

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO**

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In re:	)	Chapter 11
LIGHTNING DOCK	)	Case No. 17-10567
GEOTHERMAL HI-01,	)	(Jointly Administered)
LLC, <i>et al.</i> , <sup>1</sup>	)	
Debtors.	)	

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**ORDER CONFIRMING THE DEBTORS'  
THIRD AMENDED JOINT CHAPTER 11 PLAN**

This matter came before the Court on September 7, 2017 for confirmation of the *Debtors' Third Amended Joint Chapter 11 Plan* (Doc. No. 379) (as may be amended or supplemented in accordance with its terms and including all exhibits and supplements thereto, the "**Plan**").<sup>2</sup> The Court, after reviewing the Plan, the *Disclosure Statement for the Debtors' Third Amended Joint Chapter 11 Plan* (Doc. No. 378) (the "**Disclosure Statement**"); and after considering the evidence presented, the statements of counsel, the record of these Chapter 11 Cases and all other evidence presented or proffered at the hearing; and it appearing

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are Lightning Dock Geothermal HI-01, LLC (4697) and Los Lobos Renewable Power, LLC (4797). The address of the Debtors' corporate headquarters is 136 S. Main Street, Suite 600, Salt Lake City, UT 84101.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings given to such terms in the Plan.

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to the Court that the legal and factual bases presented support confirmation of the Plan and all other relief granted herein; accordingly, the Court makes the following findings of fact, conclusions of law, and order:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW:<sup>3</sup>**

A. On March 14, 2017 (the **“Petition Date”**), Lightning Dock Geothermal HI-01, LLC (**“Lightning Dock”**) and Los Lobos Renewable Power, LLC (**“Los Lobos”**), together with Lightning Dock, the **“Debtors”**) commenced the above-captioned chapter 11 cases (the **“Chapter 11 Cases”**).

B. The Court has subject matter jurisdiction over this proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), (L), and (O). The Debtors are and remain qualified as debtors under section 109 of the Bankruptcy Code.

C. Venue in the District of New Mexico was proper as of the Petition Date and remains proper under 28 U.S.C. § 1408 and 1409.

D. The Court takes judicial notice of the docket in these Chapter 11 Cases, including without limitation all pleadings and other documents filed, all orders entered, and evidence and argument made, proffered,

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<sup>3</sup> All findings of fact shall constitute findings of fact even if stated as conclusions of law, and all conclusions of law shall constitute conclusions of law even if stated as findings of fact.

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or adduced at the hearings held before the Court during the pendency of the Chapter 11 Cases.

E. The Debtors complied with the Court's *Order Approving Disclosure Statement and Setting Objection and Voting Deadlines; Notice of Final Hearing on Plan Confirmation* (Doc. No. 375) (the "**Approval Order**"). The transmittal and service of the Plan, Disclosure Statement, related notices and other documents set forth in paragraph 2 of the Approval Order was completed, and such notice (i) was sufficient notice of the hearing on confirmation of the Plan, (ii) was sufficient notice of the opportunity for any party in interest to object to confirmation of the Plan, (iii) provided adequate time for creditors entitled to vote on the Plan to do so, (iv) was sufficient notice of Lightning Dock's assumption of executory contracts and unexpired leases pursuant to the Plan, and (v) satisfied in all respects the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules of this Court. No further notice to any creditors or other parties in interest is necessary to grant the relief set forth herein.

F. The Debtors solicited and tabulated votes to accept or reject the Plan fairly, in good faith, and in a manner consistent with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Approval Order. As reflected in the declaration of Samuel I. Roybal, the only holders of claims entitled to vote on the Plan were Cyrg Energy (in Class 5) and Kaishan Holding (in Class 2), and each such holder voted in favor of the Plan. Thus, all Classes entitled to vote on the Plan

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voted in favor of the Plan by the required amount and number for such Classes to accept the Plan.

G. The Debtors have met their burden of proving the elements of subsections (a) and (b) of section 1129 of the Bankruptcy Code. Without limiting the foregoing, the Court finds that:

i. the Plan complies with all applicable provisions of the Bankruptcy Code;

ii. the Plan has been proposed in good faith and not by any means forbidden by law;

iii. any payment made or to be made under the Plan for services or for costs and expenses in or in connection with the Chapter 11 Cases has been approved by, or is subject to the approval of, the Court as reasonable;

iv. the Debtors have fully disclosed the identity and affiliations of the individuals proposed to serve, after confirmation of the Plan, as a manager or officer of the Reorganized Debtors, and the appointment to, or continuance in, such office of such individuals, is consistent with the interests of creditors and equity security holders and with public policy; and the Debtors have disclosed the identity of any insider who will be employed or retained by the Reorganized Debtors and the nature of the compensation to such insiders;

v. there are no proposed post-confirmation rate changes for which the approval of a government regulatory commission would be required. 11 U.S.C. § 1129(a)(6) is not applicable to this case;

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vi. at least one class of claims that is impaired under the Plan has accepted the Plan, determined without including any acceptance of the Plan by any insider;

vii. the Plan is feasible, and is not likely to be followed by the liquidation or the need for further financial reorganization of Lightning Dock;

viii. the Plan contains all mandatory provisions required by 11 U.S.C. § 1123 and contains only such other provisions as are permissible under 11 U.S.C. § 1123 and otherwise consistent with the Bankruptcy Code; and

ix. The plan contains adequate means for its implementation.

H. The principal purpose of the Plan is not to evade tax or securities laws.

I. The consummation of the settlement between the Plan Proponents and the Kaishan Entities set forth in the Plan (the “**Kaishan Settlement**”) is in the best interests of the Debtors, the Estates, and all holders of Claims. The Kaishan Settlement is fair and equitable and falls within the range of reasonableness with respect to the asserted claims of the parties, taking into account the probabilities of success on the merits of all relevant parties, the complexity, expense and delay of litigation thereby resolved, and the interests of all creditors, and thus the Kaishan Settlement represents a benefit to the Estates and creditors. The Kaishan Settlement is the result of arm’s-length, good

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faith negotiations among the Plan Proponents and the Kaishan Entities.

J. The consummation of the settlement between the Plan Proponents and Deutsche Bank set forth in the Plan (the “**Deutsche Bank Settlement**”) is in the best interests of the Debtor, the Estates, and all holders of Claims. The Deutsche Bank Settlement is fair and equitable and falls within the range of reasonableness with respect to the claims asserted by Deutsche Bank, taking into account the probabilities of success on the merits of all relevant parties, the complexity, expense and delay of litigation thereby resolved, and the interests of all creditors, and thus the Deutsche Bank Settlement represents a benefit to the Estates and creditors. The Deutsche Bank Settlement is the result of arm’s-length, good faith negotiations among the Plan Proponents and Deutsche Bank.

K. Pursuant to section 1142(b) of the Bankruptcy Code, no action of their respective managers, officers, managers or members will be required to authorize the Debtors or the Reorganized Debtors (i) to effectuate and carry out the Plan or any order of this Court relating thereto, (ii) consummate the transactions contemplated by the Plan or such orders, or (iii) to take any other action or thing contemplated by the Plan or such orders, and all such actions and things are hereby deemed taken or done with like effect as if authorized or approved by unanimous actions of such managers, officers, or members.

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L. Lightning Dock has exercised sound business judgment in determining (i) to assume, or assume and assign, each of the Executory Contracts and Unexpired Leases listed on Exhibit A to the Plan or assumed by prior order of the Court. As a result of the assumption of the Executory Contracts and Unexpired Leases listed on Exhibit A to the Plan or assumed by prior order of the Court, and the payment of any related cure amount, any existing default under any assumed Executory Contract or Unexpired Lease shall have been, and hereby is deemed, cured.

M. All applicable requirements for confirmation of the Plan have been duly satisfied.

Therefore, after due deliberation and good cause appearing,

IT IS HEREBY ORDERED:

1. The Plan, attached hereto as *Exhibit A*, including all Exhibits attached thereto or included in the Plan Supplement, hereby is **APPROVED** and **CONFIRMED** pursuant to section 1129 of the Bankruptcy Code.

2. If there is any direct conflict between the terms of the Plan and the terms of this Order, the terms of this Order shall control.

3. All objections and responses to, and statements and comments regarding, the Plan, to the extent not withdrawn prior to entry of this Order, or not cured by the relief granted herein, hereby are expressly overruled.

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4. The terms of the Plan hereby bind the Debtors and all holders of Claims or Interests (whether or not such Claims or Interests are impaired under the Plan or the holders of such Claims or Interests accepted the Plan), and any and all non-debtor parties to executory contracts and unexpired leases with the Debtors, and the respective heirs, executors, administrators, successors, or assigns, if any, of each of the foregoing.

5. The Debtors, Reorganized Debtors, and all other appropriate parties are authorized to execute and deliver any and all documents and instruments and take any and all action necessary or desirable to implement the Plan and this Order and to effect any other transactions contemplated therein or thereby, regardless of whether the Plan or this Order specifically refers to such actions or documents, including without limitation (i) adopting amended limited liability company agreements or similar governing documents, and (ii) executing such documents and instruments necessary to effect, in the Reorganized Debtors' discretion, the dissolution of Los Lobos. To the extent that under applicable non-bankruptcy law any of the foregoing actions would otherwise require the consent, authorization or approval of the officers, managers or members of such entity, this Order constitutes such consent, authorization or approval.

6. The execution, entry into, and consummation of all documents, agreements and instruments contemplated by the Plan hereby are and will be deemed to have occurred and be effective as provided in the Plan, and hereby are authorized and approved in all respect



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and for all purposes without any requirement of further action by the officers, managers or members of the Debtors, Reorganized Debtors, and all other appropriate parties.

7. *Plan Modifications.* To the extent any of the provisions of this Order constitute modifications of the Plan, the Plan, as modified, satisfies the requirements of Sections 1122 and 1123 of the Bankruptcy Code and is hereby approved.

8. *Execution by Third Parties.* Each and every federal, state and local government agency or department shall be, and hereby is, directed to accept, and lessors or holders of liens are directed to execute, any and all documents, instruments, or amendments necessary and appropriate to consummate the transactions contemplated under the Plan.

9. *Approval of the Releases, Settlements and Injunctions.* Pursuant to Sections 1123(b)(3)(A), 1123(b)(5) and 1123(b)(6) of the Bankruptcy Code and Bankruptcy Rule 9019(a), the settlements, compromises, releases, and injunctions set forth in the Plan, and implemented by this Order, including without limitation the Kaishan Settlement and the Deutsche Bank Settlement, hereby are approved as fair, equitable, reasonable and in the best interests of the Debtors and their Estates and the holders of Claims and Interests; provided, however, notwithstanding anything to the contrary in the Plan or this Order, such releases and injunctions shall not include, nor shall they be deemed to provide, a release of any obligations under

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the Plan or a stay against enforcing any provision of the Plan in accordance with its terms. Without limiting the foregoing, the following discharge, releases and injunctions set forth in Article VIII of the Plan are hereby approved:

a. Discharge of Claims and Termination of Interests.

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

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activity of any kind or nature that occurred prior to the Effective Date. Pursuant to section 1141(d)(3) of the Bankruptcy Code, Confirmation will not discharge Claims against Los Lobos; *provided, however* that (i) no holder of a Claim against and Interest in Los Lobos may on account of such Claim or Interest seek payment or other treatment from, or seek recourse against Los Lobos in a manner inconsistent with the Plan, and (ii) nothing in this sentence shall alter or amend, or be deemed to alter or amend the settlements embodied in the Plan, or the releases, injunctions and exculpations provided for in Sections 8.2, 8.3, 8.5, and 8.6 of the Plan.

b. Releases by Lightning Dock in Favor of the Released Parties.

Pursuant to section 1123(b) of the Bankruptcy Code, and except as otherwise expressly provided in the Plan, for good and valuable consideration, as of the Effective Date, each of the Debtors, the Reorganized Debtors, and the Estates, irrevocably and absolutely releases the Released Parties from any and all Claims and Causes of Actions that the Debtors, the Reorganized Debtors, or the Estates, would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other Entity, based in whole or in part upon any act of omission, transaction, agreement, event or other occurrence taking place on or before the Effective

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Date arising out of or in any way related to the Chapter 11 Cases, the Disclosure Statement, the Plan, or related agreements, instruments or other documents; *provided, however*, that the foregoing provisions of Section 8.2 of the Plan shall have no effect on the liability of any of the Released Parties for gross negligence, willful misconduct, fraud, or criminal conduct as determined by a Final Order entered by a court of competent jurisdiction.

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

c. Releases by the Kaishan Entities in Favor of the Released Parties.

Except as otherwise expressly provided in the Plan, for good and valuable consideration, as of the Effective Date, each of the

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Kaishan Entities, and each of their successors and assigns, and current and former affiliates, subsidiaries, officers, directors, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, solely in their respective capacities as such, irrevocably and absolutely releases the Released Parties from any and all Claims and causes of action (including, without limitation, the Kaishan Claims), based in whole or in part upon any act of omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date arising out of or in any way related to the Chapter 11 Cases, the Disclosure Statement, the Plan, the Kaishan Financing Documents, the Kaishan EPC Contract, the Kaishan Equipment Purchase Agreements, or related agreements, instruments or other documents.

Entry of this Order shall constitute this Court's approval, pursuant to Bankruptcy Rule 9019, of the release set forth above and in Section 8.3 of the Plan, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Court's finding that such release is: (a) in exchange for the good and valuable consideration provided by the Released Parties; (b) a good faith settlement and compromise of the Claims and causes of action released by Section 8.3 of the Plan; (c) in the best interests of the Debtors and all holders of Claims against and Interests in the Debtors;

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(d) fair, equitable, and reasonable; (e) given and made after due notice and opportunity for hearing; and (f) a bar to any Entity granting a release under Section 8.3 of the Plan from asserting any Claim or cause of action released by Section 8.3 of the Plan.

d. Releases in Favor of the Kaishan Entities.

Except as otherwise expressly provided in the Plan, for good and valuable consideration, as of the Effective Date, each of the Released Parties irrevocably and absolutely releases the Kaishan Entities, and each of their successors and assigns, and current and former affiliates, subsidiaries, officers, directors, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, solely in their respective capacities as such from any and all Claims and causes of action (including, without limitation, the Kaishan Causes of Action), based in whole or in part upon any act of omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date arising out of or in any way related to the Chapter 11 Cases, the Disclosure Statement, the Plan, the Kaishan Financing Documents, the Kaishan EPC Contract, the Kaishan Equipment Purchase Agreements, or related agreements, instruments or other documents.

Entry of this Order shall constitute this Court's approval, pursuant to Bankruptcy Rule 9019, of the release set forth above and in Section 8.4 of the Plan, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Court's finding that such release is: (a) in exchange for the good and valuable consideration provided by the Kaishan Entities; (b) a good faith settlement and compromise of the Claims and causes of action released by Section 8.4 of the Plan; (c) in the best interests of the Debtors and all holders of Claims against and Interests in the Debtors; (d) fair, equitable, and reasonable; (e) given and made after due notice and opportunity for hearing; and (f) a bar to any Entity granting a release under Section 8.4 of the Plan from asserting any Claim or cause of action released by Section 8.4 of the Plan.

e. Exculpation.

No Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated from any Exculpated Claim or any obligation, Cause of Action, or liability for any Exculpated Claim; *provided, however,* that the foregoing "exculpation" shall have no effect on the liability of any Entity that results from any such act or omission that is determined in a Final Order to have constituted gross negligence or willful misconduct; provided, further, that in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their

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duties and responsibilities pursuant to, or in connection with, the Plan. The Exculpated Parties have, and upon Confirmation shall be deemed to have, participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation of acceptances and rejections of the Plan and the making of distributions pursuant to the Plan and, therefore, are not and shall not be liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

f. *Injunction.*

Except as otherwise provided in the Plan or for obligations issued pursuant to the Plan, all Entities that have held, hold, or may hold Claims or Interests that have been released pursuant to Section 8.2, Section 8.3, or Section 8.4 of the Plan, discharged pursuant to Section 8.1 of the Plan, or are subject to exculpation pursuant to Section 8.5 of the Plan are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, the Kaishan Entities, the Released Parties, or the Exculpated Parties: (a) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment,



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award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (c) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; (d) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property or estates of such Entities on account of or in connection with or with respect to any such Claims or Interests unless such holder has filed a motion requesting the right to perform such setoff on or before the Confirmation Date; and (e) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests released, exculpated, or settled pursuant to the Plan.

10. *Assumption of Executory Contracts and Unexpired Leases.* Subject only to the occurrence of the Effective Date and the payment of all applicable cure amounts, the assumption of the Executory Contracts and Unexpired Leases of Lightning Dock in accordance with the Plan and this Order shall be, and hereby is, approved in all respects pursuant to Section 365 of the Bankruptcy Code. As a result of the assumption of the Executory Contracts and Unexpired Leases listed on Exhibit A to the Plan or assumed by prior order of the Court, and the payment of any applicable cure amount,

any existing default under any assumed Executory Contract or Unexpired Lease shall have been, and hereby is deemed, cured.

11. *Exemption from Transfer Taxes.* Pursuant to Section 1146(a) of the Bankruptcy Code, the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan will not be subject to any stamp tax, recording tax, personal property transfer tax, sales or use tax, or other similar tax or fee. All recording and filing officers and clerks wherever located are hereby directed to accept for filing or recording, and to file or record immediately upon presentation thereof, any mortgage, deed of trust or other instrument of transfer without payment of any stamp tax, recording tax, personal property transfer tax, sales or use tax, or similar tax or fee. Furthermore, the transfer of the Debtors' assets to any party shall not be subject to any stamp tax, recording tax, personal property tax, transfer tax, sales or use tax or any other similar tax or fee. The Debtors hereby are authorized to deliver a notice or short form of this Order to any state recording officer to the effect that such officer must accept for filing such documents described in this paragraph without charging any stamp tax, recording tax, personal property transfer tax, real estate transfer tax, sales or use tax or other similar tax or fee.

12. Prior to the Effective Date, the Debtors may make non-material modifications, corrections, supplements or amendments to any document filed as part of the Plan Supplement without further Order of the Court.

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13. Pursuant to Bankruptcy Rule 3020(e), this Order shall not be automatically stayed, but shall be effective and enforceable immediately upon signature and entry of this Order on the jointly administered docket in these Chapter 11 Cases.

**XXX END OF ORDER XXX**

Submitted by:

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO**

In re:	)	Chapter 11
LIGHTNING DOCK	)	Case No. 17-10567
GEOTHERMAL HI-01, LLC,	)	(Jointly Administered)
<i>et al.</i> , <sup>1</sup>	)	
Debtors	)	

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**DEBTORS' THIRD AMENDED  
JOINT CHAPTER 11 PLAN**

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Dated: August 23, 2017

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are Lightning Dock Geothermal HI-01, LLC (4697) and Los Lobos Renewable Power, LLC (4797). The address of the Debtors' corporate headquarters is 136 S. Main Street, Suite 600, Salt Lake City, UT 84101.

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[iv] LIST OF EXHIBITS

Exhibit A	Executory Contracts and Unexpired Leases Assumed by Lightning Dock
Exhibit B	Executory Contracts and Unexpired Leases Rejected by Lightning Dock
Exhibit C	List of Officers and Managers for Reor- ganized Debtors
Exhibit D	Operation and Maintenance Agreement Dated June 30, 2014
Exhibit E	Form of Exit Facility Credit Agreement
Exhibit F	Form of New Subordinated Intercompany Note

[1] INTRODUCTION

Lightning Dock Geothermal HI-01, LLC, a Delaware limited liability company, and Los Lobos Renewable

Power, LLC, a Delaware limited liability company, debtors and debtors-in-possession in the above-captioned chapter 11 cases, hereby propose the following Chapter 11 Plan. Although proposed jointly for administrative purposes, the Plan constitutes a separate Plan for each Debtor. The Plan contemplates no substantive consolidation of the Debtors. Reference is made to the Disclosure Statement for a discussion of the Debtors' history, business, properties, operations, projections, risk factors, a summary and analysis of this Plan and certain related matters.

## ARTICLE I

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

#### 1.1 Defined Terms

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

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2. “*Allowed*” means, with reference to any Claim, or any portion thereof, that is (a) specifically allowed under this Plan, (b) allowed under the Bankruptcy Code, or (c) allowed by a Final Order.

3. “*Allowed Agent Fee Claim*” means the accrued and unpaid fees and expenses of Deutsche Bank arising under or in connection with the Kaishan Financing Documents (including, without limitation, the fees and expenses of its counsel), which shall constitute and be deemed to be an Allowed Claim under this Plan in the amount of \$148,099.78.

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

5. “*Ballot*” means the ballot distributed to each eligible holder of a Claim, on which ballot such holder may vote to accept or reject the Plan.

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

[2] 7. “*Bankruptcy Court*” means the United States Bankruptcy Court for the District of New Mexico or such other court having jurisdiction over the Chapter 11 Cases.

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

9. “*Bottom Cycle*” means that portion of the single low-temperature unit, supplied to Lightning Dock by the Kaishan Contractors pursuant to the Phase 2 Equipment Purchase Agreement and the Kaishan EPC Contract, that was installed at the Existing Plant as of August 11, 2017.

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

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

12. “*Causes of Action*” means any and all claims, actions, causes of action, choses in action, suits, debts, demands, damages, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, judgments, remedies, rights of set-off, third-party claims, subrogation claims, contribution claims, reimbursement claims, indemnity claims, counter-claims, and crossclaims (including all claims and any avoidance, recovery, subordination, or other actions against Insiders and/or any other Entities under the Bankruptcy Code, including Avoidance Actions) of the

Debtors and/or their Estates, whether known or unknown, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, that are or may be pending on the Effective Date or commenced by the Reorganized Debtors after the Effective Date against any Entity, based in law or equity, including under the Bankruptcy Code, whether direct, indirect, derivative, or otherwise and whether asserted or unasserted as of the date of entry of the Confirmation Order, including without limitation the Kaishan Causes of Action.

13. “*Chapter 11 Cases*” means the procedurally consolidated chapter 11 cases pending for the Debtors in the Bankruptcy Court.

14. “*CITIC*” means CITIC Securities Company Limited (as Fund Manager for and on behalf of CITIC Securities Kai Shan Discovery Fund).

15. “*CITIC Note Purchase Agreement*” means the Note Purchase Agreement dated as of June 30, 2014, between Lightning Dock and CITIC, as amended.

16. “*Claim*” has the meaning set forth in section 101(5) of the Bankruptcy Code.

17. “*Claims Register*” means the official register of Claims against or Interests in the Debtors maintained by the Bankruptcy Court.

[3] 18. “*Class*” means a category of holders of Claims or Interests under section 1122(a) of the Bankruptcy Code.

19. “*Confirmation*” means the entry of the Confirmation Order on the docket of the Chapter 11 Cases.

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

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

22. “*Confirmation Order*” means the order of the Bankruptcy Court confirming the Plan under section 1129 of the Bankruptcy Code, which order shall be in form and substance reasonably satisfactory to the Debtors and Cyrg Energy.

23. “*Consummation*” means the occurrence of the Effective Date. For the avoidance of doubt, “*Consummation*” is distinct from “substantial consummation,” which is defined in section 1101(2) of the Bankruptcy Code.

24. “*Creditor*” has the meaning set forth in section 101(10) of the Bankruptcy Code.

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

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26. "*Cyrq Energy*" means Cyrq Energy, Inc.

27. "*Cyrq Energy Subordinated Debt Claim*" means the Claim of Cyrq Energy against Lightning Dock under the Intercompany Financing Documents, which Claim shall be an Allowed Claim and shall not be subject to avoidance, objection, challenge, deduction, subordination, recharacterization or offset, in the aggregate amount of \$10,043,864.82 as of the Petition Date.

28. "*Debtors*" means Lightning Dock and Los Lobos.

29. "*Deutsche Bank*" means Deutsche Bank Trust Company Americas, solely in its capacity as Security Agent, Registrar, and Transfer Agent, as applicable, under the Kaishan Financing Documents.

30. "*Deutsche Bank Claims*" mean any and all Claims against one or both Debtors held by Deutsche Bank, including without limitation the Deutsche Bank Proofs of Claim. For the avoidance of doubt, the Deutsche Bank claims shall not include the Kaishan Claims.

31. "*Deutsche Bank Proofs of Claim*" mean any and all proofs of claim filed in the Chapter 11 Cases by Deutsche Bank, including without limitation (a) the proof of claim filed [4] against Lightning Dock designated by the Clerk of Court as claim number 17-1, and (b) the proof of claim filed against Los Lobos designated by the Clerk of Court as claim number 2-1.

32. “*DIP Facility*” means the post-petition credit facility provided by Cyrq Energy under the DIP Financing Documents.

33. “*DIP Facility Claims*” means the Secured and Administrative Claims held by Cyrq Energy arising under or in connection with the DIP Financing Documents and the DIP Order and shall include without limitation all attorneys’ fees and other expenses incurred by Cyrq Energy in connection with the Chapter 11 Cases.

34. “*DIP Financing Documents*” means the agreements and other related documents pursuant to which Cyrq Energy extended secured, post-petition financing to the Debtors.

35. “*DIP Order*” means, collectively, the interim and final orders entered by the Bankruptcy Court authorizing the Debtors to obtain post-petition financing from Cyrq Energy under the DIP Financing Documents.

36. “*Disclosure Statement*” means the disclosure statement for the Plan as may be amended, supplemented, or modified from time to time, including all exhibits and schedules thereto, to be approved by the Bankruptcy Court.

37. “*Disputed*” means a Claim, or any portion thereof, that is (a) not Allowed, (b) not disallowed under the Plan, the Bankruptcy Code, as applicable, or a Final Order, (c) listed in the applicable Debtor’s Schedules as disputed, contingent and/or unliquidated, or in



the amount of \$0.00, (d) the subject of an objection or request for estimation filed in the Bankruptcy Court and which objection or request for estimation has not been withdrawn or overruled by a Final Order of the Bankruptcy Court, or (e) otherwise disputed by the Debtors or the Reorganized Debtors in accordance with applicable law, which dispute has not been withdrawn, resolved or overruled by Final Order.

38. “*Effective Date*” means the date that is the first Business Day after the Confirmation Date on which all conditions precedent to the occurrence of the Effective Date set forth in *Section 9.1* have been satisfied or waived in accordance with *Section 9.2*.

39. “*Entity*” has the meaning set forth in section 101(15) of the Bankruptcy Code.

40. “*Estates*” means the bankruptcy estates of Lightning Dock and Los Lobos created under sections 301 and 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Cases.

41. “*Exculpated Claim*” means any Claim related to any act or omission in connection with, relating to, or arising out of the Chapter 11 Cases, the formulation, preparation, solicitation, dissemination, negotiation, or filing of the Disclosure Statement, the Plan, the Repower Contracts, or any contract, instrument, release, or other agreement or document created or entered into in connection with or pursuant to the Repower Contracts, the Disclosure Statement or the Plan, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of [5] Consummation, the

administration and implementation of the Plan, or the distribution of property under the Plan.

42. “*Exculpated Party*” means each of the following in its capacity as such: (a) the Debtors and their Estates, (b) the Reorganized Debtors, (c) Cyrq Energy, (d) all affiliates, subsidiaries, members, and shareholders of each of the foregoing, and (e) with respect to each of the foregoing, all of their respective successors and assigns and current and former officers, directors, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals.

43. “*Executory Contract*” means a contract or lease to which Lightning Dock is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

44. “*Existing Plant*” means Lightning Dock’s electric generating facility located in Hidalgo County, New Mexico, prior to the Repower.

45. “*Exit Facility*” means a \$36.0 million secured term loan facility maturing on June 30, 2019 and on the other terms and conditions set forth in the Exit Facility Financing Documents, which shall be substantially the same as those of the DIP Facility and acceptable to Lightning Dock in its discretion. The Exit Facility shall be secured by first-priority blanket Liens on all Exit Facility Collateral.

46. “*Exit Facility Collateral*” means all real and personal property of the Debtors or the Reorganized

Debtors, as applicable, now owned or hereafter acquired, other than the Surrendered Equipment.

47. "*Exit Facility Credit Agreement*" means the Credit Agreement between Lightning Dock and Cyrq Energy in substantially the form annexed to the Plan Supplement.

48. "*Exit Facility Financing Documents*" means the Exit Facility Credit Agreement and the other agreements and related documents pursuant to which Cyrq Energy will provide the Exit Facility to Reorganized Lightning Dock in accordance with section 4.1 of the Plan, the terms of which shall be substantially similar to the terms of the DIP Financing Documents.

49. "*Federal Geothermal Leases*" mean the two geothermal resource leases between Lightning Dock, as lessee, and the Bureau of Land Management, as lessor, one for 2,501 acres and one for 640 acres, which geothermal resource leases are being assumed pursuant to the Plan.

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

51. "*Final Order*" means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction entered on the docket of such court that has not been reversed, vacated, stayed, modified, or amended, and as to which the time to appeal, petition for certiorari, seek to review or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari or review or other

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proceedings for reargument or rehearing shall then be pending, or as to which any right to appeal, petition for certiorari or review, reargue or rehear shall have been waived in writing in form and substance satisfactory to the Debtors or the Reorganized Debtors, or, in the event that an appeal, petition for certiorari or [6] reargument or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or certiorari or review, reargument or rehearing shall have been denied and the time to take any further appeal, petition for certiorari or review or move for reargument or rehearing shall have expired; *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.

52. “*Geothermal Leases*” mean any and all geothermal resource leases pursuant to which Lightning Dock is a lessee, including, without limitation, the Federal Geothermal Leases and the McCants Lease.

53. “*General Unsecured Claim*” means any Claim against a Debtor other than an Administrative Claim, a Professional Claim, a Secured Claim, a Priority Tax Claim, an Other Priority Claim, the Cyrq Energy Subordinated Debt Claim, a Deutsche Bank Claim, or a Kaishan Claim.

54. “*Governmental Unit*” has the meaning set forth in section 101(27) of the Bankruptcy Code.

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

56. “*Industrial Builders*” means Industrial Builders, Inc.

57. “*Insider*” has the meaning set forth in section 101(31) of the Bankruptcy Code.

58. “*Intercompany Credit Agreement*” means the Credit Agreement dated as of January 11, 2012 among Cyrq Energy and Lightning Dock.

59. “*Intercompany Financing Documents*” mean the Intercompany Credit Agreement, the Intercompany Note, and other documents evidencing or relating to the Intercompany Note.

60. “*Intercompany Note*” means the note issued by Lightning Dock pursuant to the Intercompany Credit Agreement.

61. “*Interest*” means any membership, stock or other equity ownership interest in a Debtor and all dividends and distributions with respect to such membership, stock or other equity ownership interest and all rights, options, warrants (regardless of when exercised), other rights to acquire any membership, stock or other equity ownership interest in a Debtor existing immediately prior to the Effective Date.

62. “*Kaishan Causes of Action*” means all Causes of Action against any or all of the Kaishan Entities arising out of or relating in any way to the equipment

manufactured and sold by any or all of the Kaishan Entities to Lightning Dock and/or the Kaishan EPC Contract, including without limitation all Causes of Action (a) against Kaishan Holding for fraud, intentional misrepresentation, negligent misrepresentation, and violation of applicable unfair business [7] practice statutes and (b) against the Kaishan Contractors for fraud, intentional misrepresentation, negligent misrepresentation and breach of the Kaishan EPC Contract.

63. “*Kaishan Claims*” mean any and all Claims against one or both Debtors held by one or more of the Kaishan Entities (or their successors or assigns), on behalf of themselves or any other party, including without limitation the Kaishan Secured Claim, the Kaishan Unsecured Claims, the Kaishan Proofs of Claim and any and all claims under the Kaishan Financing Documents, the Kaishan EPC Contract, or the Kaishan Equipment Purchase Agreements.

64. “*Kaishan Compressor*” means Zhejiang Kaishan Compressor Co., Ltd.

65. “*Kaishan Contractors*” means Kaishan Compressor and Kaishan Tongrong.

66. “*Kaishan Entities*” means Kaishan Holding, Kaishan Compressor and Kaishan Tongrong.

67. “*Kaishan EPC Contract*” means that certain Engineering, Procurement and Construction Contract by and between Lightning Dock, as Owner, and the Kaishan Contractors, as Contractor, for the Lightning

Dock Geothermal Power Project Renovation and Expansion, dated as of May 28, 2015.

68. “*Kaishan Equipment Purchase Agreements*” mean the Phase 1 Equipment Purchase Agreement and the Phase 2 Equipment Purchase Agreement.

69. “*Kaishan Financing Documents*” means the CITIC Note Purchase Agreement, the Kaishan Security Agreement, the Kaishan Mortgage, the Kaishan Pledge Agreement, the Kaishan Security Agency Agreement, the Kaishan Notes, the Kaishan Subordination Agreement, and other documents evidencing or relating to the foregoing.

70. “*Kaishan Holding*” means Zhejiang Kaishan Holding Group Co., Ltd.

71. “*Kaishan Letter*” means that certain letter dated August 11, 2017, signed by the Plan Proponents’ CEO, Nicholas Goodman, the original copy of which has been delivered by the Plan Proponents to the Kaishan Entities’ counsel at Garvey Schubert Barer, and which is being held in escrow by Garvey Schubert Barer as of the date of such letter.

72. “*Kaishan Mortgage*” means the Mortgage, Security Agreement and Fixture Filing by Lightning Dock, as mortgagor, in favor of Deutsche Bank, as Security Agent for and on behalf of CITIC and its successors and/or assigns.

73. “*Kaishan Notes*” means the RMB equivalent US \$25,000,000 principal amount of disputed secured

promissory notes issued pursuant to the CITIC Note Purchase Agreement.

74. “*Kaishan Payment*” means a lump sum payment in the amount of US \$7,000,000, which the Plan Proponents shall make or cause to be made to Kaishan Holding on or before the Effective Date.

[8] 75. “*Kaishan Pledge Agreement*” means the Pledge Agreement dated August 19, 2014 between Los Lobos, as Pledgor, and Deutsche Bank, as Security Agent.

76. “*Kaishan Proofs of Claim*” mean any and all proofs of claim filed in the Chapter 11 Cases by one or more of the Kaishan Entities (or their successors or assigns), on behalf of themselves or any other Entity, including without limitation (a) the proofs of claim filed against Lightning Dock and designated by the Clerk of Court as claim numbers 19-1, 20-1, 21-1, 22-2, 25-1, 26-1, and (b) the proofs of claim filed against Los Lobos and designated by the Clerk of Court as claim numbers 3-1, 4-1, and 5-1.

77. “*Kaishan Secured Claim*” means the Secured Claims held by Kaishan Holding against the Debtors arising under or in connection with the Kaishan Financing Documents, including without limitation in respect of the Kaishan Notes.

78. “*Kaishan Security Agreement*” means the Security Agreement dated as of August 19, 2014 between Lightning Dock and Deutsche Bank, as Security Agent.



79. “*Kaishan Security Agency Agreement*” means the Amended and Restated Security Agency Agreement, dated as of February 2, 2015, by and among CITIC, Lightning Dock, Deutsche Bank, as Security Agent, Registrar, and Transfer Agent, and, solely for purposes of section 9 thereof, Shanghai Rongfu Investment Management Center (Limited Partnership).

80. “*Kaishan Subordination Agreement*” means the Subordination Agreement, dated as of August 19, 2014, by Cyrq Energy and Lightning Dock for the benefit of the Secured Parties (as defined therein).

81. “*Kaishan Tongrong*” means Zhejiang Tongrong Energy Service Co. Ltd.

82. “*Kaishan Unsecured Claims*” mean all of the Kaishan Claims other than the Kaishan Secured Claim, which Claims are deemed withdrawn in accordance with the terms of the Plan.

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

84. “*Lightning Dock*” means Debtor Lightning Dock Geothermal HI-01, LLC.

85. “*London Arbitration*” means the arbitration proceeding commenced by the Kaishan Contractors against Lightning Dock under the Kaishan EPC Contract pursuant to the arbitration rules of the London Court of International Arbitration, Arbitration No. 163455.

86. “*Los Lobos*” means Debtor Los Lobos Renewable Power, LLC.

87. “*McCants Lease*” means, together, (a) the Geothermal Lease and Surface Use and Access Agreement and (b) the Operating Agreement and Agreement to Lease, as amended, between Lightning Dock and Thomas W. and Martha J. McCants.

88. “*Mitsubishi*” means Turboden S.p.A., a group company of Mitsubishi Heavy Industries, Ltd.

[9] 89. “*New York Litigation*” means the case commenced by Kaishan Holding against Lightning Dock in the United States District Court for the Southern District of New York, Case No. 16-01572-KPF.

90. “*New Subordinated Intercompany Note*” means a promissory note issued by Reorganized Lightning Dock in the original principal amount of \$10,033,864.82 (the amount of the Cyrq Energy Subordinated Debt Claim less \$10,000.00) and payable to Cyrq Energy. The New Subordinated Intercompany Note shall (a) be subordinate to all other obligations under the Plan including without limitation the Exit Facility, (b) accrue interest at a rate of 2.75% per annum, and (c) be in substantially the form annexed to the Plan Supplement.

91. “*O&M Agreement*” means the Operation and Maintenance Management Agreement, dated as of June 30, 2014, between Lightning Dock and Raser Technologies Operating Company, Inc., which is being assumed pursuant to the Plan.

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

93. “*Other Secured Claim*” means any Secured Claim against a Debtor other than the Kaishan Secured Claim or a Secured Tax Claim.

94. “*Owned Real Property*” means the approximately 160 acres of the land above the Federal Geothermal Leases in which Lightning Dock holds a fee simple interest.

95. “*Person*” has the meaning set forth in section 101(41) of the Bankruptcy Code.

96. “*Petition Date*” means March 14, 2017.

97. “*Phase 1 Equipment Purchase Agreement*” means the Equipment & Services Purchase Agreement, dated 1 August 2013, by and between Lightning Dock and Kaishan Tongrong.

98. “*Phase 1 Plant*” means the four (4) installed ORC units supplied by the Kaishan Contractors pursuant to the Phase 1 Equipment Purchase Agreement and currently in operation at the Existing Plant.

99. “*Phase 2 Equipment Purchase Agreement*” means the Equipment & Services Purchase Agreement, dated 30 July 2014, by and between the Lightning Dock and the Kaishan Contractors.

100. “*Plan*” means this joint third amended chapter 11 plan, as it may be altered, amended,

modified, or supplemented from time to time, including the Plan Supplement and all exhibits, supplements, appendices, and schedules.

101. “*Plan Proponents*” mean the Debtors and Cyrq Energy.

[10] 102. “*Plan Supplement*” means any compilation of documents and forms of documents, agreements, schedules, and exhibits to the Plan, including without limitation the Exit Facility Credit Agreement and the New Subordinated Intercompany Note, which shall be filed by Lightning Dock no later than five (5) Business Days prior to the date first scheduled for the Confirmation Hearing, or such later date as may be approved by the Bankruptcy Court on notice to parties in interest, and additional documents filed with the Bankruptcy Court prior to the Effective Date as amendments to the Plan Supplement.

103. “*PNM*” means the Public Service Company of New Mexico.

104. “*Power Purchase Agreement*” means that certain Amended and Restated Geothermal Power Purchase and Sale Agreement between PNM and Lightning Dock, dated as of June 17, 2014, as amended by that certain Amendment No. 1, dated March 10, 2017, and as may be further amended.

105. “*Priority Tax Claim*” means any Claim of a Governmental Unit against a Debtor of the kind specified in sections 502(i) and 507(a)(8) of the Bankruptcy Code, including a Secured Tax Claim.

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

107. “*Professional Claim*” means a Claim by a Professional seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of costs, expenses or other charges incurred under sections 330, 331, or 503(b) of the Bankruptcy Code after the Petition Date and prior to and including the Effective Date.

108. “*Proof of Claim*” means a proof of Claim filed against a Debtor in its Chapter 11 Case.

109. “*Rejection Schedule*” means the schedule of Executory Contracts and Unexpired Leases in the Plan Supplement, as may be amended from time to time, setting forth certain Executory Contracts and Unexpired Leases for rejection as of the Effective Date under section 365 of the Bankruptcy Code.

110. “*Released Parties*” mean each of the following: (a) the Debtors and their Estates, (b) Cyrq Energy, (c) Deutsche Bank, (d) all affiliates, subsidiaries, members, and shareholders of each of the foregoing, and (e) with respect to each of the foregoing, all of their respective successors and assigns, and current and

former officers, directors, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, solely in their respective capacities as such, and only if such Persons occupied any such positions at any time on or after the Petition Date.

[11] 111. “*Reorganized*” means as to either Debtor or the Debtors, the Debtor or Debtors and any successor thereto, by merger, consolidation, or otherwise, on or after the Effective Date.

112. “*Reorganized Equity Interests*” means 100% of the membership interests in each Reorganized Debtor.

113. “*Repower*” or “*Repowered*” means the replacement of the Existing Plant with a single utility grade turbine and generator (along with ancillary equipment) regularly used at other binary geothermal plants in the United States.

114. “*Repower Contracts*” mean the agreements and other related documents pursuant to which Lightning Dock contracted with Industrial Builders and Mitsubishi for the purchase of equipment and related construction services necessary for the Repower, as authorized in the Repower Contracts Order.

115. “*Repower Contracts Order*” means the *Order Authorizing the Debtors to Enter Into Repowering Contracts with Mitsubishi Affiliate Turboden S.p.A. and Industrial Builders, Inc.*, entered on May 2, 2017 in the Chapter 11 Cases at Docket No. 231.

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116. “*Repowered Plant*” means Lightning Dock’s Repowered electric generating facility located in Hidalgo County, New Mexico, as described in the Repower Contracts.

117. “*RMB*” means Renminbi Yuan, the official currency of the People’s Republic of China.

118. “*Secured Claim*” means a Claim against a Debtor that is (a) secured by a valid and unavoidable Lien on collateral to the extent of the value of such collateral, as determined in accordance with section 506(a) of the Bankruptcy Code, or (b) subject to a valid and unavoidable right of setoff under applicable law and section 553 of the Bankruptcy Code.

119. “*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.

120. “*Securities Act*” means the Securities Act of 1933, 15 U.S.C. §§ 77a-77aa, or any similar federal, state or local law.

121. “*Surrendered Equipment*” means all materials, supplies, equipment, parts, tools, components, instruments, appliances and spare parts included within the definition of “Equipment” in the Phase 2 Equipment Purchase Agreement and/or the definition of “Equipment and Materials” in the Kaishan EPC Contract, including but not limited to ORC power generation equipment, expanders, preheaters, evaporators, condensers, and generators, refrigerant transfer

equipment, lubricating oils, working fluids, transformers, well field piping, and spare parts provided pursuant to the Phase 2 Equipment Purchase Agreement and/or the Kaishan EPC Contract, but excluding (a) the Phase 1 Plant and (b) the Bottom Cycle.

122. “*Top Cycle*” means that portion of the single high-temperature unit, supplied to Lightning Dock by the Kaishan Contractors pursuant to the Phase 2 Equipment Purchase [12] Agreement and the Kaishan EPC Contract, that was installed at the Existing Plant as of August 11, 2017.

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

124. “*Unexpired Lease*” means a lease of nonresidential real property to which Lightning Dock is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

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



126. “*Unsecured Claim*” means a Claim that is not a Secured Claim.

## **1.2 Rules of Interpretation**

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

used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

**1.3 Computation of Time**

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

**[13] 1.4 Governing Law**

Except to the extent the Bankruptcy Code or Bankruptcy Rules apply, and subject to the provisions of any contract, lease, instrument, release, indenture, or other agreement or document entered into expressly in connection herewith, the rights and obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the State of New Mexico, without giving effect to conflict of laws principles.

**1.5 Reference to Monetary Figures**

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

**1.6 Reference to the Debtors or the Reorganized Debtors**

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

**ARTICLE II**

**ADMINISTRATIVE, PRIORITY  
AND DIP FACILITY CLAIMS**

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

**2.1 Administrative Claims**

Unless otherwise agreed to by the holder of an Allowed Administrative Claim and the Debtors or the Reorganized Debtors, as applicable, each holder of an Allowed Administrative Claim (other than holders of Professional Claims and Claims for fees and expenses pursuant to section 1930 of chapter 123 of title 28 of the United States Code) will receive in full and final satisfaction of its Administrative Claim an amount of Cash equal to the amount of such Allowed Administrative Claim either: (a) on the Effective Date, or as soon as reasonably practicable thereafter; (b) if the

Administrative Claim is not Allowed as of the Effective Date, no later than 30 days after the date on which an order Allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; or (c) if the Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of its business after the Petition Date in accordance with the terms and conditions of the particular transaction giving rise to such Allowed Administrative Claim without any further action by the holder(s) of such Allowed Administrative Claim.

## **2.2 Professional Claims**

All requests for payment of Professional Claims for services rendered and reimbursement of expenses incurred prior to the Confirmation Date must be filed no later than 45 days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such [14] Professional Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code. The Reorganized Debtors shall pay Professional Claims in Cash in the amount the Bankruptcy Court Allows. From and after the Confirmation Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtors may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

**2.3 Priority Tax Claims**

Each holder of an Allowed Priority Tax Claim due and payable on or before the Effective Date shall receive in full and final satisfaction, settlement, release, and discharge of and in exchange for such holder's Allowed Priority Tax Claim: (a) the treatment provided by section 1129(a)(9)(C) of the Bankruptcy Code; (b) a Cash payment on, or as soon as reasonably practicable after, the later of the Effective Date or the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, equal to the amount of such Allowed Priority Tax Claim; or (c) such other less favorable treatment as may be agreed upon between the holder of such Allowed Priority Tax Claim and the applicable Debtor. If payment is made in accordance with section 1129(a)(9)(C), installment payments shall be made quarterly and interest shall accrue in accordance with 26 U.S.C. § 6621. On the Effective Date, Liens securing such Allowed Secured Tax Claim shall be deemed released, terminated and extinguished, 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. To the extent any Allowed Priority Tax Claim is not due and owing on the Effective Date, such Claim may be paid in full in Cash in accordance with the terms of any agreement between Lightning Dock and the holder of such Claim, or as may be due and payable under applicable non-bankruptcy law, or in the ordinary course of business.

**2.4 DIP Facility Claims**

On the Effective Date, the DIP Facility Claims shall be paid from the proceeds of the Exit Facility in accordance with Section 4.1 below.

**ARTICLE III**

**CLASSIFICATION, TREATMENT, AND VOTING OF CLAIMS AND INTERESTS**

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

**[15] 3.1 Treatment and Classification of Claims and Interests**

The following chart designates the Classes of Claims against and Interests in the Debtors, and specifies which of those Classes are (a) Impaired or

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Unimpaired by the Plan, (b) entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code and (c) deemed to accept or reject the Plan. Unless a Class of Claims or Interests is specified to apply to a certain Debtor, such Class of Claims or Interests shall be deemed to apply separately with respect to each Plan proposed by each Debtor.

Class	Claim or Interest	Status	Voting Right
Class 1	Other Priority Claims against Lightning Dock	Unimpaired	Deemed to accept; not entitled to vote
Class 2	Kaishan Secured Claim	Impaired	Entitled to vote
Class 3	Other Secured Claims	Unimpaired	Deemed to accept; not entitled to vote
Class 4A	General Unsecured Claims against Lightning Dock	Unimpaired	Deemed to accept; not entitled to vote
Class 4B	General Unsecured Claims against Los Lobos	Impaired	Deemed to reject; not entitled to vote
Class 5	Cyrq Energy Subordinated Debt Claim against Lightning Dock	Impaired	Entitled to vote
Class 6	Interests	Impaired	Deemed to reject; not entitled to vote

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

(a) Class 1 (Other Priority Claims against Lightning Dock)

[16] (1) *Classification*: Class 1 consists of all Allowed Other Priority Claims against Lightning Dock.

(2) *Treatment*: On the Effective Date, each holder of an Allowed Other Priority Claim against Lightning Dock shall receive one of the following treatments, at the sole election of Lightning Dock:

A. To the extent then due and owing on the Effective Date, such an Allowed Other Priority Claim shall be paid in full, in Cash, in an amount equal to such holder's Allowed Other Priority Claim;

B. To the extent not due and owing on the Effective Date, such an Allowed Other Priority Claim shall be paid the amount of such Allowed Other Priority Claim in full, in Cash, by



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Reorganized Lightning Dock when and as such Allowed Other Priority Claim becomes due and owing in the ordinary course of business in accordance with the terms thereof; or

C. Such other less favorable treatment as is agreed upon by Lightning Dock or Reorganized Lightning Dock, as applicable, and the holder of such Allowed Other Priority Claim.

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

(b) Class 2 (Kaishan Secured Claim)

(1) *Classification:* Class 2 consists of the Kaishan Secured Claim, which shall be Allowed in the amount of \$10 million.

(2) *Treatment:* Provided that Kaishan Holding, as holder of the Allowed Kaishan Secured Claim, votes in favor of the Plan, is deemed to vote in favor of the Plan, or is otherwise compelled to accept the treatment set forth in the Plan in satisfaction of the Kaishan Claims, on the Effective Date, Kaishan Holding shall receive, in full and final satisfaction, settlement, and release of, and in exchange for, the

Allowed Kaishan Secured Claim (i) the Kaishan Payment, (ii) the Kaishan Letter, (iii) turnover of the Surrendered Equipment which shall be made available for retrieval at its current location on the Owned Real Property at the sole cost and expense of the Kaishan Entities, and (iv) the option but not the obligation to de-install and remove the Top Cycle, which shall be made available for retrieval at its current location on the Owned Real Property, at the sole cost and expense of the Kaishan Entities. The Debtors and the Kaishan Entities agree that no portion of the Kaishan Payment shall be attributable to the cost of the Phase 1 Plant. Kaishan Holding shall have [17] sixty (60) days from the Effective Date to remove the Surrendered Equipment and the Top Cycle from the Owned Real Property, at its sole cost and expense, after which the Reorganized Debtors may dispose of any remaining Surrendered Equipment or Top Cycle components and shall have no obligation to the Kaishan Entities in respect of such remaining Surrendered Equipment or Top Cycle components. For the avoidance of doubt, the Kaishan Entities shall not de-install or retrieve the Bottom Cycle or the Phase 1 Plant.

- (3) *Voting:* Class 2 is Impaired. The holder of the Allowed Kaishan Secured Claim is entitled to vote to accept or reject the Plan.

(c) Class 3 (Other Secured Claims)

- (1) *Classification:* Class 3 consists of all Allowed Other Secured Claims. For the avoidance of doubt, the Allowed Agent Fee Claim shall constitute and be classified as an Allowed Other Secured Claim.
- (2) *Treatment:* Each holder of an Allowed Other Secured Claim shall, at the sole discretion of the applicable Debtor (i) have the legal, equitable and contractual rights of such holder reinstated in full on the Effective Date, or (ii) receive in full satisfaction, settlement, and release of, and in exchange for, such holder's Allowed Other Secured Claim, at the sole option of the applicable Debtor, (A) Cash in an amount equal to such Allowed Other Secured Claim on the later of (x) the Effective Date, and (y) the date upon which such Other Secured Claim becomes Allowed, (B) on the Effective Date, turnover of the property of the Debtors that constitutes collateral securing such Allowed Other Secured Claim, solely to the extent the holder of such Allowed Other Secured Claim has a valid, perfected and enforceable first-priority Lien on such property, or (C) such other less favorable treatment as to which the applicable Debtor and the holder of such Allowed Other Secured Claim have agreed upon. Notwithstanding the foregoing, Deutsche Bank shall receive, on account of the Allowed Agent Fee Claim, Cash on the

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Effective Date in an amount equal to such Allowed Agent Fee Claim in full and final settlement of the Deutsche Bank Claims.

- (3) *Voting:* Class 3 is Unimpaired. Holders of Other Secured Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Other Secured Claims are not entitled to vote to accept or reject the Plan.
- (d) Class 4A (General Unsecured Claims against Lightning Dock)
  - (1) *Classification:* Class 4A consists of all Allowed General Unsecured Claims against Lightning Dock.
  - [18] (2) *Treatment:* Each holder of an Allowed General Unsecured Claim against Lightning Dock shall receive, in full satisfaction, settlement, and release of, and in exchange for, such Allowed General Unsecured Claim, payment in full, in Cash, in an amount equal to such Allowed General Unsecured Claim, on the later of (i) the Effective Date, and (ii) the date upon which such General Unsecured Claim becomes Allowed.
  - (3) *Voting:* Class 4A is Unimpaired. Holders of General Unsecured Claims against Lightning Dock are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of General Unsecured Claims

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against Lightning Dock are not entitled to vote to accept or reject the Plan.

(e) Class 4B (General Unsecured Claims against Los Lobos)

- (1) *Classification:* Class 4B consists of all Allowed General Unsecured Claims against Los Lobos.
- (2) *Treatment:* Holders of General Unsecured Claims against Los Lobos shall receive no property or distribution under the Plan on account of such General Unsecured Claims.
- (3) *Voting:* Class 4B is Impaired. Holders of General Unsecured Claims against Los Lobos are conclusively presumed to have rejected the Plan under section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject the Plan.

(f) Class 5 (Cyrq Energy Subordinated Debt Claim)

- (1) *Classification:* Class 5 consists of the Cyrq Energy Subordinated Debt Claim.
- (2) *Treatment:* On the Effective Date, Cyrq Energy shall receive, in full satisfaction, settlement, and release of, and in exchange for, the Cyrq Energy Subordinated Debt Claim, (i) one hundred percent (100%) of the Reorganized Equity Interests; and (ii) the New Subordinated Intercompany Note.

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(3) *Voting*: Class 5 is Impaired. Cyrq Energy, as holder of the Cyrq Energy Subordinated Debt Claim is entitled to vote to accept or reject the Plan.

(g) Class 6 (Interests)

(1) *Classification*: Class 6 consists of all Allowed Interests.

(2) *Treatment*: On the Effective Date, Allowed Interests shall be cancelled and the holder(s) of such Interests shall receive no property or distribution under the Plan on account of such Interests.

[19] (3) *Voting*: Class 6 is Impaired. Holders of Interests are conclusively presumed to have rejected the Plan under section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject the Plan.

**3.2 Special Provision Governing Unimpaired Claims**

Nothing under the Plan shall affect the Debtors' or the Reorganized Debtors' rights regarding any Unimpaired Claim other than the Allowed Agent Fee Claim, including all rights regarding legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claim.

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

Because certain Classes are deemed to have rejected the Plan, the Debtors will request confirmation of the Plan under section 1129(b) of the Bankruptcy Code. The Debtors reserve the right to alter, amend, modify, revoke or withdraw the Plan or any exhibit or Plan Supplement in order to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

**ARTICLE IV**

**MEANS OF IMPLEMENTATION OF THE PLAN**

**4.1 Exit Facility**

On the Effective Date, Reorganized Lightning Dock and Cyrq Energy shall enter into the Exit Facility Financing Documents and close the transactions contemplated thereby. Upon execution of the Exit Facility Credit Agreement, Reorganized Lightning Dock shall be deemed to have drawn on the Exit Facility in the amount of the DIP Facility Claims and to have used the amounts so drawn to pay the DIP Facility Claims in their entirety. Proceeds from the Exit Facility may be used to make payments on Allowed Administrative Claims, Allowed Professional Claims, Allowed Other Secured Claims (including the Allowed Agent Fee Claim), Allowed Priority Tax Claims, Allowed Other Priority Claims against Lightning Dock, and Allowed General Unsecured Claims against Lightning Dock.

**4.2 New Subordinated Intercompany Note**

On the Effective Date, Reorganized Lightning Dock shall issue the New Subordinated Intercompany Note and deliver such New Subordinated Intercompany Note to Cyrq Energy.

**4.3 Resolution of Claims Between the Kaishan Entities and the Plan Proponents**

The Plan represents a negotiated resolution of highly disputed claims between the Plan Proponents and the Kaishan Entities. In addition to all other provisions of the Plan, Confirmation shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the following agreements between the Plan Proponents and the Kaishan Entities:

[20] (a) the Kaishan Proofs of Claim shall be deemed withdrawn, with prejudice, on the Effective Date, and the Kaishan Entities shall not file, or cause any other Entity to file, any other proofs of claim against the Debtors;

(b) the Kaishan Secured Claim shall be Allowed in the amount of \$10 million, and the treatment set forth herein shall be the sole consideration received by the Kaishan Entities (for the avoidance of doubt, the consideration received by the Kaishan Entities shall include the Kaishan Payment, the Kaishan Letter, retrieval of the Surrendered Equipment and the option to de-install and retrieve the Top Cycle, each of which is a material element of the consideration received) on



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account of the Kaishan Claims. The Debtors and the Kaishan Entities agree that no portion of the Kaishan Payment shall be attributable to the cost of the Phase 1 Plant;

(c) no distribution shall be made on account of the Kaishan Unsecured Claims, which shall be deemed withdrawn with prejudice on the Effective Date;

(d) the Kaishan Entities shall support confirmation of the Plan, and shall not object to any relief sought by the Plan Proponents in the Chapter 11 Cases (including, without limitation, approval of Professional fee applications), provided that such relief is not inconsistent with the Plan;

(e) notwithstanding sections 4.9, 6.5 and 7.1 of the Plan, the Kaishan Secured Claim and the Kaishan Payment shall not be subject to avoidance, objection, challenge, deduction, subordination, reclassification, or offset;

(f) notwithstanding section 10.1 of the Plan, the Debtors and Reorganized Debtors may not amend or modify the Plan after entry of the Confirmation Order if such amendment or modification would adversely change the treatment of the Kaishan Secured Claim or the Kaishan Payment, without the consent of the Kaishan Entities;

(g) notwithstanding section 5.3 of the Plan, the Kaishan Entities shall owe no warranty, service or continued maintenance obligations of any kind to the Debtors;

(h) notwithstanding section 12.9 of the Plan, neither the Plan Supplement nor any exhibit nor document therein shall alter the treatment of the Kaishan Secured Claim without the written consent of the Kaishan Entities;

(i) on or as soon as reasonably practical after the Effective Date, the Kaishan Entities and Lightning Dock shall execute, deliver, and file any and all documents necessary to obtain dismissal, with prejudice, of any and all Claims asserted in the New York Litigation and the London Arbitration; and

(j) the Plan Proponents and the Kaishan Entities shall execute any and all supplementary documents and shall take all additional action that may be necessary or appropriate to give full force and effect to the terms and intent of the Plan.

**[21] 4.4 Resolution of Claims Between Deutsche Bank and the Plan Proponents**

The Plan represents a negotiated resolution of the Deutsche Bank Claims. The Plan Proponents and Deutsche Bank have agreed to resolve the Deutsche Bank Claims through allowance of the Allowed Agent Fee Claim, and the treatment of such Allowed Agent Fee Claim set forth herein shall be the sole consideration received by Deutsche Bank from the Plan Proponents on account of the Deutsche Bank Claims. Confirmation shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the foregoing resolution.

**4.5 General Settlement of Claims**

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims and Interests.

**4.6 Cancellation of Interests, Dissolution of Los Lobos, and Issuance of Reorganized Equity Interests**

Effective as of the Effective Date, the existing Interests in each Debtor shall be cancelled and the Reorganized Debtors shall issue the Reorganized Equity Interests. The Reorganized Equity Interests shall be issued and distributed to Cym Energy (or its designee) in accordance with section 3.1(f) of the Plan. As of the Effective Date, the Reorganized Debtors shall be authorized, but not required, to dissolve Los Lobos for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Reorganized Debtors.

**4.7 Cancellation of Instruments.**

Except as otherwise provided herein, all notes, bonds, indentures, or other instruments or documents evidencing or creating any indebtedness or obligation of the Debtors, or any security for the obligations of the Debtors, including, without limitation, the Kaishan

Financing Documents, shall be deemed cancelled on the Effective Date to the extent not previously cancelled. Effective as of the Effective Date, Deutsche Bank shall be released and forever discharged from its duties and obligations under the Kaishan Financing Documents including, without limitation, from its roles as Security Agent, Registrar, and Transfer Agent under such Kaishan Financing Documents, and any Liens held by Deutsche Bank pursuant to or in accordance with such Kaishan Financing Documents shall, upon payment in full in Cash of the Allowed Agent Fee Claim, automatically and without further action by any Person be cancelled and discharged. As of the Effective Date, Deutsche Bank shall be authorized, in its sole discretion, to dispose of any collateral in its possession held pursuant to or in accordance with the Kaishan Financing Documents, or any records thereto, *provided, however*, that, prior to disposing any such collateral or records, Deutsche Bank shall provide fourteen (14) days written notice to the Reorganized Debtors, Cyrq Energy, and Kaishan Holding, and an opportunity for the Reorganized Debtors, Cyrq Energy, or Kaishan Holding, as applicable, to retrieve such collateral or records at the sole cost and expense of Reorganized Debtors, Cyrq Energy, or Kaishan Holding, as applicable. For the avoidance of doubt, the Kaishan Subordination [22] Agreement shall be of no force and effect, and Cyrq Energy shall be the sole Entity entitled to distributions on account of the Cyrq Energy Subordinated Debt Claim.

Notwithstanding the foregoing paragraph, the Kaishan Financing Documents shall be deemed to remain in effect solely to the extent necessary to (a) enforce the rights, Claims and interests of Deutsche Bank vis-à-vis any party other than the Debtors or the Reorganized Debtors, (b) allow Deutsche Bank to receive distributions under the Plan in respect of the Allowed Agent Fee Claim, (c) preserve the right of Deutsche Bank to payment of fees, expenses, and indemnification obligations from the holder of the Kaishan Secured Claim, (d) permit Deutsche Bank to enforce any obligation owed to it under the Plan, and (e) permit Deutsche Bank to appear in the Chapter 11 Cases or in any proceeding in the Bankruptcy Court or any other court.

**4.8 Offering, Issuance, Sale or Transfer of Securities or Instruments**

The offering, issuance, sale or transfer of any securities or instruments pursuant to the Plan will be in compliance with the registration requirements of the Securities Act or exempt from the registration requirements of section 5 therein pursuant to section 1145 of the Bankruptcy Code, section 4(2) of the Securities Act, or any other available exemption from registration under the Securities Act, as applicable. In addition, under section 1145 of the Bankruptcy Code, if applicable, any securities issued under the Plan will be freely transferable under the Securities Act by the recipients thereof, subject to: (a) the provisions of section 1145(b)(1) of the Bankruptcy Code relating to the

definition of an underwriter in section 2(a)(11) of the Securities Act, and compliance with any applicable state or foreign securities laws, if any, and the rules and regulations of the United States Securities and Exchange Commission, if any, applicable at the time of any future transfer of such securities or instruments; (b) the restrictions, if any, on the transferability of such securities and instruments; and (c) any other applicable regulatory approval.

#### **4.9 Subordination**

Except as otherwise provided in the Plan, the allowance, classification, and treatment of all Claims and Interests under the Plan shall conform to and be consistent with the respective contractual, legal, and equitable subordination rights of such Claims and Interests, and the Plan shall recognize and implement any such rights; *provided, however*, that by agreement embodied in the Plan, the Kaishan Subordination Agreement shall be of no force and effect as of the Effective Date, and Cyrq Energy shall be the sole Entity entitled to distributions on account of the Cyrq Energy Subordinated Debt Claim. Pursuant to section 510 of the Bankruptcy Code, except where otherwise provided herein, the Reorganized Debtors reserve the right to re-classify any Allowed Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

**4.10 Vesting of Assets in the Reorganized Debtors**

Except as otherwise provided herein, or in any agreement, instrument, or other document incorporated in the Plan, on the Effective Date, all property in the Debtors' Estates and all of the Debtors' Causes of Action shall vest in the applicable Reorganized Debtor and, solely with [23] respect to Reorganized Lightning Dock, shall vest free and clear of all Liens, Claims, charges, and other encumbrances. On and after the Effective Date, except as otherwise provided in the Plan, the Reorganized Debtors may operate their business or wind down their affairs, as applicable, and may use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

**4.11 Release and Termination of Liens**

Each Reorganized Debtor is hereby appointed as attorney-in-fact for each party whose Lien is terminated hereunder, with full power and authority to execute on behalf of such party any and all financing statements, releases, discharges, notices or other public statements as are necessary or appropriate to evidence the termination of such party's Lien.

**4.12 Discharge from Notes, Instruments, Certificates, and Other Documents**

On the Effective Date, the obligations of Lightning Dock or Reorganized Lightning Dock under or in any way related to all notes, instruments, certificates, and other documents evidencing Claims or Interests, shall be discharged; provided, however, that such discharge shall only be with respect to Lightning Dock and Reorganized Lightning Dock, and shall not alter the rights or obligations of any party other than Lightning Dock or Reorganized Lightning Dock with respect to such notes, instruments, certificates, or other documents.

**4.13 Execution of Plan Documents**

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

**4.14 Corporate Action**

Each of the matters provided for by the Plan involving the corporate structure of the Debtors or corporate or related actions to be taken by or required of the Reorganized Debtors, whether taken prior to or as of the Effective Date, including the distribution of the Reorganized Equity Interests shall be authorized without the need for any further corporate action or without any further action by the Debtors or the Reorganized Debtors, as applicable.



**4.15 Organizational Documents**

The Debtors' limited liability company agreements, certificates of formation and other documents relating to limited liability companies shall be amended as may be required to be consistent with the provisions of the Plan and the Bankruptcy Code. After the Effective Date, the Reorganized Debtors may amend and restate their organizational documents as permitted by Delaware law.

**[24] 4.16 Effectuating Documents; Further Transactions**

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

**4.17 Section 1146(a) Exemption**

Pursuant to section 1146(a) of the Bankruptcy Code, none of the transfers of property under the Plan shall be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax or governmental

assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

**4.18 Managers and Officers**

Pursuant to section 1129(a)(5) of the Bankruptcy Code, on the Effective Date, the managers and officers who are identified in Exhibit C hereto shall serve as the initial board of managers and officers of the Reorganized Debtors. After the Effective Date, the corporate governance and management of the Reorganized Debtors shall be determined by the board of managers in accordance with the laws of the applicable state of organization.

**4.19 Preservation of Rights of Action**

Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, settled or turned over to the holder of a Secured Claim under or in the Plan or by a Final Order, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors shall retain and may enforce all rights to commence and pursue any and all Causes of Action, whether arising before or after the Petition Date, including any actions specifically enumerated in *Article III.H* of the Disclosure Statement,

and the Reorganized Debtors' rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against them as any indication that the Debtors or the Reorganized Debtors will not pursue any and all available Causes of Action against them. The Debtors and the Reorganized Debtors expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the Plan. Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Bankruptcy Court order, the Reorganized Debtors expressly reserve all Causes of Action, for later adjudication, and, therefore no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, [25] or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

The Reorganized Debtors reserve and shall retain Causes of Action notwithstanding the rejection of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that the Debtors may hold against any Entity shall vest in the Reorganized Debtors. The applicable Reorganized Debtor, through its

authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Reorganized Debtors shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, or to decline to do any of the foregoing, without the consent or approval of any third party or any further notice to or action, order, or approval of the Bankruptcy Court.

## ARTICLE V

### TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

#### 5.1 Assumption of Executory Contracts and Unexpired Leases

Except as otherwise provided herein or pursuant to the Confirmation Order, each Executory Contract and Unexpired Lease, including the contracts and leases identified on *Exhibit A* hereto (which *Exhibit A* may be modified by Lightning Dock in the Plan Supplement or, with consent of the applicable counterparty, at any time prior to the Confirmation Hearing), shall be deemed assumed, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, as of the Effective Date under section 365 of the Bankruptcy Code, unless any such Executory Contract or Unexpired Lease: (a) is listed on the Rejection Schedule; (b) has been previously assumed or rejected by Lightning Dock by Final Order or has

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been assumed or rejected by Lightning Dock by order of the Bankruptcy Court as of the Effective Date, which order becomes a Final Order after the Effective Date; or (c) is the subject of a motion to assume or reject pending as of the Effective Date. The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, assignments, and rejections.

Except as otherwise provided herein or agreed to by Lightning Dock with the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated hereunder. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by Lightning Dock 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.

[26] **5.2 Cure of Defaults and Objections to Cure and Assumption**

Any monetary defaults under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the Cure on the Effective Date or as soon as reasonably practicable thereafter, subject to the limitation described below, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree. Any Cure shall be deemed fully satisfied, released, and discharged upon payment by Lightning Dock or Reorganized Lightning Dock of the Cure; *provided, however*, that nothing herein shall prevent Reorganized Lightning Dock from paying any Cure despite the failure of the relevant counterparty to file such request for payment of such Cure.

In the event of a dispute regarding (a) the amount of any Cure, (b) the ability of Reorganized Lightning Dock or any 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 (c) any other matter pertaining to assumption, the payments required by section 365(b)(1) of the Bankruptcy Code in respect of Cures shall be made following the entry of a Final Order or orders resolving the dispute and approving the assumption (and, if applicable, assignment). Any objection by a counterparty to an Executory Contract or Unexpired Lease to a proposed assumption or related Cure must be filed with the Bankruptcy

Court and served on Lightning Dock on or before **September 5, 2017**. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely object to the proposed assumption or Cure of any Executory Contract or Unexpired Lease will be deemed to have consented to such assumption or Cure. Lightning Dock or Reorganized Lightning Dock, as applicable, also may settle any Cure without any further notice to or action, order, or approval of the Bankruptcy Court. Lightning Dock or Reorganized Lightning Dock, as applicable, reserves the right either to reject or nullify the assumption of any Executory Contract or Unexpired Lease within 45 days after a Final Order resolving an objection to assumption or determining the Cure or any request for adequate assurance of future performance required to assume such Executory Contract or Unexpired Lease, is entered.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed in the Chapter 11 Cases, including pursuant to the Confirmation Order, shall be deemed disallowed and expunged as of the Effective Date without the need for

any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

**5.3 Pre-existing Payment and Other Obligations**

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of pre-existing obligations owed to Lightning Dock or Reorganized Lightning Dock, as applicable, under such contract or lease. In particular, notwithstanding any non-bankruptcy law to the contrary, Reorganized Lightning Dock expressly [27] reserves and does not waive any right to receive, or any continuing obligation of a counterparty to provide: (a) payment to Lightning Dock or Reorganized Lightning Dock, as applicable, of outstanding and future amounts owing thereto under or in connection with rejected Executory Contracts or Unexpired Leases or (b) warranties or continued maintenance obligations on goods previously purchased by Lightning Dock or Reorganized Lightning Dock, as applicable, from counterparties to rejected Executory Contracts.

**5.4 Rejection Damages Claims and Objections to Rejections**

Pursuant to section 502(g) of the Bankruptcy Code, counterparties to Executory Contracts or Unexpired Leases that are rejected shall have the right to assert Claims, if any, on account of the rejection of such contracts and leases. Unless otherwise provided by a



Bankruptcy Court order, any Proofs of Claim asserting Claims arising from the rejection of Executory Contracts and Unexpired Leases pursuant to the Plan must be filed with the Bankruptcy Court no later than 30 days after the later of the Confirmation Date or the effective date of rejection. Any such Proofs of Claim that are not timely filed shall be disallowed without the need for any further notice to or action, order, or approval of the Bankruptcy Court. Such Proofs of Claim shall be forever barred, estopped, and enjoined from assertion. Moreover, such Proofs of Claim shall not be enforceable against Reorganized Lightning Dock, without the need for any objection by Reorganized Lightning Dock or any further notice to or action, order, or approval of the Bankruptcy Court, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied, released, and discharged notwithstanding anything in a Proof of Claim to the contrary. All Allowed Claims arising from the rejection of Executory Contracts and Unexpired Leases shall be classified as Class 4A-General Unsecured Claims against Lightning Dock.

**5.5 Contracts and Leases Entered Into After the Petition Date**

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

**5.6 Reservation of Rights**

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

[28] **ARTICLE VI**

**PROVISIONS GOVERNING DISTRIBUTIONS**

**6.1 Distributions on Account of Claims Allowed as of the Effective Date**

Except as otherwise provided in the Plan, a Final Order, or as otherwise agreed to by the Debtors or the Reorganized Debtors (as the case may be) and the holder of the applicable Allowed Claim, on or about the Effective Date, the Reorganized Debtors shall make initial distributions under the Plan on account of Claims Allowed on or before the Effective Date, subject to the Debtors and the Reorganized Debtors' right to object to Claims; *provided, however*, that (1) Allowed Administrative Claims with respect to liabilities incurred by the Debtors in the ordinary course of business during

the Chapter 11 Cases or assumed by the Debtors prior to the Effective Date shall be paid or performed in the ordinary course of business in accordance with the terms and conditions of any controlling agreements, course of dealing, course of business, or industry practice; (2) Allowed Priority Tax Claims shall be paid in accordance with section 2.3 of the Plan; and (3) the Kaishan Payment shall be made in accordance with sections 1.1 and 9.1 of the Plan. To the extent any Allowed Priority Tax Claim is not due and owing on the Effective Date, such Claim may be paid in full in Cash in accordance with the terms of any agreement between the applicable Debtor or Reorganized Debtor (as the case may be) and the holder of such Claim or as may be due and payable under applicable non-bankruptcy law or in the ordinary course of business.

**6.2 Special Rules for Distributions to Holders of Disputed Claims**

Notwithstanding any provision otherwise in the Plan and except as otherwise agreed by the relevant parties: (1) no partial payments and no partial distributions shall be made with respect to a Disputed Claim until all such disputes in connection with such Disputed Claim have been resolved by settlement or Final Order and (2) any Entity that holds both an Allowed Claim and a Disputed Claim shall not receive any distribution on the Allowed Claim unless and until all objections to the Disputed Claim have been resolved by settlement or Final Order or the Claim has been Allowed or expunged. Any dividends or other

distributions arising from property distributed to holders of Allowed Claims in a Class and paid to such holders under the Plan shall be paid also, in the applicable amounts, to any holder of a Disputed Claim, as applicable, 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.

### **6.3 Delivery of Distributions**

#### **(a) Record Date for Distributions**

On the Effective Date, the Claims Register shall be closed and the Reorganized Debtors shall be authorized and entitled to recognize only those record holders, if any, listed on the Claims Register as of the close of business on the Effective Date. Notwithstanding the foregoing, if a Claim or Interest is transferred less than 20 days before the Effective Date, the Reorganized Debtors shall make distributions to the transferee only to the extent practical and in [29] any event only if the relevant transfer form contains an unconditional and explicit certification and waiver of any objection to the transfer by the transferor.

#### **(b) Distribution Process**

The Reorganized Debtors shall make all distributions required under the Plan. Except as otherwise provided in the Plan, and notwithstanding any authority to the contrary, distributions to holders of Allowed Claims, including Claims that become Allowed after

the Effective Date, shall be made to holders of record as of the Effective Date by the Reorganized Debtors: (1) to the address of such holder as set forth in the Debtors' books and records (or if the Debtors have been notified in writing, on or before the date that is 14 days before the Effective Date, of a change of address, to the changed address); (2) in accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy Rule 7004, if no address exists in the Debtors' books and records, no Proof of Claim has been filed and the Debtors have not received a written notice of a change of address on or before the date that is 14 days before the Effective Date; or (3) on any counsel that has appeared in the Chapter 11 Cases on the holder's behalf. The Debtors and the Reorganized Debtors shall not incur any liability whatsoever on account of any distributions under the Plan.

(c) Compliance Matters

In connection with the Plan, to the extent applicable, the Reorganized Debtors shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Reorganized Debtor shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable

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

(d) Foreign Currency Exchange Rate

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

[30] (e) Undeliverable and Unclaimed Distributions

- (1) *Undeliverable Distributions.* If any distribution to a holder of an Allowed Claim is returned to the Reorganized Debtors as undeliverable or is otherwise unclaimed, no further distributions shall be made to such holder unless and until the Reorganized Debtors are notified in writing of such holder's then-current address or other necessary information for delivery. Subject to the succeeding sentence, the Reorganized Debtors shall retain undeliverable distributions until such time as a distribution becomes deliverable. Each holder of an Allowed Claim whose distribution remains (i) undeliverable for one hundred eighty (180) days after the distribution is returned as undeliverable or (ii) otherwise has not been deposited, endorsed or negotiated within one hundred eighty (180) days of the date of issuance shall have no claim to or interest in such distribution and shall be forever barred from receiving any distribution under the Plan. Nothing contained in this Plan shall require the Debtors or the Reorganized Debtors to attempt to locate any holder of an Allowed Claim.
- (2) *Reversion.* Any distribution under the Plan that is an Unclaimed

Distribution for a period of one hundred eighty (180) days after distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and such Unclaimed Distribution shall revert in the Reorganized Debtors. Upon such reversion, the Claim or Interest of any holder or its successors with respect to such property shall be cancelled, discharged, and forever barred notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws, or any provisions in any document governing the distribution that is an Unclaimed Distribution, to the contrary.

**6.4 Claims Paid or Payable by Third Parties**

**(a) Claims Paid by Third Parties**

A Claim shall be reduced in full, and such Claim shall be disallowed without a Claims objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the holder of such Claim receives payment in full on account of such Claim from a party that is not a Debtor or Reorganized Debtor. To the extent a holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor or Reorganized Debtor on account of such Claim, such holder shall repay, return or deliver any distribution held by or transferred to the holder to the applicable Reorganized Debtor to the extent the



holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan.

(b) Claims Payable by Insurance Carriers

[31] No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, such Claim may be expunged to the extent of any agreed upon satisfaction on the Claims Register without a Claims objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

(c) Applicability of Insurance Policies

Except as otherwise expressly provided herein, distributions to holders of Allowed Claims shall be in accordance with the provisions of an applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors or any Entity may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

**6.5      Setoffs**

Except as otherwise expressly provided herein, each Reorganized Debtor, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable non-bankruptcy law, or as may be agreed to by the holder of a Claim, may set off against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Allowed Claim (before any distribution is made on account of such Allowed Claim), any Claims, rights, and Causes of Action of any nature that such Debtor or Reorganized Debtor, as applicable, may hold against the holder of such Allowed Claim, to the extent such Claims, rights, or Causes of Action against such holder have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to the Plan or otherwise); *provided, however*, that neither the failure to effect such a setoff nor the allowance of any Claim pursuant to the Plan shall constitute a waiver or release by such Reorganized Debtor of any such Claims, rights, and Causes of Action that such Reorganized Debtor may possess against such holder. In no event shall any holder of Claims be entitled to set off any Claim against any Claim, right, or Cause of Action of the Debtor or the Reorganized Debtor, as applicable, unless such holder has filed a motion with the Bankruptcy Court requesting the authority to perform such setoff on or before the Confirmation Date, and notwithstanding any indication in any Proof of Claim or otherwise that such holder asserts, has, or intends to

preserve any right of setoff pursuant to section 553 or otherwise.

**6.6 Allocation Between Principal and Accrued Interest**

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

**[32] ARTICLE VII  
PROCEDURES FOR  
RESOLVING DISPUTED CLAIMS**

**7.1 Disputed Claims**

Except as otherwise provided herein, if a party files a Proof of Claim and the Debtors or Reorganized Debtors, as applicable, do not determine in their sole discretion, and without the need for notice to or action, order or approval of the Bankruptcy Court, that the Claim subject to such Proof of Claim is Allowed, such Claim shall be Disputed unless Allowed or disallowed by a Final Order or as otherwise set forth in this *ARTICLE VII*. Except as otherwise provided herein, all Proofs of Claim filed after the Effective Date shall be expunged without the need for any objection by the

Reorganized Debtors or any further notice to or action, order, or approval of the Bankruptcy Court. On and after the Effective Date, the Reorganized Debtors may settle any Claims, including Claims for which a Proof of Claim has been filed or for which a Proof of Claim has not been filed, without further notice to or approval of the Bankruptcy Court or any other party.

**7.2      Resolution of Disputed Claims**

Except insofar as a Claim is Allowed under the Plan, the Debtors or the Reorganized Debtors shall be entitled to object to the Claim. Any objections to Claims shall be served and filed on or before the 120th day after the Effective Date or by such later date as ordered by the Bankruptcy Court. Notwithstanding any authority to the contrary, an objection to a Claim shall be deemed properly served on the holder thereof if service is effected in any of the following manners: (a) in accordance with Rule 4 of the Federal Rules of Civil Procedure, as modified and made applicable by Bankruptcy Rule 7004, or (b) by first class mail, postage prepaid, on any counsel that has appeared on the holder's behalf in the Chapter 11 Cases. The Debtors and the Reorganized Debtors shall be authorized to, and shall, resolve all Disputed Claims or Interests by withdrawing or settling such objections thereto or by litigating to Final Order in the Bankruptcy Court the validity, nature and/or amount thereof. All Claims not objected to by the end of such 120-day period shall be deemed Allowed unless such period is extended upon approval of the Bankruptcy Court. For the avoidance

of doubt, except as otherwise provided in the Plan, from and after the Effective Date, each Reorganized Debtor shall have and retain any and all rights and defenses such Debtor had immediately prior to the Effective Date with respect to any Disputed Claim, including the Causes of Action retained pursuant to section 4.19 of the Plan.

**7.3 No Interest**

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

**[33] 7.4 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. Distributions on account of Disputed Claims that

become Allowed Claims shall be made pursuant to Section 6.2 of the Plan.

**7.5 Disallowance of Claims and Interests**

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

**ARTICLE VIII**

**EFFECT OF CONFIRMATION OF THE PLAN**

**8.1 Discharge of Claims and Termination of Interests**

**Except as otherwise provided for herein and effective as of the Effective Date: (a) the rights afforded in the Plan and the treatment of all Claims and Interests shall be in exchange for and in complete satisfaction, discharge, and release of all Claims and Interests of any nature whatsoever,**

including any interest accrued on such Claims from and after the Petition Date, against Lightning Dock or any of its assets, property, or Estate; (b) the Plan shall bind all holders of Claims and Interests, notwithstanding whether any such holders failed to vote to accept or reject the Plan or voted to reject the Plan; (c) all Claims and Interests shall be satisfied, discharged, and released in full, and Lightning Dock's liability with respect thereto shall be extinguished completely, including any liability of the kind specified under section 502(g) of the Bankruptcy Code; and (d) all Entities shall be precluded from asserting against Lightning Dock, its Estate, Reorganized Lightning Dock, their successors and assigns, and their assets and properties any other Claims or Interests based upon any documents, instruments, or any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date. Pursuant to section 1141(d)(3) of the Bankruptcy Code, Confirmation will not discharge Claims against Los Lobos; *provided, however* that (i) no holder of a Claim against and Interest in Los Lobos may on account of such Claim or Interest seek payment or other treatment from, or seek recourse against Los Lobos in a manner inconsistent with the Plan, and (ii) nothing in this sentence shall alter or amend, or be deemed to alter or amend the settlements embodied in [34] the Plan, or the releases, injunctions and exculpations provided for in Sections 8.2, 8.3, 8.5, and 8.6 of the Plan.

**8.2 Releases by the Debtors in Favor of the Released Parties**

Pursuant to section 1123(b) of the Bankruptcy Code, and except as otherwise expressly provided herein, for good and valuable consideration, as of the Effective Date, each of the Debtors, the Reorganized Debtors, and the Estates, irrevocably and absolutely releases the Released Parties from any and all Claims and Causes of Actions that the Debtors, the Reorganized Debtors, or the Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other Entity, based in whole or in part upon any act of omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date arising out of or in any way related to the Chapter 11 Cases, the Disclosure Statement, the Plan, or related agreements, instruments or other documents; *provided, however*, that the foregoing provisions of this *Section 8.2* shall have no effect on the liability of any of the Released Parties for gross negligence, willful misconduct, fraud, or criminal conduct as determined by a Final Order entered by a court of competent jurisdiction.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the release set forth in this *Section 8.2*, which includes by



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

**8.3      Releases by the Kaishan Entities in Favor of the Released Parties**

Except as otherwise expressly provided herein, for good and valuable consideration, as of the Effective Date, each of the Kaishan Entities, and each of their successors and assigns, and current and former affiliates, subsidiaries, officers, directors, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, solely in their respective capacities as such, irrevocably and absolutely releases the Released Parties from any and all Claims and causes of action (including, without limitation, the Kaishan Claims), based in whole or in part upon any act of omission, transaction, agreement, event or other occurrence

taking place on or before the Effective Date arising out of or in any way related to the Chapter 11 Cases, the Disclosure Statement, the Plan, the Kaishan Financing Documents, the Kaishan EPC Contract, the Kaishan Equipment Purchase Agreements, or related agreements, instruments or other documents.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the release set forth in this *Section 8.3*, which includes by reference each of the related provisions and definitions contained herein, and [35] further, shall constitute the Bankruptcy Court's finding that such release is: (a) in exchange for the good and valuable consideration provided by the Released Parties; (b) a good faith settlement and compromise of the Claims and causes of action released by this *Section 8.3*; (c) in the best interests of the Debtors and all holders of Claims against and Interests in the Debtors; (d) fair, equitable, and reasonable; (e) given and made after due notice and opportunity for hearing; and (f) a bar to any Entity granting a release under this *Section 8.3* from asserting any Claim or cause of action released by this *Section 8.3*.

#### **8.4 Releases in Favor of the Kaishan Entities**

Except as otherwise expressly provided herein, for good and valuable consideration,

as of the Effective Date, each of the Released Parties irrevocably and absolutely releases the Kaishan Entities, and each of their successors and assigns, and current and former affiliates, subsidiaries, officers, directors, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, solely in their respective capacities as such from any and all Claims and causes of action (including, without limitation, the Kaishan Causes of Action), based in whole or in part upon any act of omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date arising out of or in any way related to the Chapter 11 Cases, the Disclosure Statement, the Plan, the Kaishan Financing Documents, the Kaishan EPC Contract, the Kaishan Equipment Purchase Agreements, or related agreements, instruments or other documents.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the release set forth in this *Section 8.4*, which includes by reference each of the related provisions and definitions contained herein, and further, shall constitute the Bankruptcy Court's finding that such release is: (a) in exchange for the good and valuable consideration provided by the Kaishan Entities; (b) a good faith settlement and compromise of the Claims and causes of action released

by this *Section 8.4*; (c) in the best interests of the Debtors and all holders of Claims against and Interests in the Debtors; (d) fair, equitable, and reasonable; (e) given and made after due notice and opportunity for hearing; and (f) a bar to any Entity granting a release under this *Section 8.4* from asserting any Claim or cause of action released by this *Section 8.4*.

#### **8.5      Exculpation**

No Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated from any Exculpated Claim or any obligation, Cause of Action, or liability for any Exculpated Claim; *provided, however*, that the foregoing “exculpation” shall have no effect on the liability of any Entity that results from any such act or omission that is determined in a Final Order to have constituted gross negligence or willful misconduct; *provided, further*, that in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to, or in connection with, the Plan. The Exculpated Parties have, and upon Confirmation shall be deemed to have, participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation of acceptances and rejections of the Plan and the making of distributions pursuant to the Plan [36] and, therefore, are not and

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

#### **8.6 Injunction**

Except as otherwise provided herein or for obligations issued pursuant hereto, all Entities that have held, hold, or may hold Claims or Interests that have been released pursuant to *Section 8.2*, *Section 8.3*, or *Section 8.4*, discharged pursuant to *Section 8.1*, or are subject to exculpation pursuant to *Section 8.5* are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, the Kaishan Entities, the Released Parties, or the Exculpated Parties: (a) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (c) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or estates of such Entities on account of or in connection with or with respect to any such

**Claims or Interests; (d) asserting any right of set-off, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property or estates of such Entities on account of or in connection with or with respect to any such Claims or Interests unless such holder has filed a motion requesting the right to perform such setoff on or before the Confirmation Date; and (e) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests released, exculpated, or settled pursuant to the Plan.**

**8.7 Protection Against Discriminatory Treatment**

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

**8.8 Indemnification**

On and from the Effective Date, and except as prohibited by applicable law, the Reorganized Debtors shall assume or reinstate, as applicable, all indemnification obligations in place as of the Effective Date (whether in limited liability company agreements, board resolutions, contracts, or otherwise) for the current and former officers, managers, employees, attorneys, other professionals and agents of the Debtors.

**[37] 8.9 Recoupment**

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

**8.10 Reimbursement or Contribution**

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the Effective Date, such Claim shall be forever disallowed notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Effective Date (a) such Claim

has been adjudicated as noncontingent or (b) the relevant holder of a Claim has filed a noncontingent Proof of Claim on account of such Claim and a Final Order has been entered determining such Claim as no longer contingent.

**ARTICLE IX**  
**CONDITIONS PRECEDENT**  
**TO THE EFFECTIVE DATE**

**9.1 Conditions Precedent to the Effective Date**

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

(a) the Confirmation Order shall have been entered, and such order shall have become a Final Order;

(b) the Power Purchase Agreement shall be in full force and effect, shall not have been terminated, and no event of default shall have occurred on account of which PNM may terminate the Power Purchase Agreement;

(c) the Plan Proponents shall have made the Kaishan Payment or shall have caused the Kaishan Payment to be made;

(d) the Plan Proponents shall have delivered a fully executed original copy of the Kaishan Letter to the Kaishan Entities' counsel at Garvey Schubert Barer, which copy shall be held in escrow pending occurrence of the Effective Date, whereupon the Kaishan



Entities' counsel may release the Kaishan Letter to the Kaishan Entities;

(e) the Kaishan Entities shall have provided evidence that Kaishan Holding is the current holder of the Kaishan Notes to the reasonable satisfaction of Lightning Dock and Cyrq Energy, which for the avoidance of doubt the Kaishan Entities may do by (i) confirming their physical possession of the Kaishan Notes, to be marked "paid in full" and returned to the Plan Proponents upon the Effective Date, (ii) subscribing a "lost note affidavit" in form and content [38] satisfactory to the Plan Proponents, or (iii) providing such other documentation as the Plan Proponents may accept in satisfaction of this requirement, it being understood that any of the foregoing shall be sufficient to satisfy the requirements set forth in this section; and

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

## **9.2 Waiver of Conditions Precedent**

Lightning Dock may amend, modify, supplement or waive any of the conditions to the Effective Date set forth in *Section 9.1* at any time without any notice to

any other parties in interest and without any further notice to or action, order, or approval of the Bankruptcy Court, and without any formal action other than proceeding to confirm or consummate the Plan; *provided, however*, that Lightning Dock may not amend, modify, supplement or waive any of the conditions set forth in subsections 9.1(c) and (d) without the written consent of the Kaishan Entities.

**9.3 Effect of Non-Occurrence of Conditions to Consummation**

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

**ARTICLE X**

**MODIFICATION, REVOCATION,  
OR WITHDRAWAL OF THE PLAN**

**10.1 Modification of Plan**

Effective as of the date hereof: (a) the Debtors, in accordance with the Bankruptcy Code and the Bankruptcy

Rules, may amend or modify the Plan before the entry of the Confirmation Order; and (b) after the entry of the Confirmation Order, the Debtors or the Reorganized Debtors, as applicable, may, upon order of the Bankruptcy Court, amend or modify the Plan in accordance with section 1127(b) of the Bankruptcy Code (but only in accordance with section 1127(b) of the Bankruptcy Code), including without limitation to remedy any defect or omission, or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

**[39] 10.2 Revocation or Withdrawal of Plan**

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

**10.3 Confirmation of the Plan**

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

**ARTICLE XI**

**RETENTION OF JURISDICTION**

Pursuant to sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, subject to the limitations of section 1127(b) of the Bankruptcy Code, the Bankruptcy Court shall retain jurisdiction over all matters arising in, arising under and/or related to the Chapter 11 Cases and the Plan to the fullest extent permitted by applicable law, including, without limitation jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Claim or Interest and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims or Interests;
2. decide and resolve all matters related to the granting and denying, in whole or in part, any

applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

3. resolve any matters related to Executory Contracts or Unexpired Leases, including: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which Lightning Dock is a party or with respect to which Lightning Dock may be liable and to hear, determine, and, if necessary, liquidate, any Cure or Claims arising therefrom, including pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; (c) the Reorganized Debtors' amendment, modification, or supplement, after the Effective Date, pursuant to *ARTICLE V*, of the list of Executory Contracts and Unexpired [40] Leases to be rejected or otherwise; and (d) any dispute regarding whether a contract or lease is or was executory or expired;

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

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

6. enter and implement such orders as may be necessary or appropriate to execute, implement, or

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consummate the provisions of (a) contracts, instruments, releases, indentures, and other agreements or documents approved by Final Order in the Chapter 11 Cases and (b) the Plan or the Confirmation Order, including contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan;

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

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

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

10. hear, determine, and resolve any cases, matters, controversies, suits, disputes, or Causes of Action in connection with or in any way related to the Chapter 11 Cases, including: (a) with respect to the repayment or return of distributions and the recovery of additional amounts owed by the holder of a Claim or Interest for amounts not timely repaid pursuant to *Section 6.4*; (b) with respect to the releases, injunctions, and other provisions contained in *ARTICLE VIII*, including entry of such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions; (c) that may arise in connection with the Consummation, interpretation, implementation, or

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enforcement of the Plan or the Confirmation Order, or any Entity's obligations incurred in connection with the Plan or the Confirmation Order, including those arising under agreements, documents, or instruments executed in connection with the Plan; or (d) related to section 1141 of the Bankruptcy Code;

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

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

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

[41] 14. enter an order or Final Decree concluding or closing the Chapter 11 Cases;

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

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

**ARTICLE XII**

**MISCELLANEOUS PROVISIONS**

**12.1 Additional Documents**

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

**12.2 Payment of Statutory Fees**

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

**12.3 Reservation of Rights**

Except as expressly set forth herein, the Plan shall have no force or effect unless the Bankruptcy Court enters the Confirmation Order. None of the filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by any Debtor with respect



to the Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the holders of Claims or Interests prior to the Effective Date.

**12.4 Elimination of Vacant Classes**

Any Class of Claims that does not have a holder of an Allowed Claim or a Claim temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

**12.5 Successors and Assigns**

The rights, benefits, and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, affiliate, officer, director, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

**[42] 12.6 Service of Documents**

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

**Reorganized Debtors**      **Lightning Dock Geothermal HI-01, LLC**

136 S. Main Street, Suite 600  
Salt Lake City, Utah 84101  
Attn: Nicholas Goodman, CEO

With a copy to: Counsel to the Debtors

**Counsel to Debtors**      **Walker & Associates, P.C.**

500 Marquette N.W., Suite 650  
Albuquerque, New Mexico 87102  
Attn: Thomas D. Walker, Esq.

**Cyrq Energy**      **Cyrq Energy, Inc.**

136 S. Main Street, Suite 600  
Salt Lake City, Utah 84101  
Attn: Nicholas Goodman, CEO

With a copy to: Counsel to Cyrq Energy

**Counsel to Cyrq Energy**      **Hunton & Williams LLP**

200 Park Avenue  
New York, New York 10166  
Attn: Peter S. Partee, Sr., Esq.

- and -

**William F. Davis & Associates, P.C.**

6709 Academy Rd. NE Suite A  
Albuquerque, New Mexico 87109  
Attn: William F. Davis, Esq.

**12.7      Term of Injunctions or Stays**

**Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases (pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court) and existing**

**on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.**

[43] **12.8 Entire Agreement**

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

**12.9 Plan Supplement Exhibits**

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are filed, copies of such exhibits and documents shall be made available upon written request to Debtors' counsel at the address above or by downloading such exhibits and documents from the Bankruptcy Court's website at [nmb.uscourts.gov](http://nmb.uscourts.gov). Unless otherwise ordered by the Bankruptcy Court, to the extent any exhibit or document in the Plan Supplement is inconsistent with the terms of any part of the Plan that does not constitute the Plan Supplement, such part of the Plan that does not constitute the Plan Supplement shall control.

**12.10 Non-Severability**

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

*[Remainder of page intentionally left blank.]*

LIGHTNING DOCK  
GEOTHERMAL HI-01, LLC,

By: s/ electronically Nicholas Goodman  
Name: Nicholas Goodman  
Title: Chief Executive Officer

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LOS LOBOS RENEWABLE  
POWER, LLC

By: s/ electronically Nicholas Goodman

Name: Nicholas Goodman

Title: Chief Executive Officer

[Signature Page to Debtors' Third  
Amended Joint Chapter 11 Plan]

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No. 18-89

AMERICULTURE, INC., et al.,  
Petitioners,  
v.  
LOS LOBOS RENEWABLE POWER, LLC, et al.,  
Respondents.

**AFFIDAVIT OF SERVICE**

I, Patricia Billotte, of lawful age, being duly sworn, upon my oath state that I did, on the 26th day of October, 2018, send out from Omaha, NE 1 package(s) containing 3 copies of the BRIEF IN OPPOSITION in the above entitled case. All parties required to be served have been served by third-party commercial carrier for delivery within 3 calendar days. Packages were plainly addressed to the following:

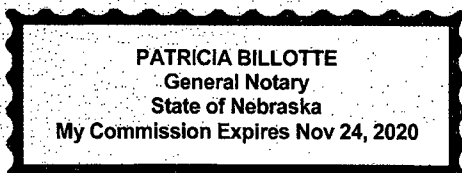
SEE ATTACHED

**To be filed for:**

SHAWN PATRICK REGAN  
Counsel of Record  
PETER S. PARTEE, SR.  
ROBERT A. RICH  
JENNIFER L. BLOOM  
HUNTON ANDREWS KURTH LLP  
200 Park Avenue  
New York, NY 10166  
(212) 309-1000  
sregan@hunton.com

Counsel for Respondents

Subscribed and sworn to before me this 26th day of October, 2018.  
I am duly authorized under the laws of the State of Nebraska to administer oaths.



*Patricia C. Billotte*

Notary Public

*Andrew H. Cockle*

Affiant

37048

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Party name: AmeriCulture, Inc., et al.