

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

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	:	
In re:	:	Chapter 11
	:	
LA PALOMA GENERATING COMPANY,	:	Case No. 16-_____ ()
LLC, <i>et al.</i> , ¹	:	
	:	Joint Administration Requested
Debtors.	:	
	:	
	x	

**NIRANJAN RAVINDRAN’S DECLARATION IN SUPPORT OF THE
DEBTORS’ CHAPTER 11 PETITIONS AND FIRST DAY PLEADINGS**

I, NIRANJAN RAVINDRAN, declare under penalty of perjury:

1. I am a Senior Vice President at EIG Global Partners LLC (“**EIG**”), one of the leading providers of institutional capital to the global energy industry, having invested more than \$23 billion in more than 310 portfolio investments in 36 countries. EIG is a member of Blocker (La Paloma), LLC (“**Blocker**”), which is the parent and sole member of CEP La Paloma Operating Company, LLC (“**CEP**”). CEP is the manager of La Paloma Generating Company, LLC (“**La Paloma**”) and its sole member and direct parent, La Paloma Acquisition Co, LLC (“**LPAC**” and together with CEP and La Paloma, the “**Debtors**”). As none of the Debtors have any of their own employees, CEP has entered into support agreements (discussed in further detail below) with RC La Paloma Management, LLC (“**RCLP**”) and NAES Corporation (“**NAES**”), whereby RCLP and NAES provide operating, maintenance, and asset management services to La Paloma. I submit this Declaration as the authorized person of each of the Debtors.

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are La Paloma Generating Company, LLC (9359), La Paloma Acquisition Co, LLC (2500), CEP La Paloma Operating Company, LLC (2503). The address of the Debtors’ corporate headquarters is 1700 Pennsylvania Avenue, NW, Suite 800, Washington, DC 20006.

2. As described below, La Paloma is a merchant power generator that has operated in California for the past thirteen years. La Paloma operates in a heavily regulated, over supplied market with intense competition. Regulatory policies and market forces have depressed revenue and margins, and made it impossible for La Paloma to service its substantial debt burden.

3. At EIG, I am primarily responsible for portfolio management and workouts. Prior to joining EIG in 2008, I worked at the Royal Bank of Scotland where I covered corporate, structured, and mezzanine transactions in the energy and infrastructure sectors. I hold a Master of Business Administration Degree from the Wharton School, University of Pennsylvania, a Master of Science in Petroleum Engineering from Stanford University, and a Bachelor of Engineering in Chemical Engineering from the University of Adelaide in Australia.

4. I am generally familiar with the Debtors' business, operations, financial matters, business plans, and financial projections. Except as otherwise indicated, all facts set forth in this Declaration are based on my personal understanding of the facts, my discussions with Rockland Capital, LLC ("**Rockland**") and its affiliate RCLP who is the asset manager of the Facility (defined below), other persons who perform management functions for the Debtors, and the Debtors' advisors, my review of relevant documents, or my opinion based on my understanding of information concerning the Debtors' operations and financial condition. If called to testify, I would testify competently to the facts set forth in this Declaration. I am authorized to submit this Declaration on behalf of the Debtors.

5. On December 6, 2016 (the "**Petition Date**"), the Debtors commenced voluntary cases under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. I submit this Declaration to describe the Debtors' background and

the circumstances that led to the Debtors' chapter 11 filings. I also submit this Declaration in support of relief the Debtors have requested in the "first day" applications and motions filed with the Court (collectively, the "**First Day Pleadings**"). All of the relief sought in the First Day Pleadings is necessary to stabilize and continue the Debtors' operations, minimize potential adverse effects of filing bankruptcy, and ease the administrative burden of operating in chapter 11.

6. By the First Day Pleadings, the Debtors seek to, among other things:
 - a. establish administrative procedures to promote a seamless transition into and through these chapter 11 cases;
 - b. maintain the Debtors' existing insurance coverage and provide adequate assurance of payment to the Debtors' utilities;
 - c. ensure the continuation of the Debtors' operations and cash management system without interruption;
 - d. obtain authority to pay certain prepetition claims of critical vendors and taxing authorities; and
 - e. use certain cash collateral in the operation of the Debtors' business.

7. I am familiar with each of the First Day Pleadings. Absent the relief requested in the First Day Pleadings, I believe the Debtors would suffer immediate and irreparable harm and jeopardize their ability to continue their business operations. I further believe that the relief sought in the First Day Pleadings is critical to the Debtors' efforts to transition into chapter 11 efficiently and minimize disruptions to their business operations, thereby permitting the Debtors to preserve and maximize value for the benefit of their stakeholders.

8. This Declaration is divided into three parts. **Part I** describes the Debtors' business, organizational structure, and prepetition indebtedness. **Part II** describes the

circumstances leading to the commencement of these chapter 11 cases. **Part III** summarizes the First Day Pleadings and explains why the relief requested in those pleadings is appropriate and necessary.

I. DESCRIPTION OF THE DEBTORS

A. The Debtors' Business

9. La Paloma owns a natural gas-fired, combined cycle electric generating facility consisting of four identical power blocks, located on an approximately 400-acre site in McKittrick, California (the "**Facility**"). The Facility has a nameplate generating capacity of 1,022 megawatts ("**MW**"). The Facility is located approximately 110 miles northwest of Los Angeles and 40 miles west of Bakersfield, which is at a point on the electric transmission grid where it can provide energy for use in both northern and southern California. The Facility employs a technology that reduces the amount of fuel used and the amount of carbon dioxide emitted relative to many other natural gas-fired electric generating facilities. The Facility also has a unique and highly advantageous feature in that it can be modified during a short outage to improve its ability to turn down and reduce its output during periods of low demand (though this requires capital expenditures by La Paloma). This unusual feature of the Facility can help to support reliable electric grid operations by offering an efficient and flexible way to provide electric generation that can compensate for fluctuations in electric output from renewable energy projects (such as wind and solar power projects that are affected by in the amount of sunlight and wind).

10. The Facility receives its natural gas fuel directly from the Kern River Gas Transmission System and the Mojave pipeline. It is directly interconnected to the electric transmission grid at the Midway Substation, which is owned by Pacific Gas & Electric

(“**PG&E**”) and is operationally controlled by the California Independent System Operator (“**CAISO**”). CAISO is an independent electric grid operator that manages the grid and flow of power covering approximately 80% of California and a small part of Nevada. The Facility is not owned by or affiliated with PG&E or any other utility that sells electric energy directly to customers. Instead, the electric energy and certain related services from the Facility are sold into a centralized electric market operated by CAISO and purchased by utilities such as PG&E, Southern Consolidated Edison (“**SCE**”), Sacramento Municipal Utility District (“**SMUD**”), and San Diego Gas and Electric (“**SDG&E**”). The energy and other services from the Facility are then transmitted through high voltage lines and distributed or sold to retail customers, including homes, schools, offices, hospitals, businesses, and industrial users. The Facility operates as a merchant facility, which means that, with minor exceptions, it does not have a contract for sale of its output at a fixed price but rather is subject to prices in the CAISO day-ahead market that vary from hour-to-hour based on the amount of demand and the amount of supply being offered by competing sellers. As of the Petition Date, 97.6% of La Paloma’s revenue is generated from the sale of energy into the CAISO market.

11. La Paloma also sells a product called resource adequacy capacity (“**RA**”), which helps utilities to ensure that they have access to adequate electric generating capacity available to serve the needs of their customers and to maintain the reliability of the electric grid. La Paloma sells RA to numerous customers, either through bilateral trades arranged by EDF Trading North America, LLC (“**EDF**”), or through auctions held by various utilities such as SCE, PG&E, SMUD, and SDG&E. As of the Petition Date, 2.4% of La Paloma’s revenue is generated from the sale of RA.

12. In addition, La Paloma sells another product, known as ancillary capacity (“AC”), in the CAISO market. AC is a product that helps certain zones of California’s electric grid to regulate the amount of electric generation on the grid in response to sudden changes in the amount of generation available from other sources. As of the Petition Date, 0.01% of La Paloma’s revenue is generated from the sale of AC.

B. The Management Agreements

13. The Debtors do not have any of their own employees. Rather, the operations and maintenance of the Facility are contracted out to third-parties via various management agreements, each of which is discussed in further detail below.

14. Asset Management Agreement. CEP is contractually obligated to provide La Paloma with certain operating, maintenance, and asset management services pursuant to that certain Operation, Maintenance and Asset Management Agreement, dated as of August 16, 2005, by and between CEP and La Paloma (as amended, the “**Asset Management Agreement**”). As CEP has no employees, it utilizes subcontractors to perform its services under the Asset Management Agreement. All costs incurred by the subcontractors are passed through to La Paloma as reimbursable costs under the Asset Management Agreement, as CEP has minimal assets of its own. La Paloma has historically paid all costs under the Asset Management Agreement using its own funds. As of the Petition Date, CEP has entered into the following support agreements, under which CEP has subcontracted out all of its operating, maintenance, and asset management duties under the Asset Management Agreement: (i) the Amended and Restated Asset Management Support Agreement, dated as of October 20, 2014 (the “**Asset Management Support Agreement**”), by and between CEP and RCLP and (ii) the Amended and Restated Operation and Maintenance Support Agreement, dated as of May 1, 2015 (as amended,

the “**O&M Agreement**”), by and between CEP and NAES. La Paloma pays NAES and RCLP directly for their services under the O&M Agreement and the Asset Management Support Agreement, respectively, and does not make any payments to CEP with respect to the Asset Management Agreement as all of CEP’s services are contracted out.

15. Asset Management Support Agreement. RCLP is responsible for performing CEP’s asset management services under the Asset Management Agreement, including the general management of La Paloma. As the asset manager for La Paloma, RCLP’s responsibilities include:

- the management and oversight of NAES;
- administering and managing certain contracts pertaining to the ownership, operation, maintenance, and financing of the Facility;
- performing cash management, financial, reporting, and accounting functions with respect to the Facility;
- maintaining the Facility’s books and records;
- maintaining compliance with regulatory requirements;
- preparing the annual budget;
- negotiating and administering insurance policies on behalf of La Paloma;
- managing La Paloma’s procurement of fuel and materials for the Facility;
- negotiating, administering, and managing transactions for the purchase and sale of power, power products, and gas; and
- maintaining the legal and public affairs of La Paloma.

16. Under the Asset Management Support Agreement, RCLP is paid a fixed monthly fee of \$67,708.33 in advance. In addition, RCLP is reimbursed by La Paloma for all out-of-pocket costs incurred in the performance of its services, including the wages and benefits of the RCLP personnel providing management services. These reimbursable costs are funded monthly in advance based on estimates provided by RCLP and are subject to a true-up at the end

of each month. As mentioned above, La Paloma is responsible for the payment of RCLP's fees and costs as they are pass through costs of CEP under the Asset Management Agreement.

17. O&M Agreement. Pursuant to the O&M Agreement, NAES manages the day-to-day operations and maintenance of the Facility. NAES employs approximately 30 individuals at the Facility to perform the day-to-day business operations of the Facility such as routine and preventive maintenance, facility administration, employee training, and monitoring and testing the Facility and its equipment. Under the O&M Agreement, NAES is solely responsible for determining the working hours, rates of compensation, and all other matters relating to the employment of the Facility personnel. The Debtors have no employees and are not seeking to pay any form of employee compensation or benefits. Instead, the Debtors are seeking authority to satisfy all prepetition obligations to NAES under the O&M Agreement under the critical vendor order, and subsequently in the ordinary course of business.

18. La Paloma prefunds all operating costs to NAES, including all Facility personnel wages and benefits, on a monthly basis in accordance with an agreed-upon operating and maintenance budget. At the end of each month, La Paloma and NAES true up the actual operating and other costs incurred by NAES for the month. In addition, La Paloma pays NAES an annual management fee of \$279,950, paid monthly in arrears in 12 equal installments, which includes the cost of time and expenses for routine project management, payroll accounting, human resources support, and the provision of environmental services. As mentioned above, La Paloma is directly responsible for the payment of NAES' fees and costs, as they are pass through costs of CEP under the Asset Management Agreement.

19. Energy Management Contract. Under that certain Amended and Restated Energy Management Contract, dated as of December 13, 2012, by and between EDF and La

Paloma, EDF provides energy management services to La Paloma. As La Paloma's scheduling coordinator and energy manager, EDF (under the direction of RCLP) is authorized to submit offers for the sale of energy output and other related services from the Facility into the CAISO market and enters into various fuel, power, and risk management transactions on behalf of La Paloma. All revenue generated by the sale of energy and related services into the CAISO market and the sale of RA, as described above, through bilateral trades arranged through EDF is wired to La Paloma on a monthly basis, net of EDF's fees and the cost of fuel procured by EDF.

C. Formation and Organizational Structure

20. La Paloma was formed in 1993. The Facility was completed in March 2003. The current ownership structure came about in April 2010, when a group of lenders foreclosed on the prior owner's majority interest in the Facility. Shortly thereafter, Rockland acquired an interest in the Facility and RCLP became the project asset manager.

21. Each of the Debtors is a limited liability company organized in Delaware. As discussed above, La Paloma and LPAC are managed by RCLP and NAES pursuant to the support agreements with CEP. The management of CEP is fully reserved to Blocker as the sole member of CEP. Blocker also holds approximately 52.3% of the membership interests in LPAC, while Rockland holds approximately 11.7% of the membership interests in LPAC through its affiliate, RC La Paloma Holdings, LLC. LPAC's members have certain approval rights over LPAC and as La Paloma's sole member, LPAC has certain approval rights over the management of La Paloma.

D. The Debtors' Prepetition Capital Structure

22. As of the Petition Date, La Paloma and LPAC had funded debt outstanding of approximately \$524 million.² The following table summarizes the Debtors' prepetition indebtedness and capital structure:

(\$ in millions)	Maturity	Principal Amount Outstanding as of the Petition Date ³
La Paloma		
First-Lien Working Capital Facility	1/20/2020	\$35
First-Lien Term Loan	1/20/2020	\$292
Second-Lien Term Loan	2/20/2020	\$110
LPAC		
LPAC Term Loan	8/25/2019	\$87

23. In addition, La Paloma has approximately \$34 million in outstanding but undrawn letters of credit, which are summarized in the following table:

(\$ in millions)	Outstanding Letters of Credit as of the Petition Date
SunTrust L/C Facility	\$4
First-Lien Working Capital Facility	\$30

(a) La Paloma Debt

24. Sun Trust L/C Facility. La Paloma is party to that certain Amended and Restated Letter of Credit Agreement, dated as of February 20, 2014, by and between La Paloma and SunTrust Bank (the "**SunTrust L/C Agreement**"). The SunTrust L/C Agreement, which matures on February 12, 2020, provides for SunTrust to issue up to \$30 million in letters of credit in favor of counterparties or obligees of La Paloma in connection with the operation of the Facility. As of the Petition Date, there are \$4,050,000 of letters of credit outstanding under the SunTrust L/C Agreement. La Paloma is required to reimburse SunTrust for amounts drawn on

² As of the Petition Date, CEP does not have any long-term debt obligations and has *de minimis* assets.

³ Amounts exclude accrued and unpaid interest.

any letters of credit issued under the SunTrust L/C Agreement. As security for La Paloma's reimbursement and other obligations under the SunTrust L/C Agreement, La Paloma funded a collateral account at SunTrust Bank with a certificate of deposit in the amount of \$30 million to cash collateralize the letters of credit. As part of the Debtors' request first day relief, the Debtors are seeking an order directing SunTrust to release the funds in the certificate of deposit and authorizing the Debtors to utilize such funds as cash collateral, except for \$4,455,000 of such proceeds that would remain in SunTrust's segregated collateral account as adequate protection with respect to La Paloma's obligations under the SunTrust L/C Agreement.

25. First-Lien Working Capital Facility. La Paloma is party to that certain First-Lien Working Capital Agreement, dated as of February 20, 2014, by and between La Paloma, the lenders and L/C issuers party thereto, and Bank of America, N.A., as administrative agent (the "**First Lien Working Capital Agreement**"). The First Lien Working Capital Agreement provides for a \$35 million working capital revolving facility and a \$30 million designated letter of credit commitment that matures on January 20, 2020. As of the Petition Date, \$35 million of revolving loans and the \$30 million designated letter of credit remain outstanding under the First Lien Working Capital Agreement. La Paloma's obligations under the First Lien Working Capital Agreement are purportedly secured by first-priority liens on substantially all of the assets and membership interests of La Paloma, which purported liens are *pari passu* with the purported liens with respect to La Paloma's obligations under the First Lien Term Loan Agreement and the Interest Rate Protection Agreements (defined below). However, upon information and belief, as of the Petition Date, such liens are unperfected with respect to certain collateral of the Debtors.

26. First-Lien Term Loan. La Paloma is party to that certain First-Lien Term Loan Credit Agreement, dated as of February 20, 2014, by and between La Paloma, the lenders party thereto, and Bank of America, N.A., as administrative agent (the “**First Lien Term Loan Agreement**”). The First Lien Term Loan Agreement provides for a \$300,191,500 term loan that matures on January 20, 2020. As of the Petition Date, approximately \$292 million under the First Lien Term Loan Agreement remains outstanding. La Paloma’s obligations under the First Lien Term Loan Agreement are purportedly secured by first-priority liens on substantially all of the assets and membership interests of La Paloma, which purported liens are *pari passu* with the purported liens with respect to La Paloma’s obligations under the First Lien Working Capital Agreement and the Interest Rate Protection Agreements. However, upon information and belief, as of the Petition Date, such liens are unperfected with respect to certain collateral of the Debtors.

27. Interest Rate Protection Agreements. La Paloma is party to two interest rate swap agreements with Macquarie Bank Limited and Bank of America N.A. (collectively, the “**Interest Rate Protection Agreements**”). La Paloma estimates that its outstanding obligations under the Interest Rate Protection Agreements are approximately \$2.5 million as of the Petition Date. La Paloma’s obligations under the Interest Rate Protection Agreements are purportedly secured by first-priority liens on the collateral purportedly securing La Paloma’s obligations under the First Lien Term Loan Agreement and the First Lien Working Capital Agreement, and such purported liens are *pari passu* with the purported liens with respect to La Paloma’s obligations under the First Lien Term Loan Agreement and the First Lien Working Capital Agreement. However, upon information and belief, as of the Petition Date, such liens are unperfected with respect to certain collateral of the Debtors.

28. Second-Lien Term Loan. La Paloma is party to that certain Second-Lien Term Loan Credit Agreement, dated as of February 20, 2014, by and between La Paloma, the lenders party thereto, SunTrust Bank, as administrative agent, and Macquarie Bank Limited, as L/C issuer (the “**Second Lien Term Loan Agreement**”). The Second Lien Term Loan Agreement provides for a \$110 million term loan that matures on February 20, 2020. As of the Petition Date, \$110 million of term loans under the Second Lien Term Loan Agreement remain outstanding. La Paloma’s obligations under the Second Lien Term Loan Agreement are purportedly secured by second-priority liens on substantially all of the assets and membership interests of La Paloma. However, upon information and belief, as of the Petition Date, such liens are unperfected with respect to certain collateral of the Debtors.

(b) LPAC Debt

29. LPAC is party to that certain Credit Agreement, dated as of August 25, 2011, by and between LPAC, the lenders party thereto, and NexBank, SSB, as the collateral agent (the “**LPAC Credit Agreement**”). The LPAC Credit Agreement, which matures on August 25, 2019, originally provided for a \$62.5 million payment-in-kind term loan provided by certain of LPAC’s members. As of the Petition Date, approximately \$87 million under the LPAC Credit Agreement remains outstanding. LPAC’s obligations under the LPAC Credit Agreement are secured by a first-priority interest in the membership interests in and to LPAC held by certain of LPAC’s members.

II. EVENTS LEADING TO THE COMMENCEMENT OF THESE CHAPTER 11 CASES

30. The Debtors’ bankruptcy filings are the result of a confluence of adverse market developments, a challenged regulatory environment, mounting compliance obligations under California’s “cap and trade” scheme, and substantial debt service requirements. Slower

than expected growth in demand for electric energy, changes in commodity markets, and the build out of renewable generation resources in the California market have compressed the Facility's generation output and reduced the margin between the market price for electric energy and the market price for natural gas fuel consumed in generating such energy (this margin often is referred to as a "spark spread"). To mitigate these pressures, La Paloma has attempted to secure additional contracts for the sale of RA, but has not been able to meet this goal. These issues have been exacerbated by an inhospitable regulatory environment. Further, CAISO has failed to provide a market mechanism to compensate the Facility and other similar facilities for the reliability service that they provide. Indeed, CAISO has denied or withdrawn outage requests from the Facility to place some of its units in "outage" mode so that they would not be required to operate. As a result of the foregoing factors, the margins La Paloma earns from energy sales have been compressed, and their cash flows are insufficient to address their environmental requirements, together with debt service payments of over \$30 million per year.

31. *Decline in Revenue.* La Paloma has experienced a substantial decline in its generation output and margins from merchant sales of output from the Facility, despite efforts to sell all of the energy and other services available from the Facility. EDF, on behalf of La Paloma, generally offers for sale into the CAISO market energy from all four of the Facility's units. When the price of such offer is at or below the clearing price in the wholesale market, then CAISO provides an award and subsequently "dispatches" the unit to generate and sell energy. The Facility is regularly dispatched by CAISO for power, but capacity factors (*i.e.*, the amount of energy actually generated compared to the maximum capacity to generate) across the full year cycle and spark spreads have compressed. La Paloma has sought to enter into bilateral contracts with third parties to sell energy and capacity (*i.e.*, RA) at fixed prices but has been unable to find

additional purchasers willing to enter into such contracts. In addition, despite efforts to augment revenues with sales of RA, La Paloma has only been able to find purchasers for 17.6% of the Facility's capacity for 2016 (as reported by RCLP).

32. As described in our filings with the Federal Energy Regulatory Commission (“**FERC**”), the plight of natural gas-fired electric generators in the California market is discussed in CAISO's 2015 Annual Report on Market Issues & Performance. This report stated that a combined cycle, natural gas-fired electric generating facility (such as the Facility) requires compensation of \$162.20 per year for each kilowatt of capacity to cover its fixed costs, however, the report stated that net revenues in 2015 to cover fixed costs of such units were only \$39.62/kW-year in the northern California market zone and \$45.77/kW-year in the southern California market zone. As discussed below, there is hope that market reforms in the future will address this situation, but it is not clear how long this may take.

33. Failed CAISO Market Reform Efforts. As described in our filings with FERC, CAISO proposed changes to its tariff in 2012 to implement a Flexible and Local Reliability Resource Retention mechanism. The CAISO tariff is a document that is filed with FERC that, among other things, establishes the terms and conditions for participation of sellers and buyers in the CAISO market. The purpose of the proposal was to offer temporary financial support to electric generating resources that are otherwise uneconomic to operate but that provide important benefits to the market (for example, by offering the ability to quickly adjust to market conditions) and that support reliability of local portions of the electric grid. However, FERC rejected CAISO's proposed tariff revisions, finding that they did not create proper price signals and that they failed to address the underlying need to ensure the presence of financial incentives for electric generating resources to enter and remain in the market. At the time, FERC

urged CAISO and its stakeholders to focus on the development of a durable, market-based mechanism that would provide incentives to ensure that electric generating resources would be available to meet the resource adequacy and reliability needs of the CAISO market. Since that time, no such durable, market-based mechanism providing needed resources and incentives to remain in the market have been developed. CAISO has planned efforts in 2017 to address the needed market reforms. The Debtors believe that such market reforms are inevitable, but the timing and form of any such changes remain uncertain.

34. Denied and Withdrawn Outage Requests. As described in our filings with FERC, as a result of the inability of the CAISO market to provide sufficient compensation to La Paloma for the past several years, La Paloma requested CAISO approval in May 2016 to designate units 1, 3, and 4 of the Facility as being in “outage” mode from July 1, 2016 to November 30, 2016, to alleviate the financial losses they were experiencing. These proposed outages would protect La Paloma from being required to operate those units of the Facility and provide associated energy for sale in the CAISO market. La Paloma argued that the outages were necessary because no RA had been procured from the units and operation was expected to be uneconomic. These requests were denied by CAISO because the CAISO tariff did not have a provision for declaring outages for economic reasons. In addition, in June 2016, CAISO also canceled a previously approved maintenance outage for unit 2 due to the need for the Facility to be available to generate during an impending heat wave.

35. Unsuccessful Efforts for Alternative Compensation. La Paloma has sought other forms of compensation, including proposing to enter into a “Reliability Must Run” (“RMR”) contract with CAISO or being designated a “CPM” (Capacity Procurement Mechanism) resource under the CAISO tariff. RMR and CPM contracts provide compensation to

electric generating units that are needed to maintain the reliability of the electric grid but are not receiving sufficient compensation from the market to support continued operation. However, even though CAISO previously had found unit 2 of the Facility was needed during the 2016 summer heat wave, as discussed above, CAISO declined to execute an RMR or CPM contract with La Paloma. Therefore, La Paloma was denied this relief.

36. Denied FERC Complaint. On June 17, 2016, La Paloma filed a complaint (the “**Complaint**”) against CAISO with FERC, requesting that FERC issue an order requiring CAISO to grant La Paloma an RMR designation effective as of July 1, 2016, for units 1, 3, and 4 of the Facility, or otherwise provide a mechanism for cost recovery to allow La Paloma to continue operation of those units. On October 3, 2016, FERC issued an order denying the Complaint, finding that CAISO reasonably denied La Paloma’s economic outage requests for units 1, 3, and 4 of the Facility.

37. Carbon Costs. Under the California Global Warming Solutions Act of 2006, which includes a “cap and trade” emissions reduction program, the Facility must surrender one compliance instrument for each metric ton of carbon dioxide equivalent (CO₂e) of greenhouse gas emitted. Compliance instruments consist of both allowances and offset credits. The cap and trade program operates on three-year cycles called compliance periods. The current compliance period is 2015-2017. La Paloma is required to surrender allowances for 30% of the previous year’s carbon emissions with the remaining 70% due thereafter pursuant to a three-year true-up mechanism, the most recent of which concludes in 2018. The Debtors recognize the importance of the cap and trade program and compliance with this environmental regulatory scheme and intend to honor these obligations in accordance with applicable law.

38. Effects of Competition from Renewable Energy Resources. Growth in the supply of lower marginal cost solar-power-generated electricity associated with “behind the meter” solar installations in California (*i.e.*, solar collectors installed by residential and commercial electric customers on the customer side of their electric meters that are capable of selling energy back to the electric grid whenever generation from the collectors exceeds the customer’s needs), has resulted in a decrease in overall demand for electric generation from natural gas-fired units and other conventional generating resources, and also suppressed market clearing prices. Competition from utility scale solar and wind-powered electric generation has also contributed to this effect. However, because generation from solar and wind-powered resources is intermittent, due to changes in the amount of sunlight during the daytime (and of course the absence of sunlight at night) and variations in wind speeds, generation capacity from conventional resources is still needed. In fact, electric generation from flexible resources, such as the Facility, that can quickly respond to changes in demand, is particularly important due to the increase in generation from intermittent resources, however, the CAISO market does not currently adequately compensate natural gas-fired electric generating resources for providing that flexibility.

39. Low Natural Gas and Electric Prices. In addition, technological improvements in hydraulic fracturing (fracking) has contributed to significant increases in U.S. natural gas production and decreased natural gas prices. While this has reduced the cost of fuel for the Facility, it also has reduced the price of electric energy in the CAISO market, because it has reduced the short-run marginal cost of gas-fired generators that typically set CAISO market prices. This has reduced La Paloma’s income and cash flows.

40. Unsustainable Financial Obligations. The Debtors' current balance sheet is unsustainable. As of the Petition Date, the La Paloma and LPAC carried funded-debt obligations of approximately \$524 million. The Facility's cash flows are insufficient to support the Debtors' annual interest expense of approximately \$34.6 million, and annual debt amortization requirements of approximately \$3 million. Absent a restructuring of their indebtedness, the Debtors would be unable to service their debt and fund necessary operating expenses, including projected carbon credit requirements. Moreover, due to this significant indebtedness, the Debtors would lack sufficient cash flow to continue to maintain the Facility and reinvest capital to ensure continued reliable performance in accordance with prudent operating practice. The Debtors have therefore concluded, in their business judgment, that filing these cases is in the best interests of their stakeholders.

III. SUMMARY OF THE FIRST DAY PLEADINGS

41. Concurrently with the filing of these chapter 11 cases, the Debtors have filed the following First Day Pleadings:

- a) Debtors' Motion for Entry of an Order Directing Joint Administration of Chapter 11 Cases ("**Joint Administration Motion**");
- b) Debtors' Application for Entry of an Order Authorizing Employment and Retention of Epiq Bankruptcy Solutions, LLC as Claims and Noticing Agent, *Nunc Pro Tunc* to the Petition Date ("**Epiq Application**");
- c) Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Payment of Certain Prepetition Taxes and Fees and (II) Granting Related Relief ("**Taxes Motion**");
- d) Debtors' Motion for Entry of Interim and Final Orders (I) Prohibiting Utilities from Altering, Refusing, or Discontinuing Service; (II) Approving the Debtors' Proposed Form of Adequate Assurance of Payment to Utilities; and (III) Establishing Procedures for Resolving Objections to the Debtors' Proposed Form of Adequate Assurance ("**Utilities Motion**");

- e) Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Maintain and Renew Their Insurance Policies and Pay All Obligations in Respect Thereof and (B) Maintain Their Premium Financing Program and Pay All Obligations in Respect Thereof; and (II) Granting Related Relief ("**Insurance Motion**");
- f) Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Prepetition Claims of Critical Vendors and (II) Granting Related Relief ("**Critical Vendors Motion**");
- g) Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Use of the Debtors' Cash Management System and Bank Accounts Subject to Certain Modifications; (II) Waiving Certain United States Trustee Requirements; and (III) Granting Related Relief ("**Cash Management Motion**"); and
- h) Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing Use of SunTrust Bank's Cash Collateral, and (II) Directing Immediate Release of Funds in Certificate of Deposit ("**SunTrust Cash Collateral Motion**").

42. Having reviewed each of the First Day Pleadings or had their contents explained to me, I believe that the Debtors would suffer immediate and irreparable harm absent the ability to continue their business operations as sought in the First Day Pleadings. In my opinion, approval of the relief sought in the First Day Pleadings is critical to the Debtors' efforts to reorganize and conduct these cases efficiently, thus permitting the Debtors to preserve and maximize value for the benefit of all stakeholders.

43. Several of the First Day Pleadings request authority to pay prepetition claims. I am told by the Debtors' advisors that Federal Rule of Bankruptcy Procedure 6003 provides, in relevant part, that the Court may not consider motions to pay prepetition claims during the first 21 days following the filing of a chapter 11 petition, "except to the extent relief is necessary to avoid immediate and irreparable harm." In light of this exception, the Debtors have limited their requests for immediate authority to pay prepetition claims to those circumstances where the failure to pay such claims would cause immediate and irreparable harm to the Debtors

and their estates. Consequently, certain aspects of the relief sought in the First Day Pleadings will be deferred for consideration at a later hearing, as indicated therein. With respect to the other First Day Pleadings, set forth below is the reasons why I believe it is imperative that the Court grant the relief requested.

A. Joint Administration Motion

44. The Debtors seek entry of an order directing joint administration of their chapter 11 cases for procedural purposes only. Given the organizational structure of the Debtors, I believe that joint administration of these chapter 11 cases would provide significant administrative convenience without harming the substantive rights of any parties in interest. Many of the motions, hearings, and orders in these cases will affect each Debtor, and joint administration would eliminate the need for duplicate pleadings, notices, and orders in each of the respective dockets. This, in turn, would save the Court, the Debtors, and other parties in interest substantial time and expense when preparing and filing such documents. Further, joint administration would protect any parties in interest by ensuring that they will be apprised of the various motions filed with the Court with respect to each of the Debtors' cases.

45. Because the Debtors seek only administrative, not substantive, consolidation of the estates, joint administration would not adversely affect the Debtors' respective constituencies. The relief requested in the Joint Administration Motion will not only preserve individual creditors' rights, but also provide those creditors the benefit of cost reductions associated with joint administration.

B. Epiq Application

46. The Debtors seek entry of an order authorizing the employment and retention of Epiq Bankruptcy Solutions, LLC ("**Epiq**") as the Claims and Noticing Agent, effective *nunc pro tunc* to the Petition Date. I understand that the Debtors and their advisors

obtained and reviewed engagement proposals from three court-approved claims and noticing agents to ensure selection through a competitive process. Following that review, and in consideration of the number of anticipated notice parties, the nature of the Debtors' business, and Epiq's competitive and reasonable rates given their quality of services and expertise, the Debtors selected Epiq to act as the Debtors' Claims and Noticing Agent. I believe that the retention of Epiq as Claims and Noticing Agent is necessary and in the best interest of the estates. Indeed, Epiq will relieve the Debtors of the burdens associated with claims and noticing services, allowing them to devote their full attention and resources to maximize value for their stakeholders and facilitate the orderly administration of these chapter 11 cases.

47. I have also reviewed Epiq's engagement letter and the description of the services that Epiq has agreed to render and the compensation and other terms of the engagement as provided in the Epiq Application. Based on that review, I believe that the Debtors' estates, creditors, parties in interest, and this Court will benefit as a result of Epiq's experience and cost-effective methods.

48. I further believe that no parties in interest would be prejudiced by the granting of the *nunc pro tunc* employment because Epiq will provide valuable services to the Debtors' estates in the interim period.

C. Taxes Motion

49. The Debtors seek entry of interim and final orders authorizing payment of prepetition sales and use, property, business entity fees, and licensing fees, and all other similar obligations, including any related penalties and interest (collectively, the "**Prepetition Taxes and Fees**"). The Debtors incur various tax liabilities and fees and in the past have generally paid such liabilities to various federal, state, and local authorities (the "**Authorities**") as they have become due in the ordinary course of business. I understand that the Debtors estimate that

approximately \$950,000 in Prepetition Taxes and Fees are currently outstanding or will become due and payable following the Petition Date, all of which the Debtors are seeking authority to pay during the interim period.

50. Sales and Use Taxes. The Debtors incur use taxes when they purchase materials and services from a vendor that is not registered to collect sales taxes for the state where the property is delivered or the services are provided. In this circumstance, vendors are not obligated to charge or remit sales taxes. As purchasers, however, the Debtors must self-assess and pay the use taxes, when applicable, to the appropriate Authority. I understand that the Debtors estimate that as of the Petition Date there are no accrued and unpaid sales and use taxes.

51. Real and Personal Property Taxes. Where the Debtors have operations and real and personal property, the Debtors are subject to property tax levied by state and local governments. The Debtors typically pay real and personal property taxes in the ordinary course as such taxes are invoiced (typically for the prior year or quarter depending on how the relevant tax is assessed). I understand that the Debtors estimate that as of the Petition Date, \$940,000 in real and personal property taxes have accrued and remain unpaid for the prepetition period.

52. State Franchise Taxes and Business License Taxes and Fees. Many state and local Authorities require the payment of certain franchise taxes and business license taxes and fees as a condition to the Debtors conducting business within the applicable jurisdiction. I understand that the Debtors estimate that as of the Petition Date, approximately \$1,000 in state franchise taxes and general business license taxes and fees have accrued and remain unpaid for the prepetition period.

53. The Debtors' ability to pay Prepetition Taxes and Fees is critical to their continued and uninterrupted operations and would ultimately preserve the resources of the

Debtors' estates and going-concern values. It is my understanding that the Debtors' failure to pay Prepetition Taxes and Fees could materially and adversely impact the Debtors' business operations in several ways. Among other things, I understand that failure to timely pay Prepetition Taxes and Fees would require the Debtors to spend time and money to resolve whether (i) the obligations are priority, secured, or unsecured; (ii) the obligations are proratable or fully prepetition or postpetition; and (iii) penalties, interest, attorneys' fees, and costs can continue to accrue on a postpetition basis, and if so, whether the penalties, interest, attorneys' fees, and costs are priority, secured, or unsecured.

54. In addition, I understand that many federal, state, and local statutes also impose personal liability on officers and directors of companies for certain Prepetition Taxes and Fees such entities owe. To the extent that the relevant Prepetition Taxes and Fees remain unpaid by the Debtors, the Debtors' directors, officers, and executives may be subject to lawsuits or criminal prosecution during the pendency of these chapter 11 cases. Any such lawsuit or criminal prosecution (and the ensuing potential liability) would, in my opinion, distract the Debtors and their officers, directors, and executives from devoting their full attention to the Debtors' businesses and the orderly administration of these chapter 11 cases. Accordingly, the relief requested in the Taxes Motion is necessary to avoid immediate and irreparable harm and is in the best interests of the Debtors' estates, their creditors, and all other parties in interest.

D. Utilities Motion

55. The Debtors seek entry of interim and final orders (i) prohibiting utilities, as that term is used in section 366 of the Bankruptcy Code ("**Utility Companies**"), from altering, refusing, or discontinuing services to, or discriminating against, the Debtors solely on the basis of the commencement of the Debtors' chapter 11 cases, a debt owed by the Debtors for services

rendered before the Petition Date, or any perceived inadequacy of the Debtors' proposed adequate assurance of payment to Utility Companies for postpetition services; (ii) approving the Debtors' proposed adequate assurance of payment to Utility Companies for postpetition services; and (iii) approving procedures for resolving objections to the Debtors' proposed adequate assurance of payment to Utility Companies for postpetition services (the "**Adequate Assurance Procedures**").

56. In the ordinary course of business, the Debtors buy electricity, gas, water, sewer, waste, telephone and internet services, including mobile communications services, and other similar services (collectively, the "**Utility Services**") from a number of Utility Companies to operate their business. I understand that, on average, the Debtors pay approximately \$105,000 per month for Utility Services.

57. I anticipate that the Debtors will have sufficient cash on hand to timely pay in full, in cash, all undisputed postpetition obligations owed to Utility Companies during these chapter 11 cases. I understand that the Proposed Adequate Assurance Procedures are customary and provide Utility Companies with adequate assurance of payment, and I do not believe that other or further assurances of payment to Utility Companies for postpetition Utilities Services are necessary. However, I understand that the Debtors have also proposed procedures to resolve requests for additional or alternative assurance of payment in an orderly and fair manner.

58. Preserving Utility Services on an uninterrupted basis is essential to the Debtors' ongoing operations and, therefore, to the success of these cases. Indeed, any interruption in Utility Services, even for a brief period, would disrupt the Debtors' ability to continue operations. Given the Debtors' need to receive uninterrupted Utility Services, the relief requested fairly balances Utility Companies' rights and the Debtors' rights under the Bankruptcy

Code. Accordingly, the Utility Companies will not be prejudiced by either the proposed adequate assurance or the requirement to provide the Debtors with uninterrupted service.

E. Insurance Motion

59. The Debtors seek entry of interim and final orders authorizing the Debtors to (i) maintain, supplement, amend, extend, renew, or replace their Insurance Policies (defined below), (ii) pay any obligations, whether arising before or after the Petition Date, related to the Insurance Policies, including premiums, Premium Financing Obligations (defined below), deductibles, assessments, true-up amounts, broker fees, administrative fees, and other related fees and costs (collectively, the “**Insurance Obligations**”) as such obligations come due in the ordinary course of business. I understand that the Debtors estimate that approximately \$500,000 in Insurance Obligations will become due and owing during the interim period.

60. *The Debtors’ Insurance Policies.* The Debtors maintain approximately 20 insurance policies (each an “**Insurance Policy**” and collectively, the “**Insurance Policies**”) through a variety of insurance carriers. La Paloma is either the first named insured on each Insurance Policy or named as an additional insured party under certain Insurance Policies where Rockland, an upstream owner of La Paloma, is the first named insured.

61. The Debtors’ business involves a high degree of operational risk and it is vitally important that the Debtors protect themselves against the prospect of disaster, and the Debtors’ Insurance Policies are designed to safeguard against such contingencies. To this end, the Debtors maintain Insurance Policies tailored to protect them against the risks inherent in the power industry. Among other things, the Insurance Policies provide the Debtors pollution and environmental site liability coverage and terrorism coverage, which protect the Debtors from the uncertainty of potential environmental liabilities associated with operating a natural gas-fired

generating facility and from the loss of value of Debtor property caused by acts of war or terrorism, respectively. The Debtors also maintain multiple general liability policies, which provide, among other things, automobile liability coverage, general commercial liability coverage, commercial umbrella liability coverage, and excess liability coverage.

62. Payment Obligations Under the Insurance Policies. Through the Insurance Motion, the Debtors seek authority to continue making monthly payments of financed premiums (collectively, the “**Premium Financing Obligations**”) under that certain Commercial Insurance Premium Finance and Security Agreement, dated as of June 3, 2016 (the “**Premium Financing Program**”) among the Debtors, Rockland, and Aon Premium Finance, LLC (“**Aon**”). On average, the annual premiums due under the Insurance Policies total approximately \$2.5 million. The Debtors believe that, where feasible, it is economically beneficial to finance the premiums rather than pay them in a lump-sum. Accordingly, the Debtors have financed the premiums on the majority of their Insurance Policies through the Premium Financing Program. The Debtors’ obligation to pay Aon under the Premium Financing Program is secured by all unearned or return premiums related to the financed Insurance Policies. Under the Premium Financing Program, Aon also has the right to cancel the financed Insurance Policies if the Debtors default on their payment obligations. The Debtors expect to renew the Premium Financing Program in May 2017.

63. The Premium Financing Program required the Debtors to make an initial down payment of \$250,791, followed by monthly installments in the amount of \$228,920.67, payable on the first day of each month. As of the Petition Date, the Debtors have paid approximately \$1.4 million under the Premium Financing Program and the Debtors’ remaining

obligations under the Premium Financing Program are approximately \$916,000. The next monthly installment was due on December 1, 2016 and has not yet been paid.

64. The nature of the Debtors' business makes it essential for the Debtors to maintain the Insurance Programs, including the Premium Finance Program, on an ongoing and uninterrupted basis. Nonpayment of any Insurance Obligations could result in insurance carriers terminating or declining to renew the Debtors' Insurance Policies, or refusing to enter into new insurance agreements with the Debtors in the future. As a result, the Debtors may be unable to find a carrier willing to provide them similar insurance coverage or a company willing to finance insurance premiums without charging significantly higher premiums and fees. Any lapse in insurance coverage would leave the Debtors exposed to significant and potentially crippling liability, and it is therefore essential that the Debtors maintain their Insurance Programs and honor their Insurance Obligations throughout these cases. Accordingly, the relief requested in the Insurance Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to operate their businesses throughout these cases.

F. Critical Vendor Motion

65. The Debtors seek entry of interim and final orders authorizing the Debtors to pay prepetition obligations of certain vendors, suppliers, service providers, and similar entities that provide goods or services critical to the ongoing operation of the Debtors' businesses (the "**Critical Vendors**") in the ordinary course in an amount not to exceed \$2 on an interim basis and \$3.1 on a final basis.

66. The natural gas power generating industry in which the Debtors operate requires them to rely heavily on certain Critical Vendors to provide personnel (the Debtors have none of their own employees), services, equipment and parts. Without these people, goods and

services, the Debtors' business would suffer severe disruption, jeopardizing the Debtors' ability to continue operating. To prevent any unexpected or inopportune interruption to the Debtors' business during these chapter 11 cases, it is essential that the Debtors maintain their relationship with, and honor their outstanding payment obligations to, the Critical Vendors.

67. I have been advised that Rockland and RCLP, with the assistance of the Debtors' advisors, have carefully studied accounts payable and vendor lists to identify the vendors most essential to operating the Debtors' business. In examining their vendor relationships, the Debtors considered whether:

- the vendor is a sole-source or limited-source supplier or service provider;
- the vendor has the ability to exercise remedies against the Debtors' property;
- the vendor provides services that are so vital to, or so commingled with, the Debtors' business that even a brief disruption would harm the Debtors' operations;
- the Debtors would be able to cost-effectively obtain comparable products or services from alternative sources within a reasonable timeframe;
- the vendor is able or likely to refuse providing essential supplies or services to the Debtors if prepetition balances are not paid; and
- the business relationship between the Debtors and the vendor is governed by a long-term contract.

68. Based on these criteria, the Debtors identified a limited roster of Critical Vendors that generally fall into one or more of the following categories: (i) Specialized Service Vendors; (ii) Raw Materials Suppliers; and (iii) Parts and Equipment Suppliers.

69. Specialized Service Vendors. The Debtors use a variety of vendors to provide services, ranging from general maintenance to information technology, to the Facility (the "**Specialized Service Vendors**"). Due to the specialized and often hazardous nature of some of the services involved, I understand that certain of these services can only be obtained from Specialized Service Vendors with permits or licenses required by state or federal laws and regulations. For example, routine maintenance and repair services that could be performed for

other companies by a wide range of vendors (*e.g.*, electrical and waste removal services) may only be performed for the Debtors by certain Specialized Service Vendors possessing specialized skills and/or licenses where those services involve dangerous elements such as high voltage electricity or toxic substances.

70. In addition, as discussed above, NAES employs the people who run the Facility on an operational basis, and those people have institutional knowledge of, and experience with, the Facility. Accordingly, in my view, NAES provides the Debtors with unique and specialized services that cannot be immediately replaced without crippling the Debtors. The Debtors thus intend to treat NAES as a Specialized Service Vendor and to pay any undisputed prepetition claim due and owing to NAES, as well as any undisputed employee reimbursement claim that the Debtors ordinarily pay directly to any NAES employee.

71. Due to the limited availability of vendors able to provide the Debtors with these specialized maintenance, repair, and employee related services, certain Specialized Service Vendors may refuse to provide postpetition services to the Debtors if all or a portion of their prepetition claims are not satisfied. Although the Debtors will make every effort to obtain continued performance from the Specialized Service Vendors, it is vital that the equipment required for energy production and pollution control be maintained in an appropriate manner to reduce the risk of disruption to the Debtors' operations. It is therefore crucial that the Debtors have the authority to satisfy the prepetition claims of the Specialized Service Vendors.

72. Raw Materials Suppliers. The Debtors rely heavily on vendors to provide raw materials necessary to generate power (the "**Raw Materials Suppliers**"). These vendors often supply certain chemicals, gases, and other raw materials without which the Debtors cannot operate. In some cases, Raw Materials Suppliers are sole-source providers for those raw

materials. In other cases, Raw Materials Suppliers are the only source capable of shipping the volume of raw materials the Debtors require and cannot be replaced at a competitive price (or at all). If there is any disruption to the Debtors' ability to obtain these raw materials, the Debtors would suffer severe disruption, jeopardizing the Debtors' ability to continue operating. Accordingly, the Debtors' ongoing relationship with the Raw Materials Suppliers is critical to preserving the value of the Debtors' estates.

73. Parts and Equipment Suppliers. Other Critical Vendors provide specialized parts, supplies, and technical equipment essential to the Debtors' operations (the "**Parts and Equipment Suppliers**"). The Parts and Equipment Suppliers provide the Debtors with supplies and equipment specifically tailored to meet the Debtors' business needs and to comply with various regulations. I understand that locating and agreeing to terms with replacement vendors may involve extensive testing and modifications to the Facility, resulting in needless delay and costs. Because the Debtors cannot immediately replace these vendors, and because any such replacement would be disruptive and expensive, I understand that the loss of the Parts and Equipment Suppliers could be devastating to the Debtors' business. Accordingly, the continuation of supplies from the Parts and Equipment Suppliers is essential to the Debtors' efforts to continue uninterrupted operations and to ensure that the Facility operates at maximum safety and efficiency.

74. I will instruct the Debtors and their advisors to use commercially reasonable efforts to require the applicable Critical Vendors to provide favorable trade terms consistent with historical practice. The Debtors therefore request authority, but not direction, to condition payment on such Critical Vendor's agreement to continue providing supplies or services to the Debtors in accordance with (a) the most favorable trade terms, practices, and

programs (including credit limits, rebates, discounts, pricing, timing of payments, and availability, and other applicable terms and programs) in place during the 12 months before the Petition Date or (b) such other favorable terms as the Debtors and the Critical Vendor may mutually agree on.

75. The relief requested in the Critical Vendor Motion is narrowly tailored to facilitate the Debtors' restructuring efforts. Moreover, any interruption in the goods or services supplied by the Critical Vendors—however brief—would disrupt the Debtors' operations and cause irreparable harm to the Debtors' estates. Therefore, the relief requested in the Critical Vendor Motion is necessary to preserve the value of their estates throughout these chapter 11 cases and is in the best interests of the Debtors, their estates, and all of their stakeholders.

G. Cash Management Motion

76. The Debtors seek entry of interim and final orders (i) authorizing the Debtors' use of their cash management system (the "**Cash Management System**") subject to certain modifications; (ii) waiving certain bank account and related requirements of the Office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**"); (iii) extending time to comply with section 345(b) of the Bankruptcy Code; and (iv) granting related relief.

77. The Cash Management System consists of an integrated network of bank accounts that enable the Debtors to collect and disburse cash generated by their business. Before the Petition Date, the Cash Management System consisted of approximately 22 bank accounts (the "**Debtor Bank Accounts**"), the majority of which were held at The Bank of New York Mellon ("**BONY**") and insured by the Federal Deposit Insurance Corporation ("**FDIC**").

78. Historically, EDF collected substantially all revenue generated by La Paloma's operations and, on the 25th day of each month, transferred such revenue (net of EDF's

fees and costs of fuel procured by EDF) to La Paloma's revenue account at BONY (the "**Revenue Account**"). From the 25th to 29th of each month, the funds in the Revenue Account were distributed to the various Debtor Bank Accounts in accordance with the cash flow waterfall (the "**Waterfall**") set forth in the Security Deposit Agreement, dated August 16, 2005, between CEH La Paloma Merger Co., LLC, La Paloma, and BONY (as amended, modified, or supplement from time to time, the "**Security Deposit Agreement**"). The Waterfall required the Debtors to distribute funds from the Revenue Account to the Debtor Bank Accounts in the following order: (i) the Operating Account (ii) First Lien Interest Payment Account; (iii) First Lien Principal Account; (iv) Second Lien Interest Payment Account; (v) Second Lien Principal Account; (vi) First Lien Debt Service Reserve Account; (vii) Second Lien Debt Service Reserve Account; (viii) Major Maintenance Reserve Account; and (ix) Carbon Reserve Account (collectively, with the Revenue Account, the "**Encumbered Accounts**").

79. By the Cash Management Motion, the Debtors are not seeking authority to continue the Cash Management System in the manner maintained prepetition (*i.e.*, transferring all revenue on a monthly basis to the Revenue Account and distributing such revenue in accordance with the Waterfall). Instead, the Debtors do not intend to use the Encumbered Accounts postpetition (absent seeking further relief from the Court) and, consistent with the U.S. Trustee operating guidelines, will open a new bank account (the "**New Operating Account**") and direct all postpetition revenues to be distributed to the New Operating Account. I understand that the Debtors anticipate that the New Operating Account will be with Chase Bank.

80. I further understand that the manner in which revenue will be distributed to the New Operating Account postpetition will be similar to the practices employed prepetition: EDF will continue to collect revenue generated from La Paloma's operations throughout the

month and on the 25th day of each month, EDF will transfer the net revenue to the New Operating Account. The Debtors intend to satisfy all postpetition obligations and Court-approved prepetition obligations from funds in the New Operating Account and no funds from the Encumbered Accounts will be used to satisfy the Debtors' postpetition or prepetition obligations absent further court order.

81. However, because the Debtors have an immediate need to access their Cash Management System to pay their near-term obligations to vendors, utilities, taxing authorities, insurers, and other parties necessary to operate their business, the Debtors seek authority to deposit money into, and disburse money from, La Paloma's funding account at BONY (the "**Funding Account**") until the New Operating Account is open and can be accessed by the Debtors. More specifically, if the Court authorizes the Debtors to release the funds in the certificate of deposit in that certain bank account at SunTrust Bank, as requested by the SunTrust Cash Collateral Motion, the Debtors plan to transfer a portion of such funds to the Funding Account to make postpetition payments and Court approved prepetition payments until the New Operating Account is open.

82. Payment of Vendor Claims. Before the Petition Date, in order to satisfy payments to the Debtors' vendors, La Paloma submitted a withdrawal certificate to BONY on a weekly basis, setting forth a schedule of vendors to be paid. Based on this schedule, BONY would make such payments directly from the Operating Account by one of two methods. *First*, if a vendor payment was to be made by wire transfer, La Paloma would wire such payment directly to the vendor. *Second*, if a vendor payment was to be made by check, La Paloma would wire the amount of such payment to a bank account maintained by CEP at Chase Bank (the "**Manager**

Checking Account”) and CEP would send a check to the vendor from the Manager Checking Account.

83. During these cases, I understand the Debtors intend to pay all vendor claims directly from the New Operating Account. I anticipate that the Debtors will be able to pay vendors from the New Operating Account via either check or wire transfer, and thus the Debtors will likely discontinue the process of wiring funds to CEP in order for CEP to pay certain vendors from the Manager Checking Account.

84. Prefunding of Employee Related Costs. On the last day of each month La Paloma prefunds projected employee costs for the following month to NAES. At the end of the month, the actual amount of employee costs is reconciled against the amount prefunded by La Paloma and, if necessary, a true-up payment is issued. I understand that, consistent with the Debtors’ prepetition practice, the Debtors intend to prefund employee costs on the last day of each month, however, such amounts will now be funded from the New Operating Account.

85. I believe that the Debtors’ ability to maintain the Cash Management System and implement necessary changes to such system, including discontinuing use of the Encumbered Accounts (absent further order of the Court) and opening the New Operating Account, is important to maintaining the Debtors’ business and maximizing the value of their estates. Moreover, I believe that requiring the Debtors to adopt an entirely new cash management systems and liquidate all existing bank accounts would be expensive, onerous, and disruptive. Accordingly, I believe the relief request in the Cash Management Motion is necessary to avoid immediate and irreparable harm to the Debtors’ estates and is in the best interests of all stakeholders.

H. SunTrust Cash Collateral Motion

86. The Debtors seek entry of interim and final orders authorizing the use of certain cash collateral (the “**SunTrust Cash Collateral**”) that was pledged to SunTrust to secure La Paloma’s obligations to SunTrust under the SunTrust L/C Agreement, in excess of outstanding letters of credit (with a meaningful cushion). The Debtors have access to less than \$50,000 of cash as of the Petition Date, and have an immediate need for the SunTrust Cash Collateral to fund certain critical obligations that are either already due or will come due in the next few weeks, including, but by no means limited to, amounts owed to vendors, utilities, taxing authorities, insurers and other parties necessary to operate their business.

87. Absent access to the SunTrust Cash Collateral and satisfaction of these necessary cash payments, the Debtors will be unable to operate, reducing value for all stakeholders. In contrast, if the Debtors are able to use the SunTrust Cash Collateral to the extent requested in the SunTrust Cash Collateral Motion, the Debtors expect that such cash collateral, along with postpetition revenues, will be sufficient to fund the Debtors’ postpetition operating expenses and the administrative expenses of these cases. Accordingly, granting the Debtors immediate access to the SunTrust Cash Collateral is in the best interests of the Debtors and their estates and creditors, and is integral to the Debtors’ efforts to maximize the value of their assets.

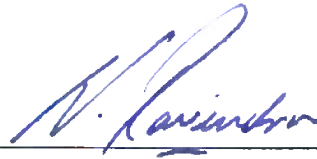
88. The Debtors have not yet obtained SunTrust’s consent to use the Cash Collateral, but propose to provide SunTrust with a variety of protections that leave no doubt that SunTrust’s interests in the SunTrust Cash Collateral will not be jeopardized during these cases. Importantly, the Debtors do not propose to use all of the SunTrust Cash Collateral. Rather, the Debtors propose to leave \$4,455,000 in SunTrust’s existing collateral account (the “**Reserved Cash Collateral**”), which is more than sufficient to fully cash collateralize the outstanding

letters of credit under the SunTrust L/C Agreement. I understand that those letters of credit have an aggregate face amount of \$4,050,000. The amount of Reserved Cash Collateral also exceeds the amount of SunTrust Cash Collateral that SunTrust would have been permitted to hold back under the terms of the SunTrust L/C Agreement, had the Debtors exercised their right to reduce the SunTrust's letter of credit issuance commitments under the facility to the amount of letters outstanding as of the Petition Date (which I understand would have had the same effect as the filing of these cases, in that SunTrust is no longer obligated to continue issuing letters of credit under the SunTrust L/C Agreement).

89. Finally, the SunTrust Cash Collateral Motion requests important ancillary relief in the form of a direction to SunTrust to release the funds in the certificate of deposit that comprises, to the best of my knowledge, the entirety of the Cash Collateral. The certificate of deposit is not liquid. Thus, release of the funds in the certificate of deposit is essential to the Debtors' ability to realize the benefit of access to the SunTrust Cash Collateral and pay critical expenses.

90. Accordingly, I believe that the relief requested in the SunTrust Cash Collateral Motion is in the best interests of the Debtors and their estates and creditors, and necessary for the Debtors to continue operations during these chapter 11 cases.

Dated: December 6, 2016
Washington, DC

A handwritten signature in blue ink, appearing to read "N. Ravindran", is written above a horizontal line.

Niranjan Ravindran
Authorized Person