; (B) such other less favorable treatment as to which the Debtors (with the consent of the Required Lenders) or Reorganized Debtors, as applicable, and the Holder of such Allowed Class 4 Claim shall have agreed upon in writing; or (C) such other treatment such that it will not be impaired pursuant to section 1124 of the Bankruptcy Code.
- (c) *Voting:* Class 4 is an Unimpaired Class, and the Holders of Claims in Class 4 shall be conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Claims in Class 4 are not entitled to vote to accept or reject this Plan.

5. Class 5 – Secured Sponsor Claims

- (a) *Classification:* Class 5 consists of the Secured Sponsor Claims.
- (b) *Treatment:* The Secured Sponsor Claims are deemed Allowed Claims in the aggregate principal amount of \$[\_\_\_\_\_]. Upon effectiveness of the Sponsor Compromise (subject to the conditions precedent to the Sponsor Compromise set forth in Article V.D being satisfied), the aggregate amount of Secured Sponsor Claims shall be waived and shall be deemed forever waived and discharged pursuant to the Sponsor Compromise. In the event that the Effective Date occurs but the conditions precedent to the Sponsor Compromise set forth in Article V.D are not satisfied, then the Secured Sponsor Claims shall be deemed to be Class 6 Prepetition Credit Agreement Claims (Secured Portion), and shall be entitled to the voting and treatment contained in Article III.B.6 hereof.
- (c) *Voting:* Class 5 is an Unimpaired Class, and the Holders of Claims in Class 5 shall be conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Claims in Class 5 are not entitled to vote to accept or reject this Plan.

6. Class 6 - Prepetition Credit Agreement Claims (Secured Portion)

- (a) *Classification:* Class 6 consists of the Prepetition Credit Agreement Claims (Secured Portion).

- (b) *Allowance:* The Prepetition Credit Agreement Claims (Secured Portion) are deemed Allowed Claims in the aggregate principal amount of \$[\_\_\_\_\_], plus any accrued and unpaid interest payable on such amounts as of the Petition Date.<sup>2</sup>
- (c) *Treatment:* On the Effective Date and in addition to the reimbursement described in Article V of this Plan, each Holder of a Prepetition Credit Agreement Claim (Secured Portion) shall receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Prepetition Credit Agreement Claim (Secured Portion) its respective Pro Rata share of the New Equity Interests Pool.
- (d) *Voting:* Class 6 is Impaired, and Holders of Claims in Class 6 are entitled to vote to accept or reject this Plan.

7. Class 7 – General Unsecured Claims

- (a) *Classification:* Class 7 consists of the General Unsecured Claims, including, but not limited to, the Prepetition Credit Agreement Claims (Unsecured Deficiency Portion).
- (b) *Allowance:* The Prepetition Credit Agreement Claims (Unsecured Deficiency Portion) are deemed Allowed Claims in the aggregate principal amount of \$[\_\_\_\_\_].
- (c) *Treatment:*

Subject to Article VIII hereof, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date if such Class 7 Claim is an Allowed Class 7 Claim as of the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 7 Claim, at the election of (x) prior to the Effective Date, the Debtors (with the consent of the Required Lenders) or (y) on or after the Effective Date, the Reorganized Debtors, as applicable: (A) its Pro Rata share of the General Unsecured Claims Cash Amount or (B) such other less favorable treatment as to which the Debtors (with the consent of the Required Lenders) or Reorganized Debtors, as applicable, and the Holder of such Allowed Class 7 Claim shall have agreed upon in writing.

- (d) *Voting:* Class 7 is Impaired, and Holders of Claims in Class 7 (including, for the avoidance of doubt, Holders of the Prepetition Credit Agreement Claims (Unsecured Deficiency Portion)) are entitled to vote to accept or reject this Plan.

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<sup>2</sup>The Allowed amount excludes any accrued fees, costs, and expenses that will be paid in Cash on the Effective Date pursuant to this Plan.

8. Class 8 – Intercompany Claims

- (a) *Classification:* Class 8 consists of the Intercompany Claims.
- (b) *Treatment:* Subject to the Restructuring Transactions, the Intercompany Claims shall be reinstated, compromised, or cancelled, at the option of the relevant Holder of such Intercompany Claims with the consent of the Required Lenders.
- (c) *Voting:* Class 6 is an Impaired Class. Because the Holders of such Intercompany Claims are not expected to receive any distributions pursuant to this Plan, they are therefore conclusively deemed, pursuant to Section 1126(g) of the Bankruptcy Code, to have rejected this Plan and are not entitled to vote to accept or reject this Plan.

9. Class 9 - Old Parent Interests

- (a) *Classification:* Class 9 consists of the Old Parent Interests.
- (b) *Treatment:* On the Effective Date, the Old Parent Interests will be cancelled without further notice to, approval of or action by any Person or Entity, and each Holder of an Old Parent Interest shall not receive any distribution or retain any property on account of such Old Parent Interest.
- (c) *Voting:* Class 9 is an Impaired Class. Because the sole Holder of such Old Parent Interests (Sponsor) is not expected to receive any distributions pursuant to this Plan, it is therefore conclusively deemed, pursuant to Section 1126(g) of the Bankruptcy Code, to have rejected this Plan and is not entitled to vote to accept or reject this Plan.

10. Class 10 - Old Intercompany Interests

- (a) *Classification:* Class 10 consists of any and all Intercompany Interests.
- (b) *Treatment:* Subject to the Restructuring Transactions, the Old Intercompany Interests shall remain effective and outstanding on the Effective Date and shall be owned and held by Reorganized Parent and/or another applicable Entity as set forth in greater detail in the Description of Structure as of the Effective Date.
- (c) *Voting:* Class 10 is an Unimpaired Class, and the Holders of the Old Intercompany Interests in Class 10 are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of the Old Intercompany Interests in Class 8 are not entitled to vote to accept or reject this Plan.

C. *Special Provision Governing Unimpaired Claims*

Except as otherwise provided herein, nothing under this Plan shall affect or limit the Debtors' or the Reorganized Debtors' rights and defenses (whether legal or equitable) in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.



*D. Elimination of Vacant Classes*

Any Class of Claims that is not occupied as of the commencement of the Confirmation Hearing by an Allowed Claim or a claim temporarily allowed under Bankruptcy Rule 3018, or as to which no vote is cast, shall be deemed eliminated from this Plan for purposes of voting to accept or reject this Plan and for purposes of determining acceptance or rejection of this Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

**ARTICLE IV.**

**ACCEPTANCE OR REJECTION OF THE PLAN**

*A. Presumed Acceptance of Plan*

Classes 1-5, and 10 are Unimpaired under this Plan. Therefore, the Holders of Claims or Equity Interests in such Classes are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code and are not entitled to vote to accept or reject this Plan.

*B. Presumed Rejection of Plan*

Classes 8 and 9 are Impaired under this Plan. Because the Holders of Claims or Equity Interests in such Classes are not expected to receive any distributions pursuant to this Plan, they are conclusively deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code and are not entitled to vote to accept or reject this Plan.

*C. Voting Classes*

Classes 6 and 7 are Impaired under this Plan. The Holders of Claims in such Classes as of the Voting Record Date are entitled to vote to accept or reject this Plan.

*D. Acceptance by Impaired Class of Claims*

Pursuant to section 1126(c) of the Bankruptcy Code and except as otherwise provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims has accepted this Plan if the Holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims in such Class actually voting have voted to accept this Plan.

*E. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code*

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of this Plan by either Class 6 or Class 7. The Debtors request confirmation of this Plan under section 1129(b) of the Bankruptcy Code with respect to any Impaired Class that does not accept this Plan pursuant to section 1126 of the Bankruptcy Code. The Debtors reserve the right to modify this Plan or any Exhibit or Plan Schedule in order to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

*F. Votes Solicited in Good Faith*

The Debtors have, and upon the Confirmation Date shall be deemed to have, solicited votes on this Plan from the Voting Classes in good faith and in compliance with the applicable provisions of the Bankruptcy Code, including, without limitation, sections 1125 and 1126 of the Bankruptcy Code, and any

applicable non-bankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with the solicitation. Accordingly, the Debtors, the Reorganized Debtors, and each of their respective Related Persons shall be entitled to, and upon the Confirmation Date are hereby granted, the protections of section 1125(e) of the Bankruptcy Code.

## ARTICLE V.

### MEANS FOR IMPLEMENTATION OF THE PLAN

#### A. *Restructuring Transactions*

Without limiting any rights and remedies of the Debtors or Reorganized Debtors under this Plan or applicable law, but in all cases subject to the terms and conditions of the Restructuring Documents and any consents or approvals required thereunder, the entry of the Confirmation Order shall constitute authorization for the Reorganized Debtors to take, or to cause to be taken, all actions necessary or appropriate to consummate and implement the provisions of this Plan prior to, on and after the Effective Date, including such actions as may be necessary or appropriate to effectuate a corporate restructuring of their respective businesses (whether for tax purposes or otherwise), to simplify the overall corporate structure of the Reorganized Debtors, to transfer or re-domesticate certain of the Affiliate Debtors, from their existing jurisdiction of formation to other jurisdictions for purposes of continuing their formation, organization or incorporation, as applicable, or to change the classification of any of the Reorganized Debtors or Affiliates of the Debtors for United States federal income tax purposes. Such restructuring may include one or more mergers, consolidations, conversions, transfers, restructures, dispositions, liquidations or dissolutions, creations of one or more new Entities, or the making of any tax classification elections, in each case, as may be determined by (i) prior to the Effective Date, the Debtors (with the consent of the Required Lenders) or (ii) on or after the Effective Date, the Reorganized Debtors, to be necessary or appropriate (collectively, the “**Restructuring Transactions**”). To the extent known, any such Restructuring Transactions will be summarized in the Description of Structure, and in all cases, such transactions shall be subject to the terms and conditions of this Plan and the Restructuring Documents and any consents or approvals required hereunder or thereunder. Notwithstanding the foregoing, the Reorganized Debtors shall be authorized to (i) take all commercially reasonable steps to wind down or otherwise effectuate a state law dissolution of Handley Power, LLC following the closing of the transactions contemplated by the Handley Sale Order and Handley APA and (ii) remove any reference to “ExGen” in the corporate names of the Reorganized Debtors.

All such Restructuring Transactions taken, or caused to be taken, shall be deemed to have been authorized and approved by the Bankruptcy Court subject to the Confirmation Order. The actions to effectuate the Restructuring Transactions may include: (i) the execution and delivery of appropriate agreements or other documents of merger, consolidation, restructuring, disposition, liquidation, or dissolution containing terms that are consistent with the terms of this Plan and that satisfy the applicable requirements of applicable state law and such other terms to which the applicable Entities may agree; (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, duty, or obligation on terms consistent with the terms of this Plan and having such other terms to which the applicable Entities may agree; (iii) the filing of appropriate certificates or articles of merger, consolidation, conversion, transfer or dissolution pursuant to applicable state law; (iv) the creation of one or more new Entities; (v) the filing of appropriate election forms with the IRS or other tax authorities; and (vi) all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable state law in connection with such transactions, but in all cases subject to the terms and conditions of this Plan and the Restructuring Documents and any consents or approvals required thereunder.

*B. Continued Corporate Existence*

Subject to the Restructuring Transactions permitted by Article V.A of this Plan, after the Effective Date, the Reorganized Debtors shall continue to exist as separate legal entities in accordance with the applicable law in the respective jurisdiction in which they are incorporated, organized or formed and pursuant to their respective certificates of formation and limited liability company agreements, or other applicable organizational documents, in effect immediately prior to the Effective Date, except to the extent such certificates of formation and limited liability company agreements, or other applicable organizational documents, are amended, restated or otherwise modified under this Plan, or as otherwise contemplated in the Description of Structure. Notwithstanding anything to the contrary herein, the Claims against a particular Debtor or Reorganized Debtor shall remain the obligations solely of such Debtor or Reorganized Debtor and shall not become obligations of any other Debtor or Reorganized Debtor solely by virtue of this Plan or the Chapter 11 Cases.

*C. Vesting of Assets in the Reorganized Debtors Free and Clear of Liens and Claims*

Except as otherwise expressly provided in this Plan, the Confirmation Order, or any Restructuring Document, pursuant to sections 1123(a)(5), 1123(b)(3), 1141(b) and (c) and other applicable provisions of the Bankruptcy Code, on and after the Effective Date, all property and assets of the Estates of the Debtors, including all claims, rights, and Litigation Claims of the Debtors, and any other assets or property acquired by the Debtors or the Reorganized Debtors during the Chapter 11 Cases or under or in connection with this Plan (other than the assets sold or contemplated to be sold by the Handley APA and the Handley Sale Order), shall automatically, without the notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, rule or any requirement of further action, vote or other approval or authorization of the security holders, equity owners, members, managers, officers or directors of the Debtors, the Reorganized Debtors or the other applicable Entity or by any other person (except for those expressly required pursuant hereto or by the Restructuring Documents), vest in the Reorganized Debtors free and clear of all Claims, Liens, charges, and other encumbrances, subject to the Restructuring Transactions and Liens which survive the occurrence of the Effective Date as described in this Plan. Notwithstanding anything to the contrary in this Article V.C or otherwise, on and after the Effective Date, the obligations under the Amended Hedge Agreement shall be secured in accordance with the Exit Security Documents. On and after the Effective Date, the Reorganized Debtors may (i) operate their respective businesses, (ii) use, acquire, and dispose of their respective property and (iii) compromise or settle any Claims, in each case without notice to, supervision of or approval by the Bankruptcy Court and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than restrictions expressly imposed by this Plan or the Confirmation Order.

For the avoidance of doubt, and notwithstanding anything to the contrary contained in this Plan, the Debtors shall not transfer or be deemed to have transferred to (or otherwise vest in) the Reorganized Debtors the Settled Claims or any other claims or Causes of Action (i) released pursuant to Article X.B.1 hereof or (ii) exculpated pursuant to Article X.E hereof to the extent of any such exculpation.

*D. Sponsor Compromise*

In exchange for the releases, exculpations, injunctions and other consideration set forth in Article X, hereof, the Sponsor agrees (subject to the conditions precedent to the Sponsor Compromise set forth in this section being satisfied), on the Effective Date, to: (i) pay the Sponsor Compromise Payment to the Debtors; (ii) enter into the Amended Shared Assets Agreements and the Transition Services Agreement, each in form and substance acceptable to the Debtors, the Sponsor and the Required Lenders and in accordance with the Term Sheets annexed as exhibits to the Disclosure Statement; (iii) contribute the shared assets at no cost to the Debtors or Reorganized Debtors pursuant to the Contribution Agreements;

and (iv) waive (A) the Secured Sponsor Claims and (B) any Claim (other than an Administrative Claim) of the Sponsor accruing under any of the O&M Agreements (as defined in the Prepetition Credit Agreement); provided, however that: (w) if the amount of Secured Sponsor Claims (before giving effect to such waiver) is less than \$10,800,000.00, then the Sponsor shall pay (or otherwise credit the Debtors on account of post-petition amounts outstanding to the Sponsor) the difference between \$10,800,000.00 and the amount of such Secured Sponsor Claims, (x) if the amount of Secured Sponsor Claims (before giving effect to such waiver) is more than \$10,800,000.00, then the Sponsor Compromise Payment shall be reduced by the difference between the amount of such Secured Sponsor Claims and \$10,800,000.00, (y) if the amount of General Unsecured Claims (other than Administrative Claims) of the Sponsor accruing under any of the O&M Agreements (before giving effect to such waiver) is less than \$1,900,000.00, then the Sponsor shall pay (or otherwise credit the Debtors on account of post-petition amounts outstanding to the Sponsor) the difference between \$1,900,000.00 and the amount of such Claims and (z) if the amount of General Unsecured Claims (other than Administrative Claims) of the Sponsor accruing under any of the O&M Agreements (before giving effect to such waiver) is more than \$1,900,000.00, then the Sponsor Compromise Payment shall be reduced by the difference between the amount of such General Unsecured Claims and \$1,900,000.00 (but, in no event shall such reduction in the Sponsor Compromise Payment on account of the O&M Agreements be more than \$150,000.00).

Subject to the conditions precedent to the Sponsor Compromise set forth in this section being satisfied, beginning on the Petition Date and until the Effective Date, the Sponsor shall be obligated to perform under, and shall receive post-petition payments in the ordinary course pursuant to, the Sponsor Affiliate Agreements in accordance with the terms therein; provided; however, that the Sponsor shall provide the GMSA Services at no cost to the Debtors until the earlier of (i) February 28, 2018; and (ii) the Effective Date.

Beginning on the Petition Date and ending on the Effective Date, the Sponsor shall be obligated to maintain all existing credit support with respect to the Debtors' agreements in existence as of the Petition Date, to or for the benefit of the Debtors.

Subject to the conditions precedent to the Sponsor Compromise set forth in this section being satisfied on the Effective Date, the Reorganized Debtors and the Sponsor shall enter into the Transition Services Agreement for ninety (90) days (or such lesser time as determined by the Reorganized Debtors), and, subject to the Term Sheet annexed to the Disclosure Statement as Exhibit H, the Reorganized Debtors shall have no obligation to pay, and the Sponsor shall not earn any fees thereunder during such period. Thereafter, the Reorganized Debtors shall have the option, in their sole discretion, to extend the provision of transition services by the Sponsor for an additional sixty (60) days, in thirty (30) day increments, in exchange for payment of the applicable portion of the fees set forth in the Transition Services Agreement or such other fees that may otherwise be agreed upon between the parties.

On the Effective Date, the Debtors and Reorganized Debtors are authorized to execute and deliver, and to consummate the transactions contemplated by, the Amended Shared Assets Agreements, the Contribution Agreements, and the Transition Services Agreement without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or vote, consent, authorization, or approval of any Person.

Notwithstanding anything to the contrary contained herein, the Sponsor Compromise shall not be effective unless and until the following conditions precedent are satisfied: (i) the Plan is confirmed and the Effective Date occurs; and (ii) all conditions to the application of the release provisions of Article X to the Settled Claims and to the Sponsor and its Related Persons contained in Article X.A are satisfied, and the release provisions in Article X shall apply to the Settled Claims and to the Sponsor and its Related

Persons (subject to such modifications as may be set forth in the Confirmation Order)<sup>3</sup>; provided, however, that for the avoidance of doubt, the conditions set forth in this paragraph and the conditions set forth in Article X.A may occur concurrently. In the event the Sponsor Compromise is not effective pursuant to the foregoing: (i) the Sponsor shall not be obligated to perform under the Sponsor Affiliate Agreements except as required under applicable law (including, without limitation, the Bankruptcy Code); (ii) the Sponsor shall not be required to provide any of the consideration provided under the Sponsor Compromise and shall be entitled to seek payment of any amounts outstanding that were otherwise waived or credited under the Sponsor Compromise; (iii) the agreements reached under the Sponsor Compromise shall not be deemed a waiver or admission of any kind; and (iv) the Sponsor reserves all rights in connection with any claims or defenses in connection with the foregoing.

For the avoidance of doubt, the Sponsor Compromise is made as a settlement, without admitting any wrongdoing of any kind, of any potential claims, known or unknown, that could be asserted against the Sponsor and any of its Related Persons.

*E. Letter of Credit Facility Documents, Amended Hedge Agreement and Exit Security Documents*

On the Effective Date, the Debtors and the Reorganized Debtors, as applicable, shall be authorized to execute and deliver, and to consummate the transactions contemplated by, the Letter of Credit Facility Documents (in form and substance acceptable to the Debtors and the Required Lenders) and the Exit Security Documents (in form and substance acceptable to the Debtors and the Required Lenders and reasonably acceptable to the Commodity Hedge Counterparty) and without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity (other than as expressly required by the Letter of Credit Facility Documents or the Exit Security Documents). On the Effective Date, the Reorganized Debtors shall remain parties to the Amended Hedge Agreement. On the Effective Date, the Letter of Credit Facility Documents, the Amended Hedge Agreement and the Exit Security Documents shall constitute legal, valid, binding and authorized indebtedness and obligations of the Reorganized Debtors and/or one or more other applicable Entities as set forth in greater detail in the Description of Structure, enforceable in accordance with their respective terms and such indebtedness and obligations shall not be, and shall not be deemed to be, enjoined or subject to discharge, impairment, release or avoidance under this Plan, the Confirmation Order or on account of the Confirmation or Consummation of this Plan.

*F. No Discharge or Release of Certain Claims*

Notwithstanding anything in this Plan to the contrary, the Debtors and Reorganized Debtors have waived discharge or release of the Commodity Hedge Agreement Claims.

*G. New Equity Interests*

On the Effective Date, subject to the terms and conditions of the Restructuring Transactions, Reorganized Parent and/or another applicable Person or Entity, as set forth in greater detail in the Description of Structure, shall issue the New Equity Interests pursuant to this Plan and the New Governance Documents. Except as otherwise expressly provided in the Restructuring Documents, the Reorganized Parent shall not be obligated to register the New Equity Interests under the Securities Act or to list the New Equity Interests for public trading on any securities exchange.

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<sup>3</sup> NTD: Restriction on content of Confirmation Order now set forth in conditions in X.A.

Distributions of the New Equity Interests may be made by delivery or book-entry thereof by the applicable Distribution Agent in accordance with this Plan and the New Governance Documents. Upon the Effective Date, after giving effect to the transactions contemplated hereby, the authorized units or other equity securities of Reorganized Parent shall be that number of units of New Equity Interests as may be designated in the New Governance Documents.

H. *New Governance Documents*

Subject to the Restructuring Transactions permitted by Article V.A of this Plan, on or before the Effective Date, the Debtors and/or the Reorganized Debtors (as applicable), and/or any applicable Entity as set forth in the Description of Structure, as applicable, shall enter into the New Governance Documents, which shall become effective and binding in accordance with its terms and conditions upon the parties thereto, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity (other than as expressly required by the New Governance Documents).

On and as of the Effective Date, all of the Holders of New Equity Interests shall be deemed to be parties to the applicable New Governance Documents, without the need for execution by such Holder. The New Governance Documents, as applicable, shall be binding on all Persons receiving, or to which the New Equity Interests are issued or distributed and all Holders of the New Equity Interests (and such Persons' or Holders' respective successors and assigns), whether such New Equity Interest is received or to be received on or after the Effective Date and regardless of whether such Person executes or delivers a signature page to the New Governance Documents.

I. *[New Management Incentive Plan*

On and after the Effective Date, Reorganized Parent and/or another applicable Entity may adopt and implement the New Management Incentive Plan, whose terms and conditions, including recipients, individual awards and vesting periods, shall be determined by the New Board. The New Management Incentive Plan Equity will dilute all of the New Equity Interests equally.]

J. *Plan Securities and Related Documentation; Exemption from Securities Laws*

On and after the Effective Date, the Debtors, the Reorganized Debtors and any other applicable Entity as set forth in the Description of Structure, as applicable, are authorized to and shall provide or issue, as applicable, the New Equity Interests and any and all other securities to be distributed or issued under this Plan (collectively, the "**Plan Securities**") and any and all other notes, units, instruments, certificates, and other documents or agreements required to be distributed, issued, executed or delivered pursuant to or in connection with this Plan (collectively, the "**Plan Securities and Documents**"), in each case in form and substance acceptable to the Debtors and the Required Lenders, and without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity.

The distribution and issuance, as applicable, of the Plan Securities and Documents under this Plan shall be exempt from registration under applicable securities laws (including Section 5 of the Securities Act or any similar state or local law requiring the registration for offer or sale of a security or registration or licensing of an issuer of a security) pursuant to section 1145(a) of the Bankruptcy Code, Section 4(a)(2) of the Securities Act and/or other applicable exemptions. An offering of Plan Securities provided in reliance on the exemption from registration under the Securities Act pursuant to section 1145(a) of the Bankruptcy Code may be sold without registration to the extent permitted under section 1145 of the Bankruptcy Code and is deemed to be a public offering, and such Plan Securities may be resold without

registration to the extent permitted under section 1145 of the Bankruptcy Code. Any Plan Securities and Documents provided in reliance on the exemption from registration under the Securities Act provided by Section 4(a)(2) of such act will be provided in a private placement.

All units of New Equity Interests issued to Holders of Allowed Claims on account of their respective Claims will be issued without registration under the Securities Act or any similar federal, state, or local law in reliance on Section 1145(a) of the Bankruptcy Code (or to the extent required, in reliance on Section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder).

Resales by Persons who receive any Plan Securities that are offered pursuant to an exemption under section 1145(a) of the Bankruptcy Code, who are deemed to be “underwriters” (as such term is defined in the Bankruptcy Code) (collectively, the “**Restricted Holders**”) would not be exempted by section 1145 of the Bankruptcy Code from registration under the Securities Act. Restricted Holders would, however, be permitted to resell the New Equity Interests or Plan Securities that are offered pursuant to an exemption under section 1145(a) of the Bankruptcy Code, as applicable, without registration if they are able to comply with the provisions of Rule 144 under the Securities Act, or if such securities are registered with the Commission pursuant to a registration statement or otherwise.

Persons who purchase securities pursuant to the exemption from registration set forth in section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder will hold “restricted securities.” Resales of such restricted securities would not be exempted by section 1145 of the Bankruptcy Code from registration under the Securities Act or other applicable law. Holders of restricted securities would, however, be permitted to resell Plan Securities without registration if they are able to comply with the applicable provisions of Rule 144 or Rule 144A or any other applicable registration exemption under the Securities Act, or if such securities are registered with the Commission.

*K. Release of Liens and Claims*

To the fullest extent provided under section 1141(c) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided herein or in any contract, instrument, release or other agreement or document entered into or delivered in connection with this Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to Article VII hereof, all Liens and Claims against the assets or property of the Debtors or the Estates shall be fully released, canceled, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person or Entity. The filing of the Confirmation Order with any federal, state, or local agency or department shall constitute good and sufficient evidence of, but shall not be required in order to effect, the termination of such Liens or Claims and other interests to the extent provided in the immediately preceding sentence. Any Entity holding such Liens, Claims or interests shall, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Reorganized Debtors such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Reorganized Debtors. For the avoidance of doubt, the release set forth in this Article V.K shall not apply to obligations under the Amended Hedge Agreement (other than Commodity Hedge Agreement Claims due and owing by any of the Debtors as of the Effective Date that have been paid in full in Cash on or prior to the Effective Date) or to any liens granted pursuant to the Exit Security Documents (but shall apply to any liens securing the obligations under the Amended Hedge Agreement other than the liens granted pursuant to the Exit Security Documents).

*L. Organizational Documents of the Reorganized Debtors*

The respective organizational documents of each of the Debtors shall be amended and restated or replaced (as applicable) in form and substance satisfactory to the Debtors and the Required Lenders as necessary to satisfy the provisions of this Plan and the Bankruptcy Code. Such organizational documents shall: (i) to the extent required by section 1123(a)(6) of the Bankruptcy Code, include a provision prohibiting the issuance of non-voting equity securities; (ii) authorize the issuance of New Equity Interests in an amount not less than the amount necessary to permit the distributions thereof required or contemplated by this Plan; (iii) to the extent necessary or appropriate, include restrictions on the transfer of New Equity Interests; and (iv) to the extent necessary or appropriate, include such provisions as may be needed to effectuate and consummate this Plan and the transactions contemplated herein. After the Effective Date, the Reorganized Debtors may, subject to the terms and conditions of the Restructuring Documents, amend and restate their respective organizational documents as permitted by applicable law.

*M. New Board and Officers of the Reorganized Debtors*

The New Board or other governing body of the Reorganized Debtors and/or one or more applicable Entities as set forth in the Description of Structure shall be identified in the Plan Supplement as Plan Schedule 2 and shall be subject to approval of the Bankruptcy Court pursuant to section 1129(a)(5) of the Bankruptcy Code. Pursuant to and to the extent required by section 1129(a)(5) of the Bankruptcy Code, the Debtors will disclose, at or prior to the Confirmation Hearing, the identity and affiliations of any Person proposed to serve on the initial board or other governing body or as an officer of each of the Reorganized Debtors and/or applicable Entities, and, to the extent such Person is an insider other than by virtue of being a managing member, manager, director or an officer, the nature of any compensation for such Person. Each such manager, director, managing member and/or officer shall serve from and after the Effective Date pursuant to applicable law and the terms of the New Governance Documents and the other constituent and organizational documents of the applicable Reorganized Debtors and/or Entity. The existing boards of director, manager or members and other governing bodies of the Debtors will be deemed to have resigned on and as of the Effective Date, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person or Entity.

*N. Corporate Action*

Each of the Debtors, the Reorganized Debtors and/or any other applicable Entity as set forth in the Description of Structure may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, including, without limitation, the approval and implementation of the Sponsor Compromise, the issuance and the distribution of the securities to be issued pursuant hereto, in each case in form and substance acceptable to the Required Lenders, and without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, equity owners, members, managers, officers or directors of the Debtors, the Reorganized Debtors or other applicable Entity or by any other Person (except for those expressly required pursuant hereto or by the Restructuring Documents).

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the unitholders, equity owners, directors, officers, managers or members of the Debtors (as of prior to the Effective Date) shall be deemed to have been so approved and shall be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the unitholders, equity owners, directors,



officers, managers or members of the Debtors, the Reorganized Debtors or other applicable Entity, or the need for any approvals, authorizations, actions or consents of any Person.

As of the Effective Date, all matters provided for in this Plan involving the legal or corporate structure of the Debtors, the Reorganized Debtors or other applicable Entity (including, without limitation, the adoption of the New Governance Documents and similar constituent and organizational documents, and the selection of directors, managers, managing members and/or officers for, each of the Reorganized Debtors), and any legal or corporate action required by the Debtors, the Reorganized Debtors or other applicable Person or Entity in connection with this Plan, shall be deemed to have occurred and shall be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the unitholders, equity owners, directors, officers, managers or members of the Debtors, the Reorganized Debtors or other applicable Entity or by any other Person.

On and after the Effective Date, the appropriate officers of the Debtors, the Reorganized Debtors and any other applicable Entity are authorized to issue, execute, and deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtors, the Reorganized Debtors or other applicable Entity, in each case in form and substance acceptable to the Reorganized Debtors and without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The secretary and any assistant secretary of the Debtors, the Reorganized Debtors and such other applicable Entity shall be authorized to certify or attest to any of the foregoing actions.

*O. Cancellation of Notes, Certificates, and Instruments*

On the Effective Date, except to the extent otherwise expressly provided herein, all notes, units, equity interests, indentures, instruments, certificates, agreements and other documents evidencing or relating to any Impaired Claim (other than the Prepetition Credit Agreement Claims) and/or the Old Parent Interests and the Old Parent Interests themselves shall be canceled, and the obligations of the Debtors thereunder or in any way related thereto shall be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person.

*P. Old Intercompany Interests*

On the Effective Date, subject to any changes described in the Description of Structure, the Old Intercompany Interests shall remain effective and outstanding, and shall be owned and held by Reorganized Parent and/or another applicable Entity as set forth in greater detail in the Description of Structure as of the Effective Date. EGTP, Wolf Hollow I, Colorado Bend I, Handley, Mountain Creek and LaPorte shall continue to be governed by the terms and conditions of their applicable organizational documents as in effect immediately prior to the Effective Date, except as amended or modified by this Plan or the Description of Structure or amended or amended and restated organizational documents.<sup>4</sup>

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<sup>4</sup> Note to Draft: To be modified as necessary if any assets are excluded.

*Q. Sources of Consideration for Plan Distributions*

The Debtors shall make distributions under the Plan, as applicable, with: (1) the New Equity Interests; (2) the Sponsor Compromise Payment; (3) the Debtors' encumbered and unencumbered Cash on hand; and (4) the sale proceeds generated from the sale contemplated by the Handley APA and the Handley Sale Order. Each distribution and issuance referred to in Article III hereof shall be governed by the terms and conditions set forth in the Plan applicable to such distribution or issuance and by the terms and conditions of the instruments or other documents evidencing or relating to such distribution or issuance, and which terms and conditions shall bind each Entity receiving such distribution or issuance.

*R. Continuing Effectiveness of Final Orders*

Payment authorization granted to the Debtors under any prior Final Order entered by the Bankruptcy Court shall continue in effect after the Effective Date. Accordingly, the Debtors or the Reorganized Debtors may pay or otherwise satisfy any Claim to the extent permitted by, and subject to, the applicable Final Order without regard to the treatment that would otherwise be applicable to such Claim under this Plan.

*S. Payment of Fees and Expenses of Certain Creditors*

Subject to the procedures under the Cash Collateral Orders, the Debtors shall, on and after the Effective Date and to the extent invoiced, pay the Prepetition Agent Fees and Expenses and the Ad Hoc Committee Fees and Expenses (in each case whether accrued prepetition or postpetition and to the extent not otherwise paid during the Chapter 11 Cases), without application by any such parties to the Bankruptcy Court, and without notice and a hearing pursuant to section 1129(a)(4) of the Bankruptcy Code or otherwise; provided, however, if the Debtors or Reorganized Debtors and any such Entity cannot agree with respect to the reasonableness of the fees and expenses (incurred prior to the Effective Date) to be paid to such party, the reasonableness of any such fees and expenses shall be determined by the Bankruptcy Court (with any undisputed amounts to be paid by the Debtors on or after the Effective Date (as applicable) and any disputed amounts to be escrowed by the Reorganized Debtors). Notwithstanding anything to the contrary in this Plan, the fees and expenses described in this paragraph shall not be subject to either Administrative Claims Bar Date.

*T. General Unsecured Claims Cash Escrow*

Notwithstanding any other provision of this Plan to the contrary, the Debtors and the Reorganized Debtors shall only be obligated to satisfy Allowed General Unsecured Claims from the General Unsecured Claims Cash Escrow and no other asset or property of the Debtors, the Reorganized Debtors or their respective Estates shall be required to be used or otherwise monetized to pay or otherwise fund such Allowed Claims.

## ARTICLE VI.

### TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

#### A. *Assumption of Executory Contracts and Unexpired Leases*

On the Effective Date, all Executory Contracts and Unexpired Leases of the Debtors will be assumed by the Debtors in accordance with, and subject to, the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, except for those Executory Contracts and Unexpired Leases that:

(i) have been assumed or rejected by the Debtors by prior order of the Bankruptcy Court, including (i) the Amended Hedge Agreement that has been assumed pursuant to the Final Cash Collateral Order and (ii) those Executory Contracts and Unexpired Leases that have been, or are contemplated to be, assumed and assigned pursuant to the Handley Sale Order;

(ii) are the subject of a motion to reject by the Debtors (with the consent of the Required Lenders) pending on the Effective Date;

(iii) are identified by the Debtors (with the consent of the Required Lenders) on Plan Schedule 3 hereto or in the Plan Supplement, in either case which Plan Schedule may be amended by the Debtors (with the consent of the Required Lenders) to add or remove Executory Contracts and Unexpired Leases by filing with the Bankruptcy Court an amended Plan Schedule and serving it on the affected non-Debtor contract parties any time prior to the Effective Date;

(iv) are Sponsor Affiliate Agreements; or

(v) are rejected or terminated by the Debtors (with the consent of the Required Lenders) pursuant to the terms of this Plan.

Without amending or altering any prior order of the Bankruptcy Court approving the assumption or rejection of any Executory Contract or Unexpired Lease, entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions or rejections pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

To the extent any provision in any Executory Contract or Unexpired Lease assumed or assumed and assigned (as applicable) pursuant to this Plan or any prior order of the Bankruptcy Court (including, without limitation, any “change of control” provision) prohibits, restricts or conditions, or purports to prohibit, restrict or condition, or is modified, breached or terminated, or deemed modified, breached or terminated by, (i) the commencement of these Chapter 11 Cases or the insolvency or financial condition of any Debtor at any time before the closing of its respective Chapter 11 Case, (ii) any Debtor’s or any Reorganized Debtor’s assumption or assumption and assignment (as applicable) of such Executory Contract or Unexpired Lease or (iii) the Confirmation or Consummation of this Plan, then such provision shall be deemed modified such that the transactions contemplated by this Plan shall not entitle the non-debtor party thereto to modify or terminate such Executory Contract or Unexpired Lease or to exercise any other default-related rights or remedies with respect thereto, and any required consent under any such contract or lease shall be deemed satisfied by the Confirmation of the Plan.

Each Executory Contract and Unexpired Lease assumed and/or assigned pursuant to this Plan shall revert in and be fully enforceable by the applicable Reorganized Debtor or the applicable assignee in accordance with its terms and conditions, except as modified by the provisions of this Plan, any order of the Bankruptcy Court approving its assumption and/or assignment, or applicable law.

The inclusion or exclusion of a contract or lease on any schedule or exhibit shall not constitute an admission by any Debtor that such contract or lease is an Executory Contract or Unexpired Lease or that any Debtor has any liability thereunder.

*B. Cure of Defaults; Assignment of Executory Contracts and Unexpired Leases*

Any defaults under each Executory Contract and Unexpired Lease to be assumed, or assumed and assigned, pursuant to this Plan shall be satisfied, pursuant to and to the extent required by section 365(b)(1) of the Bankruptcy Code, by payment of the applicable default amount in Cash on the Effective Date or on such other terms as the Bankruptcy Court may order or the parties to such Executory Contracts or Unexpired Leases may otherwise agree in writing (the “**Cure Claim Amount**”); provided, however, that the foregoing shall not include Executory Contracts or Unexpired Leases assumed and assigned (or are contemplated to be assumed and assigned) pursuant to the Handley Sale Order.

In the event of an assumption, or an assumption and assignment, of an Executory Contract or Unexpired Lease under this Plan, at least seven (7) days prior to the Plan Objection Deadline, the Debtors shall File and serve upon counterparties to such Executory Contracts and Unexpired Leases, a notice (each, an “**Assumption Notice**”) of the proposed assumption, or proposed assumption and assignment, which will: (a) list the applicable Cure Claim Amount, if any; (b) if applicable, identify the party to which the Executory Contract or Unexpired Lease will be assigned; (c) describe the procedures for filing objections thereto; and (d) explain the process by which related disputes will be resolved by the Bankruptcy Court. The Filing and service of any such Assumption Notice shall not obligate the Debtors to assume or assume and assign any Executory Contract or Unexpired Lease set forth in such Assumption Notice.

Any objection by a counterparty to an Executory Contract or Unexpired Lease to a proposed assumption, or proposed assumption and assignment under this Plan, or any related cure amount, must be Filed, served and actually received by the Debtors on or prior to the later of (i) the Plan Objection Deadline or (ii) seven (7) days after the filing and service of an Assumption Notice that first identifies such Executory Contract or Unexpired Lease. Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption, or proposed assumption and assignment, or cure amount will be deemed to have consented to such matters and will be deemed to have forever released and waived any objection to such proposed assumption, proposed assumption and assignment, and cure amount. The Confirmation Order shall constitute an order of the Bankruptcy Court approving each proposed assumption, or proposed assumption and assignment, of Executory Contracts and Unexpired Leases pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date.

In the event of a dispute regarding (a) the amount of any Cure Claim Amount, (b) the ability of any Debtor or assignee to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or assumed and assigned or (c) any other matter pertaining to assumption or assignment, the applicable payment of the Cure Claim Amount required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving the dispute and approving such assumption, or assumption and assignment. If such objection is sustained by Final Order of the Bankruptcy Court, the Debtors (with the consent of the Required Lenders) or the Reorganized Debtors, as applicable, may elect to reject such Executory Contract or Unexpired Lease in lieu of assuming or assigning it. The Debtors (with the consent of the Required Lenders) or the Reorganized Debtors, as applicable, shall be authorized to effect such rejection by filing a written notice of rejection with the Bankruptcy Court and serving such notice on the applicable counterparty within thirty (30) days of the entry of such Final Order.

Subject to any cure claims Filed with respect thereto, assumption or assumption and assignment of any Executory Contract or Unexpired Lease pursuant to this Plan shall result in the full release and satisfaction of any 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 or assumption and assignment, in each case as provided in section 365 of the Bankruptcy Code. Any Proofs of Claim filed with respect to an Executory Contract or Unexpired Lease that has been assumed or assumed and assigned by Final Order shall be deemed disallowed and expunged (subject to any cure claims Filed with respect thereto), without further notice to or action, order, or approval of the Bankruptcy Court.

With respect to any Executory Contract or Unexpired Lease assumed and assigned pursuant to this Plan, upon and as of the Effective Date, the applicable assignee shall be deemed to be substituted as a party thereto for the applicable Debtor party to such assigned Executory Contract or Unexpired Lease and, accordingly, the Debtors and the Reorganized Debtors shall be relieved, pursuant to and to the extent set forth in section 365(k) of the Bankruptcy Code, from any further liability under such assigned Executory Contract or Unexpired Lease.

*C. Rejection of Executory Contracts and Unexpired Leases*

The Debtors reserve the right (subject to the consent of the Required Lenders), at any time prior to the Effective Date, except as otherwise specifically provided herein, to seek to reject any Executory Contract (other than the Amended Hedge Agreement) or Unexpired Lease and to add such contract or lease to Plan Schedule 3 or to file a motion requesting authorization for the rejection of any such contract or lease. All Executory Contracts and Unexpired Leases listed on Plan Schedule 3 shall be deemed rejected as of the Effective Date. The Confirmation Order shall constitute an order of the Bankruptcy Court approving the rejections described in this Article VI pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date. Rejection of any Executory Contract or Unexpired Lease pursuant to this Plan or otherwise shall not constitute a termination of any preexisting obligations owed to the Debtors or the Reorganized Debtors, as applicable, under such Executory Contracts or Unexpired Leases.

*D. Claims on Account of the Rejection of Executory Contracts or Unexpired Leases*

All Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, pursuant to this Plan or the Confirmation Order, if any, must be filed with the Bankruptcy Court within thirty (30) days after service of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection.

Any Entity that is required to file a Proof of Claim arising from the rejection of an Executory Contract or an Unexpired Lease that fails to timely do so shall be forever barred, estopped and enjoined from asserting such Claim, and such Claim shall not be enforceable, against the Debtors, the Reorganized Debtors or the Estates, and the Debtors, the Reorganized Debtors and their Estates and their respective assets and property shall be forever discharged from any and all indebtedness and liability with respect to such Claim unless otherwise ordered by the Bankruptcy Court or as otherwise provided herein. All such Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Article X.G hereof.

*E. Extension of Time to Assume or Reject*

Notwithstanding anything to the contrary set forth in Article VI of this Plan, in the event of a dispute as to whether a contract is executory or a lease is unexpired, the right of the Reorganized Debtors to move to assume or reject such contract or lease shall be extended until the date that is thirty (30) days after entry of a Final Order by the Bankruptcy Court determining that the contract is executory or the lease is unexpired. The deemed assumption provided for in Article VI.A of this Plan shall not apply to any such contract or lease, and any such contract or lease shall be assumed or rejected only upon motion of the Reorganized Debtors or the filing of a notice following the Bankruptcy Court's determination that the contract is executory or the lease is unexpired.

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

Unless otherwise provided in this Plan, each Executory Contract or Unexpired Lease that is assumed by the Debtors or the Reorganized Debtors pursuant to this Plan shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, 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 has been previously rejected or repudiated or is rejected or repudiated hereunder. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts (other than the Amended Hedge Agreement) 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.

## ARTICLE VII.

### PROVISIONS GOVERNING DISTRIBUTIONS

*A. Distributions for Claims Allowed as of the Effective Date*

Except as otherwise provided in the "Treatment" sections in Article III hereof or as ordered by the Bankruptcy Court, initial distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made on the Initial Distribution Date or as soon thereafter as is practicable. Any payment or distribution required to be made under this Plan on a day other than a Business Day shall be made on the next succeeding Business Day. Distributions on account of Disputed Claims that first become Allowed Claims after the Effective Date shall be made pursuant to Article VIII hereof.

*B. No Postpetition Interest, Fees, and Costs on Claims*

Unless otherwise specifically provided for in this Plan, the Confirmation Order or Final Order of the Bankruptcy Court, or required by applicable bankruptcy law (including, without limitation, as required pursuant to section 506(b) or section 511 of the Bankruptcy Code), postpetition interest, fees (including attorneys' fees), costs or charges shall not accrue or be paid on any Claims and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim.

*C. Distributions by the Reorganized Debtors or Other Applicable Distribution Agent*

Other than as specifically set forth below, the Reorganized Debtors or other applicable Distribution Agent shall make all distributions required to be distributed under this Plan. Distributions on account of the Allowed Prepetition Credit Agreement Claims shall be made to the Prepetition

Administrative Agent, or, as applicable, any successor agent as provided by the Prepetition Credit Agreement, and such agent will be, and shall act as, the Distribution Agent with respect to its respective Class of Claims in accordance with the terms and conditions of this Plan and the applicable loan documents. All distributions to Holders of Prepetition Credit Agreement Claims shall be deemed completed when made by the Reorganized Debtors to the Prepetition Administrative Agent, or, as applicable, any successor agent as provided by the Prepetition Credit Agreement. The Reorganized Debtors may employ or contract with other entities to assist in or make the distributions required by this Plan and may pay the reasonable fees and expenses of such entities and the Distribution Agents in the ordinary course of business. No Distribution Agent shall be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court.

From and after the Effective Date, any Distribution Agent, solely in its capacity as Distribution Agent, shall be exculpated by all Persons and Entities, including, without limitation, holders of Claims and Equity Interests and other parties in interest, from any and all claims, Causes of Action, and other assertions of liability arising out of the discharge of the powers and duties conferred upon such Distribution Agent by the Plan or any order of the Bankruptcy Court entered pursuant to or in furtherance of the Plan, or applicable law, except for actions or omissions to act arising out of the Distribution Agent's gross negligence, willful misconduct, fraud, malpractice, criminal conduct, or *ultra vires* acts. No holder of a Claim or Equity Interest or other party in interest shall have or pursue any claim or Cause of Action against a Distribution Agent, solely in its capacity as Distribution Agent, for making payments in accordance with the Plan or for implementing provisions of the Plan, except for actions or omissions to act arising out of such Distribution Agent's gross negligence, willful misconduct, fraud, malpractice, criminal conduct, or *ultra vires* acts.

*D. Delivery and Distributions; Undeliverable or Unclaimed Distributions*

1. Record Date for Distributions

On the Distribution Record Date, the Claims Register shall be closed. Accordingly, the Debtors, the Reorganized Debtors or other applicable Distribution Agent will have no obligation to recognize the assignment, transfer or other disposition of, or the sale of any participation in, any Allowed Claim (other than Prepetition Credit Agreement Claims) that occurs after the close of business on the Distribution Record Date, and will be entitled for all purposes herein to recognize and distribute securities, property, notices and other documents only to those Holders of Allowed Claims (other than Prepetition Credit Agreement Claims) who are Holders of such Claims, or participants therein, as of the close of business on the Distribution Record Date. The Reorganized Debtors or other applicable Distribution Agent shall be entitled to recognize and deal for all purposes under this Plan with only those record holders stated on the Claims Register, or their books and records, as of the close of business on the Distribution Record Date; provided, however, that the Distribution Record Date shall not apply to the Prepetition Credit Agreement Claims.

2. Delivery of Distributions in General

Except as otherwise provided herein, the Debtors, the Reorganized Debtors or other applicable Distribution Agent, as applicable, shall make distributions to Holders of Allowed Claims, or in care of their authorized agents, as appropriate, at the address for each such Holder or agent as indicated on the Debtors' or other applicable Distribution Agent's books and records as of the date of any such distribution; *provided, however*, that the manner of such distributions shall be determined in the discretion of the applicable Distribution Agent (subject to the terms and conditions of the relevant Prepetition Loan Documents, if applicable); provided further, that the address for each Holder of an Allowed Claim shall

be deemed to be the address set forth in the latest Proof of Claim Filed by such Holder pursuant to Bankruptcy Rule 3001 as of the Distribution Record Date.

### 3. Minimum Distributions

Notwithstanding anything herein to the contrary, no Distribution Agent shall be required to make distributions or payments of less than \$25.00 (whether in Cash or otherwise) or to make partial distributions or payments of fractions of dollars or New Equity Interests, in each case with respect to Impaired Claims. With respect to Impaired Claims, whenever any payment or distribution of a fraction of a dollar or share of New Equity Interest under this Plan would otherwise be called for, the actual payment or distribution will reflect a rounding of such fraction to the nearest whole dollar or share of New Equity Interest (up or down), with half dollars and half units of New Equity Interest or more being rounded up to the next higher whole number and with less than half dollars and half units of New Equity Interest being rounded down to the next lower whole number (and no Cash shall be distributed in lieu of such fractional New Equity Interest).

No Distribution Agent shall have any obligation to make a distribution on account of an Allowed Claim that is Impaired under this Plan if: (a) the aggregate amount of all distributions authorized to be made on the Subsequent Distribution Date in question is or has an economic value less than \$25,000.00, unless such distribution is a final distribution; or (b) the amount to be distributed to the specific Holder of an Allowed Claim on such Subsequent Distribution Date does not constitute a final distribution to such Holder and is or has an economic value less than \$25.00, which shall be treated as an undeliverable distribution under Article VII.D.4 below.

### 4. Undeliverable Distributions

#### (a) Holding of Certain Undeliverable Distributions

If the distribution to any Holder of an Allowed Claim is returned to the Distribution Agent as undeliverable or is otherwise unclaimed, no further distributions shall be made to such Holder unless and until the Distribution Agent is notified in writing of such Holder's then current address, at which time all currently due but missed distributions shall be made to such Holder on the next Subsequent Distribution Date (or such earlier date as determined by the applicable Distribution Agent). Undeliverable distributions shall remain in the possession of the Reorganized Debtors or in the applicable reserve, subject to Article VII.D.4(b) hereof, until such time as any such distributions become deliverable. Undeliverable distributions shall not be entitled to any additional interest, dividends or other accruals of any kind on account of their distribution being undeliverable.

#### (b) Failure to Claim Undeliverable Distributions

Any Holder of an Allowed Claim (or any successor or assignee or other Person or Entity claiming by, through, or on behalf of, such Holder) that does not assert a right pursuant to this Plan for an undeliverable or unclaimed distribution within one (1) year after the later of the Effective Date or the date such distribution is due shall be deemed to have forfeited its rights for such undeliverable or unclaimed distribution and shall be forever barred and enjoined from asserting any such rights for an undeliverable or unclaimed distribution against the Debtors or their Estates, the Reorganized Debtors or their respective assets or property, or any Distribution Agent. In such case, (i) for Claims other than in Class 4, any Cash, Plan Securities, or other property reserved for distribution on account of such Claim shall become the property of the Estates free and clear of any Claims of such Holder with respect thereto and notwithstanding any federal or state escheat laws to the contrary, and (ii) for Claims in Class 4, any Cash, Plan Securities and Documents, and/or other property, as applicable, held for distribution on account of



such Claim shall be allocated Pro Rata by the applicable Distribution Agent for distribution among the other Holders of Claims in such Class. Nothing contained in this Plan shall require the Debtors, the Reorganized Debtors, or any Distribution Agent to attempt to locate any Holder of an Allowed Claim.

(c) *Failure to Present Checks*

Checks issued by the Distribution Agent on account of Allowed Claims shall be null and void if not negotiated within 180 days after the issuance of such check. In an effort to ensure that all Holders of Allowed Claims receive their allocated distributions, no later than 90 days after the issuance of such checks, the Reorganized Debtors shall File with the Bankruptcy Court a list of the Holders of any un-negotiated checks. This list shall be maintained and updated periodically in the sole discretion of the Reorganized Debtors for as long as the Chapter 11 Cases stay open. Requests for reissuance of any check shall be made directly to the Distribution Agent by the Holder of the relevant Allowed Claim with respect to which such check originally was issued. Any Holder of an Allowed Claim holding an un-negotiated check that does not request reissuance of such un-negotiated check within 365 days after the date of mailing or other delivery of such check shall have its Claim for such un-negotiated check discharged and be forever barred, estopped and enjoined from asserting any such Claim against the Debtors or their Estates, the Reorganized Debtors or their respective assets or property. In such case, any Cash held for payment on account of such Claims shall be distributed to the applicable Distribution Agent for distribution or allocation in accordance with this Plan, free and clear of any Claims of such Holder with respect thereto and notwithstanding any federal or state escheat laws to the contrary.

*E. Compliance with Tax Requirements*

In connection with this Plan and all distributions hereunder, the Reorganized Debtors or other applicable Distribution Agent shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions hereunder shall be subject to any such withholding and reporting requirements. The Reorganized Debtors or other applicable Distribution Agent shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. All Persons holding Claims shall be required to provide any information necessary to effect information reporting and the withholding of such taxes, and 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.

*F. Allocation of Plan Distributions Between Principal and Interest*

To the extent that any Allowed Claim entitled to a distribution under this Plan is comprised of indebtedness and accrued but unpaid interest thereon, such distribution shall, to the extent permitted by applicable law, be allocated for income tax purposes to the principal amount of the Claim first and then, to the extent that the consideration exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest.

*G. Means of Cash Payment*

Payments of Cash made pursuant to this Plan shall be in U.S. dollars and shall be made, at the option of the Debtors or the Reorganized Debtors (as applicable), by checks drawn on, or wire transfer from, a domestic bank selected by the Debtors or the Reorganized Debtors. Cash payments to foreign creditors may be made, at the option of the Debtors or the Reorganized Debtors, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction.

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

Except as otherwise provided in the “Treatment” sections in Article III hereof or as ordered by the Bankruptcy Court, on the Initial Distribution Date (or if a Claim is not an Allowed Claim on the Effective Date, on the Subsequent Distribution Date occurring after such Claim becomes an Allowed Claim, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim shall receive the full amount of the distributions that this Plan provides for Allowed Claims in the applicable Class. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in the applicable class treatment or in Article VIII hereof. Except as otherwise provided herein, Holders of Claims shall not be entitled to interest, dividends or accruals on the distributions provided for herein, regardless of whether such distributions are delivered on or at any time after the Effective Date.

*I. Setoffs*

Without altering or limiting any of the rights and remedies of the Debtors and the Reorganized Debtors under section 502(d) of the Bankruptcy Code, all of which rights and remedies are hereby reserved, the Debtors and the Reorganized Debtors may, but shall not be required to, withhold (but not setoff except as set forth below) from the distributions called for hereunder on account of any Allowed Claim an amount equal to any claims, Causes of Action and Litigation Claims of any nature that the Debtors or the Reorganized Debtors may hold against the Holder of any such Allowed Claim; provided that, at least ten (10) days prior to effectuating such withholding, the Debtors or the Reorganized Debtors, as applicable, shall provide written notice thereof to the applicable Holder of such Claim, and all objections and defenses of such Holder to such withholding are preserved. In the event that any such claims, Causes of Action or Litigation Claims are adjudicated by Final Order or otherwise resolved against the applicable Holder, the Debtors and the Reorganized Debtors may, pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy law, set off against any Allowed Claim and the distributions to be made pursuant hereto on account of such Allowed Claim (before any distribution is made on account of such Allowed Claim), the amount of such adjudicated or resolved claims, Causes of Action or Litigation Claims. Neither the failure to effect such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors or the Reorganized Debtors of any such claims, Causes of Action or Litigation Claims, all of which are reserved unless expressly released or compromised pursuant to this Plan or the Confirmation Order.

**ARTICLE VIII.**

**PROCEDURES FOR RESOLVING CONTINGENT,  
UNLIQUIDATED AND DISPUTED CLAIMS**

*A. Resolution of Disputed Claims*

1. Allowance of Claims

After the Effective Date, and except as otherwise provided in this Plan, the Reorganized Debtors shall have and shall retain any and all available rights and defenses that the Debtors had with respect to any Claim, including, without limitation, the right to assert any objection to Claims based on the limitations imposed by section 502 of the Bankruptcy Code. The Debtors and the Reorganized Debtors may contest the amount and validity of any Disputed Claim or contingent or unliquidated Claim in the ordinary course of business in the manner and venue in which such Claim would have been determined, resolved or adjudicated if the Chapter 11 Cases had not been commenced.

## 2. Prosecution of Objections to Claims

After the Confirmation Date but before the Effective Date, the Debtors, and after the Effective Date, the Reorganized Debtors shall have the authority to File objections to Claims (other than Claims that are Allowed under this Plan) and settle, compromise, withdraw or litigate to judgment objections to any and all such Claims, regardless of whether such Claims are in an Unimpaired Class or otherwise; *provided, however*, this provision shall not apply to Professional Fee Claims, which may be objected to by any party-in-interest in these Chapter 11 Cases. From and after the Effective Date, the Reorganized Debtors may settle or compromise any Disputed Claim without any further notice to or action, order or approval of the Bankruptcy Court. The Reorganized Debtors shall have the sole authority to administer and adjust the Claims Register and their respective books and records to reflect any such settlements or compromises without any further notice to or action, order or approval of the Bankruptcy Court.

## 3. Claims Estimation

After the Confirmation Date but before the Effective Date, the Debtors, and after the Effective Date, the Reorganized Debtors may at any time request that the Bankruptcy Court estimate any Disputed Claim or contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any such Claim, whether for allowance or to determine the maximum amount of such Claim, including during the litigation concerning any objection to any Claim or during the pendency of any appeal relating to any such objection. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation.

## 4. Deadline to File Objections to Claims

Any objections to Claims shall be Filed by no later than the Claims Objection Deadline; *provided* that nothing contained herein shall limit the Reorganized Debtors' right to object to Claims, if any, Filed or amended after the Claims Objection Deadline. Moreover, notwithstanding the expiration of the Claims Objection Deadline, the Reorganized Debtors shall continue to have the right to amend any claims or other objections and to File and prosecute supplemental objections and counterclaims to a Disputed Claim until such Disputed Claim is or becomes Allowed by Final Order of the Bankruptcy Court.

### *B. No Distributions Pending Allowance*

Notwithstanding any other provision of this Plan to the contrary, no payments or distributions of any kind or nature shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim has become an Allowed Claim pursuant to a Final Order.

### *C. Distributions on Account of Disputed Claims Once They Are Allowed and Additional Distributions on Account of Previously Allowed Claims*

On each Subsequent Distribution Date (or such earlier date as determined by the Reorganized Debtors in their sole discretion), the Reorganized Debtors or other applicable Distribution Agent will make distributions (a) on account of any Disputed Claim that has become an Allowed Claim during the preceding calendar quarter, and (b) on account of previously Allowed Claims of property that would have been distributed to the Holders of such Claim on the dates distributions previously were made to Holders

of Allowed Claims in such Class had the Disputed Claims that have become Allowed Claims or Disallowed Claims by Final Order of the Bankruptcy Court been Allowed or disallowed, as applicable, on such dates. Such distributions will be made pursuant to the applicable provisions of Article VII of this Plan. For the avoidance of doubt, but without limiting the terms or conditions of Article VII.B or Paragraph B of this Article VIII, any dividends or other distributions arising from property distributed to holders of Allowed Claims in a Class and paid to such Holders under this Plan shall also be paid, in the applicable amounts, to any Holder of a Disputed Claim in such Class that becomes an Allowed Claim after the date or dates that such dividends or other distributions were earlier paid to holders of Allowed Claims in such Class.

*D. Reserve for Disputed Claims*

(i) Prior to the Effective Date, the Debtors (with the consent of the Required Lenders) and (ii) on or after the Effective Date, the Reorganized Debtors may, in their respective sole discretion, establish such appropriate reserves for Disputed Claims in the applicable Class(es) as they determine necessary and appropriate. Without limiting the foregoing, reserves (if any) for Disputed Claims shall equal, as applicable, an amount of Cash or units of New Equity Interests equal to 100% of distributions to which Holders of Disputed Claims in each applicable Class would otherwise be entitled under this Plan as of such date if such Disputed Claims were Allowed Claims in their respective Face Amount (or based on the Debtors' books and records if the applicable Holder has not yet Filed a Proof of Claim and the Claims Bar Date has not yet expired); provided, however, that the Debtors and the Reorganized Debtors, as applicable, shall have the right to file a motion seeking to estimate any Disputed Claims. For the avoidance of doubt, no reserve shall be established in respect of the Commodity Hedge Agreement Claims.

**ARTICLE IX.**

**CONDITIONS PRECEDENT TO CONFIRMATION  
AND CONSUMMATION OF THE PLAN**

*A. Conditions Precedent to Confirmation*

It shall be a condition to Confirmation of this Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of Article IX.C hereof:

1. This Plan and the Restructuring Documents shall be in form and substance acceptable to the Debtors and the Required Lenders (and, with respect to the Amended Shared Assets Agreements, the Contribution Agreements and the Transition Services Agreement, in form and substance reasonably acceptable to the Debtors, the Required Lenders and the Sponsor);
2. There shall be no default or Event of Default (as defined in the Cash Collateral Orders) under any of the applicable Cash Collateral Orders; and
3. The Confirmation Order shall have been entered by the Bankruptcy Court.

*B. Conditions Precedent to Consummation*

It shall be a condition to Consummation of this Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of Article IX.C hereof.

1. The Confirmation Order shall have become a Final Order and such order shall not have been amended, modified, vacated, stayed, or reversed;
2. The Confirmation Date shall have occurred;
3. The Bankruptcy Court shall have entered one or more Final Orders (which may include the Confirmation Order), in form and substance acceptable to the Debtors and the Required Lenders, authorizing the assumption, or, if applicable, assumption and assignment of the Executory Contracts and Unexpired Leases by the Debtors as contemplated in this Plan and the Plan Supplement that are necessary for the Reorganized Debtors to operate the business of the Debtors (other than those Executory Contracts and Unexpired Leases otherwise assumed and assigned under the Handley Sale Order);
4. This Plan and the Restructuring Documents shall not have been amended or modified other than in a manner acceptable to the Debtors and the Required Lenders (other than with respect to the Amended Shared Assets Agreements, the Contribution Agreements and the Transition Services Agreement, which shall not have been amended or modified other than in a manner reasonably acceptable to the Debtors, the Required Lenders and the Sponsor);
5. The Restructuring Documents shall have been filed, tendered for delivery, and been effectuated or executed by all Persons party thereto (as appropriate), and in each case in full force and effect. All conditions precedent to the effectiveness of such Restructuring Documents shall have been satisfied or waived pursuant to the terms of such applicable Restructuring Documents (or shall be satisfied concurrently with the occurrence of the Effective Date);
6. All consents, actions, documents, certificates and agreements necessary to implement this Plan and the transactions contemplated by this Plan (including, without limitation, all governmental, regulatory, environmental and third party approvals, authorizations, certifications, rulings, no-action letters, opinions, waivers and/or consents) shall have been, as applicable, obtained and not otherwise subject to unfulfilled conditions, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws, and in each case in full force and effect;
7. All governmental approvals and consents, including Bankruptcy Court approval, that are applicable and legally required for the consummation of this Plan shall have been obtained, not be subject to unfulfilled conditions and be in full force and effect, and all applicable waiting periods under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, shall have expired;
8. The New Board shall have been selected;
9. The Amended Hedge Agreement shall be in full force and effect;
10. The conditions to the effectiveness of the Letter of Credit Facility Documents shall have been satisfied or waived and the Letter of Credit Facility Documents shall have closed or will close simultaneously with the effectiveness of this Plan;
11. The Exit Security Documents (a) shall be in form and substance reasonably acceptable to (i) the Debtors, (ii) the Required Lenders and (iii) the Commodity Hedge Counterparty and (b) either (i) shall be in full force and effect or (ii) shall become in full force and effect simultaneously with the effectiveness of the Plan;
12. The Transition Services Agreement, the Amended Shared Assets Agreements and the

Contribution Agreements, in each case, (a) shall be in form and substance reasonably acceptable to the Debtors, the Sponsor and the Required Lenders and (b) either (i) shall be in full force and effect or (ii) shall become in full force and effect simultaneously with the effectiveness of the Plan;

13. The closing of the Handley Sale shall have occurred, or the Handley APA shall have been terminated.

14. To the extent invoiced, all Ad Hoc Committee Fees and Expenses and Prepetition Agent Fees and Expenses shall have been paid in full in Cash or reserved in a manner acceptable to the Required Lenders (or approved by order of the Bankruptcy Court) to the extent of any disputes related thereto.

15. The Required Lenders shall have reasonably determined that the aggregate amount required to pay all estimated Allowed Administrative Claims, Allowed Other Priority Claims, Allowed Other Secured Claims and Allowed Secured Tax Claims in full in Cash on the Effective Date is no more than \$[\_\_\_\_\_].

*C. Waiver of Conditions*

Subject to section 1127 of the Bankruptcy Code, the conditions to Confirmation and Consummation of this Plan set forth in this Article IX that are capable of being waived may be waived by the Debtors, with the consent of the Required Lenders, without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or consummate this Plan; provided, however, that such waiver shall only be effective with respect to those conditions to Confirmation and Consummation contained in Article IX.A.1 (to the extent relating to the Amended Shared Assets, the Contribution Agreements and Transition Services Agreement), Article IX.A.3, and Article IX.B.12 (other than the condition to Consummation contained in Article XI.B.12.b (to the extent that the Reorganized Debtors have offered to enter into the Transition Services Agreement, the Amended Shared Assets Agreements and the Contribution Agreements and such offer remains open)), if waived by the Debtors, with the consent of the Required Lenders and the Sponsor. The failure of any of the foregoing parties to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each right shall be deemed an ongoing right that may be asserted at any time.

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

If the Confirmation or the Consummation of this Plan does not occur with respect to one or more of the Debtors, then this Plan shall, with respect to such applicable Debtor or Debtors, be null and void in all respects and nothing contained in this Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any claims by or Claims against or Equity Interests in the Debtors; (2) prejudice in any manner the rights of the Debtors, any Holders or any other Entity; (3) constitute an Allowance of any Claim or Equity Interest; or (4) constitute an admission, acknowledgment, offer or undertaking by the Debtors, any Holders or any other Entity in any respect.

**ARTICLE X.**

**RELEASE, DISCHARGE, INJUNCTION AND RELATED PROVISIONS**

*A. General*

Pursuant to section 1123 of the Bankruptcy Code, and in consideration for the classification, distributions, releases and other benefits provided under this Plan, upon the Effective Date, the provisions of this Plan shall constitute a good faith compromise and settlement of all Claims and Equity Interests and

controversies resolved pursuant to this Plan. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Equity Interests and controversies, including the Settled Claims, as well as a finding by the Bankruptcy Court that any such compromise or settlement is in the best interests of the Debtors, their Estates, and any Holders of Claims and Equity Interests and is fair, equitable and reasonable.

Notwithstanding anything contained herein to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions (if any) and treatments hereunder, takes into account the relative priority and rights of the Claims and the Equity 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 of the Bankruptcy Code or otherwise. As of the Effective Date, any and all contractual, legal and equitable subordination rights, whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code or otherwise, relating to the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions (if any) and treatments hereunder, are settled, compromised, terminated and released pursuant hereto; *provided, however*, that nothing contained herein shall preclude any Person or Entity from exercising their rights pursuant to and consistent with the terms of this Plan and the contracts, instruments, releases, indentures, and other agreements or documents delivered under or in connection with this Plan.

Notwithstanding anything to the contrary contained herein, the application of the release, injunction and exculpation provisions of this Article X to the Settled Claims and to the Sponsor and its Related Persons shall be subject to the following conditions precedent: (i) the closing of the Handley Sale shall have occurred (or shall occur concurrently) pursuant to the Handley APA and the Handley Sale Order (or the Handley APA shall have been terminated as a result of the Sponsor being determined not to be the Successful Bidder (as defined in the Handley APA) at the Auction (as defined in the Handley APA)); (ii) the Confirmation Order shall not have adversely modified the release and injunction provisions contained in this Plan (except (x) such modifications as are required by the Bankruptcy Court (provided that neither the Debtors nor the Ad Hoc Committee shall have requested that the Bankruptcy Court require such modifications and provided further that such modifications are no more unfavorable, considered as a whole, to the Sponsor than to the Ad Hoc Committee) and (y) such other modifications as are reasonably acceptable to each of the Debtors, the Required Lenders and the Sponsor); and (iii) the Sponsor shall have paid the Sponsor Compromise Payment, entered into and satisfied the conditions precedent contained in each of the Amended Shared Assets Agreements, Contribution Agreements and Transition Services Agreement, waived the Sponsor's Claims in accordance with this section, and otherwise performed its obligations required to be performed on or prior to the Effective Date in accordance with and pursuant to the Sponsor Compromise; *provided, however*, that for the avoidance of doubt, the conditions set forth in this paragraph and the conditions set forth in Article V.D may occur concurrently; *provided further* that (i) payment by the Sponsor to the Debtors of the Sponsor Compromise Payment shall be deemed to constitute acknowledgement by the Sponsor that the conditions precedent contained in Article V.D and this Article X.A have been satisfied and (ii) receipt and retention by the Debtors of the Sponsor Compromise Payment (with the express written consent of the Required Lenders, which consent may not be unreasonably withheld or delayed) shall be deemed to constitute acknowledgement by the Debtors that the conditions precedent contained in Article V.D and this Article X.A have been satisfied.

Notwithstanding anything contained to the contrary herein, nothing in this Article X shall be deemed to release, discharge or enjoin the enforcement of any obligations of any Person or Entity under the Handley APA, any other agreement entered into on or after the Petition Date in connection with the Handley Sale, the Sponsor Compromise or the Amended Hedge Agreement (other than Commodity

Hedge Agreement Claims due and owing by any of the Debtors as of the Effective Date that have been paid in full in Cash prior to the Effective Date).

Notwithstanding anything contained to the contrary herein, nothing in this Article X or the Plan shall be deemed to release, discharge or enjoin the enforcement of any obligations of any of the Prepetition Lenders under any of the Prepetition Loan Documents to indemnify the Prepetition Agents in accordance with the terms of the Prepetition Loan Documents; provided, however, that the Prepetition Lenders reserve and retain all rights, claims and defenses of any kind (whether legal, equitable or otherwise) in connection with such indemnification obligations, notwithstanding anything to the contrary contained herein.

*B. Release of Claims and Causes of Action*

1. **Release by the Debtors and Their Estates.** Pursuant to section 1123(b) and any other applicable provisions of the Bankruptcy Code, and except as otherwise expressly provided in this Plan, effective as of the Effective Date, for good and valuable consideration provided by each of the Released Parties, the adequacy and sufficiency of which is hereby confirmed, the Debtors and the Reorganized Debtors, in their respective individual capacities and as debtors-in-possession, and on behalf of themselves and their respective Estates, including, without limitation, any successor to the Debtors or any Estate representative appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code (collectively, the “**Debtor Releasing Parties**”) will be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever provided a full discharge, waiver and release to each of the Released Parties (and each such Released Party so released shall be deemed forever released, waived and discharged by the Debtor Releasing Parties) and their respective assets and properties (the “**Debtor Release**”) from any and all Claims, Causes of Action, Litigation Claims and any other debts, obligations, rights, suits, damages, actions, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, whether directly or derivatively held, existing as of the Effective Date or thereafter arising, in law, at equity or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances existing or taking place prior to or on the Effective Date arising from or related in any way in whole or in part to any of (i) the Debtors, the Chapter 11 Cases, the marketing of any of the Debtors’ assets, the Handley Sale and the negotiations, formulations and/or preparations of the Handley APA and all other documents and agreements entered into in connection with such sale, including without limitation, the Handley Sale Order, the Disclosure Statement, this Plan and the Restructuring Documents, (ii) the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in this Plan, (iii) the business or contractual arrangements between any Debtor and any Released Parties, including, but not limited to, the Prepetition Credit Agreement and the Sponsor Affiliate Agreements, (iv) the negotiation, formulation or preparation of this Plan, the Disclosure Statement, the Restructuring Documents, or related agreements, instruments or other documents, including the Settled Claims and the Sponsor Compromise, (v) the restructuring of Claims or Equity Interests prior to or during the Chapter 11 Cases, (vi) the purchase, sale, or rescission of the purchase or sale of any Claim or Equity Interest of the Debtors or the Reorganized Debtors, and/or (vii) the Confirmation or Consummation of this Plan or the solicitation of votes on this Plan that such Debtor Releasing Party would have been legally entitled to assert (whether individually or collectively) or that any Holder of a Claim or Equity Interest or other Entity would have been legally entitled to assert for, or on behalf or in the name of, any Debtor, its respective Estate or any Reorganized Debtor (whether directly or derivatively) against any of the Released Parties; *provided, however*, that the foregoing provisions of this Debtor Release shall not operate to waive, release or otherwise impair: (i) any Causes of Action arising from willful misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy



Court or any other court of competent jurisdiction and/or (ii) the rights of such Debtor Releasing Party to enforce this Plan and the contracts, instruments, releases, indentures, and other agreements or documents delivered under or in connection with this Plan or assumed pursuant to this Plan or assumed pursuant to Final Order of the Bankruptcy Court.

The foregoing release shall be effective as of the Effective Date without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person and the Confirmation Order will permanently enjoin the commencement or prosecution by any Person or Entity, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, Settled Claims or liabilities released pursuant to this Debtor Release. Notwithstanding the foregoing, nothing in this Article X.B shall or shall be deemed to (i) prohibit the Debtors or the Reorganized Debtors from asserting and enforcing any claims, obligations, suits, judgments, demands, debts, rights, Causes of Action, Settled Claims or liabilities they may have against any Person that is based upon an alleged breach of a confidentiality or non-compete obligation owed to the Debtors or the Reorganized Debtors and/or (ii) operate as a release or waiver of any Intercompany Claims, in each case unless otherwise expressly provided for in this Plan.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Debtor Release, which includes by reference each of the related provisions and definitions contained herein, and further, shall constitute the Bankruptcy Court's finding that the Debtor Release is: (i) in exchange for the good and valuable consideration provided by the Released Parties, including the Sponsor Compromise; (ii) a good faith settlement and compromise of the Claims released by the Debtor Release; (iii) in the best interest of the Debtors and their Estates; (iv) fair, equitable and reasonable; and (v) given and made after due notice and opportunity for hearing.

2. Release by Third Parties. Except as otherwise expressly provided in this Plan, effective as of the Effective Date, to the fullest extent permitted by applicable law, for good and valuable consideration provided by each of the Released Parties, the adequacy and sufficiency of which is hereby confirmed, and without limiting or otherwise modifying the scope of the Debtor Release provided by the Debtor Releasing Parties above, each Non-Debtor Releasing Party (together with the Debtor Releasing Parties, the "Releasing Parties") will be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever provided a full discharge, waiver and release to each of the Released Parties (and each such Released Party so released shall be deemed forever released, waived and discharged by the Non-Debtor Releasing Parties) and their respective assets and properties (the "Third Party Release") from any and all Claims, Causes of Action, Litigation Claims and any other debts, obligations, rights, suits, damages, actions, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, whether directly or derivatively held, existing as of the Effective Date or thereafter arising, in law, at equity or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances existing or taking place prior to or on the Effective Date arising from or related in any way in whole or in part to any of (i) the Debtors, the Chapter 11 Cases, the marketing of any of the Debtors' assets, the sale effectuated by, or otherwise contemplated by, the Handley APA and the Handley Sale Order, the Disclosure Statement, this Plan and the Restructuring Documents, (ii) the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in this Plan, (iii) the business or contractual arrangements between any Debtor and any Released Parties, including, but not limited to, the Prepetition Credit Agreement and the Sponsor Affiliate Agreements, (iv) the negotiation, formulation or preparation of this Plan, the Disclosure Statement, the Restructuring

Documents, or related agreements, instruments or other documents, including the Settled Claims and the Sponsor Compromise, (v) the restructuring of Claims or Equity Interests prior to or during the Chapter 11 Cases, (vi) the purchase, sale or rescission of the purchase or sale of any Claim or Equity Interest of the Debtors or the Reorganized Debtors, and/or (vii) the Confirmation or Consummation of this Plan or the solicitation of votes on this Plan that such Non-Debtor Releasing Party would have been legally entitled to assert (whether individually or collectively) against any of the Released Parties; provided, however, that the foregoing provisions of this Third Party Release shall not operate to waive, release or otherwise impair: (i) any Causes of Action arising from willful misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction; (ii) any of the indebtedness and obligations of the Debtors and/or the Reorganized Debtors under this Plan and the contracts, instruments, releases, indentures, and other agreements and documents delivered under or in connection with this Plan or assumed pursuant to this Plan or assumed pursuant to Final Order of the Bankruptcy Court; (iii) the rights of such Non-Debtor Releasing Party to enforce this Plan and the contracts, instruments, releases, indentures, and other agreements and documents delivered under or in connection with this Plan or assumed pursuant to this Plan or assumed pursuant to Final Order of the Bankruptcy Court; and/or (iv) any objections with respect to any Professional's final fee application or accrued Professional Fee Claims in these Chapter 11 Cases.

The foregoing release shall be effective as of the Effective Date without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person and the Confirmation Order will permanently enjoin the commencement or prosecution by any Person or Entity, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, Settled Claims or liabilities released pursuant to this Third Party Release.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the Third Party Release, which includes by reference each of the related provisions and definitions contained herein, and further, shall constitute the Bankruptcy Court's finding that the Third Party Release is: (i) in exchange for the good and valuable consideration provided by the Released Parties, including the Sponsor Compromise; (ii) a good faith settlement and compromise of the Claims released by the Third Party Release; (iii) in the best interest of the Debtors and all Holders of Claims and Equity Interests; (iv) fair, equitable and reasonable; and (v) given and made after due notice and opportunity for hearing.

*C. Waiver of Statutory Limitations on Releases*

Each of the Releasing Parties in each of the releases contained above expressly acknowledges that although ordinarily a general release may not extend to Claims which the Releasing Party does not know or suspect to exist in its favor, which if known by it may have materially affected its settlement with the party released, they have carefully considered and taken into account in determining to enter into the above releases the possible existence of such unknown losses or claims. Without limiting the generality of the foregoing, each Releasing Party expressly waives any and all rights conferred upon it by any statute or rule of law which provides that a release does not extend to claims which the claimant does not know or suspect to exist in its favor at the time of providing the release, which if known by it may have materially affected its settlement with the released party. The releases contained in this Plan are effective regardless of whether those released matters are presently known, unknown, suspected or unsuspected, foreseen or unforeseen.

*D. Discharge of Claims and Equity Interests*

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, effective as of the Effective Date, all consideration distributed under this Plan shall be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims, Equity Interests and Causes of Action of any kind or nature whatsoever against the Debtors or any of their respective assets or properties, including any interest accrued on such Claims or Equity Interests from and after the Petition Date, and regardless of whether any property shall have been abandoned by order of the Bankruptcy Court, distributed or retained pursuant to this Plan on account of such Claims, Equity Interests or Causes of Action.

Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtors and their Estates shall be deemed discharged and released under and to the fullest extent provided under sections 524 and 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code. Such discharge shall void any judgment obtained against the Debtors or the Reorganized Debtors at any time, to the extent that such judgment relates to a discharged Claim.

Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date: (i) the rights afforded herein and the treatment of all Claims and Equity Interests shall be in exchange for and in complete satisfaction, settlement, discharge, and release of all Claims and Equity Interests of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtors or any of their respective assets, property, or Estates; (ii) all Claims and Equity Interests shall be satisfied, discharged, and released in full, and each of the Debtor's liability with respect thereto shall be extinguished completely without further notice or action; and (iii) all Entities shall be precluded from asserting against the Debtors, the Estates, the Reorganized Debtors, each of their respective successors and assigns, and each of their respective assets and properties, any such Claims or Equity Interests, whether 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 or otherwise.

*E. Exculpation*

Effective as of the Effective Date, the Exculpated Parties shall neither have nor incur any liability to any Entity for any claims or Causes of Action arising prior to or on the Effective Date for any act taken or omitted to be taken in connection with, or related to, formulating, negotiating, preparing, disseminating, implementing, administering, confirming or effecting the Confirmation or Consummation of this Plan, the Disclosure Statement, the Restructuring Documents or any contract, instrument, release or other agreement or document created or entered into in connection with this Plan or any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtors, the marketing of any of the Debtors' assets, the sale effectuated by, or otherwise contemplated by, the Handley APA and the Handley Sale Order, the approval of the Disclosure Statement or Confirmation or Consummation of this Plan including the Settled Claims and the Sponsor Compromise; *provided, however*, that the foregoing provisions of this exculpation shall not operate to waive, release or otherwise impair: (i) any Causes of Action expressly set forth in and preserved by this Plan or the Plan Supplement; (ii) any Causes of Action arising from willful misconduct, actual fraud, or gross negligence of such applicable Exculpated Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction; (iii) any of the indebtedness or obligations of the Debtors and/or the Reorganized Debtors under this Plan and the contracts, instruments, releases,

indentures, and other agreements and documents delivered under or in connection with the Plan or assumed pursuant to this Plan or assumed pursuant to Final Order of the Bankruptcy Court, (iv) the rights of any Entity to enforce this Plan and the contracts, instruments, releases, indentures, and other agreements or documents delivered under or in connection with this Plan or assumed pursuant to this Plan or assumed pursuant to Final Order of the Bankruptcy Court; and/or (v) any objections with respect to any Professional's final fee application or accrued Professional Fee Claims in these Chapter 11 Cases; provided, further, that each Exculpated Party shall be entitled to rely upon the advice of counsel concerning its respective duties pursuant to, or in connection with, the above referenced documents, actions or inactions.

The foregoing exculpation shall be effective as of the Effective Date without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person. Notwithstanding the foregoing, nothing in this Article X.E shall or shall be deemed to prohibit the Debtors or the Reorganized Debtors from asserting and enforcing any claims, obligations, suits, judgments, demands, debts, rights, Causes of Action, Settled Claims or liabilities they may have against any Person that is based upon an alleged breach of a confidentiality or non-compete obligation owed to the Debtors or the Reorganized Debtors, in each case unless otherwise expressly provided for in this Plan.

*F. Preservation of Causes of Action*

1. Maintenance of Causes of Action

Except as otherwise provided in this Article X or elsewhere in this Plan or the Confirmation Order, after the Effective Date, the Reorganized Debtors shall retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Litigation Claims, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Cases; provided, however, that the foregoing shall not be deemed to include the Settled Claims or any other claims or Causes of Action (i) released pursuant to Article X.B.1 hereof or (ii) exculpated pursuant to Article X.E hereof to the extent of any such exculpation. The Reorganized Debtors, as the successors-in-interest to the Debtors and the Estates, may, and shall have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of such Litigation Claims, in each case solely to the extent of the Debtors' or their Estates' interest therein, without notice to or approval from the Bankruptcy Court.

2. Preservation of All Causes of Action Not Expressly Settled or Released

The Debtors expressly reserve all Causes of Action and Litigation Claims for later adjudication by the Debtors or the Reorganized Debtors (including, without limitation, Causes of Action and Litigation Claims not specifically identified or of which the Debtors may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtors at this time or facts or circumstances that may change or be different from those the Debtors now believe to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such Causes of Action or Litigation Claims upon or after the Confirmation or Consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except in each case where such Causes of Action or Litigation Claims have been expressly waived, relinquished, released, compromised or settled in this Plan, the Confirmation Order or any other Final Order, including, without limitation, the Settled Claims or any other claims or Causes of Action (i) released pursuant to Article X.B.1 hereof or (ii) exculpated pursuant to Article X.E hereof to the extent of any such exculpation. In addition, the Debtors and the Reorganized Debtors expressly reserve the right to pursue or adopt any

claims alleged in any lawsuit in which any of the Debtors are a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits.

*G. Injunction*

**EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS PLAN OR THE CONFIRMATION ORDER, FROM AND AFTER THE EFFECTIVE DATE, ALL PERSONS AND ENTITIES ARE, TO THE FULLEST EXTENT PROVIDED UNDER SECTION 524 AND OTHER APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE, PERMANENTLY ENJOINED FROM (I) COMMENCING OR CONTINUING, IN ANY MANNER OR IN ANY PLACE, ANY SUIT, ACTION OR OTHER PROCEEDING; (II) ENFORCING, ATTACHING, COLLECTING, OR RECOVERING IN ANY MANNER ANY JUDGMENT, AWARD, DECREE, OR ORDER; (III) CREATING, PERFECTING, OR ENFORCING ANY LIEN OR ENCUMBRANCE; (IV) ASSERTING A SETOFF OR RIGHT OF SUBROGATION OF ANY KIND; OR (V) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND, IN EACH CASE ON ACCOUNT OF OR WITH RESPECT TO ANY CLAIM, DEMAND, LIABILITY, OBLIGATION, DEBT, RIGHT, CAUSE OF ACTION, SETTLED CLAIMS, EQUITY INTEREST, OR REMEDY RELEASED OR TO BE RELEASED, SETTLED OR TO BE SETTLED OR DISCHARGED OR TO BE DISCHARGED PURSUANT TO THIS PLAN OR THE CONFIRMATION ORDER AGAINST ANY PERSON OR ENTITY SO RELEASED OR DISCHARGED (OR THE PROPERTY OR ESTATE OF ANY PERSON OR ENTITY SO RELEASED, DISCHARGED). ALL INJUNCTIONS OR STAYS PROVIDED FOR IN THE CHAPTER 11 CASES UNDER SECTION 105 OR SECTION 362 OF THE BANKRUPTCY CODE, OR OTHERWISE, AND IN EXISTENCE ON THE CONFIRMATION DATE, SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL THE EFFECTIVE DATE.**

*H. Binding Nature of the Plan*

**ON THE EFFECTIVE DATE, AND EFFECTIVE AS OF THE EFFECTIVE DATE, THIS PLAN SHALL BIND, AND SHALL BE DEEMED BINDING UPON, THE DEBTORS, THE REORGANIZED DEBTORS, ANY AND ALL HOLDERS OF CLAIMS AGAINST AND EQUITY INTERESTS IN THE DEBTORS, ALL PERSONS AND ENTITIES THAT ARE PARTIES TO OR ARE SUBJECT TO THE SETTLEMENTS, COMPROMISES (INCLUDING THE SPONSOR COMPROMISE), RELEASES, DISCHARGES, AND INJUNCTIONS DESCRIBED IN THIS PLAN, EACH PERSON ACQUIRING PROPERTY UNDER THIS PLAN, ANY AND ALL NON-DEBTOR PARTIES TO EXECUTORY CONTRACTS AND UNEXPIRED LEASES WITH THE DEBTORS AND THE RESPECTIVE SUCCESSORS AND ASSIGNS OF EACH OF THE FOREGOING, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND NOTWITHSTANDING WHETHER OR NOT SUCH PERSON OR ENTITY (I) WILL RECEIVE OR RETAIN ANY PROPERTY, OR INTEREST IN PROPERTY, UNDER THIS PLAN, (II) HAS FILED A PROOF OF CLAIM OR INTEREST IN THE CHAPTER 11 CASES OR (III) FAILED TO VOTE TO ACCEPT OR REJECT THIS PLAN, AFFIRMATIVELY VOTED TO REJECT THIS PLAN OR IS CONCLUSIVELY PRESUMED TO REJECT THIS PLAN.**

*I. Protection Against Discriminatory Treatment*

To the extent provided by section 525 of the Bankruptcy Code and the Supremacy Clause of the United States Constitution, all Persons and Entities, including Governmental Units, shall not discriminate against the Reorganized Debtors or deny, revoke, suspend or refuse to renew a license, permit, charter, franchise or other similar grant to, condition such a grant to, discriminate with respect to such a grant,

against the Reorganized Debtors, or another Person or Entity with whom the Reorganized Debtors have been associated, solely because any Debtor has been a debtor under chapter 11 of the Bankruptcy Code, has been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before the Debtors are granted or denied a discharge) or has not paid a debt that is dischargeable in the Chapter 11 Cases.

*J. Integral Part of Plan*

Each of the provisions set forth in this Plan with respect to the settlement, release, discharge, exculpation, and injunction of, for or with respect to Claims and/or Causes of Action are an integral part of this Plan and essential to its implementation. Accordingly, each Entity that is a beneficiary of such provision shall have the right to independently seek to enforce such provision and such provision may not be amended, modified, or waived after the Effective Date without the prior written consent of such beneficiary.

**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, on and after the Effective Date, retain exclusive jurisdiction over the Chapter 11 Cases and all Entities with respect to all matters related to the Chapter 11 Cases, the Debtors and this Plan as legally permissible, including, without limitation, jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of any such Claim or Equity Interest;
2. grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however,* that, from and after the Effective Date, the Reorganized Debtors shall pay Professionals in the ordinary course of business for any work performed after the Effective Date and such payment shall not be subject to the approval of the Bankruptcy Court;
3. resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, those matters related to any amendment to this Plan after the Effective Date to add Executory Contracts or Unexpired Leases to the list of Executory Contracts and Unexpired Leases to be assumed or rejected (as applicable);
4. resolve any issues related to any matters adjudicated in the Chapter 11 Cases;
5. ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of this Plan;
6. decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action that are pending as of the Effective Date or that may be commenced in the future, and grant or deny any applications involving the Debtors that may be pending on the Effective Date or

instituted by the Reorganized Debtors after the Effective Date, *provided, however* that the Reorganized Debtors shall reserve the right to commence actions in all appropriate forums and jurisdictions;

7. enter such orders as may be necessary or appropriate to implement or consummate the provisions of this Plan and all other contracts, instruments, releases, indentures and other agreements or documents adopted in connection with this Plan, the Plan Supplement or the Disclosure Statement;

8. resolve any cases, controversies, suits or disputes that may arise in connection with the Consummation, interpretation or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;

9. hear and determine all Causes of Action that are pending as of the Effective Date or that may be commenced in the future, except for those the Settled Claims or any other claims or Causes of Action (i) released pursuant to Article X.B.1 hereof or (ii) exculpated pursuant to Article X.E hereof to the extent of any such exculpation;

10. issue injunctions and enforce them, 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 this Plan;

11. enforce the terms and conditions of this Plan, the Confirmation Order, and the Restructuring Documents;

12. enforce the Handley Sale Order and/or any agreements or other documents entered into in connection with such sale, including without limitation, the Handley APA;

13. resolve any cases, controversies, suits or disputes with respect to the Release, the Exculpation, and any other provisions contained in Article X hereof and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such provisions;

14. hear and determine all Litigation Claims;

15. enter and implement such orders or take such other actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

16. resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order or any release or exculpation adopted in connection with this Plan; and

17. enter one or more final decrees closing the Chapter 11 Cases.

Notwithstanding the foregoing, if the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Cases, including the matters set forth in this Article of the Plan, the provisions of this Article XI shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction by any other court having jurisdiction with respect to such matter.

## ARTICLE XII.

### MISCELLANEOUS PROVISIONS

A. *Substantial Consummation*

“Substantial Consummation” of the Plan, as defined in 11 U.S.C. § 1101(2), shall be deemed to occur on the Effective Date.

B. *Payment of Statutory Fees; Post-Effective Date Fees and Expenses*

All fees due and payable pursuant to section 1930 of Title 28 of the U.S. Code prior to the Effective Date shall be paid by the Debtors. On and after the Effective Date, the Reorganized Debtors shall pay any and all such fees when due and payable, and shall file with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the United States Trustee. Each Debtor shall remain obligated to pay quarterly fees to the Office of the United States Trustee until the earliest of that particular Debtor’s case being closed, dismissed, or converted to a case under Chapter 7 of the Bankruptcy Code.

The Reorganized Debtors shall pay the liabilities and charges that they incur on or after the Effective Date for Professionals’ fees, disbursements, expenses, or related support services (including reasonable fees, costs and expenses incurred by Professionals relating to the preparation of interim and final fee applications and obtaining Bankruptcy Court approval thereof) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court, including, without limitation, the reasonable fees, expenses, and disbursements of the Distribution Agents and the fees, costs and expenses incurred by Professionals in connection with the implementation, enforcement and Consummation of this Plan and the Restructuring Documents.

C. *Conflicts*

In the event that a provision of the Restructuring Documents or the Disclosure Statement (including any and all exhibits and attachments thereto) conflicts with a provision of this Plan or the Confirmation Order, the provision of this Plan and the Confirmation Order (as applicable) shall govern and control to the extent of such conflict. In the event that a provision of this Plan conflicts with a provision of the Confirmation Order, the provision of the Confirmation Order shall govern and control to the extent of such conflict.

D. *Modification of Plan*

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) prior to the entry of the Confirmation Order, the Debtors (with the consent of the Required Lenders) reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order in a way that is acceptable to the Required Lenders in accordance with section 1127(a) of the Bankruptcy Code; and (b) after the entry of the Confirmation Order, (i) prior to the Effective Date, the Debtors (with the consent of the Required Lenders, which consent shall not be unreasonably withheld) or (ii) on or after the Effective Date, the Reorganized Debtors may, upon order of the Bankruptcy Court, amend or modify this Plan in a way that is acceptable to the Required Lenders, in accordance with section 1127(b) of the Bankruptcy Code or to remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan. A Holder of a Claim that has accepted this Plan shall be deemed to have accepted this Plan, as altered, amended or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim of such Holder.



*E. Revocation or Withdrawal of Plan*

The Debtors reserve the right to revoke or withdraw this Plan prior to the Effective Date and/or to File subsequent chapter 11 plans, with respect to one or more of the Debtors. If the Debtors revoke or withdraw this Plan, or if Confirmation or Consummation of this Plan does not occur with respect to one or more of the Debtors, then with respect to the applicable Debtor or Debtors for which this Plan was revoked or withdrawn or for which Confirmation or Consummation of this Plan did not occur: (1) this Plan shall be null and void in all respects; (2) any settlement or compromise embodied in this Plan, assumption or rejection of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (3) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the applicable Debtors or any other Entity; (b) prejudice in any manner the rights of the applicable Debtors or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the applicable Debtors or any other Entity.

*F. Successors and Assigns*

This Plan shall be binding upon and inure to the benefit of the Debtors, the Reorganized Debtors, all present and former Holders of Claims and Equity Interests, other parties-in-interest, and their respective heirs, executors, administrators, successors, and assigns. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

*G. Reservation of Rights*

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and this Plan is Consummated. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtors or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtors with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

*H. Further Assurances*

The Debtors or the Reorganized Debtors, as applicable, all Holders of Claims receiving distributions hereunder and all other Entities 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 this Plan or the Confirmation Order.

*I. Severability*

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will 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 will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this 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 will constitute a judicial determination and will provide that

each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

*J. Service of Documents*

Any notice, direction or other communication given regarding the matters contemplated by this Plan (each, a “**Notice**”) must be in writing, sent by personal delivery, electronic mail, courier or facsimile and addressed as follows:

**If to the Debtors:**

ExGen Texas Power, LLC  
c/o FTI Consulting, Inc.  
1001 Fannin, Suite 3950  
Houston, Texas 77022  
Attn: David Rush  
Chief Restructuring Officer  
Direct Dial: (832) 667-5160  
Fax: (713) 353-5459  
Email: david.rush@fticonsulting.com

with a copy to:

Richards, Layton & Finger, P.A.  
One Rodney Square 920 North King Street  
Wilmington, Delaware 19801  
Attn: Daniel J. DeFranceschi  
Direct Dial: (302) 651-7816  
Fax: (302) 498-7701  
Email: defranceschi@rlf.com

**If to the Ad Hoc Committee:**

Wachtell, Lipton, Rosen & Katz  
51 W 52<sup>nd</sup> Street  
New York, NY 10019  
Attn: Scott K. Charles; Neil M. Snyder  
Direct Dial: (212) 403-1202; (212) 403-1078  
Fax: (212) 403-2202; (212) 403-2078  
Email: skcharles@wlrk.com; nmsnyder@wlrk.com

**If to the Sponsor:**

Exelon Generation Company, LLC  
701 Ninth Street NW, 9th Floor  
Washington, D.C. 20068  
Attn: Joseph W. Downs IV, Esq.  
Direct Dial: (202) 872-2591  
Email: joseph.downs@exeloncorp.com

with a copy to:

DLA Piper LLP (US)  
444 W. Lake Street, Suite 900  
Chicago, Illinois 60606  
Attn: Richard A. Chesley; Daniel M. Simon  
Direct Dial: (312) 368-3430; (312) 368-3465  
Fax: (312) 236-7516  
Email: rick.chesley@dlapiper.com; daniel.simon@dlapiper.com

**If to the Bank of America, N.A., as administrative agent under the Prepetition Credit Agreement:**

Norton Rose Fulbright US LLP  
1301 Avenue of the Americas  
New York, NY 10019-6022  
Attn: Louis R. Strubeck, Jr.  
Direct Dial: (212) 318-3159  
Fax: (212) 318-3400  
Email: louis.strubeck@nortonrosefulbright.com

A Notice is deemed to be given and received (a) if sent by personal delivery or courier, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day, or (b) if sent by facsimile, on the Business Day following the date of confirmation of transmission by the originating facsimile, or (c) if sent by electronic mail, when the sender receives an email from the recipient acknowledging receipt, provided that an automatic “read receipt” does not constitute acknowledgment of an email for purposes of this Section. Any party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any element of a party’s address that is not specifically changed in a Notice will be assumed not to be changed. Sending a copy of a Notice to a party’s legal counsel as contemplated above is for information purposes only and does not constitute delivery of the Notice to that party. The failure to send a copy of a Notice to legal counsel does not invalidate delivery of that Notice to a party.

*K. Exemption from Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code*

Pursuant to section 1146(a) of the Bankruptcy Code, any issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer of property, pursuant to or in connection with this Plan, the Restructuring Documents or the sale effectuated by, or otherwise contemplated by, the Handley APA and the Handley Sale Order, to the extent consummated substantially in connection with this Plan, shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States or by any other Governmental Unit, and the Confirmation Order shall direct the appropriate federal, state or local (domestic or foreign) governmental officials or agents to forgo the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents evidencing such action or event without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to evidence and implement the provisions of, transactions contemplated by and the distributions to be made under this Plan or the Restructuring Documents, (ii) the issuance and distribution of the New Equity Interests or Plan Securities and Documents, and (iii) the maintenance or creation of security interests or any Lien as contemplated by this Plan or the Restructuring Documents.

*L. Governing Law*

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that a Restructuring Document or an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Delaware, without giving effect to the principles of conflicts of law of such jurisdiction.

*M. Tax Reporting and Compliance*

The Reorganized Debtors are hereby authorized, on behalf of the Debtors, to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtors for all taxable periods ending after the Petition Date through and including the Effective Date.

*N. Schedules*

All exhibits and schedules to this Plan, including the Exhibits and Plan Schedules, are incorporated herein and are a part of this Plan as if set forth in full herein.

*O. No Strict Construction*

This Plan is the product of extensive discussions and negotiations between and among, *inter alia*, the Debtors, the Sponsor, the Prepetition Agents, the Prepetition Lenders, and their respective professionals. Each of the foregoing was represented by counsel of its choice who either participated in the formulation and documentation of, or was afforded the opportunity to review and provide comments on, this Plan, the Disclosure Statement, the Exhibits and the Plan Schedules, and the agreements and documents ancillary or related thereto. Accordingly, unless explicitly indicated otherwise, the general rule of contract construction known as “contra proferentem” or other rule of strict construction shall not apply to the construction or interpretation of any provision of this Plan, the Disclosure Statement, the Exhibits or the Plan Schedules, or the documents ancillary and related thereto.

*P. Entire Agreement*

Except as otherwise provided herein or therein, this Plan and the Restructuring Documents supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan and the Restructuring Documents.

*Q. Closing of Chapter 11 Cases*

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

*R. 2002 Notice Parties*

After the Effective Date, the Debtors and the Reorganized Debtors, as applicable, are authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities who have Filed a renewed request after the Confirmation Hearing to receive documents pursuant to Bankruptcy Rule 2002.

*S. Dissolution of Committee*

On and as of the Effective Date, any Committee shall dissolve automatically and its members shall be released and discharged from all rights, duties and responsibilities arising from, or related to, the Chapter 11 Cases. The Reorganized Debtors shall not be responsible for paying any fees, costs, or expenses incurred by the members, professionals, or advisors to any Committee after the Effective Date, except for such fees, costs, or expenses incurred in connection with any applications for allowance of compensation and reimbursement of expenses pending on the Effective Date or Filed and served after the Effective Date pursuant to Article II.A.2.

Dated: November 7, 2017

Respectfully submitted,

EXGEN TEXAS POWER, LLC,

By: \_\_\_\_\_  
Name:  
Title:

EXGEN TEXAS POWER HOLDINGS, LLC,

By: \_\_\_\_\_  
Name:  
Title:

WOLF HOLLOW I POWER, LLC,

By: \_\_\_\_\_  
Name:  
Title:

COLORADO BEND I POWER, LLC,

By: \_\_\_\_\_  
Name:  
Title:

HANDLEY POWER, LLC,

By: \_\_\_\_\_  
Name:  
Title:

LAPORTE POWER, LLC,

By: \_\_\_\_\_  
Name:  
Title:

MOUNTAIN CREEK POWER, LLC,

By: \_\_\_\_\_ N  
Title: