

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

Chapter 11

Coal New Haven LLC,

Case No. 24-45425-JMM

Debtor.
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DEBTOR’S FIRST AMENDED CHAPTER 11 PLAN OF REORGANIZATION

Coal New Haven LLC (the “Debtor”) hereby proposes the following First Amended Chapter 11 plan of reorganization (the “Amended Plan”) pursuant to the provisions of Title 11 of the United States Code (the “Bankruptcy Code”).

FRAMEWORK OF THE AMENDED PLAN

Just prior to bankruptcy, the Debtor entered into a Restructuring Support Agreement (“RSA”) with a group of financial investors generally referred to throughout the Chapter 11 case as the New Investor Group. The goal of the RSA is to revitalize and reopen the health care facility (the “Facility”) located at 915 Ella T. Grasso Boulevard, New Haven, Connecticut (the “Property”). The Property is owned by the Debtor and leased to a non-debtor affiliate known as NR Connecticut LLC (the “OpCo”) which operated the Facility under a classic “ProCo – OpCo” business format.

Not unexpectedly, the Debtor’s senior lender, Arba Credit Investors II, L.P. (“Arba”), objected to the bankruptcy and moved to dismiss the Chapter 11 case and/or obtain relief from the automatic stay. The Debtor successfully defended against dismissal of the Chapter 11 case and thereafter obtained approval for interim DIP financing of up to \$875,000. Following the parties’ initial litigation, the Debtor and Arba reached agreement in principle on a consensual exit strategy in conjunction with an agreed payment relating to Arba’s secured claims for purposes of

bankruptcy. With the anticipated support of Arba, the Debtor is filing this Amended Plan to incorporate the agreed treatment and disposition of Arba's secured claims plus proposed distributions to the holders of other allowed unsecured claims based upon a separate fund in the amount of \$1,000,000 (the "General Creditor Reserve"). The General Creditor Reserve shall be established promptly after the Effective Date at Closing.

The Amended Plan contemplates that the New Investor Group, together with its operating partner, Empower Recovery Investors LP and its subsidiary, Emend Health Company (CT) LLC ("Emend") (hereinafter, Emend together with the New Investor Group, are collectively referred to as the "Plan Funder"), shall promptly proceed with its application to obtain a Certificate of Need ("CON") and new operating license for the Facility contemporaneously with the filing of this Amended Plan and without competition from any other potential buyers. By virtue of Arba's support of the Plan, Promises Behavioral Health LLC ("Promises") has withdrawn its application for a CON and its contract is no longer effective. The Debtor reserves the right to assert that any other contracts or applications to Connecticut regulatory authorities proposing to use the Property would violate the automatic stay.

As with the bulk of the pre-petition proposals relating to the acquisition of the Property, the issuance of a CON and operating license to the Plan Funder or its designee (the "License Condition") is a condition to the effectiveness of the Plan. The Debtor and Plan Funder, however, remain confident that the License Condition will be satisfied in a reasonable period of time of one (1) year from Confirmation, subject to potential extension as provided in Section 4.1. The Plan Funder has strong financial resources and includes experienced health care operators, being guided by highly respected health care counsel.

Once the License Condition has been satisfied, all distributions due hereunder shall be promptly deposited by the Plan Funder or its designee with the Disbursing Agent, whereupon the parties shall convene for a closing (the “Closing”) and the Amended Plan shall become effective. At the Closing, distributions shall be made by the Disbursing Agent to Arba and the holders of other allowed claims and administrative expenses. In consideration therefor, the Property shall be transferred by the Debtor to the Plan Funder or its designee, free and clear of all claims, liens, taxes and other interests pursuant to 11 U.S.C. §§1123(a)(5) and 1146(a). The distributions at Closing shall include a cash payment of \$15,856,844.11 to Arba (the “Base Payment”), plus the additional sum of \$100,000 per month (or a *pro rata* share thereof) beginning on September 1, 2025 (and increasing by an additional \$100,000 on the first of each month thereafter (or a *pro rata* share thereof) if the Effective Date does not occur prior to August 31, 2025 (the “Additional Monthly Payments”). The Additional Monthly Payments shall be added to the Base Payment, with all funds owed to Arba to be paid at the Closing. For avoidance of doubt, any adequate protection payments made by the Debtor to Arba during the course of the bankruptcy shall not be deducted from the Base Payment and any Additional Monthly Payments paid to Arba. Additionally, the Plan Funder shall also make or cause to be made distributions to the holders of all other allowed claims, including Administrative Expenses and Professional Fees, U.S. Trustee fees, residual priority tax claims, if any, and the General Creditor Reserve. (The total funds to be contributed by the Plan Funder are defined hereunder as the “Exit Financing”).

ARTICLE I

DEFINITIONS

All capitalized terms used herein shall have the meanings set forth below.

- 1.1 “**Administrative Expense Claim**” means a Claim for the costs and expenses of administering the Chapter 11 case under §§ 503(b) and 507(b) of the Bankruptcy

Code, including: (a) the actual and necessary costs and expenses of maintaining and preserving the Property; and (b) the awarded compensation and reimbursement of expenses for the Debtor's bankruptcy counsel and other professionals, including the newly retained CRO.

- 1.2 **"Allowed"** means, with reference to any Claim, proof of which was timely and properly filed or, if no proof of Claim was filed, that has scheduled by the Debtor as being liquidated and undisputed, and as to which: (a) no objection to allowance has been interposed within the applicable period fixed by the Plan; or (b) an objection has been interposed and such Claim has been allowed, in whole or in part, by a Final Order.
- 1.3 **"Bankruptcy Court"** means the United States Bankruptcy Court for the Eastern District of New York.
- 1.4 **"Bar Date"** means April 7, 2025, the last date set by the Bankruptcy Court to file a Claim against the Debtor.
- 1.5 **"Business Day"** means any day other than a Saturday, Sunday, or other day on which commercial banks in New York, New York are authorized or required by law to close, or other Legal Holiday.
- 1.6 **"Cash"** means on any Business Day, immediately available funds, in United States dollars, which may be spent or transferred without restriction (other than as may be provided in this Amended Plan or in the Confirmation Order) no later than the next Business Day.
- 1.7 **"Case"** means the applicable bankruptcy case of the Debtor.
- 1.8 **"Causes of Action"** means, without limitation, any and all actions, causes of action, controversies, liabilities, obligations, rights, suit damages, judgments, claims and demands whatsoever, whether known or unknown, reduced to judgment, liquidated or unliquidated fixed or contingent, matured or unmatured, disputed or undisputed, secured or unsecured, assertible directly or derivatively, existing or hereafter arising, in law, equity, or otherwise, including the Rent Causes of Action as defined in Section 6.1 of this Plan.
- 1.9 **"Claim"** means a claim against the Debtor as defined in Bankruptcy Code § 101(5).
- 1.10 **"Claim Objection Deadline"** shall mean thirty (30) days after the Effective Date of the Plan.
- 1.11 **"Claimant"** shall mean the holder of a Claim.
- 1.12 **"Class"** shall mean a category of Claims or Interests set forth in Article III of this Plan, as such term is used and described in Section 1122 and Section 1123(a)(1) of the Bankruptcy Code.

- 1.13 “**Closing**” means the day when the Debtor transfers the Property to the designee of the Plan Funder, and the Plan Funder pays all distributions and payments required herein.
- 1.14 “**Confirmation**” means approval of the Amended Plan by the Bankruptcy Court.
- 1.15 “**Confirmation Hearing**” means the hearing or hearings before the Bankruptcy Court to consider approval of the Plan.
- 1.16 “**Confirmation Order**” means the order of the Bankruptcy Court approving the Amended Plan pursuant to Bankruptcy Code § 1129.
- 1.17 “**Creditor**” means the holder of a Claim against the Debtor.
- 1.18 “**Disputed Claim**” means (a) any Claim that is listed in the Schedules as disputed, contingent or unliquidated and with respect to which no Proof of Claim has been filed; and (b) any Claim (including an Administrative Expense), or portion thereof, that has not been disallowed and with respect to which an objection or action concerning the allowance and/or extent thereof, in whole or in part, has been interposed within the applicable period of limitation fixed by this Plan, the Bankruptcy Code, the Bankruptcy Rules or the Bankruptcy Court, to the extent that any such objection or action has not been resolved by a Final Order.
- 1.19 “**Disbursing Agent**” means Goldberg Weprin Finkel Goldstein LLP.
- 1.20 “**Disputed Claim Reserve**” means the escrow established by the Debtor at the Closing with the Disbursing or Escrow Agent for the deposit of cash reserves to secure payment of the disputed portion of a creditor’s particular claim.
- 1.21 “**Effective Date**” means the day when the conditions to the Effective Date set forth in Section 7.2 of the Amended Plan have been satisfied or waived in accordance therewith.
- 1.22 “**Equity Interests**” means the Debtor’s membership interests held directly or indirectly by David Silberstein and the Estate of Peter Schorr.
- 1.23 “**Escrow Agent**” means Goldberg Weprin Finkel Goldstein LLP.
- 1.24 “**Final Order**” means an order or judgment of the Bankruptcy Court that has not been reversed, stayed, modified within fourteen (14) days of entry and is no longer appealable.
- 1.25 “**Loan Documents**” means all documents executed in connection with the mortgage loans originally made to the Debtor by Fulton Bank and which Fulton Bank subsequently assigned to Arba, including (but not limited to): (i) a secured mortgage loan in the principal amount of up to Five Million Five Hundred Thousand Dollars (\$5,500,000) (the “\$5.5MM Mortgage Loan”) as evidenced by, *inter alia*, that certain Promissory Note dated as of August 21, 2012 (as amended,

modified, supplemented and/or restated from time to time, the “\$5.5MM Note”); (ii) a secured line of credit in the original maximum principal amount of Two Million Dollars (\$2,000,000) which was subsequently reduced to One Million Five Hundred Thousand Dollars (\$1,500,000) (the “\$1.5MM LOC”) as evidenced by, *inter alia*, that certain Promissory Note dated as of August 21, 2012 (as amended, modified, supplemented and/or restated from time to time, the “LOC Note”); (iii) a secured mortgage loan in the original principal amount of Nine Million Two Hundred Thousand Dollars (\$9,200,000) (the “\$9.2MM Mortgage Loan”) as evidenced by, *inter alia*, that certain Promissory Note dated as of October 7, 2016 (as amended, modified, supplemented and/or restated from time to time, the “\$9.2MM Note”); and (iv) a time loan in the original maximum principal amount of One Million Five Hundred Thousand Dollars (\$1,500,000) (the “\$1.5MM Time Loan” and together with the \$5.5MM Mortgage Loan, the \$1.5MM LOC, and the \$9.2MM Mortgage Loan, the “Loans”) as evidenced by, *inter alia*, that certain Promissory Note dated as of October 31, 2018 (as amended, modified, supplemented and/or restated from time to time, the “\$1.5MM Time Loan Note” and together with the \$5.5MM Note, the LOC Note, and the \$9.2MM Note, the “Notes”). The Loans are secured by, *inter alia*, (i) an Open-End Mortgage and Security Agreement from the Debtor to Fulton Bank, dated as of August 21, 2012, and recorded in the Office of the New Haven Land Records, Connecticut (the “New Haven Recording Office”) at Volume 8873, Page 77 (the “First Mortgage”), which encumbers the property known as 915 Ella T Grasso Blvd, New Haven, Connecticut (the “Property”); (ii) an Open-End Mortgage and Security Agreement from Debtor to Fulton Bank, dated as of October 7, 2016, and recorded in the New Haven Recording Office at Volume 9484, Page 87 (the “Second Mortgage”), which encumbers the Property, (iii) an Open-End Mortgage and Security Agreement from Debtor to Fulton, dated as October 31, 2018, and recorded in the New Haven Recording Office at Volume 9909, Page 259 (the “Third Mortgage”).

- 1.26 “**Petition Date**” means December 31, 2024, the date on which the voluntary petition commencing this Chapter 11 case was filed.
- 1.27 “**Priority Tax Claim**” means any Unsecured Claim of a federal, state or local taxing authority for real estate taxes and related charges.
- 1.28 “**Professional**” means all professionals employed by the Debtor under Section 327 of the Bankruptcy Code.
- 1.29 “**Professional Fee Claim**” means a Claim for compensation for services rendered, and reimbursement of expenses incurred by Professionals as awarded by the Bankruptcy Court.
- 1.30 “**Proof of Claim**” means a Proof of Claim filed pursuant to Section 501 of the Bankruptcy Code and the applicable Bankruptcy Rules.
- 1.31 “**Property**” means the Debtor’s real property located at 915 Ella T. Grasso Boulevard, New Haven, Connecticut.

- 1.32 **“Transfer Taxes”** means, without limitation, all state and local real property deed and transfer taxes as applicable relating to the transfer of the Property, and (b) any and all other stamp taxes or similar taxes, which are exempt pursuant to § 1146(a) of the Bankruptcy Code.
- 1.33 **“Unsecured Claim”** means an allowed general unsecured claim arising prior to the Petition Date not entitled to priority under the Bankruptcy Code or otherwise secured by property of the Debtor.
- 1.34 **“Unsecured Creditor”** means the holder of an Allowed Unsecured Claim against the Debtor.
- 1.35 **“U.S. Trustee Fees”** means fees payable pursuant to 28 U.S.C. § 1930, together with any statutory interest.
- 1.36 **Rules of Interpretation.** For purposes of this Plan, unless otherwise provided herein: (a) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, will include both the singular and the plural; (b) any reference in this Amended Plan to an existing document, schedule or exhibit filed or to be filed means such document, schedule or exhibit, as it may have been or may be amended, modified, or supplemented pursuant to this Plan; (c) any reference to a Claimant includes that Claimant’s successors and assigns; (d) all references in this Amended Plan to Sections and Articles are references to Sections and Articles of or to this Plan, as the same may be amended, waived or modified from time to time; (e) the words “herein,” “hereof,” “hereto,” “hereunder” and other words of similar import refer to this Amended Plan as a whole and not to any particular Section, subsection or clause contained in this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Plan; (g) subject to the provisions of any contract or other agreements or documents entered into in connection with this Plan, the rights and obligations arising under this Amended Plan shall be governed by, and construed and enforced in accordance with federal law, including the Bankruptcy Code and Bankruptcy Rules; (h) the rules of construction set forth in Section 102 of the Bankruptcy Code will apply; and (i) the term “including” shall be construed to mean “including, but not limited to,” “including, without limitation,” or words of similar import.

ARTICLE II

UNCLASSIFIED CLAIMS

Pursuant to Section 1123(a) of the Bankruptcy Code, the Amended Plan does not classify Administrative Expense Claims (including Professional Fees), Priority Tax Claims or U.S. Trustee

Fees, all of which shall be paid in full as required by 11 U.S.C. §1129(a)(9) on the Effective Date, or such other mutually agreed terms as the parties involved may agree.

2.1 **The DIP Loan.** Pursuant to Order to be entered in the Chapter 11 case, the Debtor obtained authorization to borrow up to the sum of \$875,000 without interest on a super administrative priority basis pursuant to 11 U.S.C. §364(c)(1) (the “DIP Loan”). The DIP Loan is being made by WR Health Enterprises LLC (the “DIP Lender”), an affiliate of the New Investor Group to provide liquidity to maintain and preserve the Property pending Confirmation. For purposes of the Plan, the DIP Loan is being treated as an unclassified Administrative Expense Claim because it arises post-petition. As part of the settlement with Arba, the DIP Lender has agreed to defer reimbursement on account of the DIP Loan pending maturity thereof as may be extended until such time as the Class 1 Secured Claims of Arba are paid in accordance with the terms of this Plan. The DIP Lender shall otherwise retain a super priority administrative claim under 11 U.S.C. §364(c)(1), which shall be paid at Closing or upon such terms as the Debtor, the DIP Lender and the Plan Funder mutually agree upon. To the extent the existing DIP Loan is insufficient to fund ongoing bankruptcy expenses including maintenance of the Property and adequate protection payments to Arba, the DIP Lender will cooperate with the Debtor and Arba to provide the Debtor with such additional funding as it may reasonably require prior to the Effective Date.

2.2 **Administrative Expense Claims.** To the extent not otherwise paid under the DIP Loan, Administrative Expense Claims consist of the costs and expenses of maintaining and preserving the Property, plus allowed Professional Fees. Each holder of an Allowed Administrative Expense Claim, as determined by the Bankruptcy Court, shall be paid the full amount of such allowed claim at the Closing, in cash, or as soon thereafter as is practicable.

2.3 **Professional Fees.** All Professionals seeking an award of compensation shall file their respective final applications for services rendered at or prior to the Closing Date no later than thirty (30) days after the Effective Date. After notice and a hearing, the allowed Professional Fee Claims shall be paid by the Plan Funder at the Closing. If the Closing occurs prior to the time that applications for Professional Fee Claims are heard and determined by the Bankruptcy Court, then appropriate reserves shall be established at the Closing to pay the requested amounts for Professional Fees.

2.4 **Priority Tax Claims.** Any remaining real estate taxes and related charges that may be due as of the Effective Date are being treated as a Priority Tax Claim for the purposes of the Plan. All Allowed Priority Tax Claims shall be paid in full, in cash, at the Closing, including any residual balances owed to the City of New Haven Collector of Taxes and the Connecticut Department of Revenue Services.

2.5 **Priority Wage Claims.** A number of former employees of the Facility have filed proofs of claim for unpaid wages. The Debtor has no direct responsibility for these claims, and this Amended Plan does not provide for payment of these claims. Accordingly, the Debtor and Plan Funder reserve the right to file appropriate objections to these claims. If these claims are allowed, however, in whole or in part, the Plan Funder shall pay them in full at the Closing.

2.6 **U.S. Trustee Fees.** The Plan Funder shall pay all outstanding U.S. Trustee Fees, together with any interest thereon, until the Chapter 11 case is closed by entry of a final decree.

ARTICLE III

CLASSIFICATION AND TREATMENT OF CLAIMS

The Amended Plan classifies Claims and Interests against the Debtor consistent with the applicable provisions of the Bankruptcy Code.

3.1 **Summary.** The categories listed below classify Claims and Interests against the Debtor for all purposes, including voting, confirmation and distribution pursuant to Sections 1122 and 1123(a)(1) of the Bankruptcy Code, as summarized below:

<u>Class</u>	<u>Designation</u>	<u>Impaired</u>	<u>Entitled to Vote</u>
Class 1	Allowed Secured Claims of Arba	Yes	Yes
Class 2	Allowed General Unsecured Claims	Yes	Yes
Class 3	Equity Interests	N/A	N/A

3.1 **Class 1: The Allowed Secured Claims of the Senior Lender**

Classification – Class 1 consists of the total Allowed Secured Claims of Arba pursuant to the Loan Documents.

Treatment – Promptly after the Effective Date, Arba shall be paid the Base Amount of \$15,856,844.11 at the Closing on account of and in satisfaction with the Class 1 Arba Secured Claims, with the Plan Funder reserving the right to cause an assignment of Arba’s mortgages to a third-party lender at no additional cost or expense. Further, Arba shall be eligible to receive at Closing the Additional Monthly Payments of \$100,000 per month (or a *pro rata* share thereof) if the Closing occurs after August 31, 2025. Pending the Closing and beginning on April 1, 2025, Arba shall receive the sum of \$30,000 per month as agreed adequate protection, which shall not be applied to reduce the Base Payment or the Additional Monthly Payments. Arba shall retain its security interests in the Debtor’s property until the Closing, at which time Arba’s receipt of the Base Payment and any Additional Monthly Payments due will be deemed to satisfy the Debtor’s obligations to Arba in full.

Voting – Arba is impaired under the Plan, although by virtue of the settlement with the Debtor and Plan Funder, Arba is anticipated to support the Amended Plan and vote affirmatively.

3.2 **Class 2: Unsecured Claims**

Classification – The Debtor is classifying all other claims against the Debtor as being unsecured, which primarily includes Stonehenge Capital Fund Connecticut IV, LLC.

Treatment – Allowed Class 2 Unsecured Claims shall be paid and receive a *pro rata* dividend based upon distribution of the General Creditor Reserve in full satisfaction, release and discharge of their Allowed Claims, together with a release of any liens on personalty located at the Facility.

Voting – The Class 2 Claims of Allowed General Unsecured Creditors are impaired and eligible to vote on the Plan.

Class 3: Equity Interests

3.3 **Classification** – Class 3 consists of the Equity Interests in the Debtor.

Treatment – No payments shall be made on account of equity interests in the Debtor. Upon the Effective Date and after the Closing, the Equity Interests shall be deemed canceled, whereupon the Debtor shall be dissolved.

Voting – While Class 3 equity interests are impaired under the Plan as insiders, they are not entitled to vote on the Plan.

ARTICLE IV

MEANS FOR IMPLEMENTATION OF THE PLAN

4.1 The Plan Funder shall contribute all funds necessary to pay all required distributions hereunder after the License Condition is satisfied and the Amended Plan becomes effective. The Plan Funder shall use all commercially reasonable efforts to file and prosecute its application for a CON and new operating license at the Plan Funder's sole cost and expense. The Plan Funder shall provide monthly reports to Arba and other creditors regarding the status of the

application for a CON and new operating license. The Plan Funder shall be eligible to obtain an extension of the one (1) year period to meet the License Condition upon the written consent of Arba, such consent not to be unreasonably withheld, so long as the Plan Funder is proceeding in good faith and has complied with all requirements of the Connecticut Office of Policy and Management and the Connecticut Department of Health in connection therewith.

4.2 At the Closing, the Plan Funder shall transfer to the Disbursing Agent for distribution all amounts required to be paid to Claimants under the Amended Plan.

4.3 The Debtor's counsel shall be the Disbursing Agent under the Amended Plan without a bond and will generally administer and take all actions in furtherance of the Amended Plan.

4.4 As of the Effective Date and at the Closing, the Debtor shall execute and deliver all commercially standard transfer and conveyance documents to the Plan Funder or its designee to effectuate a transfer of the Property.

4.5 As of the Effective Date and following the Closing, and except as expressly set forth in this Plan, all mortgages, deeds of trust, liens or other security interests or encumbrances against the Property shall be released and forever discharged. For avoidance of doubt, Arba shall retain its security interests until the completion of the Closing.

4.6 **Transfer of the Property.** Upon the Closing, the Debtor shall effect the transfer of the Property and convey to the Plan Funder or its designee title to the Property free and clear of all Claims, liens, charges, interests and encumbrances. Any and all Claims, liens and encumbrances that have not been preserved under the Amended Plan shall be deemed extinguished as of the Closing upon Plan Funder's payment of all amounts necessary to effectuate the Closing.

4.7 **Transfer Taxes.** The transfer of the Property to the Plan Funder or its designee constitutes the making or delivery of instruments of transfer of property or otherwise, pursuant to or in connection with confirmation of the Plan, and, therefore, to the maximum extent provided by Section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of any security and the making or delivery of any instrument of transfer under this Plan, including an issuance of the Bargain and Sale and Deed executed by the Debtor, shall not be subject under any law imposing a stamp tax, recording tax as applicable relating to real estate transfer tax, or similar tax (previously defined, as the “Transfer Taxes”). Accordingly, the appropriate state and local officials or agents in Connecticut shall forego collection of any such Transfer Taxes and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such Transfer Taxes.

4.8 **Preservation of Causes of Action.** All claims, Causes of Action (including the Rent Causes of Action as defined in Section 6.1 of this Amended Plan), damages or remedies in favor of the Debtor’s estate relating to any prior transactions (including all avoidance claims under the Bankruptcy Code or state law) shall be preserved for the Debtor and the Debtor’s estate to be invoked and prosecuted at the discretion of the Plan Funder. The pursuit of accrued rents shall be the subject of further negotiations with Stonehenge, which has asserted a first lien on all available cash held by the Op Co. Thus, any funds to pay the Rent Causes of Action will come from available cash held by the Op Co Receiver, which is potentially subject to the lien of Stonehenge.

ARTICLE V

DISTRIBUTIONS

5.1 **Method of Payment.** Unless otherwise expressly agreed, in writing, payments to be made pursuant to the Amended Plan shall be made at the times and in the amounts set forth in

the Amended Plan by either electronic funds wire transfer or check drawn on a domestic bank, but the payment due to Arba at Closing shall be made via electronic funds wire transfer.

5.2 **Disbursing Agent.** All Distributions and/or payments under this Amended Plan shall be made by the Disbursing Agent who shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court. All Cash received by the Disbursing Agent shall be kept in a segregated escrow account maintained at a banking institution that is an authorized depository in the Eastern District of New York. The Disbursing Agent shall not be compensated for services rendered under the Amended Plan (excluding legal matters relating to the closing and objections to claims). The Disbursing Agent shall not incur any liability, other than for gross negligence, willful misconduct, criminal conduct, or for any claim for liability pursuant to 28 U.S.C. § 959 in connection with carrying out its duties under the Plan, which liability shall be expressly limited to the period commencing from the Disbursing Agent's receipt of the Available Cash and ending on the date that all disbursements contemplated by the Amended Plan have been distributed. The Disbursing Agent shall **not** be deemed to be an officer, fiduciary or agent of the Debtor. Furthermore, the Disbursing Agent shall have the express authority to execute a deed to the Property and other conveyance documents in place (including, but not limited to, the appropriate transfer tax returns), instead of members of the Debtor, or other authorized parties of the Debtor, and shall have no other powers or authority with respect to the Debtor. The Disbursing Agent shall have no obligation to file income tax returns or similar reports with the applicable taxing authorities, which obligations shall remain with the Debtor.

5.3 **Rights and Powers of Disbursing Agent.** The Disbursing Agent shall be empowered to (i) effect all actions and execute all agreements, instruments and other documents

necessary to perform its duties under this Plan, (ii) to object to claims and make all Distributions contemplated hereby, (iii) employ and compensate professionals to represent it with respect to its responsibilities and (iv) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof.

5.4 **Disputed Claims Reserves.** No distributions shall be made with respect to any Disputed Claim. Instead, the Disbursing Agent shall deposit into one or more segregated accounts (the “Disputed Claims Reserves,” each being a “Disputed Claims Reserve”) funds equal to 100% of the Cash that would be distributed under the Amended Plan to the holder of a Disputed Claim that would be an Allowed Claim, but for the dispute. In determining the amount of the Cash to be distributed under the Amended Plan to the holders of Allowed Claims, the calculation of the amount to be distributed to each holder of an Allowed Claim in such class shall be made as if all Disputed Claims in the applicable class were Allowed Claims in their respective face amounts. The Debtor or any other party in interest shall have the right to seek an Order of the Bankruptcy Court, after notice and a hearing, estimating the amount of a Disputed Claim, and limiting the amount of Cash that must be so deposited.

5.5 **Prosecution of Objections.** Debtor shall have the right to file, settle, compromise, withdraw or litigate, to final order or judgment, objections to Disputed Claims. Objections to Claims, other than Administrative Expense Claims, shall be served and filed on or before the Claims Objection Deadline, and objections to Administrative Expense Claims shall be served and filed on or before thirty (30) days after the later of the entry of the Confirmation Order or the filing of the Administrative Expense Claim.

5.6 **Distribution After Allowance.** Within ten (10) days after entry of a Final Order finding all (or part of) a Disputed Claim to be an Allowed Claim (or as soon thereafter as practicable), the Disbursing Agent shall distribute from the funds placed in the Disputed Claims Reserve with respect to such Claim, all Cash, including any interest, dividends or proceeds thereof, to which a holder is then entitled with respect to any Disputed Claim that has become an Allowed Claim.

5.7 **Delivery of Distributions.** Distributions to holder of Allowed Claims shall be made: (i) at the address set forth on the respective Proof(s) of Claim or other request(s) for payment filed by the holder of such Allowed Claim; (ii) at the addresses set forth in any written notices of address change delivered to the Disbursing Agent; or (iii) at the address reflected in the Schedules if no Proof of Claim is filed and the Disbursing Agent has not received a written notice of change of address. If the distribution to the holder of any Claim or Interest is returned to the Disbursing Agent as undeliverable, the Disbursing Agent will make reasonable attempts to locate the holder of the Allowed Claim or Allowed Interest. Any further undeliverable distributions shall remain in the possession of the Disbursing Agent until the earlier of (i) such time as a distribution becomes deliverable or (ii) such undeliverable distribution becomes an unclaimed distribution (each, an “Unclaimed Distribution”). A distribution becomes an Unclaimed Distribution if three months have elapsed since a distribution is returned to the Disbursing Agent as undeliverable or six months have elapsed since a distribution check has gone uncashed and if no notice has been provided to the Disbursing Agent by the holder of the claim to which such distribution relates containing a valid address for such holder. If such a notice is provided, then, after receipt of such additional information as the Debtor may require confirming the identity, address and ownership of such Claim, the Disbursing Agent shall make a distribution of all amounts reserved for such

undeliverable distribution or unclaimed check to such Claim holder at the address provided in such notice within 14 days thereafter. All Unclaimed Distributions shall become Available Cash and shall be distributed in accordance with this Plan.

ARTICLE VI

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

6.1 **Termination of the OpCo Operating Lease.** The operating lease between the Debtor, as landlord, and NR Connecticut LLC as the prior operator of the Facility as tenant, is in material default for, among other things, non-payment of rent obligations over a protracted period of time. As part of the Confirmation process, the operating lease shall be cancelled or rejected pursuant to 11 U.S.C. § 365 and deemed of no force and effect as of the Effective Date or such other date as the Bankruptcy Court may direct. If necessary, the Debtor shall obtain a judicial determination to this effect. The Debtor and Debtor's estate shall retain all causes of action for unpaid rent arrears against the OpCo (the "Rent Causes of Action") subject to potential competing claims of Stonehenge relating to available cash held by the Op Co Receiver.

ARTICLE VII

CONFIRMATION AND CONSUMMATION OF THE PLAN

7.1 **Injunction against Interference with the Plan.** The automatic stay shall remain in place pending the Effective Date or other disposition of the Chapter 11 case. Except as otherwise noted, the occurrence of the Effective Date shall forever stay, restrain and permanently enjoin on and after the Effective Date: (a) the commencement or continuation of any action, the employment of process, or any act to collect, enforce, attach, recover or offset from any property of the Debtor's Estate, including the Property; or (b) the creation, perfection or enforcement of any lien or encumbrance against any property of the Debtor's Estate, including the Property transfer

under this Plan. Since this Amended Plan provides for the liquidation of all or substantially all of the property of the Debtor's Estate, the confirmation of the Amended Plan will not result in a discharge of the Debtor's pre-petition obligations and claims. Upon entry of the Confirmation Order, all holders of Claims against or interests in the Debtor and other parties in interest, and any other Person with notice (actual or constructive) of the Confirmation Order shall be enjoined from taking any actions to interfere with the implementation or consummation of the Amended Plan or the transfer of the Property.

7.2 **Conditions to Effective Date.** The Amended Plan will not become effective, and the Effective Date will not occur, unless and until:

- (a) The Confirmation Order has become a Final Order and shall include approval of the transfer of the Property;
- (b) The CON has been obtained and a new license has been issued to the Plan Funder or its designee;
- (c) The transfer of the Property at the Closing has occurred; and
- (d) The payments required pursuant to the Amended Plan shall have been made.

7.3 **Effect of Non-Occurrence of Effective Date.** If the Effective Date does not occur within one (1) year following the Confirmation Date (subject to extension as set forth in Section 4.1 of the Amended Plan based upon the Debtor's good faith compliance with CON and licensing requirements, and Arba's agreement not to unreasonably withhold consent to an extension), then upon motion by any party in interest upon notice to the Debtor made after the one year period expires, as may be extended, the Property shall be made subject to an auction sale process on terms to be agreed to by the Debtors and Arba or fixed by the Court with Arba to have credit bid rights up to the amount of its Allowed Secured Claims. In the event a subsequent sale of the Property

becomes necessary, nothing contained in the Amended Plan shall thereafter: (a) constitute a waiver or release of any claims by or against the Debtor; (b) prejudice in any manner the rights of the Debtor, Arba, or of any other party in interest and creditors, or (c) constitute an admission, acknowledgment, offer, or undertaking of any sort by the Debtor, Arba, or any other person or entity.

7.4 **Execution of Documents.** The Debtor shall execute, release and deliver all documents reasonably necessary to consummate the transactions contemplated by the terms and conditions of this Plan.

7.5 **Limitation as to Liability.** Neither the Debtor, the CRO, the Plan Funder or Arba together with their respective attorneys, members and managers shall incur any liability to any person or entity for any action taken or omitted to be taken in connection with or related to the formulation, preparation, prosecution, dissemination, confirmation, consummation or administration of this Plan, the Disclosure Statement or any contract, instrument, release or other agreement or document created or entered into, or the distribution of property under this Plan, or any other action taken or omitted to be taken in connection with the Chapter 11 case or this Plan, except for willful misconduct or gross negligence, breach of fiduciary duty, criminal conduct, ultra vires actions or the disclosure of confidential information that causes actual damages. In addition, any release exculpation or limitation of liability provided for in this Amended Plan shall not release any attorney from any obligations owed under Rule 1.8(h) of the New York Rules of Professional Conduct for malpractice liability. Nothing in the Amended Plan nor the Confirmation Order shall effect a release of any claim by the United States Government or any of its agencies or any state and local authority, including without limitation any claim arising the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority

against the Debtor. In addition, subject to Sections 524 and 1141 of the Bankruptcy Code, the releases, exculpations, and limitations of liability described herein shall not preclude police, federal tax, or regulatory agencies from fulfilling their statutory duties.

7.6 **Binding Effect.** Subject to the occurrence of the Effective Date, the provisions of the Amended Plan will bind every holder of a claim against or Interest in the Debtor and inure to the benefit of and be binding on such holder's respective heirs, successors and assigns, regardless of whether the Claim or Interest of such holder is impaired under the Amended Plan and whether such holder accepted the Plan.

ARTICLE VIII

RETENTION OF JURISDICTION

8.1 **Retention of Jurisdiction.** The Bankruptcy Court shall retain post-confirmation jurisdiction over the following matters:

8.1.1 To allow or disallow in whole or in part any objections filed prior to the Claim Objection Deadline.

8.1.2 To grant or deny the applications for allowance of final compensation and reimbursement of expenses of Professionals.

8.1.3 To enter an order or final decree concluding the Cases following the transfer of the Property, payment of allowed claims, resolution of all disputes, and distribution of all reserves.

8.1.4 To allow, disallow, determine, liquidate, classify, estimate, or establish the treatment of any Claim.

8.1.5 To ensure that the Property is properly preserved prior to the occurrence of the Closing.

8.1.6 To decide any dispute relating to the transfer of the Property prior to the Closing thereon.

8.1.7 To adjudicate any motions, adversary proceedings, applications or contested matters that may be pending on the Effective Date.

8.1.8 To enter and implement such Orders as may be necessary or appropriate to execute, implement, enforce or consummate the provisions of the Plan, and the distributions hereunder.

ARTICLE IX

GENERAL PROVISIONS

9.1 **Headings.** The headings in the Amended Plan are for reference purposes only.

9.2 **Contents of Confirmation Order.** The Confirmation Order shall be in form and substance satisfactory to the Debtor, the Plan Funder and Arba, and may contain various provisions deemed necessary to clarify, implement or enforce the Amended Plan and Sale of the Property.

9.3 **Orders in Aid of Consummation.** Pursuant to §§ 105, 1141, 1142 and 1143 of the Bankruptcy Code, the Bankruptcy Court may enter one or more Orders in aid of Confirmation and/or consummation of the Amended Plan directing the implementation of matters or actions required by the Plan.

9.4 **Compliance with Tax Requirements.** In connection with the Plan, the Debtor shall comply with all withholding and reporting requirements imposed by federal, state and local taxing authorities, and distributions under the Amended Plan shall be subject to applicable withholding and reporting requirements; *provided, however*, that the transfer of any Cash, property or other interest hereunder shall not be subject to any federal, state or local tax to the fullest extent provided under § 1146 of the Bankruptcy Code.

9.5 **Due Authorization by Creditors.** Each and every Creditor who elects to participate in the distributions provided for under the Amended Plan warrants that it is a lawful owner of such Claim and is authorized to accept the distributions provided for in the Amended Plan and that there are no outstanding Liens, Encumbrances, commitments, agreements or understandings, express or implied, that may or can in any way defeat or modify the rights released, or modified by the Plan, or obligations undertaken by such Creditor under the Plan.

9.6 **Amendments and Modifications.** The Amended Plan may be altered, amended or modified by the Debtor, solely with the consent of Arba, at any time before the substantial consummation of the Plan, as provided in §§ 1101 and 1127 of the Bankruptcy Code and Bankruptcy Rule 3019.

9.7 **Request for Relief under § 1129 (b).** If the Amended Plan is accepted by one or more, but not all, classes of Creditors that are found to be impaired by the Plan, Debtor may request confirmation under § 1129(b) of the Bankruptcy Code.

9.8 **Filing of Additional Documents.** Except as otherwise provided in the Amended Plan, on or before the Effective Date, the Debtor may file with the Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Amended Plan.

9.9 **Computation of Time.** In computing any period of time prescribed or allowed by the Amended Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

9.10 **Successors and Assigns.** The rights, benefits and obligations of any entity named or referred to in the Amended Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such entity.

9.11 **Quarterly Fees.** All fees payable pursuant to 28 U.S.C. § 1930, together with any applicable interest thereon, shall be paid by the Debtor until the closing of the Case under 11 U.S.C. §350(a).

9.12 **Post-Confirmation Reports.** The Debtor shall file quarterly status reports until the Chapter 11 Case is closed.

9.13 **No Third Party Releases.** The Amended Plan does not release non-debtor third-parties and guarantors from any liabilities.

Dated: New York, NY
May 20, 2025

Coal New Haven LLC

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