IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
Tonopah Solar Energy, LLC	Case No. 26-10060
Debtor.	
	Hearing Date: TBD **Obj. Deadline: April 23, 2026 at 4:00 p.m.**

[AMENDED] MOTION OF CMB INFRASTRUCTURE INVESTMENT GROUP IX, LP, CMB INFRASTRUCTURE INVESTMENT GROUP XI, LP, AND CMB EXPORT, LLC FOR ENTRY OF AN ORDER APPOINTING A CHAPTER 11 TRUSTEE

CMB Infrastructure Investment Group IX, LP, CMB Infrastructure Investment Group XI, LP, and CMB Export, LLC (together, the "**CMB Creditors**") hereby file this *[Amended] Motion of CMB Infrastructure Investment Group IX, LP, CMB Infrastructure Investment Group XI, LP, and CMB Export, LLC for Entry of an Order Appointing a Chapter 11 Trustee* (the "**Motion**") for entry of an Order appointing a chapter 11 trustee pursuant to section 1104(a)(1) and (2) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "**Bankruptcy Code**") in the chapter 11 case of the above-captioned debtor and debtor in possession (the "**Debtor**" or "**TSE**"). In support thereof, the CMB Creditors respectfully state as follows:

I. PRELIMINARY STATEMENT

The above-captioned debtor and debtor in possession (the "**Debtor**" or "**TSE**") and its management are hopelessly conflicted.

First, the Debtor is owned by Crescent Dunes Investment, LLC ("**CDI**"). *See* Declaration of Yale Scott Bogen in Support of Debtor's Chapter 11 Petition and First Day Motions dated January 21, 2026 [D.I. 12] (the "**Bogen Decl.**") at ¶ 12. CDI entered the capital structure of TSE when

Cobra Energy Investment Finance, LLC ("**Cobra Finance**") designated Crescent Dunes Investment, LLC to receive the 100 New Common Units in the Reorganized TSE for the $100 million capital contribution made on the Effective Date of the 2020 Chapter 11 Plan.[1] *See* Notice of Filing of Revised Exhibits A & C to Plan Supplement for the Chapter 11 Plan for Tonopah Solar Energy, LLC dated December 9, 2020 [D.I. 293-1 (2020 Chapter 11 Case)], at Exh. 1 ("Revised LLC Agreement").

Second, the Debtor's prepetition and DIP lender is Crescent Dunes Finance, Inc. ("**CDF**," and together with CDI, the "**Crescent Dunes Parties**"). CDF entered the capital structure of TSE when Cobra Finance designating its rights under the Exit Credit Facility Agreement from the 2020 Chapter case to CDF.[2] Cobra Finance, Cobra Energy Investment, LLC, Cobra Instalaciones y Servicios S.A., and Cobra Thermosolar Plants, Inc. were at the times relevant to the matters subsidiaries of ACS Servicios, Comunicaciones y Energia, S.L. ("**ACSSCE**" and, collectively, the "**Cobra Affiliates**"). *See* Cobra Tonopah Organizational Chart as it concerns the Power Plant, attached hereto as **Exhibit B**.

Third, ACSSCE was the parent entity, which indirectly owned Cobra Instalaciones y Servicios S.A. ("**Cobra Instalaciones**"), which in turn indirectly owned and controlled Cobra Energy Investment Finance, LLC, ("**Cobra Finance**") which wholly owned Cobra Energy

[1] The 2020 Chapter 11 Plan limits Cobra's Designees by defining that term as follows: "Cobra Designee means an Affiliate of Cobra designated by Cobra in writing prior to the Effective Date and reasonably acceptable to the Debtor." *Id.* at Section 1.29. Therefore, Crescent Dunes Finance, the Debtor's "prepetition and proposed postpetition secured lender," Bogen Declaration at ¶ 13, are affiliates. Under section 101(31)(E) of the Bankruptcy Code, a statutory insider of the Debtor includes an "affiliate, or insider of an affiliate as if such affiliate were the debtor . . . ."). 11 U.S.C. §§ 101(31)(E).

[2] Cobra Finance, Cobra Energy Investment, LLC, Cobra Instalaciones y Servicios S.A., and Cobra Thermosolar Plants, Inc., were at the times relevant to the matters underlying the CMB Creditors' claims, subsidiaries of ACSSCE. They are referred to collectively herein as the "Cobra Defendants."

Investment, LLC ("**CEI**"), which held the equity interest in Tonopah Solar Investment, LLC ("**TSI**"), which, through two holding companies, owned and controlled TSE.[3] ACSSCE is indirectly owned and controlled Cobra Thermosolar Plants, Inc. ("**CPI**"), which was responsible for all aspects of the construction of the Crescent Dunes project. ACSSCE also unconditionally guaranteed CPI's performance under the EPC Contract. *See* Exhibit B.

Fourth, the Debtor recently filed its Motion of the Debtor for Entry of an Order Approving and Authorizing the Settlement Agreement by and between the Debtor and Former Manager [D.I. 165] (the "**Manski Motion**") seeking this Court's approval of a release of a former insider—Mark Manski—who participated in the management of the Debtor during a period in which the enterprise lost hundreds of millions of dollars in value, without any meaningful investigation, without identifying the claims being released, and without providing any consideration to creditors.

That is why the CMB Creditors believe an independent fiduciary (other than the Special Committee of the TSE Board) must investigate this material loss in value between the 2020 Chapter 11 Case and the recent sale (during a time period when Manski was an insider), Manski, the Debtor, the Debtor's other related affiliates and insiders, including the Cobra Defendants and the Crescent Dunes Parties, and Board members and management (together, the "**Conflicted Parties**") regarding potential direct and derivative claims based on (i) avoidance actions associated with actual and constructive fraudulent transfer claims under federal and applicable state law, including transfers made by the debtor within two years prior to the filing date (a) with actual intent to hinder, delay, or defraud a creditor, or (b) if made for less than reasonably equivalent value at a time when the Debtor was insolvent, had unreasonably small capital, or believed it would incur debts upon

[3] "ACSSCE" refers to ACS Servicios, Comunicaciones y Energia S.A. ACSSCE is currently known as Dragados, S.A. and is the indirect parent of CDF and CDI. Bogen Declaration at ¶ 34, n.5.

its ability to pay; (ii) state-law claims such as (x) fraud, illegality, breach of fiduciary, aiding and abetting fiduciary breach, or other legally recognized duties, among others, (y) undercapitalization of the debtor, and (z) control or use of the Debtor as a mere instrumentality or alter ego to benefit another, as against TSE, the Cobra Defendants and related entities, and other insiders, including the Crescent Dunes Parties, all of which must be preserved for creditors holding unsecured claims (together, the "**Potential Fraudulent Transfer Claims**").

II. JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. § 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated as of February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in the District of Delaware is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested in this Motion are sections 105(a) and 1112(b) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "**Bankruptcy Code**") and Fed. R. Bankr. P. 1017 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"). Pursuant to Local Rule 9013-1(f), the CMB Creditors confirm their consent to the entry of a final order or judgment by the Court with respect to this Motion if it is determined that this Court, absent consent of the parties, cannot enter a final order or judgment consistent with Article III of the United States Constitution.[4]

[4] The CMB Creditors do not consent to the jurisdiction of this Court or to entry of a final order for any purpose other than the resolution of this Motion.

III. BACKGROUND

A. The CMB Creditors

3. In connection with the funding of certain equity commitments for the development and construction of the Power Plant, the CMB Creditors extended loans to an indirect subsidiary of SolarReserve and to Cobra Finance, as follows:

(i) CMB Group XI loaned $80 million to Cobra Finance to fund the equity interest of CEI in TSE. Cobra Instalaciones[5] guaranteed the loan, which was fully repaid in April 2018.

(ii) CMB Group IX loaned $90 million to SolarReserve CSP Finance LLC ("**SolarReserve Finance**"), to fund SolarReserve CSP Holdings, LLC's equity interest in TSE (the "**SolarReserve Loan**"). SolarReserve Finance failed to repay the $90 million SolarReserve Loan.

See Bogen Decl. at ¶ 47.

B. TSE's Power Plant

4. TSE owns and operates a "net 110-megawatt concentrated solar energy power plant (the "**Power Plant**") located in Tonopah in Nye County, Nevada.[6] *See* Bogen Decl. at ¶ 9. The Power Plant leases land from the Bureau of Land Management ("**BLM**") of the U.S. Department of the Interior and "occupies 1,620 acres of land on a 2,250-acre site." Bogen Decl. at ¶ 29.

C. The Turnkey EPC Contract with Cobra

5. On September 20, 2011, CPI entered into an Engineering, Procurement, and Construction Contract ("**EPC Contract**") with TSE pursuant to which CPI was responsible for delivering a turnkey-ready Power Plant to TSE.

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[5] Cobra Finance, Cobra Energy Investment, Cobra Instalaciones, and Cobra Thermosolar Plants, Inc., were at the times relevant to the matters underlying the CMB Creditors' claims, subsidiaries of ACSSCE. They are referred to collectively herein as the "Cobra Defendants."

[6] Upon information and belief, the Power Plant cost over $1 billion to build and to place in service.

6. ASCSCE was an indirect equity holder in TSE. It was the parent entity that indirectly owned Cobra Instalaciones, which in turn indirectly owned and controlled Cobra Finance, which wholly-owned CEI, which held the equity interest in Tonopah Solar Investment, LLC, which, through two holding companies, owned and controlled TSE.[7] ACSSCE also indirectly owned and controlled CPI, which was responsible for all aspects of the construction of the Crescent Dunes project under the EPC Contract. Critically, ACSSCE unconditionally guaranteed CPI's performance under the EPC Contract. *See* Exhibit B.

D. The Molten Salt Leaks at TSE's Power Plant

7. The Power Plant is designed to use molten salt which is "maintained in a hot salt tank before it is transmitted to other areas of the Plant." Bogen Decl. at ¶ 9. Beginning in October 2016, the first of several catastrophic hot salt tank leaks occurred at the Power Plant. Bogen Decl. at ¶ 10. A second hot salt tank leak "occurred in March 2019, both requiring the Power Plant to halt power-generating operations." *Id.* The Power Plant "sustained two additional hot salt tank leaks, one in 2022 and the second in 2023." *Id.*

8. Prior to the October 2016 hot salt tank leak, significant infighting began between the Cobra Affiliates and SolarReserve. due to delays and defects in CPI's work under the EPC Contract, which resulted in the Plant experiencing lengthy outages or generating substantially less electricity than it was designed to generate. Thus, CPI was required to pay the Debtor significant sums in liquidated damages under the EPC Contract. In November of 2017, CPI initiated arbitration with the International Chamber of Commerce against the Debtor, disputing how the Debtor calculated the liquidated damages the Debtor was attempting to collect from CPI under the EPC Contract.

[7] "ACSSCE" refers to ACS Servicios, Comunicaciones y Energia S.A. ACSSCE is currently known as Dragados, S.A. and is the indirect parent of CDF and CDI. Bogen Decl. at ¶ 34, n.5.

9. At or around the time CPI initiated the ICC arbitration against the Debtor, FTI Consulting was retained to provide management services to the Debtor. At or about that same time, Manski was brought on as chairman of the Debtor's board of directors.

10. In early 2018, in response to CPI's arbitration demand, the Debtor counterclaimed against CPI and ACSSCE, asserting significant delays, serious performance deficiencies, and other material breaches of the EPC Contract by CPI amounting to gross negligence.

E. The 2020 Chapter 11 Bankruptcy Case

11. After hot salt tank leaks, the Power Plant lowered the "operating temperature of the hot salt tank to prevent future leaks," Bogen Decl. at ¶ 10, which resulted in a reduction of the amount of energy that the Power Plant generates, which in turn has led to decreased revenues." *Id.* In 2019, following two of the hot salt tank leaks, Nevada Power Company d/b/a NV Energy ("**NVE**") terminated its long-term power-purchase agreement ("**PPA**") with TSE. *Id.* at ¶ 11. The PPA's termination was the death knell for SolarReserve and, with CPI's refusal to pay liquidated damages, cut off any revenues for the Debtor. CMB is informed and believes that, due to the PPA's termination, CPI's and ASCSCE's liability exposure from the Debtor's counterclaim in the ICC arbitration ballooned to approximately $1 billion.

12. In July of 2020. following the termination of the PPA by NVE, TSE, CPI, ASCSCE and CEI negotiated and entered into a restructuring support agreement, which, among other things, resulted in: (a) the DOE receiving $200 million and a $100 million contingent note to be guaranteed by Cobra, in full and complete satisfaction of the Debtor's outstanding obligations owed to the DOE, (b) a mutual release between TSE. on the one hand, and CPI. ACSSCE. and Cobra Energy Investment on the other, (c) ACSSCE or an affiliate owning 100% of TSE's membership interests, and (d) the unimpairment of any other claims against TSE. SolarReserve

was not involved in or even informed of any discussions relating to the restructuring support agreement.

13. Based on the restructuring support agreement, TSE commenced the 2020 Chapter 11 Case on July 30, 2020. Bogen Decl. at ¶ 35. On December 9, 2020, the Bankruptcy Court approved TSE's plan in the 2020 Chapter 11 Case. *Id.* at ¶ 37. The confirmed plan in the 2020 Chapter 11 Case (the "**2020 Chapter 11 Plan**") resulted in, among other things:

> (a) a $200 million cash payment to the DOE, plus potential deferred payments under the terms of a $100 million contingent note to the DOE (now expired), with funding for the Debtor's obligations under the 2020 plan through new debt financing and an equity contribution;[8]
>
> (b) mutual releases by the parties and the DOE;[9]
>
> (c) ownership of TSE by CDI; and
>
> (d) the unimpairment of all other claims.

Bogen Decl. at ¶ 36.[10] Because no other claims were impaired, no other creditor could object to the 2020 Chapter 11 Plan.

14. Also under the 2020 Chapter 11 Plan, Cobra received 100 New Common Units in Reorganized TSE, reflecting all new limited liability company interests in Reorganized TSE and having an "aggregate deemed value equal to $100 million."[11] *See* 2020 Chapter 11 Plan at § 7.3.

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[8] This contingent note "expired on December 31, 2023." Bogen Decl. at ¶ 12.

[9] In connection with 2020 Chapter 11 Plan, TSE released certain Cobra-related entities including "ACS Servicios Comunicaciones y Energía S.L., Cobra Thermosolar Plants, Inc. and Cobra Energy Investment, LLC." *See* 2020 Chapter 11 Plan at Section 1.27; Section 12.6(a).

[10] The 2020 Chapter 11 Plan restructured a "Prepetition Note" held by the DOE in the original principal amount of $455,693,000, including the release of the security interests under the federal loan documents. *See* 2020 Plan at Section 1.90.

[11] As addressed below, Cobra designated Crescent Dunes Investment, LLC to receive the 100 New Common Units in the Reorganized TSE for the $100 million capital contribution made on the Effective Date of the 2020 Chapter 11 Plan. *See* Notice of Filing of <u>Revised</u> Exhibits A & C

15. In exchange for this contribution, Cobra selected "five (5) individuals" to serve on the "board of managers of Reorganized TSE." *See id.* at Section 7.8(a). The plan supplement identified one independent manager to the Reorganized TSE board of managers, Mark Manski. The further revised plan supplement also identified three managers to the Reorganized TSE board of managers, each of whom was associated with ACSSCE: (1) Oscar Yunta Toledo, (2) Luis Rein Rojo, and (3) Carlos Ramiro Visser. *See* Notice of Filing of Further Revised Exhibit B to Plan Supplement for the Chapter 11 Plan for Tonopah Solar Energy, LLC dated December 1, 2020 [D.I. 273 (2020 Chapter 11 Case)], at Exhibit B, Exh. 1 ("Further Revised Exhibit B to Plan Supplement – List of Proposed Officers and Managers and Disclosure Regarding Compensation"). Manski was to receive $150,000 per year for serving as manager of the reorganized TSE, as well as $100,000 per year for his services as executive chairman of the reorganized TSE.

16. TSE also entered into an Operation and Maintenance Agreement (the "**Cobra O&M Agreement**") with Cobra Industrial Services, Inc. ("**CIS**") under which CIS agreed to operate the Power Plant. Bogen Decl. at ¶ 35. CIS "supplies the personnel needed to operate the Power Plant," *id.* at ¶ 31, and TSE "has no employees of its own."[12] *Id.*

17. Finally, under the 2020 Chapter 11 Plan, an affiliate of the Debtor obtained a $6 million letter of credit for the benefit of the CMB Creditors to secure TSE's potential liability to the CMB Creditors, applicable only if any such claimant obtains a final and non-appealable money judgment with respect to the Nevada District Court Action and ensuing ICC Arbitrations initiated by the CMB Creditors. Additionally, the CMB Letter of Credit may be drawn by the CMB

to Plan Supplement for the Chapter 11 Plan for Tonopah Solar Energy, LLC dated December 9, 2020 [D.I. 293-1 (2020 Chapter 11 Case)], at Exh. 1 ("**Revised LLC Agreement**").

[12] According to the Debtor, the operator of the Power Plant (formerly CIS) is "now known as ACS Industrial Activities, Inc." Bogen Decl. at ¶ 31, n.3.

Creditors only in accordance with the plan in the 2020 Chapter 11 Case (the "**CMB Letter of Credit**").[13]

18. On December 9, 2020, the Court approved TSE's plan in the 2020 Chapter 11 Case, allowing it to emerge from bankruptcy with a significantly deleveraged balance sheet.

19. With SolarReserve holding no interest in the reorganized TSE and the DOE having released its claims against TSE, there was effectively no independent oversight remaining as to TSE's operations following the 2020 Chapter 11 Case.

F. The Special Committee's Investigation

20. TSE's Board "appointed two independent managers" and "established a special committee comprised of the two independent managers . . . under Section 7(c) of the Company LLC Agreement, to conduct an investigation of the transactions between TSE and its affiliates and potential claims and causes of action held by TSE against insiders or other related parties . . . and report to the Board regarding the Investigation and its conclusions." Bogen Decl. at ¶ 78. According to TSE, the Investigation by the Special Committee concluded that TSE does not hold any material claims or causes of action against any insiders or affiliates." *Id.* at ¶ 79.

21. [Intentionally omitted].

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13 The issuing bank under the CMB Letter of Credit is *Itau Corpbanca*, the applicant is ACSSCE, and CMB Export is the beneficiary. CMB Export is entitled to draw the CMB Letter of Credit after certifying one of the following two alternatives: (1) following a final, nonappealable judgment awarding a monetary judgment against the Debtor in respect of the "CMB/SR Claims" following the Debtor's failure to pay that judgment within 30 days; or (2) the CMB Letter of Credit is not extended or replaced with ten business days prior to its expiration. TSE has told the Bankruptcy Court that it "anticipates that CMB's claims will be unimpaired under the Plan to the extent such claims are eventually allowed." Bogen Decl. at ¶ 87. TSE has also said the CMB Letter of Credit "will remain in place after the effective date of the Plan" and that "CMB's potential claims will also remain subject to setoff with respect to all amounts that CMB may owe the Debtor, including through future arbitration awards." *Id.* The CMB Creditors intend to object to confirmation of any Plan proposed by the Debtor that interfere with CMB Export's rights to the proceeds of the CMB Letter of Credit following the issuance of "draw certificate" thereunder.

G. Crescent Dunes Parties and Cobra are Affiliates and Insiders of TSE

22. The 2020 Chapter 11 Case provided that "Cobra *(or a Cobra Designee)* [would] provide Reorganized TSE with up to $64 million to fund the working capital and other needs of Reorganized TSE." *Id.* at Section 7.4 (emphasis added). The Exit Credit Facility Agreement from the 2020 Chapter case is with *Crescent Dunes Finance, Inc.*, not Cobra, presumably the result of designating its rights under the Exit Credit Facility to CDF. Similarly, Cobra designated Crescent Dunes Investment, LLC to receive the 100 New Common Units in the Reorganized TSE for the $100 million capital contribution made on the Effective Date of the 2020 Chapter 11 Plan.[14] *See* Notice of Filing of <u>Revised</u> Exhibits A & C to Plan Supplement for the Chapter 11 Plan for Tonopah Solar Energy, LLC dated December 9, 2020 [D.I. 293-1 (2020 Chapter 11 Case)], at Exh. 1 ("**Revised LLC Agreement**").

IV. THE POTENTIAL CLAIMS AGAINST TSE, COBRA AND OTHER INSIDERS

23. General unsecured creditors, including the CMB Creditors and the U.S. Government, have various direct and indirect claims, including:

(a) claims belonging to the CMB Creditors in the CMB Litigation;[15]

(b) claims belonging to the United States as against the Debtor or any non-debtor party, including but not limited to:

(i) claims under the False Claims Act (31 U.S.C. §§ 3729–3733); and

(ii) environmental remediation claims at the Power Plant related to public land restoration, hazardous material release response, and compliance with

[14] The 2020 Chapter 11 Plan limits Cobra's Designees by defining that term as follows: "Cobra Designee means an Affiliate of Cobra designated by Cobra in writing prior to the Effective Date and reasonably acceptable to the Debtor." *Id.* at Section 1.29. Thus, Crescent Dunes Finance, the Debtor's "prepetition and proposed postpetition secured lender," Bogen Decl. at ¶ 13, is an affiliate. *See* 11 U.S.C. §§ 101(31)(E).

[15] The "CMB Litigation" includes the Nevada District Court Action, ICC Arbitration, CMB Judgment Appeal, *Qui Tam* Action, and CMB's *Qui Tam* Appeal. Each of these litigation matters is discussed in the Bogen Decl., at ¶¶ 47-65.

federal environmental statutes and lease obligations (together, the "**U.S. Government Claims**"); and

(c) the Potential Fraudulent Transfer Claims.

(together, the "**Preserved Claims**").

24. In addition to other direct and derivative claims based on state law related to fraud, illegality, breach of fiduciary, aiding and abetting fiduciary breach, or other legally recognized duties, among others, fraudulent transfers and obligations under both the Bankruptcy Code and state law provide grounds for the avoidance of certain transactions. These claims can be asserted to recover transfers of cash or property previously made by the Debtor, including transfers made to Cobra Defendants and related entities, as well as Crescent Dunes Parties (CDI and CDF).

25. Neither the Debtor nor the Special Committee of the Board has expressed any interest in pursuing the Potential Fraudulent Transfer Claims, apparently relying on the conclusion by the Special Committee "that TSE does not hold any material claims or causes of action against any insiders or affiliates." Bogen Decl. at ¶ 79. That is why the CMB Creditors believe that the appointment of a plan administrator to "manage the Debtor's . . . continued defense of the CMB Litigation," is insufficient. *Id.* at ¶ 88. Rather, an independent fiduciary should be appointed to (i) investigate the insider relationships between the Cobra Defendants and the Crescent Dunes Parties (CDI and CDF), and (ii) pursue and avoid any Potential Fraudulent Transfers.

V. RELIEF REQUESTED

26. Through this Motion, the CMB Creditors seeks entry of an order in the form attached hereto as **<u>Exhibit A</u>** (the "**Proposed Order**") appointing an impartial, independent trustee to:

(a) investigate Potential Fraudulent Transfer Claims related to the Debtor's descent into bankruptcy and to prosecute the same;

(b) resolve issues of corporate governance; and

(c) analyze and determine the nature and priority of the claims, rights and interests possessed by the Debtor's creditors, including the Crescent Dunes Parties.

VI. BASIS FOR RELIEF REQUESTED

27. In his First Day Declaration, Mr. Bogen goes to great lengths to portray the Debtor's bankruptcy filings as the result of hot salt tank failures. *See* Bogen Decl. at ¶¶ 9-11; 39-45. These operational failures do not address, however, whether the Conflicted Parties exercised improper control over TSE that:

(1) prematurely placed the Power Plant in service, causing over $1 billion in losses to taxpayers and creditors;

(2) caused the issuance of misleading financial projections made by the Reorganized TSE and its financial and other advisors related to a federally funded project;

(3) resulted in design defects associated with the hot salt tank or the construction or design of the Power Plant; and

(4) how management and control of the enterprise by ACS and its affiliates caused the Debtor to file for bankruptcy twice within six years, despite investments of over $1.4 billion, much of which went into the pockets of ACSSCE and its affiliates.

28. Moreover, the hot salt tank failures do not explain whether present management misinformed creditors, who were led to believe that the Debtor was in good financial health even after the 2020 Chapter 11 Plan became effective in December 2020.

29. Stated simply, positive results in these cases will be driven by whether the Debtor's estate is successful at prosecuting and collecting on Potential Fraudulent Transfer Claims against the Conflicted Parties, including potentially the Debtor's current management and any insurance policies. Neither the Debtor nor the Special Committee of the Board has expressed any interest in pursuing the Potential Fraudulent Transfer Claims, apparently relying on the conclusion by the

Special Committee that TSE does not hold any material claims or causes of action against any insiders or affiliates." Bogen Decl. at ¶ 79.

30. That is why the CMB Creditors believe that the appointment of a plan administrator to "manage the Debtor's . . . continued defense of the CMB Litigation," is insufficient. *Id.* at ¶ 88. Rather, an independent fiduciary should be appointed to investigate the insider relationships between the Cobra Defendants, and the Crescent Dunes Parties (CDI and CDF) and to pursue and avoid any Potential Fraudulent Transfers. Rather, an impartial, independent fiduciary should be appointed to ensure that the Debtor vigorously pursues any and all potential recoveries for the Debtor's creditors whom they purport to serve, and to provide fair, impartial information regarding the Debtor's current financial affairs and business operations. The Debtor's current management should not be put in a conflicted position vis-à-vis the Conflicted Parties.

A. Operative Bankruptcy Code Provisions

31. Section 1104(a) of the Bankruptcy Code is the primary statutory authority for the relief requested in this Motion. It provides, in relevant part:

> On request of a party in interest, and after notice and a hearing, the court shall order the appointment of a trustee—(1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause as determined by the court; or (2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate.

11 U.S.C. § 1104(a)(1)–(2) (emphasis added).

32. The statute's use of "shall" makes appointment mandatory once the Court finds either "cause" under subsection (a)(1), or that a trustee would serve the best interests of the estate under subsection (a)(2). *See In re Marvel Entm't Grp., Inc.*, 140 F.3d 463, 471 (3d Cir. 1998) (noting that if the movant meets its burden, "the court must appoint the trustee"). "Cause" under § 1104(a)(1) is not limited to the enumerated examples; courts in the Third Circuit and Delaware

have repeatedly held that insider control, conflicts of interest, self-dealing, and the failure to investigate or pursue claims against affiliates constitute "similar cause." *See In re Sharon Steel Corp.*, 871 F.2d 1217, 1225 (3d Cir. 1989) (insider transactions and conflicts of interest that prevent impartial pursuit of estate claims satisfy § 1104(a)(1)); *In re Sillerman*, 605 B.R. 631, 641 (Bankr. S.D.N.Y. 2019) (conflicts of interest and self-dealing constitute cause).

33. Section 1112(b) of the Bankruptcy Code provides an alternative path to relief by authorizing conversion to chapter 7 or dismissal "for cause," including "gross mismanagement of the estate" and "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." 11 U.S.C. § 1112(b)(1), (4)(A), (D). Although the facts here would support conversion or dismissal, appointment of a chapter 11 trustee is the less drastic and often preferable remedy when it best serves the interests of creditors and the estate. *See In re Marvel*, 140 F.3d at 472 (recognizing trustee appointment as a measured alternative to conversion that preserves reorganization possibilities while addressing management deficiencies). The CMB Creditors therefore seek the targeted relief of an independent trustee under § 1104(a) rather than the broader remedies of § 1112(b).

B. Cause Exists for Appointment of a Trustee Under Section 1104(a)(1) and Appointment Is in the Best Interests of Creditors and the Estate Under Section 1104(a)(2)

34. Cause under § 1104(a)(1) is abundantly present. The Debtor is controlled by insiders and affiliates—the Crescent Dunes Parties (CDI and CDF) and the Cobra entities—that have presided over a nearly $200 million decline in enterprise value between the 2020 Chapter 11 Case (when the Debtor emerged with a deleveraged balance sheet and $100 million in new equity) and the recent sale process. *See* Bogen Decl. ¶¶ 36, 78–79. Current management has conducted no meaningful investigation into potential fraudulent transfers, breaches of fiduciary duty,

aiding-and-abetting claims, alter-ego liability, or undercapitalization claims against those same insiders. Instead, the Debtor now seeks Court approval of the Manski Motion—a broad release of a former insider who participated in management during the period of massive value destruction—without identifying the claims being released, without any disclosure of the investigation (if any) that preceded the release, and without providing any consideration to unsecured creditors. These facts constitute gross mismanagement, incompetence, and "similar cause" warranting appointment of a trustee. *See In re Sharon Steel*, 871 F.2d at 1225 (appointment required where debtor-in-possession failed to pursue avoidance actions against insiders with whom management shared fiduciary duties); *In re Sillerman*, 605 B.R. at 641 (self-dealing and refusal to investigate affiliate claims established cause); *United Sur. and Indem. Co. v. Lopez-Munoz (In re Lopez-Munoz)*, 553 B.R. 179, 183 (Bankr. 1st Cir. 2016) (gross mismanagement is cause).

35. [Intentionally omitted].

36. Separately and independently, appointment of a trustee is plainly "in the interests of creditors . . . and other interests of the estate" under § 1104(a)(2). An independent fiduciary is essential to (i) investigate the insider relationships and Potential Fraudulent Transfer Claims that the Special Committee and current management have refused to pursue, (ii) resolve the inherent conflicts of interest that prevent the Debtor from fairly representing unsecured creditors (including the CMB Creditors and the United States), and (iii) ensure that any plan or wind-down actually maximizes value for non-insider creditors rather than insiders who may have received preferential or fraudulent transfers. *See In re W.R. Grace*, 285 B.R. at 158 (best-interests prong satisfied where independent fiduciary needed to investigate insider conduct); *In re Ashley River Consulting*, LLC, 2015 Bankr. LEXIS 1008, at *14 (Bankr. S.D.N.Y. Mar. 31, 2015) (trustee required to investigate insider conduct); *see also In re Humphreys Pest Control Franchises, Inc.*, 40 B.R. 174, 177 (Bankr.

E.D. Pa. 1984) (trustee appropriate where officers of debtor and parent share conflicting fiduciary duties).

37. The presumption in favor of debtor-in-possession management yields to clear and convincing evidence of the type presented here. *See In re Marvel*, 140 F.3d at 471; *In re Sharon Steel*, 871 F.2d at 1226. Positive results in these cases will be driven by whether the estate successfully prosecutes and collects on the Potential Fraudulent Transfer Claims and other Preserved Claims against the Conflicted Parties. Neither current management nor the Special Committee has shown any willingness to do so. A neutral trustee—unburdened by the affiliations that taint the Debtor's current decision-making—will provide the impartial investigation, pursuit of claims, and corporate-governance oversight that the estate and its creditors require. Appointment is therefore both statutorily mandated and squarely in the best interests of all stakeholders.

C. The Debtor Cannot Confirm its Chapter 11 Plan without CMB's Support

38. Finally, the Debtor anticipates filing a combined disclosure statement and chapter 11 plan (the "**2026 Plan**") providing "for the distribution of sale proceeds in the event of a successful sale and a wind-down of the Debtor's affairs." Bogen Decl. at ¶ 86. According to the TSE, "any recovery to allowed, undisputed, non-insider general unsecured creditors under the 2026 Plan would be funded by a carve-out from CDF's collateral if sale proceeds are insufficient to pay CDF's allowed secured claim in full." *Id.* The Debtor also anticipates that the plan will provide for appointment of a plan administrator to "manage the Debtor's wind-down, including its continued defense of the CMB Litigation and disposition of any related residual assets." Bogen Decl. at ¶ 88.

39. Of course, the Debtor cannot confirm a chapter 11 liquidating plan without CMB's support because the Debtor will not have an impaired, accepting class of non-insiders to accept the plan. That's because section 1129(a)(10) of the Bankruptcy Code provides that, to the extent there is an impaired class of claims, at least one impaired class of claims must accept the plan, "without including any acceptance of the plan by any insider," as an alternative to the requirement under section 1129(a)(8) of the Bankruptcy Code that each class of claims or interests must either accept the plan or be unimpaired under the plan. 11 U.S.C. § 1129(a)(10).

40. That is why the CMB Creditors believe that the appointment of a plan administrator to "manage the Debtor's . . . continued defense of the CMB Litigation," is insufficient. *Id.* at ¶ 88.

VII. NOTICE

41. Notice of this Motion will be provided to: (a) the U.S. Trustee; (b) DLA Piper LLP (US) and Debevoise & Plimpton LLP, as counsel to the Debtor; (c) Ice Miller and Kelley Drye & Warren LLP, as counsel to the Crescent Dunes Investment, LLC and Crescent Dunes Finance, Inc.; and (d) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, no other or further notice need be given. No prior motion for the relief requested herein has been made to this or any other court.

VIII. CONCLUSION

42. In light of the foregoing, it is critical that any plan administrator not be a current or former insider of the debtor. That is why this Court should appoint an independent fiduciary with authorization to:

(a) act in fiduciary capacities on behalf of the interests of all Holders of Claims that will receive Distributions from the Liquidation Trust; and

(b) investigate the insider relationships between the Cobra Defendants, and the Crescent Dunes Parties (CDI and CDF) and to pursue and avoid any Potential Fraudulent Transfers.

WHEREFORE, for the reasons set forth above, the CMB Creditors respectfully request that this Court (A) enter the Proposed Order appointing a Chapter 11 Trustee; and (B) grant such other and further relief as the Court deems just and proper.

Dated: April 9, 2026
Wilmington, Delaware

/s/ Scott D. Cousins

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Counsel to CMB Infrastructure Investment Group IX, LP, CMB Infrastructure Investment Group XI, LP, and CMB Export, LLC

EXHIBIT A

(Proposed Order)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: Tonopah Solar Energy, LLC Debtor.	Chapter 11 Case No. 26-10060

ORDER GRANTING [AMENDED] MOTION OF CMB INFRASTRUCTURE INVESTMENT GROUP IX, LP, CMB INFRASTRUCTURE INVESTMENT GROUP XI, LP, AND CMB EXPORT, LLC FOR ENTRY OF AN ORDER APPOINTING A CHAPTER 11 TRUSTEE

Upon consideration of the *Amended Motion of CMB Infrastructure Investment Group IX, LP, CMB Infrastructure Investment Group XI, LP, and CMB Export, LLC for Entry of an Order Appointing a Chapter 11 Trustee* (the "**Motion**")[1] , pursuant to sections 105(a) and 1112(b) of the Bankruptcy Code, and Bankruptcy Rule 1017; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties in interest; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or

[1] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

further notice need be provided; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** to the extent set forth herein.

2. The U.S. Trustee is directed to appoint a chapter 11 trustee.

3. This Order is immediately effective and is not stayed by operation of law, notwithstanding the stay provisions of Fed. R. Bankr. P.4001(a)(3).

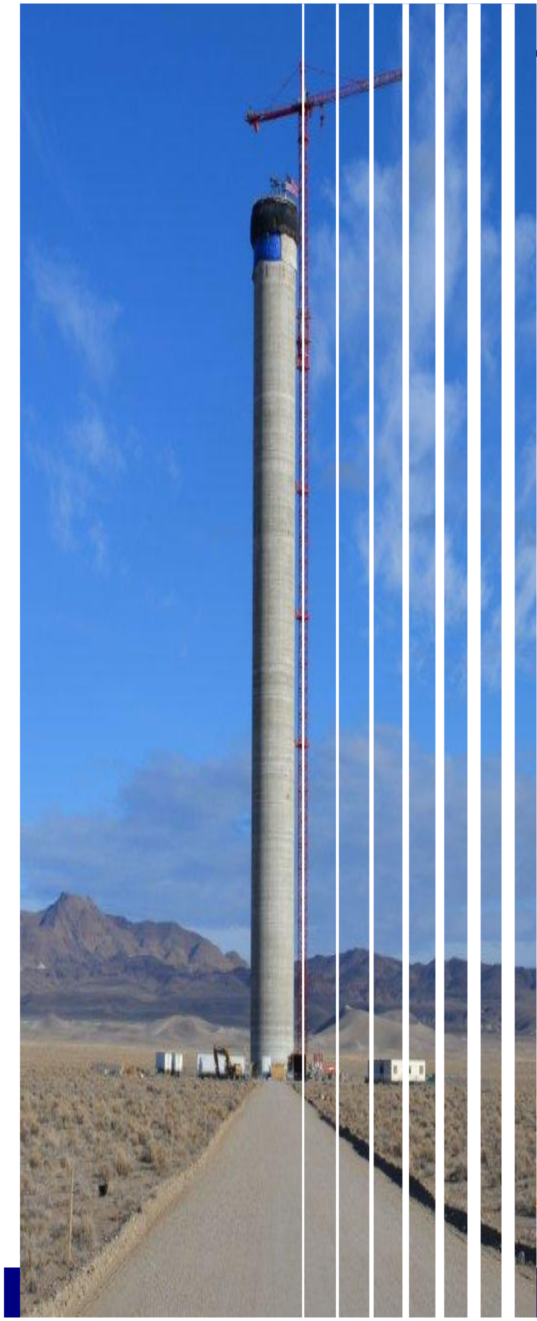
4. This Court retains jurisdiction with respect to all matters arising from, or related to, the implementation, interpretation, and enforcement of this Order.

EXHIBIT B

(Cobra Tonopah Organizational Chart)

Crescent Dunes Project

cobra



Project Structure

ACS Servicios Comunicaciones y Energía, S.L.

100%

Cobra Instalaciones y Servicios

Moncobra S.A.

99%

1%

Golden State Tedagua

SPAIN

USA

100%

CIS, Inc
- Delaware corp.
- Registered in Texas

100%

100%

SRCSP, LLC

CEI, LLC
- Delaware LLC
- Registered in Nevada

CTP, Inc
- EPC Contractor
- Nevada Corp.

50%

50%

TSI, LLC

TS 1, LLC (Santander)

73.2%

26.8%

TSEH I, LLC

100%

TSEH II, LLC

100%

TSE, LLC
- Delaware LLC
- Registered in Nevada

ACS Servicios Comunicaciones y Energía: S.L.: SPONSOR PARENT.
CIS: Cobra Industrial Services.
CEI: Cobra Energy Investment. SPONSOR
CTP: Cobra Thermosolar Plants
SRCSP: Solar Reserve CSP.
TSI: Tonopah Solar Investment.
TS 1: Tonopah Solar 1
TSEH I: Tonopah Solar Energy Holding I
TSEH II: Tonopah Solar Energy Holding II
TSE: Tonopah Solar Energy.

CERTIFICATE OF SERVICE

I certify that on this 9th day of April 2026, the foregoing *Amended Motion of CMB Infrastructure Investment Group IX, LP, CMB Infrastructure Investment Group XI, LP, and CMB Export, LLC for Entry of an Order Appointing a Chapter 11 Trustee* has been served (A) upon all parties that are registered or otherwise entitled to receive electronic notices via electronic notification pursuant to the CM/ECF system for the United States Bankruptcy Court for the District of Delaware; and (B) via electronic mail on the following parties:

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Scott D. Cousins (No. 3079)

Dated: April 9, 2026