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

| | |
|---|---|
| In re:<br><br>TONOPAH SOLAR ENERGY, LLC,[1]<br><br>Debtor. | Chapter 11<br><br>Case No. 26-10060 (___) |

**DECLARATION OF YALE SCOTT BOGEN IN SUPPORT OF DEBTOR'S CHAPTER 11 PETITION AND FIRST DAY MOTIONS**

I, Yale Scott Bogen, hereby declare, under penalty of perjury, that the following is true to the best of my knowledge, information, and belief:

1. I am the Chief Restructuring Officer ("CRO") of Tonopah Solar Energy, LLC ("TSE"), the debtor and debtor in possession (the "Debtor") in the above-captioned chapter 11 case.

2. I am also a Senior Managing Director at Development Specialists Inc. ("DSI"), a leading provider of management consulting and financial advisory services, including turnaround consulting, liquidating trustee, financial restructuring, litigation support and forensic accounting. DSI's clients include business owners, corporate management and boards of directors, financial services institutions, secured lenders, bondholders, unsecured creditors, and creditor committees. TSE retained DSI and appointed me to the role of CRO effective on May 1, 2025.

3. I received my Bachelor's of Business Administration, Master of Professional Accountancy, and Masters in Business Administration from the University of Miami. I am a Certified Public Accountant, a Certified Insolvency & Restructuring Advisor, a Certified Internal Auditor and certified in Financial Forensics.

---

[1] The Debtor in this chapter 11 case, along with the last four digits of its federal tax identification number, is Tonopah Solar Energy, LLC (1316). The Debtor's headquarters is located at 11 Gabbs Pole Line Road, Box 1071, Tonopah, NV 89049.

4. I have over twenty-two years of experience in business restructuring and turnaround management and have worked with clients across various industries, including healthcare, retail, manufacturing, telecommunications, law firms, and finance. My expertise encompasses a wide range of skills in business restructuring and forensic accounting including management, litigation support, asset analysis, merger and acquisition due diligence and tax compliance among other finance, accounting, and operations experience. I have served as a chief restructuring officer and chief financial officer to multiple distressed companies.

5. Before joining DSI, I held several senior level positions, including Chief Financial Officer of Furniture.com, Inc. (2000-2001), Senior Manager of Ernst & Young's internal audit outsourcing service line (1996-2000), and Internal Audit Manager at Federal-Mogul Corporation (1994-1996). I began my career as a Controller of the Latin America Division at Burger King Corporation (1988-1994), where I oversaw the company's entry into a number of new geographic markets, including Mexico. Some of my active and former cases include: *In re Zymergen, Inc.*, Case No. 23-11661 (KBO) (Bankr. D. Del. Oct. 3, 2023) (financial advisor to liquidation trustee); *In re Sabon Holdings LLC, et al.*, Case No. 20-11320 (JLG) (Bankr. S.D.N.Y. May 29, 2020) (debtor's Chief Restructuring Officer); *In re JCK Legacy Company et al.*, Case No. 20-10418 (MEW) (Bankr. S.D.N.Y. Feb. 13, 2020) (Successor GUC Recovery Trustee); *In re Remington Outdoor Co. Inc., et al.*, Case No. 18-10684 (BLS) (Bankr. D. Del. Mar. 25, 2018) (financial advisor to the litigation trustee); *In re ARO Liquidation, Inc. (f/k/a Aéropostale, Inc.),* Case No.16-11275 (SHL) (Bankr. S.D.N.Y. May 4, 2016) (financial advisor to the debtor and the plan administrator); *In re China Fishery Group Ltd. (Cayman), et al.,* Case No. 16-11895 (JLG) (Bankr. S.D.N.Y. Jun. 30, 2016) (financial advisor to the chapter 11 trustee); *In re Sammy Eljamal*,

Case No. 15-22872 (RDD) (Bankr. S.D.N.Y. Jun. 18, 2015) (financial advisor to the official committee of unsecured creditors).

6. In my capacity as CRO of the Debtor, I have personal knowledge of, and am familiar with, the business affairs, day-to-day operations, books and records, and financial condition, of the Debtor. I am authorized to submit this Declaration by the Debtor's board of managers (the "Board"). Except as otherwise stated, all facts set forth in this Declaration are based on my personal knowledge, my discussions with those reporting directly to me, my review of relevant documents and contemporaneous business records regularly kept and maintained by the Debtor, my experience and knowledge of the industry and of the Debtor's operations and financial condition, or the information provided to me by the Debtor's management, advisors, counsel, agents, employees, or other representatives. If called upon to testify, I could and would testify competently to the facts set forth in this Declaration.

7. Earlier today (the "Petition Date"), the Debtor filed a voluntary petition (the "Petition") for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), commencing this chapter 11 case. The Debtor is operating its business and managing its property as a debtor in possession under sections 1107(a) and 1108 of the Bankruptcy Code.

8. To minimize the adverse effects on its business, the Debtor has filed motions and pleadings seeking various forms of "first day" relief to facilitate the success of its chapter 11 case (collectively, the "First Day Motions"). I am generally familiar with the contents of each First Day Motion, and I submit this Declaration to assist the Court and parties in interest in understanding the circumstances leading to this chapter 11 case and in support of the Debtor's Petition and First Day Motions.

## PRELIMINARY STATEMENT

9. The Debtor owns and operates the first of its kind, net 110-megawatt concentrated solar energy power plant (the "Power Plant") located in Tonopah in Nye County, Nevada. As the first utility-scale concentrated solar power plant in the United States to be fully integrated with energy storage technology, the Power Plant operates by concentrating sunlight to heat molten salt. Hot salt liquids can be super-heated to between 550°F to 1,050°F to create a source of heat energy. The molten salt is maintained in a hot salt tank before it is transmitted to other areas of the Plant. The Power Plant then converts heat energy to high pressurized steam, using the steam to spin a turbine connected to a generator that creates electricity for sale. Significantly, the Power Plant has the capability to store and produce electricity at night, setting it apart from other solar power facilities. The Power Plant's design is an innovative solution to the core limitation of renewable energy sources such as solar and wind—their intermittency.

10. The Power Plant's underlying technology was unique among solar energy power plants at the time of its construction. Unfortunately, unforeseen technological issues arose and led to several hot salt tank leaks at the Power Plant. The first hot salt tank leak occurred in October 2016, and the second hot salt tank leak occurred in March 2019, both requiring the Power Plant to halt power-generating operations. The Power Plant sustained two additional hot salt tank leaks, one in 2022 and the second in 2023. When the Power Plant recommenced operations in July 2023, TSE decided to lower the operating temperature of the hot salt tank to prevent future leaks, which has allowed the Power Plant to reliably produce electricity for the past two and one half years without suffering further leaks. Lowering the operating temperature resulted in a reduction of the amount of energy that the Power Plant generates, which in turn has led to decreased revenues.

11. TSE's financial condition was further strained without a long-term power purchase agreement ("PPA") in place to generate consistent revenue. Historically, TSE operated under a

long-term PPA with Nevada Power Company d/b/a NV Energy ("NVE"), which NVE terminated in 2019 after the expiration of applicable cure periods. Although TSE has had short-term PPAs with NVE and other parties since then, there is no long-term PPA in place at this time. TSE has successfully prevented further hot salt tank leaks and secured a short-term PPA that is currently in place with a separate party. Altogether, however, these challenges have limited the Debtor's ability to generate revenue and service its debt obligations.

12. The Debtor's direct parent, Crescent Dunes Investment, LLC ("CDI") and affiliate Crescent Dunes Finance, Inc. ("CDF" or the "Prepetition Lender") have economically supported TSE since its initial bankruptcy case (the "2020 Chapter 11 Case"). This economic support has allowed the Debtor to ensure that the Power Plant remains operational and that staff, trade, and other vendors are paid in the ordinary course. In addition, affiliates of the Debtor funded TSE's payment to the U.S. Department of Energy ("DOE") of $200 million in cash upon the effective date of the chapter 11 plan in the 2020 Chapter 11 Case and backstopped TSE's obligations to the DOE on a $100 million contingent note, which expired on December 31, 2023.

13. CDF, the Debtor's prepetition and proposed postpetition secured lender, loaned to TSE the full $64 million under a line of credit approved in connection with the 2020 Chapter 11 Case, and then contributed approximately $52.9 million more to TSE after the original line of credit with CDF was exhausted. The additional $52.9 million was originally recorded by TSE as a loan. CDF could have maintained and asserted this amount as a loan, but as part of the restructuring support provided by CDF and certain affiliates of the Debtor and to facilitate a smoother process, CDF and said affiliates agreed to treat this amount as an equity investment in TSE (collectively, the "Equity Contributions"). As described in Section II.A., CDF separately

increased the line of credit in August 2025, from $64 million to $73.5 million, to fund TSE's operational expenses, including the payment in full of staff, trade and other third-party vendors.

14. CDF further permitted TSE to stop making interest (or any other) payments on the loans in 2023, all without any obligation to do so. This voluntary forbearance by CDF with respect to TSE's payment obligations helped TSE to remain current on all of its ordinary course trade debt, even through the filing of this chapter 11 case. As described below, CDF also agreed to provide debtor-in-possession ("DIP") financing to the Debtor, to ensure the funding of this chapter 11 case and to facilitate a sale or other disposition of the Power Plant.

15. TSE has continued to operate at a loss, which was exacerbated by the absence of a long-term PPA, despite CDF's substantial prepetition support. To address these challenges, the Debtor determined, in consultation with CDF and CDI, that the most value-maximizing path forward would be to pursue a sale of the Power Plant. TSE accordingly commenced a robust prepetition marketing process in May 2025.

16. TSE also negotiated a restructuring support agreement (the "RSA"), forbearance agreement, and DIP financing (the "DIP Facility") with CDF and CDI in order to facilitate a sale and prompt exit from chapter 11. The RSA contemplates the sale of substantially all of the Debtor's assets under section 363 of the Bankruptcy Code, subject to a postpetition marketing process and customary Court-approved bidding procedures, with the administrative costs of the chapter 11 case funded through the DIP Facility. Accordingly, the Debtor and its advisors immediately intend to encourage the submission of offers for a sale of the Power Plant under section 363 of the Bankruptcy Code and to propose a chapter 11 plan in accordance with the RSA. These efforts have positioned the Debtor to enter this chapter 11 case with a clear path toward maximizing the value of its assets and proposing a plan for the benefit of all its stakeholders.

17. This Declaration is organized into four parts, as follows:

i. **Part I** provides an overview of the Debtor's history, operations, and corporate structure;
ii. **Part II** provides an overview of the Debtor's prepetition debt and capital structure;
iii. **Part III** provides a description of the circumstances leading to the commencement of this chapter 11 case and the Debtor's proposed path forward; and
iv. **Part IV** provides an overview of the relief requested in the First Day Motions and sets forth the evidentiary basis for each First Day Motion.

## I. Description of the Debtor's History, Operations, and Corporate Structure

### *A. TSE's Formation*

18. TSE was formed in February 2008 by SolarReserve, Inc. ("SolarReserve") to develop a solar energy power plant in the Nevada desert. Also known as the Crescent Dunes Solar Energy Project, the Power Plant was designed to utilize a molten salt receiver to generate power.

19. The Power Plant was the first utility-scale solar project of its kind in the United States, capable of storing energy as heat in the form of molten salt, effectively functioning as a large battery with the ability to generate electricity at night. The Power Plant's design was an innovative solution to the intermittency of renewable energy sources such as traditional solar and wind. TSE anticipated that the Power Plant would generate at least 600 construction jobs and 45 permanent jobs and would avoid the release of nearly 279,000 metric tons of carbon dioxide into the atmosphere annually that would have been produced through conventional electricity generation technologies.

20. The Power Plant's development, financing and construction was dependent on three key factors: (i) securing a utility to purchase the Power Plant's renewable, clean power under a long-term PPA; (ii) identifying a construction company to assume the risks associated with a required turnkey fixed-price engineering, procurement and construction contract; and (iii) obtaining a loan guarantee from the DOE.

21. As to the first factor, after extensive negotiation and a protracted regulatory approval process, TSE entered into a PPA (the "First PPA") with NVE in November 2009. The First PPA, entered into before TSE constructed the Power Plant, was for a twenty-five-year term. NVE would be the exclusive offtake purchaser of the power generated by the Power Plant once construction of the Power Plant was complete.

22. As to the second and third factors, in December 2009, SolarReserve applied for a loan guarantee from the DOE, and TSE executed an engineering, procurement and construction contract (the "EPC Contract") with Cobra Thermosolar Plants, Inc., ("CPI"). Under the EPC Contract, CPI agreed to provide engineering, procurement and construction services for the Power Plant at an initial fixed price amount of $766.4 million. TSE also obtained equity investments from SolarReserve, affiliate Cobra Energy Investment, LLC ("CEI"), and Banco Santander, S.A. Financial closing with the DOE for the development and construction of the Power Plant occurred in September 2011 and a notice to proceed with construction was issued later that same month.

23. Under the EPC Contract, CPI agreed to complete construction of the Power Plant by a date certain at a fixed price and to secure "Provisional Acceptance" of the Power Plant before tendering a "turnkey" power plant to TSE. CPI further agreed to pay both liquidated damages and certain contractually-defined damages if the Power Plant did not generate specific minimum levels of electricity and satisfy other specified performance criteria.[2]

[2] Disputes related to the parties' respective performance obligations under the EPC Contract were resolved in the 2020 Chapter 11 Case. As described in detail in Section I.E. of this Declaration, however, CPI and the Debtor remain involved in a related arbitration proceeding with third parties in the ICC International Court of Arbitration.

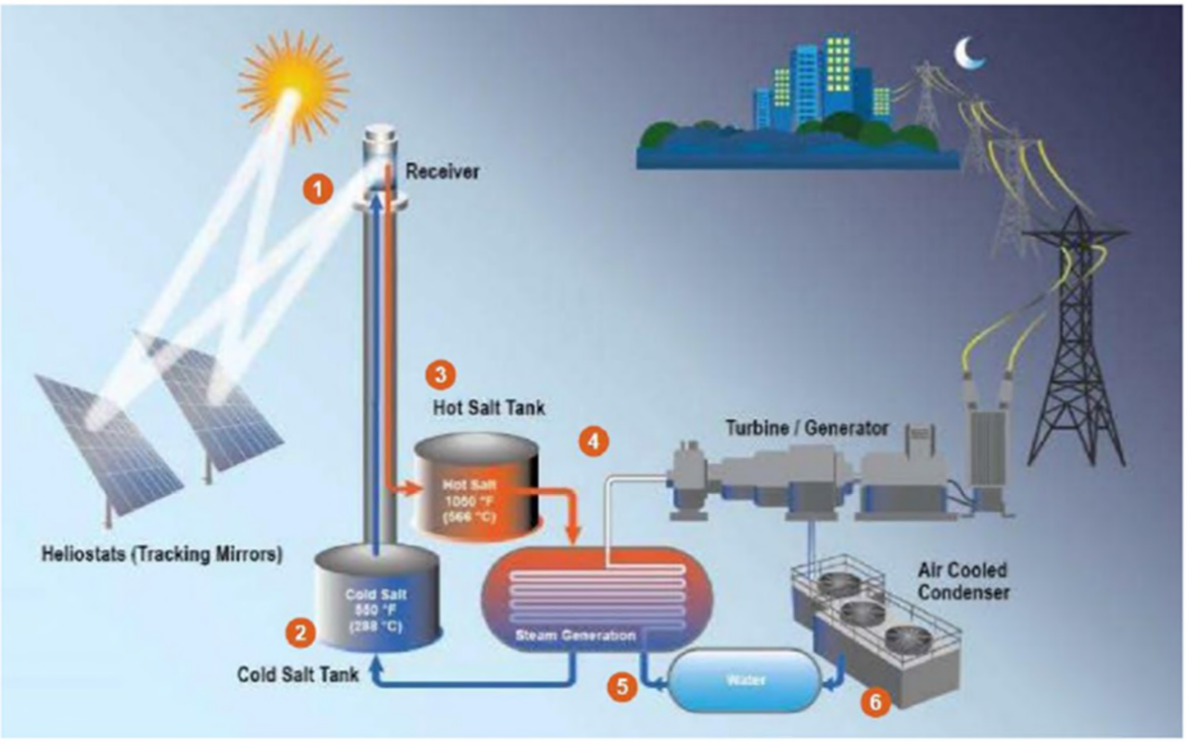
### *B. The Power Plant's Technology and Operations*

24. The Power Plant commenced commercial operations and production in November 2015, upon synchronization with NVE's utility grid. At that time, CPI operated the Power Plant.

25. The Power Plant includes 10,347 heliostats (mirror assemblies) that collect and focus the sun's thermal energy to heat molten salt flowing through an approximately 640-foot-tall solar power tower (the "Receiver Tower"). The Power Plant converts solar energy to heat energy by concentrating sunlight on the Receiver Tower, where molten salt can be super-heated to a design temperature of 1,050°F to create a source of heat energy. Upon exiting the Receiver Tower, this molten salt is maintained in a vessel, the hot salt tank, before it is transmitted to the other areas of the Power Plant.

26. The balance of the Power Plant then relies on conventional technology to convert the heat energy to high-pressurized steam through a steam generation system, which powers a

turbine that creates electricity for sale. Cold salt (550°F) then flows into a cold salt tank before condensed steam from the steam turbine is recycled for reuse.




27. The Power Plant operates similarly to a rechargeable battery, utilizing solar energy to charge and later discharge as needed. Energy is stored in the form of thermal energy, with molten salts being heated from a minimum of 550°F to a maximum of 1,050°F. The amount of energy available for use is directly influenced by the salt temperature and load demand, which are in turn affected by several environmental and operational factors.

28. Following construction, the Power Plant was unique among solar energy plants for many reasons, including its use of a non-degradable energy storage technology that can produce electricity at night, or in the absence of sunlight, for 10 hours. The Power Plant operates like a conventional power generation asset with no back-up fossil fuel system required and can load shift to peak periods or operate at night, allowing for offtake to occur at highest grid-rate periods. Integrated molten salt heated in a tower configuration stores energy more efficiently than other

solar thermal storage solutions. Storage technology utilized in the Power Plant provides for a large-scale solar storage option and produces twice the output of similar sized solar projects without storage.

29. TSE 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. The BLM lease term runs through December 31, 2039, with potential for renewal upon application to, and approval by, the BLM. The annual cost of the lease was approximately $250,000 for 2025.

30. In addition, TSE holds purchased water rights and associated permits sufficient to meet the Power Plant's operational needs. The current permit provides for a combined water duty of up to 562.29 acre-feet, annually. The Power Plant is connected to the Nevada electricity grid via a 5.6 mile, 230kV transmission line that links the Power Plant to a nearby station.

31. The Debtor also obtains operational support from third party contractors. Under the Debtor's O&M Agreement (defined below), Cobra Industrial Services, Inc. ("CIS")[3] supplies the personnel needed to operate the Power Plant. As of the Petition Date, the Debtor has no employees of its own.[4]

***C. The 2020 Chapter 11 Case***

32. In March 2019, the Power Plant suffered a leak in the hot salt tank that halted operations and prevented the Power Plant from generating revenue for over two years.

33. Until October 2019, the electricity generated by the Power Plant was sold exclusively to NVE under the First PPA, and the Debtor's sole source of revenue was the sale of power under the First PPA. In the years following execution of the First PPA, however, the market

[3] CIS is now known as ACS Industrial Activities, Inc. ("ACSIA" or the "O&M Operator").

[4] See *Motion of the Debtor for (I) Authority to Honor and Pay Prepetition Compensation Obligations and (II) Related Relief* filed contemporaneously with this Declaration.

price of renewable energy dropped significantly. Eager to free itself from the long-term obligation to purchase power at a price it no longer viewed as economic, NVE served a notice of default under the First PPA due to the operational difficulties at the Power Plant. Although TSE and CPI worked to cure the potential event of default within the applicable cure periods, NVE ultimately terminated the First PPA in October 2019.

34. In early 2020, facing serious liquidity issues, TSE began discussions with CPI, ACSSCE,[5] CEI, and the DOE, culminating in an agreement in principle for a restructuring support agreement (the "2020 RSA") to deleverage TSE through a pre-negotiated chapter 11 plan.

35. TSE commenced the 2020 Chapter 11 Case on July 30, 2020. Under the terms of the 2020 RSA, TSE entered into that certain *Operation and Maintenance Agreement* dated as of July 30, 2020 (as may be amended, supplemented, or otherwise modified from time to time, the "O&M Agreement") with CIS, which was approved by the Bankruptcy Court. Under the O&M Agreement, the O&M Operator operates the Power Plant.[6]

36. The restructuring implemented in the 2020 Chapter 11 Case 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; (b) mutual releases by the parties and the DOE; (c) ownership of TSE by CDI; and (d) the unimpairment of all other claims.

37. 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.

[5] "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.

[6] O&M Operator has generally collected a monthly management fee of $15,000 (subject to adjustment for inflation) and reimbursement for expenses under the O&M Agreement.

***D. Operations Post-Emergence from the 2020 Chapter 11 Case***

38. The projections underlying the plan in the 2020 Chapter 11 Case assumed an energy sale price of $70/MWh and generation of 400 GWh per year. The Power Plant generation capacity was based upon reasonable expectations at the time that the Power Plant would be able to operate as originally planned once extensive repairs were completed.

39. TSE initially anticipated that the Power Plant would resume operations in October 2020. After extensive remediation of the hot salt tank (including replacement of the baseplate and repair of the hot salt tank floor) and repair and maintenance of other Power Plant operating components and systems, the Plant restarted operations in July 2021 and resumed selling energy to NVE under a short-term PPA (the "Short-Term NVE PPA") for the summer months (through September 15, 2021).

40. TSE had little leverage in negotiating the Short-Term NVE PPA, however. The Power Plant did not own transmission capacity and relied on transmission capacity provided by NVE and therefore, only a very limited number of potential buyers of energy existed. The resulting pricing under the Short-Term NVE PPA was significantly lower than the $70/MWh forecast in the 2020 Chapter 11 Case's disclosure statement. Under the Short-Term NVE PPA, NVE agreed to pay only $21/MWh for most hours, and $63/MWh for a 7-hour peak pricing window from 3:00 p.m. to 10:00 p.m. each day. Moreover, NVE sold much of the transmission capacity that it had previously dedicated to transmit energy from the Power Plant to other energy producers. NVE ultimately decreased the amount of energy it purchased from TSE to approximately 40 MWh.

41. On November 1, 2021, TSE entered into a new PPA with NVE (the "2021 PPA"), which was subsequently extended, and which had significantly better terms more closely aligned with the projections in the disclosure statement in the 2020 Chapter 11 Case. Under the 2021 PPA,

NVE agreed to a "take-or-pay" obligation for all energy produced at the Power Plant and available for delivery to NVE. The pricing under the 2021 PPA also improved by: (i) expanding the peak pricing window to 12-hours, from noon to 12:00 a.m. each day, (ii) increasing non-peak pricing to $31.25/MWh, and (iii) increasing peak window pricing to $122.84/MWh from June through September (with no change in the peak price of $62.50/MWh from October through May). The average sales price under the 2021 PPA in 2023 was $66.16/MWh, only five percent less than originally projected in the 2020 Chapter 11 Case's disclosure statement.

42. On February 14, 2022, a third hot salt tank leak unfortunately led to another shutdown of the Power Plant. TSE repaired the tank, and the Power Plant resumed service on August 20, 2022. A fourth leak shut down operations again in mid-February 2023, after which service resumed on July 13, 2023.

43. The Power Plant's technology is complex. Remedying each leak required the shutdown of the Power Plant, the gradual cooling and draining of the hot salt tank, hot salt tank repairs, and restarting operations. TSE worked with leading experts, including CADE Engineered Technologies ("CADE"), to inspect the hot salt tank, perform root cause analyses and provide recommendations for repairs and remediation designed to prevent additional leaks. Based on a study conducted by CADE, along with rigorous internal analysis, TSE determined to operate the hot salt tank at a lower temperature to reduce the risk of another hot salt tank leak and to reduce the wear and tear of extreme heat on certain other Power Plant components.

44. When the Power Plant resumed operations in July 2023, the temperature of the hot salt tank was reduced from its originally designed operating temperature of approximately 1,050°F to approximately 850°F. In the latter part of May 2024, the temperature of the hot salt tank was gradually raised to 890°F. The typical operating temperature of the hot salt tank today is

approximately 850°F to a maximum of 900°F. Except for short-term stoppages for preventative and corrective maintenance,[7] the Power Plant has remained in service since July 2023—over two years without a leak or a leak-related shutdown.

45. While lowering temperatures in the hot salt tank prevented further leaks, it also significantly reduced the Power Plant's energy production. Assuming no other operating issues and favorable weather/solar exposure, maximum production of the Power Plant is around 55 MWh, rather than approximately 100 MWh when operating at 1,050°F, reducing potential revenue generation.

46. When NVE refused to extend the 2021 PPA at the end of 2024, the Power Plant went into standby mode and thus did not deliver energy from January through May 2025. Early in 2025, the Company was approached by, and commenced discussions with, Switched On, LLC ("Switch") to enter into a new PPA. On May 30, 2025, the Company and Switch entered into a short-term PPA (the "Switch Short-Term PPA") with an initial term of 30 days, subject to extensions by mutual agreement of the parties. The Power Plant is still operating under the Switch Short-Term PPA, which currently expires on February 21, 2026.

### *E. Nevada District Court Action, ICC Arbitration, and Qui Tam Action*

47. In connection with the funding of certain equity commitments for the development and construction of the Power Plant, CMB Infrastructure Investment Group IX, LP ("CMB Group IX"), CMB Infrastructure Investment Group XI, LP ("CMB Group XI"), and CMB Export, LLC ("CMBE" and, together with CMB Group IX and CMB Group XI, "CMB") extended loans to an

[7] On September 19, 2025, one of the Power Plant's evaporators suffered a failure, forcing the Power Plant to temporarily shut down for maintenance. The Power Plant resumed operations on November 6, 2025, after the evaporator was inspected and repaired.

indirect subsidiary of SolarReserve and to Cobra Energy Investment Finance, LLC ("Cobra Finance"), as follows:

(a) CMB Group XI loaned $80 million to Cobra Finance to fund CEI's equity interest in TSE. Cobra Instalaciones y Servicios S.A. ("Cobra Instalaciones") guaranteed the loan, which was fully repaid in April 2018.

(b) 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 allegedly failed to repay a significant portion of the $90 million SolarReserve Loan.[8]

48. As set forth in the *Debtor's Motion Under Section 362(d) of the Bankruptcy Code to Lift Automatic Stay Solely with Respect to Pending CMB Litigation* (the "Lift Stay Motion") filed contemporaneously with this Declaration, CMB initiated actions (collectively, the "CMB Litigation") against: (a) Cobra Finance, CEI, CIS, CPI, and Cobra Instalaciones (collectively, the "Cobra Defendants"); (b) ACSSCE; (c) TSE; and (d) Banco Santander, S.A. ("Santander") (TSE, ACSSCE, and the Cobra Defendants are referred to collectively as "Defendants").[9]

49. The CMB Litigation includes the Nevada District Court Action, ICC Arbitration, CMB Judgment Appeal, *Qui Tam* Action, and CMBE *Qui Tam* Appeal. Each of these litigation matters is further discussed below.

***a. Nevada District Court Action***

50. On May 19, 2020, CMB filed a complaint in Clark County, Nevada (the "Nevada State Court"), Case No. A-20-815245-C, against the Defendants asserting a variety of contract and

---

[8] SolarReserve ultimately initiated a liquidation process in late 2019, through which it assigned certain assets and legal causes of action to its creditors, including CMB Group IX.

[9] Santander was later dismissed from the Nevada District Court Action, the only litigation to which it was a party. The Debtor therefore does not refer to Santander among the "Defendants" in this Declaration.

tort claims, with the goal of recovering the $90 million debt that SolarReserve allegedly failed to repay to CMB Group IX (the "Nevada State Court Litigation"). CMB's Amended Complaint in the Nevada State Court Action, filed on September 1, 2020 (the "Amended Complaint"), alleged ten causes of action. Claims 1 through 6 of the Amended Complaint were asserted by CMB directly, and Claims 7 through 10 of the Amended Complaint stemmed from the CMB Group XI Loan Agreement and were asserted by CMB directly, while Claims 7 through 10 of the Amended Complaint were asserted by CMB, purportedly as assignee of SolarReserve CSP Holdings.

51. On February 9, 2021, before TSE's appearance in the case, the Nevada State Court Litigation was removed to the U.S. District Court for the District of Nevada (the "Nevada District Court"), commencing Case No. 2:21-cv-00214 (the "Nevada District Court Action").[10]

52. As relevant here, on March 11, 2021, CMB filed a motion to remand.[11] On March 12, 2021, the Cobra Defendants filed a motion to compel arbitration.[12] On May 17, 2021, ACSSCE specially appeared and filed a motion dismiss for lack of personal jurisdiction.[13]

53. On July 9, 2021, CMB purported to serve TSE in the Nevada District Court Action by serving the Amended Complaint with a Nevada State Court summons. On July 30, 2021, TSE filed a motion to dismiss that asserted various grounds for relief, including insufficient service of process, that certain claims were time-barred, and failure to state a claim. In the alternative, TSE sought a stay of the claims against it pending arbitration.[14]

---

[10] *See* Doc. 1 in the Nevada District Court Action.

[11] *See* Doc. 17 in the Nevada District Court Action.

[12] *See* Doc. 24 in the Nevada District Court Action.

[13] *See* Doc. 53 in the Nevada District Court Action.

[14] *See* Doc. 60 in the Nevada District Court Action.

54. On November 15, 2021, the Nevada District Court entered an order that decided all of the pending motions. As relevant here, the Nevada District Court: (i) denied ACSSCE's motion to dismiss for lack of personal jurisdiction; (ii) granted TSE's motion to dismiss in part, dismissing Count 6 of the Amended Complaint; (iii) denied CMB's motion to remand; and (iv) granted the Cobra Defendants' motion to compel arbitration.[15] The Nevada District Court also stayed the action pending the conclusion of the arbitration (except for certain jurisdictional discovery concerning Santander not pertinent here).[16]

***b. ICC Arbitration***

55. On February 4, 2022, CMB initiated an arbitration (the "<u>ICC Arbitration</u>") with the International Chamber of Commerce International Court of Arbitration (the "<u>ICC</u>") against the Defendants. In September 2023, the case proceeded to a hearing before the ICC, where the ICC heard and took evidence on CMB's entire case.

56. On January 12, 2024, the ICC issued an award that rejected all claims CMB brought on its own behalf (*i.e.*, Claims 1 through 5). The ICC determined it did not have jurisdiction to decide the claims CMB brought as SolarReserve's purported assignee (*i.e.*, Claims 7 through 10), so it did not decide those claims. The ICC also awarded the Defendants $2,437,221 in attorneys' fees and costs, payable jointly and severally by CMB (the "<u>Award</u>").

57. On October 15, 2024, the Nevada District Court (1) confirmed the Award (denying CMB's motion to vacate the Award); (2) awarded pre- and post- judgment interest on the Award; and (3) granted the Defendants' motion to compel arbitration of Claims 7-10.[17]

---

[15] *See CMB Infrastructure Group IX, LP v. Cobra Energy Investment Finance, Inc.*, 572 F.Supp.3d 950, 977-78 (D. Nevada 2021).

[16] *Id.* at 978.

[17] *See CMB Infrastructure Group IX, LP v. Cobra Energy Investment Finance, Inc.*, No. 2024 WL 4502252 at *12 (D. Nevada Oct. 15, 2024).

58. On June 17, 2025, the Nevada District Court entered judgment (the "Judgment") in favor of the Defendants against CMB with respect to Claims 1 through 5 of the Amended Complaint in the amount of $2,437,221 as awarded by the ICC, plus $80,025.52 in prejudgment interest, and post-judgment interest computed daily from October 15, 2024 to the date of payment at a rate of 4.22%, compounded annually.[18] CMB paid the Judgment on October 30, 2025.

59. On July 11, 2025, CMB submitted its request for arbitration of Claims 7-10 to the ICC. Arbitration with respect to these claims will be ongoing, subject to the outcome of the Lift Stay Motion (as defined below).

60. On July 16, 2025, CMB filed a Notice of Appeal from the Judgment to the United States Court of Appeals for the Ninth Circuit, commencing Case No. 25-4430 (the "CMB Judgment Appeal"). CMB submitted its opening brief in the CMB Judgment Appeal on November 21, 2025. Briefing in the CMB Judgment Appeal is ongoing, and answering briefs are currently due January 21, 2026.

***c. Qui Tam Action***

61. Separately, on January 28, 2020, CMBE, as relator, filed a *qui tam* action in the Nevada District Court against all Defendants other than Santander, Case No.: 2:20-cv-00196-JCM-DJA (the "*Qui Tam* Action") alleging violations of the False Claims Act in connection with cash grants from the U.S. Department of the Treasury made available to TSE under Section 1603 of the American Recovery and Reinvestment Tax Act.

62. While the case was under seal, the United States Department of Justice (the "DOJ") investigated CMBE's allegations and, on June 1, 2023, declined to intervene.[19] On January 24,

[18] *See* Docs. 130-31 in the Nevada District Court Action.

[19] *See* the *United States' Notice of Declination of Intervention* [Doc. 24] filed in the *Qui Tam* Action.

2024, the case was unsealed. On April 19, 2024, CMBE filed a second amended complaint, adding Cobra Concesiones, S.L. as an additional defendant.

63. On November 7, 2024, the DOJ filed a motion to intervene in the *Qui Tam* Action and to dismiss the action under a section of the False Claims Act that allows for intervention for purposes of dismissal by the government, 31 U.S.C. § 3730(c)(2)(A).

64. On July 18, 2025, the Nevada District Court granted the DOJ's motion to dismiss the *Qui Tam* Action. CMBE appealed the dismissal to the Ninth Circuit Court of Appeals, commencing Case No. 25-5835 (the "CMBE *Qui Tam* Appeal"), on September 12, 2025. CMBE filed its opening brief in the CMBE *Qui Tam* Appeal on December 29, 2025. Answering briefs are currently due on January 30, 2026.

65. I understand that the filing of the Petition operates as a stay (the "Automatic Stay") of any prepetition action or proceeding against the Debtor and any prepetition actions to recover claims against the Debtor, under section 362(a)(1) of the Bankruptcy Code. The Debtor is filing the Lift Stay Motion to lift the Automatic Stay solely with respect to the CMB Litigation so as to allow the Debtor to expeditiously resolve CMB's claims.

## II. Description of the Debtor's Prepetition Debt and Capital Structure[20]

### *A. Prepetition Debt*

66. The Debtor is party to that certain *Loan Agreement* dated as of December 18, 2020 (as amended, amended and restated, supplemented, or otherwise modified from time to time in accordance with its provisions, the "Prepetition Loan Agreement"), that was approved by the Court as exit financing in connection with the 2020 Chapter 11 Case.

[20] The financial figures presented in this Declaration are unaudited and potentially subject to change but reflect the Debtor's most recent review of its business. The Debtor reserves all rights to revise and supplement the figures presented in this Declaration.

67. The Prepetition Loan provided for a term loan of $100 million (the "Prepetition Term Loan") and a revolving line of credit not to exceed $64 million (the "Prepetition Line of Credit" and, together with the Prepetition Term Loan, the "Loan"). The Loan bears interest at a rate of 2.9% per year.

68. The obligations under the Prepetition Loan Agreement are secured by a first-priority lien on substantially all of the Debtor's assets, which the Court approved in the 2020 Chapter 11 Case. Additionally, as a condition precedent to the entry into the Prepetition Loan Agreement, CDI executed that certain Prepetition Equity Pledge Agreement with the Prepetition Lender, whereby CDI granted to the Prepetition Lender a lien on and continuing security interest in, all of its right, title and interest in all limited liability company interests and other equity interests of TSE, as well as proceeds thereof.

69. As of October 2022, the Prepetition Line of Credit was fully extended. After October 2023, TSE stopped paying interest (and has never made any principal repayments). From and after that time, until the Prepetition Line of Credit was amended on August 29, 2025, the Prepetition Lender continued to contribute additional funds to TSE. The Prepetition Lender contributed approximately $52.9 million to TSE after the Prepetition Line of Credit was fully extended, which the Prepetition Lender agreed to treat as Equity Contributions. The Prepetition Lender also agreed to provide financing to TSE in anticipation of this chapter 11 case, and TSE and the Prepetition Lender entered into that certain *Amendment and Forbearance Agreement* dated as of August 29, 2025, which increased the amount of the Prepetition Line of Credit from $64 million to $73.5 million. The Prepetition Line of Credit has not otherwise been amended or modified.

70. The Debtor estimates that it will require approximately $10 million of liquidity to maintain ordinary course operations and fund the administrative costs of this chapter 11 case, which CDF has agreed to provide to the Debtor through a senior secured debtor-in-possession financing facility on very favorable terms to the Debtor.

71. As of the Petition Date, the Debtor owed the Prepetition Lender the aggregate amount of approximately $173 million (plus accrued interest, costs, and fees).

72. In addition to the secured obligations owed to CDF, an affiliate of the Debtor obtained a $6 million letter of credit for the benefit of CMB (the "CMB Letter of Credit"). The CMB Letter of Credit was obtained in connection with the approved plan in the 2020 Chapter 11 Case. The CMB Letter of Credit secures the Debtor's potential liability to the CMB Litigation claimants, applicable only if any such claimant obtains a final and non-appealable money judgment with respect to the Nevada District Court Action and ICC Arbitration, and the CMB Letter of Credit may only be drawn by CMB in accordance with the plan in the 2020 Chapter 11 Case. In addition, the Debtor is party to a $2.5 million escrow agreement to backstop potential indemnification claims of certain former managers of TSE, which may also be entitled to insurance coverage.

73. In the ordinary course of business, the Debtor incurs unsecured obligations to various suppliers, trade vendors, utility providers, and services providers, among others. To the best of the Debtor's knowledge, the Debtor is current with respect to its ordinary course trade payables as of the Petition Date.

### *B. Cash on Hand*

74. As of the Petition Date, the Debtor has approximately $598,000 in available cash, all of which constitutes cash collateral of the Prepetition Lender.[21]

### *C. Equity Interests*

75. All of the equity interests in TSE are owned by CDI.

## III. Description of the Circumstances Leading to This Chapter 11 Case

76. The Debtor commenced this chapter 11 case after exploring strategic alternatives and commencing two extensive prepetition marketing and sale processes intended to obtain the highest or otherwise best offer for the Power Plant. The Debtor expects to incur sizeable financial operating losses under its current business model, as it lacks a long-term PPA and needs to rely on continuous cash infusions from its affiliates. Running the Power Plant at a temperature high enough to generate revenue sufficient to sustain current operations materially increases the risk of additional hot salt tank leaks. The Debtor and its advisors believe that a sale, coupled with additional investment and technological and capital advancement, can convert TSE's promising technology into sustainable profitability, which can be achieved through this chapter 11 case.

### *A. Enhanced Corporate Governance*

77. Prior to the Petition Date, the Debtor's shareholder determined it was in the best interests of the Company to amend and restate its operating agreement and replace it with that certain *Sixth Amended and Restated Limited Liability Company Agreement of Tonopah Solar Energy, LLC*, dated as of March 20, 2025 (the "Company LLC Agreement"). The written consent adopting the Company LLC Agreement appointed three managers to the Board.

---

[21] The Debtor collateralized its obligations under the BLM right-of-way grants, including potential decommissioning costs, by posting a deposit of approximately $13.2 million with the BLM.

78. On March 21, 2025, TSE appointed two independent managers to the Board, and on March 27, 2025, the Board established a special committee comprised of the two independent managers (the "Special Committee") 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 (the "Investigation") and report to the Board regarding the Investigation and its conclusions. The Special Committee retained Morris, Nichols, Arsht & Tunnell LLP ("Morris Nichols") as independent counsel and Teneo Capital LLC ("Teneo") as independent financial advisor.[22] As part of the Investigation, the Special Committee received access to TSE's records, information, and key personnel.

79. On July 18, 2025, Morris Nichols and Teneo issued the *Tonopah Special Committee Investigation Phase I Report*, which concluded that CDF's prepetition claims against TSE in respect of the Prepetition Loan and associated documents are valid, properly perfected, and unavoidable.[23] On August 18, 2025, Morris Nichols and Teneo issued the *Tonopah Special Committee Investigation Phase II Report*, which concluded that TSE does not hold any material claims or causes of action against any insiders or affiliates.

### *B. Prepetition Marketing Efforts*

80. In the second half of 2024, TSE sought to sell the Power Plant with the assistance of its former investment banker. Given the nature of the Debtor's assets, the universe of potential buyers is limited. Nevertheless, TSE undertook a widespread marketing campaign with targeted outreach to over 120 strategic and financial buyers. While several parties received a confidential

[22] I understand that Morris Nichols and Teneo have not previously represented TSE or any of its corporate affiliates or subsidiaries.

[23] The Phase I Report also concluded that CDF properly perfected its liens in all of TSE's assets, with the exception of certain categories (for example, copyrights) that do not exist or have *de minimis* value.

information memorandum and executed confidentiality agreements, this initial marketing process did not lead to an actionable offer.

81. In light of continued operational and financial challenges, TSE hired a new investment banker SSG Advisors, LLC ("SSG"), in May 2025, which is also proposed to be employed in this chapter 11 case. SSG recommenced the marketing process and worked with TSE to prepare a teaser, confidential information memorandum ("CIM"), virtual data room, buyer list and other related diligence materials. TSE formally launched its renewed marketing process on May 21, 2025, with the targeted distribution of teasers to potential acquirers followed by the distribution of more substantive materials upon interested parties' execution of a non-disclosure agreement. As set forth in the *Declaration of J. Scott Victor in Support of Sale and Bidding Procedures Motion*, as part of the sale process, SSG contacted 253 potential buyers—129 strategic buyers that were selected based on their business model, historical acquisition activity and financial capabilities and 124 financial buyers and investors that were selected based on their historical interest in the solar energy industry, existing and past investments and financial capabilities. As of the Petition Date, 13 of those parties executed confidentiality agreements and received the CIM and related information, as well as virtual data room access to conduct diligence.

82. The Debtor's prepetition marketing process generated interest in its assets and yielded several indications of interest, all of which contemplated a bankruptcy sale process. The Debtor engaged in advanced discussions with one potential buyer, which delivered the Debtor a non-binding term sheet contemplating a purchase of the Debtor's assets through an in-court sale process. The parties entered into an exclusivity agreement to allow the parties to try to negotiate a stalking horse asset purchase agreement. Despite the exclusivity agreement, which was ultimately extended through October 15, 2025, the Debtor and SSG were free to continue

marketing the Debtor's assets and to facilitate diligence by other parties; the Debtor only agreed that it would not directly or indirectly solicit, negotiate, or enter into an alternative transaction. The prepetition marketing process unfortunately did not result in an actionable bid for the Debtor's assets, however.

83. In November 2025, a new potential buyer expressed interest in the Debtor's assets, and in December 2025, the Debtor provided this potential buyer with access to the virtual data room and a site visit. The Debtor continues to advance discussions with this party about a possible transaction.

### *C. Restructuring Support Agreement*

84. On December 16, 2025, the Debtor, CDF, CDI, and ACSIA entered into the RSA, which contemplates a sale transaction and pre-negotiated chapter 11 plan. In particular, the RSA establishes financial and other support for a sale and provides the basis for the Debtor to exit chapter 11 efficiently and in a value-maximizing manner. The RSA also establishes milestones (the "RSA Milestones") by which key, case-related events must be completed, including:

(a) within 24 hours of the Petition Date, or as soon as reasonably practicable thereafter, TSE shall file the First Day Pleadings, the DIP Financing Motion, the Plan, and the Bidding Procedures Motion;

(b) no later than 50 days after the Petition Date, the bid deadline in the Bidding Procedures Order shall have occurred;

(c) no later than 55 days after the Petition Date, the Bankruptcy Court shall have entered the DIP Financing Order (subject to the Bankruptcy Court's availability) on a final basis;

(d) no later than 80 days after the Petition Date, the Bankruptcy Court shall have entered the Sale Order (subject to the Bankruptcy Court's availability), if applicable;

(e) no later than 125 days after the Petition Date, the Bankruptcy Court shall have entered an order confirming the Plan;

(f) no later than 225 days after the Petition Date, the sale pursuant to the Sale Order shall have been consummated, if applicable; and

(g) no later than 240 days after the Petition Date, the effective date under a Plan shall have occurred.

85. The milestones under the RSA obligate the Debtor to consummate a Plan promptly after the sale closes and emerge from this chapter 11 case expeditiously.

### *D. The Combined Chapter 11 Plan and Disclosure Statement*

86. The Debtor anticipates filing a combined disclosure statement and chapter 11 plan (the "Plan") early in its chapter 11 case that will provide for the distribution of sale proceeds in the event of a successful sale and a wind-down of the Debtor's affairs. The Debtor anticipates that any recovery to allowed, undisputed, non-insider general unsecured creditors under the 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.

87. The Debtor anticipates that CMB's claims will be unimpaired under the Plan to the extent such claims are eventually allowed. CMB's potential claims are secured by virtue of the CMB Letter of Credit that was posted under the confirmed plan in the 2020 Chapter 11 Case, which letter of credit will remain in place after the effective date of the Plan. CMB's potential claims will also remain subject to setoff with respect to all amounts that CMB may owe to the Debtor, including through future arbitration awards.

88. Following confirmation, the Plan will provide for the 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. The plan administrator will not engage in the conduct of a trade or business. Upon the occurrence of the effective date of the Plan, the current members of the Board, including the independent managers, will resign, and the plan administrator

will have authority to implement the Plan and take all actions necessary to wind up the Debtor's affairs.

## VI. The First Day Motions

89. To facilitate a smooth and successful chapter 11 case, the Debtor has requested certain relief that the Debtor believes is necessary to enable it to administer its estate with minimal disruption and preserve value. I believe that the relief requested in each of the First Day Motions is critical to maximizing the value of the Debtor's estate.

90. Among other things, the First Day Motions seek relief designed to ensure sufficient liquidity to run the Debtor's business, the continuation of the Debtor's cash management system, and uninterrupted business operations. Specifically, the Debtor has filed the following motions:

(a) DIP Motion[24];

(b) Cash Management Motion[25];

(c) Independent Contractor Motion[26];

(d) Customer Programs Motion[27];

(e) Epiq Retention Application[28];

[24] *Motion of the Debtor for Entry of Interim and Final Orders (I) Authorizing Debtor to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral; (II) Granting Adequate Protection to Prepetition Lender; (III) Modifying the Automatic Stay; (IV) Scheduling a Final Hearing and (V) Related Relief.*

[25] *Motion of the Debtor (I) for Authority to (A) Operate Its Cash Management System, and (B) Honor Prepetition Obligations Related Thereto, (II) to Waive Strict Application of Section 345(b) of the Bankruptcy Code and the U.S. Trustee Guidelines to the Extent Necessary, and (III) for Related Relief.*

[26] *Debtor's Motion for (I) Authority to Honor and Pay Prepetition Compensation Obligations and (II) Related Relief.*

[27] *Motion of the Debtor for (I) Authority to (A) Maintain and Administer its Customer Programs and (B) Honor Prepetition Business Practices Related Thereto and (II) Related Relief.*

[28] *Debtor's Application for Entry of an Order (I) Approving the Retention and Appointment of Epiq Corporate Restructuring, LLC as Claims and Noticing Agent to the Debtor, Effective as of the Petition Date, and (II) Related Relief.*

(f) Utilities Motion[29];

(g) Tax Motion[30];

(h) PII Motion[31]; and

(i) Lift Stay Motion.[32]

### *A. DIP Motion*

91. By the DIP Motion, the Debtor seeks entry of interim and final orders approving its entry into the DIP Facility, which contemplates a senior secured, first-lien and super-priority and priming debtor-in-possession delayed draw term loan facility in the aggregate principal amount of up to $10 million.

92. As set forth in the declaration of Neil Gupta (the "Gupta Declaration"),[33] the Debtor's access to the proposed DIP Facility will provide crucial liquidity to allow the Debtor to continue running a postpetition sale process, consummate a sale transaction, and maximize the value of its estate for the benefit of all stakeholders.

93. The Gupta Declaration describes in detail SSG's and the Debtor's efforts to identify potential DIP lenders. Given the nature of the Debtor's existing secured debt, however, the Debtor was unable to obtain any other financing. CDF would not consent to another lender providing

---

[29] *Motion of the Debtor to (I) Prohibit Utility Companies from Altering, Refusing, or Discontinuing Utility Services, (II) Deem Utility Companies Adequately Assured of Future Payment, (III) Establish Procedures for Determining Additional Adequate Assurance of Payment, and (IV) Grant Related Relief, Including Setting a Final Hearing.*

[30] *Motion of the Debtor for Authority (I) to Pay Certain Prepetition Taxes and Fees and Related Obligations and (II) for the Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto.*

[31] *Motion of the Debtor for (I) Authority to Redact Certain Personally Identifiable Information of Natural Persons and (II) Related Relief.*

[32] *Debtor's Motion Under Section 362(d) of the Bankruptcy Code to Lift Automatic Stay Solely with Respect to Pending CMB Litigation*. The Lift Stay Motion will not be heard at the first day hearing.

[33] *Declaration of Neil Gupta in Support of the Motion of the Debtor for Entry of Interim and Final Orders (I) Authorizing Debtor to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral; (II) Granting Adequate Protection to Prepetition Lender; (III) Modifying the Automatic Stay; (IV) Scheduling a Final Hearing and (V) Related Relief.*

funding and priming its prepetition liens; accordingly, I understand that no other party would have provided funding on a junior basis. Other than CDF, no party has come forward with a proposal for DIP financing. The Debtor and its legal and financial advisors therefore engaged in arm's-length negotiations regarding the terms offered by CDF. Over the course of several weeks, the Debtor and CDF, with the assistance of their respective legal and financial advisors, worked to negotiate the DIP Facility. These good faith negotiations resulted in terms advantageous to the Debtor, such as favorable interest rates, no financing fees, and sufficient funding to operate the Power Plant, conduct the postpetition sale process, and confirm a chapter 11 plan on a reasonable timeline.

94. Accordingly, I believe that the DIP Facility is fair and reasonable, was negotiated at arm's-length and in good faith, and is the Debtor's best and only currently available option. Without immediate access to the DIP Facility as provided for in the DIP Motion, the Debtor would not have sufficient funding to administer this chapter 11 case or operate its business. Therefore, I believe that approval of the DIP Facility as described in the DIP Motion is in the best interests of the Debtor's estate and creditors.

***B. Cash Management Motion***

95. By the Cash Management Motion, the Debtor seeks authority to (a) operate its existing cash management system (the "Cash Management System") and bank accounts (including authorizing the Debtor to open and close bank accounts as necessary in the ordinary course of business) and (b) honor prepetition obligations related thereto, including any unpaid bank fees. The Cash Management Motion also seeks a waiver of the strict application of the requirements of section 345(b) of the Bankruptcy Code and the U.S. Trustee Guidelines to the extent the Cash Management System does not comply with such requirements and certain related relief.

96. As more fully set forth in the Cash Management Motion, the Debtor operates a streamlined Cash Management System to facilitate the timely and efficient collection, management, and disbursement of funds used in the Debtor's business. The Debtor uses its Cash Management System to transfer and distribute funds and to facilitate cash monitoring, forecasting, and reporting. The Cash Management System enables the Debtor to continue operating in the ordinary course and pay routine expenses.

97. Because of the nature of the Debtor's business and the disruption to the business that would result if it were forced to close its existing bank accounts, I believe it is critical that the existing Cash Management System remain in place on a postpetition basis. I believe that the relief requested in the Cash Management Motion is in the best interest of the Debtor's estate, its creditors, and all other parties in interest, as it will enable the Debtor to continue to operate its business in chapter 11.

***C. Independent Contractor Motion***

98. By the Independent Contractor Motion, the Debtor seeks authority to honor and perform its obligations with respect to independent contractors and independent managers (the "Compensation Program") and to pay certain Compensation Program Obligations in the ordinary course of business.

99. As set forth in the Independent Contractor Motion, the Debtor's operations are run by individuals employed by the O&M Operator under the O&M Agreement. The Debtor currently utilizes the services of three (3) independent contractors (the "Independent Contractors") to perform key services unrelated to the direct operation of the Power Plant. These services include bookkeeping, financial and accounting, management advisory, business and strategic consulting,

and general counsel legal support. Under the O&M Agreement, the Power Plant's operations are run by the O&M Operator.

100. The Independent Contractors' services are critical to the Debtor's operations in the ordinary course of business. I believe it is essential that the Debtor obtain authority to continue compensating its Independent Contractors to avoid disrupting the Debtor's business operations and to maximize the value of its estate.

***D. Customer Programs Motion***

101. As set forth in the Customer Programs Motion, the Debtor currently participates in Nevada Tracks Renewable Energy Credits ("NVTREC"), a state-run program designed to encourage the growth of renewable energy in Nevada. Through NVTREC, renewable energy producers can earn and sell tradable certificates representing clean energy or energy savings ("Portfolio Energy Credits" or "PECs") that can be purchased by utilities to satisfy State of Nevada renewable portfolio standards. Under the Switch Short-Term PPA, the Debtor sells Switch energy produced at the Power Plant together with renewable energy benefits, including PECs that are created from, or in connection with, the generation of energy (collectively, the "Customer Programs" and the obligations incurred thereunder, the "Customer Obligations"). While Switch has already paid for certain Customer Programs produced in 2025, NVTREC has yet to certify the related PECs for transfer in the NVTREC system.

102. By the Customer Programs Motion, the Debtor is seeking authorization to continue to honor the Customer Obligations that were paid for before the Petition Date, but not yet delivered to Switch. I believe that authorizing the Debtor to continue its Customer Programs and to honor any related prepetition practices and Customer Obligations in the ordinary course of business is necessary to maintain the Debtor's reputation and maximize value for the estate. Continuing the

Customer Programs would allow the Debtor to maintain goodwill with Switch and enhance revenue and profitability of the Power Plant for the benefit of all of the Debtor's stakeholders.

***E. Epiq Retention Application***

103. By the Epiq Retention Application, the Debtor seeks authority to retain Epiq Corporate Restructuring, LLC ("Epiq") as claims and noticing agent in accordance with that certain *Standard Services Agreement* entered into by Epiq and the Debtor, effective as of July 21, 2025. Epiq will assume full responsibility for, among other tasks, the distribution of notices to creditors and other parties in interest and the maintenance, processing, and docketing of proofs of claims filed in this chapter 11 case.

104. The Debtor obtained and reviewed engagement proposals from three reputable claims and noticing agents to ensure selection through a competitive process before selecting Epiq as claims and noticing agent. Based on all engagement proposals obtained and reviewed, I believe that Epiq's rates are competitive and reasonable.

105. I believe that the appointment of Epiq as claims and noticing agent is both necessary and in the best interests of the Debtor's estate and its creditors, particularly given the number of anticipated claimants and the complexity of the Debtor's business.

***F. Utilities Motion***

106. The Debtor obtains electricity, waste disposal, and other similar services (collectively, the "Utility Services") from several utility companies (collectively, the "Utility Companies") in connection with the operation of its business and the management of the Power Plant. The Debtor requests that the Court: (i) prohibit the Utility Companies from altering, refusing, or discontinuing the Utility Services on account of pre-petition invoices, including the making of demands for security deposits or accelerated payment terms; (ii) determine that the

Debtor has provided each of the Utility Companies with "adequate assurance of payment" within the meaning of section 366 of the Bankruptcy Code, based on the Debtor's establishment of a segregated account in the total amount of $107,130, which equals approximately one half of the Debtor's estimated monthly cost of the Utility Services subsequent to the Petition Date; and (iii) establish procedures for determining additional adequate assurance of future payment, if any, and authorizing the Debtor to provide additional adequate assurance of future payment to the Utility Companies.

107. Uninterrupted Utility Services are essential to the Debtor's business operations and the overall success of the chapter 11 case. Should any Utility Provider refuse or discontinue service, even for a brief period, the Debtor's business operations could be severely disrupted. I believe that the relief requested in the Utilities Motion is in the best interests of the Debtor and its estate and creditors.

***G. Tax Motion***

108. The Debtor remits certain taxes, including use, real and personal property, commerce, and various other similar taxes, fees, charges, and assessments (the "Taxes and Fees") in the ordinary course of business. The Debtor remits such Taxes and Fees to federal, state, and local taxing and other governmental authorities and/or certain municipal or governmental subdivisions or agencies.

109. Any regulatory dispute or delinquency that impacts the Debtor's ability to conduct business could have a wide-ranging and adverse effect on the Debtor's operations as a whole, as described further in the Taxes Motion. I believe that payment of the Debtor's Taxes and Fees is in the best interests of the Debtor and its estate and creditors.

***H. PII Motion***

110. By the PII Motion, the Debtor seeks authority to redact certain personally identifiable information of natural persons, as well as approval of the form and manner of service of the notice of commencement of this chapter 11 case and certain related relief.

111. I believe it is appropriate to authorize the Debtor to redact personally identifying information ("PII") of individuals, including home addresses, to avoid exposing these individuals to potential identity theft or jeopardizing their safety by publishing their home addresses. The Debtor proposes to maintain a separate, confidential mailing list for service to individuals at their residences for the benefit of all parties in interest desiring to serve such parties with pleadings or notices in this chapter 11 case.

***I. Lift Stay Motion***[34]

112. By the Lift Stay Motion, the Debtor seeks authority to lift the Automatic Stay solely for the purpose of allowing the CMB Litigation to proceed. I believe that lifting the Automatic Stay in this limited capacity will serve the Debtor's estate and creditors by ensuring that the CMB Litigation may proceed without delay, which in turn will facilitate the Debtor's post-confirmation wind-down. The requested relief aligns with the purposes of the automatic stay because the Debtor—not a creditor—seeks to streamline case administration by bringing existing litigation (initiated by CMB) to an efficient conclusion without disrupting administration of the Debtor's estate.

113. I have reviewed each of the First Day Motions, including the exhibits and schedules thereto. The facts stated in the First Day Motions are true and correct to the best of my knowledge, information and belief, and I believe that the relief sought in each of the First Day

[34] The Lift Stay Motion will not be heard at the first day hearing.

Motions is (i) necessary to enable the Debtor to operate in chapter 11 with minimal disruption to its business operations and (ii) in the best interests of the Debtor and its stakeholders. I further believe the Debtor would suffer immediate and irreparable harm if it were unable to continue its business operations through the relief sought in the First Day Motions.

Under 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 21st day of January, 2026.

Tonopah Solar Energy, LLC,
Debtor and Debtor in Possession

By: */s/ Yale Scott Bogen*
Yale Scott Bogen
Chief Restructuring Officer