

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

In re

Optim Energy, LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 14-10262 (BLS)

(Jointly Administered)

RE: D.I. 1197, 1198

NOTICE OF EXECUTION VERSION OF PLAN SUPPORT AGREEMENT

PLEASE TAKE NOTICE that, on August 12, 2015, Optim Energy, LLC and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "**Debtors**") filed *Debtors' Motion For An Order Authorizing Debtors' Entry Into And Performance Under A Plan Support Agreement* [D.I. 1197] (the "**Motion**"),² in which the Debtors indicated that the plan support agreement, an execution version of which was attached to the Motion as Exhibit B, had been sent out for execution with the filing of the Motion (the "**PSA**"); and

PLEASE TAKE FURTHER NOTICE that, on August 13, 2015, the Parties executed the PSA, which is attached hereto as **Exhibit A**.

¹ The Debtors in these chapter 11 cases are: Optim Energy, LLC; OEM 1, LLC; Optim Energy Cedar Bayou 4, LLC; Optim Energy Altura Cogen, LLC; Optim Energy Marketing, LLC; Optim Energy Generation, LLC; Optim Energy Twin Oaks GP, LLC; Optim Energy Twin Oaks, LP. The Debtors' main corporate and mailing address for purposes of these chapter 11 cases is: c/o Competitive Power Ventures, Inc., 8403 Colesville Road, Suite 915, Silver Spring, MD 20910.

² Capitalized terms used herein but not otherwise described shall have the meanings ascribed to them in the Motion.

Dated: August 13, 2015
Wilmington, Delaware

**MORRIS, NICHOLS, ARSHT &
TUNNELL LLP**

/s/ Erin R. Fay

Robert J. Dehney (No. 3578)
Eric D. Schwartz (No. 3134)
Erin R. Fay (No. 5268)
1201 North Market Street, 16th Floor
P.O. Box 1347
Wilmington, Delaware 19899
Telephone: (302) 658-9200
Facsimile: (302) 658-3989
rdehney@mnat.com
eschwartz@mnat.com
efay@mnat.com

-and-

BRACEWELL & GIULIANI LLP

Kurt Mayr (*admitted pro hac vice*)
Mark E. Dendinger (*admitted pro hac vice*)
CityPlace I, 34th Floor
185 Asylum Street
Hartford, Connecticut 06103
Telephone: (860) 947-9000
Facsimile: (800) 404-3970
Kurt.Mayr@bgllp.com
Mark.Dendinger@bgllp.com

-and-

Robert G. Burns (*admitted pro hac vice*)
Rachel B. Goldman (*admitted pro hac vice*)
1251 Avenue of Americas, 49th Floor
New York, New York 10020-1104
Telephone: (212) 508-6100
Facsimile: (800) 404-3970
Robert.Burns@bgllp.com
Rachel.Goldman@bgllp.com

*Counsel For The Debtors And Debtors In
Possession*

Exhibit A

**Plan Support Agreement
(Execution Version dated as of August 13, 2015)**

PLAN SUPPORT AGREEMENT

This PLAN SUPPORT AGREEMENT (the "**Agreement**") is made and entered into as of August 13, 2015 by and among the following parties: (a) Optim Energy, LLC ("**Optim Energy**") and its affiliated debtors and debtors in possession (collectively, the "**Debtors**");¹ (b) Cascade Investment, L.L.C. ("**Cascade**") and ECJV Holdings, LLC ("**ECJV**" and, together with Cascade, the "**Pre-Petition Secured Parties**"), and Cascade as the Majority Lender under the Senior Secured Debtor in Possession Credit, Security, and Guaranty Agreement, dated as of February 12, 2014 (as amended, restated, supplemented or otherwise modified from time to time, the "**DIP Credit Agreement**"), among Optim Energy, as Borrower, the entities party thereto as Guarantors, the entities from time to time party thereto as Lenders and Wells Fargo Bank, National Association, as the Agent and the L/C Issuer; and (c) Black Walnut Mining, LLC ("**Black Walnut**"), Lonestar Generation LLC ("**Lonestar**"), Major Oak Power, LLC ("**Major Oak**"), The Blackstone Group L.P. ("**Blackstone Group**"), and Walnut Creek Mining Company ("**Walnut Creek**", and, collectively with Black Walnut, Lonestar, Major Oak, Blackstone Group and all of their affiliates, "**Blackstone**"). Each party named above is a "**Party**", and collectively, the "**Parties**".

RECITALS

WHEREAS, on February 12, 2014 (the "**Petition Date**"), the Debtors commenced voluntary cases (each, individually, a "**Chapter 11 Case**" and, collectively, the "**Chapter 11 Cases**") under chapter 11 of 11 U.S.C. §§ 101-1532 (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**");

WHEREAS, on March 6, 2014, the Bankruptcy Court entered the *Final Order (I) Authorizing Debtors To (A) Obtain Postpetition Financing Pursuant To 11 U.S.C. §§ 105, 361, 362, 364(C)(1), 364(C)(2), 364(C)(3), 364(D)(1) And 364(E) And (B) Utilize Cash Collateral Of Pre-Petition Secured Parties Pursuant To 11 U.S.C. § 363; (II) Granting Adequate Protection To Pre-Petition Secured Parties Pursuant To 11 U.S.C. §§ 361, 362, 363 And 364; And (III) Granting Related Relief [D.I. 144]*, pursuant to which the Pre-Petition Secured Parties were granted an Allowed Pre-Petition Secured Parties Secured Claim against the Debtors in the amount of \$712,974,677.95;

WHEREAS, on June 12, 2014, Walnut Creek filed proofs of claim in the amount of \$7,043,633.07 against each of Optim Energy and Twin Oaks LP, of which (i) \$3,121,898.89 relates to goods received by the Debtors in the ordinary course of business within 20 days before the Petition Date and is entitled to administrative expense priority pursuant to section 503(b)(9) of the Bankruptcy Code (the "**WC 503(b)(9) Claim**") and (ii) \$3,921,734.18 is a general unsecured

¹ The Debtors in the chapter 11 cases are: Optim Energy, LLC; OEM 1, LLC ("**OEM**"); Optim Energy Cedar Bayou 4, LLC ("**Cedar Bayou**"); Optim Energy Altura Cogen, LLC ("**Altura Cogen**" and together with Cedar Bayou, the "**Reorganizing Debtors**"); Optim Energy Marketing, LLC ("**Marketing**"); Optim Energy Generation, LLC ("**Generation**"); Optim Energy Twin Oaks GP, LLC ("**Twin Oaks GP**"); and Optim Energy Twin Oaks, LP ("**Twin Oaks LP**" and, collectively with Optim Energy, OEM, Marketing, Generation and Twin Oaks GP, the "**Other Debtors**").

claim (the "**WC Unsecured Lignite Claim**"), in each case related to lignite supplied to Twin Oaks LP under a certain fuel supply agreement prior to the Petition Date [claim No. 52 and 63];

WHEREAS, pursuant to the *Order (I) Authorizing and Approving Optim Energy Twin Oaks, LP to Sell Substantially All of its Property Free and Clear of All Liens, Claims, and Encumbrances, (II) Authorizing Optim Energy Twin Oaks, LP to Assume and Assign Certain Executory Contracts and Unexpired Leases and (III) Granting Related Relief* [D.I. 481], on October 14, 2014 the closing of the sale of the Twin Oaks Plant occurred pursuant to that certain Asset Purchase and Sale Agreement, dated as of August 5, 2014, made and entered into by and between Twin Oaks LP and Major Oak (the "**Twin Oaks Purchase Agreement**");

WHEREAS, on November 11 and 12, 2014, Walnut Creek filed proofs of claim against each of Optim Energy and Twin Oaks LP asserting general unsecured claims in the amount of \$190,090,392.00 based upon Twin Oaks LP's rejection of a certain fuel supply agreement [claim No. 113, 114 and 115] (the "**WC Rejection Damages Claim**");

WHEREAS, on January 22, 2015, the Debtors filed a preliminary objection to the WC Rejection Damages Claim [D.I. 707] (the "**Claim Objection**");

WHEREAS, on April 15, 2015, Walnut Creek filed a motion for temporary allowance of the WC Rejection Damages Claim for voting purposes, pursuant to Bankruptcy Rule 3018 [D.I. 832] (the "**Estimation Motion**"), on shortened notice [D.I. 833];

WHEREAS, on May 18, 2015, Liquidity Solutions, Inc. filed a *Transfer of Claim Other Than for Security* [D.I. 925] evidencing the transfer to Lonestar of a proof of claim filed against Altura Cogen for a general unsecured claim in the amount of \$3,139.25 ("**POC 57**");

WHEREAS, on May 18, 2015, Liquidity Solutions, Inc. filed a *Transfer of Claim Other Than for Security* [D.I. 926] evidencing the transfer to Lonestar of a general unsecured claim in the amount of \$1,950.00 scheduled against Altura Cogen, of which \$975.00 remains unpaid and is outstanding (the "**AC Scheduled Claim**");

WHEREAS, on May 18, 2015, Sonar Credit Partners III, LLC filed a *Transfer of Claim Other Than for Security* [D.I. 932] evidencing the transfer to Lonestar of a proof of claim filed against Altura Cogen asserting a general unsecured claim in the amount of \$327,776.00, of which \$189,330.00 remains outstanding ("**POC 59**" and, collectively with the AC Scheduled Claim and POC 57, the "**AC General Unsecured Claims**");

WHEREAS, on May 18, 2015, Sonar Credit Partners III, LLC filed a *Transfer of Claim Other Than for Security* [D.I. 930] evidencing the transfer to Lonestar of a general unsecured claim in the amount of \$10,642.43 scheduled against Twin Oaks LP (the "**TOLP Scheduled Claim**" and, collectively with the WC Unsecured Lignite Claim and the WC Rejection Damages Claim, the "**Blackstone General Unsecured Claims**," which, collectively with the AC General Unsecured Claims, the WC 503(b)(9) Claim and any remaining claims Blackstone has asserted are referred to herein as the "**Blackstone Claims**");

WHEREAS, on May 19, 2015, Lonestar filed a *Transfer of Claim Other Than for Security* [D.I. 941] evidencing the transfer of POC 57 to Walnut Creek;

WHEREAS, on July 23, 2015, the Bankruptcy Court entered the *Order Granting Debtors' Motion To Reject The Verizon Business Service Agreement* [D.I. 1132] (the "**Rejection Order**");

WHEREAS, on July 24, 2015, the Bankruptcy Court entered the *Order Denying Objection to Scheduled Claim of Verizon Against Debtor Optim Energy Cedar Bayou 4, LLC* [D.I. 1133] (the "**Claim Order**");

WHEREAS, on July 24, 2015, the Bankruptcy Court announced its ruling confirming the *Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [D.I. 937] (as may be subsequently modified, subsequently amended, and/or subsequently supplemented from time to time, the "**Third Amended Plan**");

WHEREAS, on July 28, 2015, the Bankruptcy Court entered the *Order Denying Motion of Walnut Creek Mining Company Designating the Votes of Verizon Business Network Services Inc. to Accept the Debtors' Third Amended Joint Plan of Reorganization* [D.I. 1144] (the "**Designation Order**");

WHEREAS, on July 28, 2015, the Bankruptcy Court entered the *Order Denying Motion of Walnut Creek Mining Company for Reconsideration of the Order (A) Approving the Disclosure Statement, (B) Approving the Solicitation Procedures, (C) Approving the Form of Ballots and Notices in Connection Therewith, (D) Establishing the Plan Confirmation Schedule and (E) Granting Related Relief* [D.I. 1145] (the "**Reconsideration Order**");

WHEREAS, on July 29, 2015, Walnut Creek filed a *Notice of Appeal* of the Confirmation Order [D.I. 1149] (the "**Confirmation Appeal**") to the United States District Court for the District of Delaware (the "**District Court**") and a *Motion for Stay Pending Appeal* in the Bankruptcy Court [D.I. 1151-52], on shortened notice [D.I. 1152];

WHEREAS, on July 30, 2015, the Bankruptcy Court entered the *Findings of Fact, Conclusions of Law and Order Confirming the Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [D.I. 1159] (the "**Confirmation Order**" and, collectively with the Rejection Order, the Claim Order, the Designation Order and the Reconsideration Order, the "**Orders**");

WHEREAS, on August 3, 2015, the Bankruptcy Court entered the *Order Denying Motion for Stay Pending Appeal, and Providing Related Relief* [D.I. 1164] implementing, among other relief, a stay of the Confirmation Order through August 20, 2015 (the "**Confirmation Stay**");

WHEREAS, on August 5, 2015, Walnut Creek filed a *Notice of Appeal* of the Rejection Order [D.I. 1170] to the District Court (the "**Rejection Appeal**"), and a *Notice of Appeal* of the Claim Order [D.I. 1171] to the District Court (the "**Claim Appeal**" and, collectively with the Confirmation Appeal and the Rejection Appeal, the "**Appeals**");

WHEREAS, with support of the Parties, the Other Debtors now desire to file a chapter 11 plan of liquidation (as may be amended from time to time in accordance with its terms and the terms of this Agreement, the "**Plan**"), which shall be substantively similar to the

Debtors' Second Amended Joint Plan Of Reorganization Under Chapter 11 of the Bankruptcy Code [D.I. 856] related to the Liquidating Debtors (as defined therein), although adding Optim Generation as a Liquidating Debtor and providing for the Plan distributions in Section 3(e) hereof, and a disclosure statement related thereto (as may be amended from time to time in accordance with its terms and the terms of this Agreement, the "***Disclosure Statement***");

WHEREAS, the Parties have engaged in good faith negotiations with each other and with the objective of reaching an agreement with regard to the Plan, which will include as an integral component the resolution of all the outstanding Appeals, Blackstone Claims and Orders;

WHEREAS, each Party has reviewed, or has had the opportunity to review, this Agreement with the assistance of professional legal advisors of its own choosing; and

WHEREAS, subject to appropriate approvals by the Bankruptcy Court of the Plan and Disclosure Statement, the following sets forth the agreement between the Parties concerning their respective obligations.

AGREEMENT

NOW THEREFORE, in consideration of the promises and the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Plan**. The Plan, once finalized (in form and substance acceptable to Blackstone solely with respect to the provisions and terms that directly affect Blackstone) and confirmed by the Bankruptcy Court, will be incorporated herein by reference and shall be made part of this Agreement as if fully set forth herein at the execution of this Agreement. In the event of any inconsistencies between the terms of this Agreement and the Plan, the terms of the Plan shall govern.

2. **Effectuating the Plan**. To implement the Plan, the Parties have agreed, on the terms and conditions set forth herein, that the Other Debtors shall use reasonable best efforts to confirm the Plan and cause the occurrence of the effective date of the Plan (the "***Effective Date***").

Without limiting the foregoing, the Debtors shall use their reasonable best efforts to take all actions necessary and appropriate to:

(a) as expeditiously as reasonably practicable following the execution of this Agreement, file a motion with the Bankruptcy Court seeking the entry of an order, the terms of which shall be satisfactory to the signatories hereto, approving this Agreement and authorizing the Parties entering into, and performing under, this Agreement (the "***PSA Approval Order***");

(b) file the Plan and the Disclosure Statement for the Plan and seek entry of a Bankruptcy Court order approving the Disclosure Statement for the Plan, together with solicitation procedures (the "***Disclosure Statement Order***") as expeditiously as reasonably practicable under the Bankruptcy Code and the Bankruptcy Court's local rules (such federal and local rules, the "***Bankruptcy Rules***");

(c) solicit the requisite acceptances of the Plan in accordance with the Bankruptcy Code and the terms of the Disclosure Statement Order and any motion and solicitation procedures related thereto;

(d) seek confirmation of the Plan as expeditiously as reasonably practicable under the Bankruptcy Code and the Bankruptcy Rules; and

(e) consummate the Plan as expeditiously as reasonably practicable in accordance with its terms and the terms of this Agreement.

3. **Commitments of the Parties to this Agreement.** As long as a Termination Event has not occurred, or has occurred but has been duly waived or cured in accordance with the terms hereof, each Party hereto agrees for itself, as follows:

(a) *Appeals.*

(i) Abeyance. The Parties have requested that the District Court hold the Appeals in abeyance pending approval of this Agreement by the Bankruptcy Court and confirmation and consummation of the Plan as contemplated herein. On August 10, 2015, the District Court entered orders staying the Appeals pending further order of the District Court, and providing the Parties 90 days to advise the District Court as to progress of the settlement and underlying proceedings; provided, however, that if Blackstone does not receive the amounts set forth in Section 3(e) hereof, then Blackstone may revive the Appeals held in abeyance; provided, further, that the mere passage of time that elapses while the Appeals are held in abeyance will not be used by any of the Parties if the Appeals are revived because of a failure to satisfy the condition set forth in Section 3(e) hereof; provided, further, that facts and circumstances as they occur and exist may be referred to by any Party (other than a reference to the amount of time passed); and

(ii) Dismissal. On or within three (3) business days after the Effective Date of the Plan, Blackstone shall withdraw with prejudice or voluntarily dismiss with prejudice the Appeals.

(b) *Bankruptcy Matters.*

(i) the Parties shall not take any further action to prosecute, object to or otherwise pursue the Blackstone Claims, the Estimation Motion, the Claim Objection or the Orders unless (A) the Bankruptcy Court declines to enter an order authorizing the Debtors to enter into this Agreement; or (B) a Termination Event shall have occurred and this Agreement is terminated;

- (ii) Blackstone agrees not to (A) file, purchase or control any additional claims (as defined in section 101(5) of the Bankruptcy Code) against any Debtor, or (B) file any other motions or take any other action in the Chapter 11 Cases not directed solely to the performance under or enforcement of this Agreement; provided; however, that future claims, if any, arising after the date of this Agreement that are preserved under the release provision in Section 9 hereof are expressly excluded from this Section 3(b)(ii); and
- (iii) after receiving the amounts set forth in Section 3(e) hereof, Blackstone will not appear in the Chapter 11 Cases for any purposes.

(c) *Waiver of Stay of Confirmation Order.* Blackstone consents to what remains of the Confirmation Stay being waived or lifted by the Bankruptcy Court upon execution of this Agreement by all Parties;

(d) *Reconciliation of the AC General Unsecured Claims.* Blackstone agrees to cooperate with the Reorganizing Debtors to reconcile the allowed amount of the AC General Unsecured Claims, so that there is an agreement among the Parties of what amount at 95 cents on the dollar Blackstone will receive on account of such claims when the Third Amended Plan becomes effective; provided, that the unpaid \$189,330.00 related to POC 59 shall be paid as a cure payment in connection with assumption of the underlying executory contract pursuant to the terms of the Third Amended Plan;

(e) *Plan Distributions.* The Plan will provide that on the Effective Date of the Plan, Blackstone will receive the following consideration:

- (i) an Allowed Administrative Claim in the amount of \$3,121,899.00 against Optim Energy and Twin Oaks LP, for which Blackstone will receive a total cash payment of \$3,121,899.00 in full satisfaction of the WC 503(b)(9) Claim; and
- (ii) an Allowed General Unsecured Claim in the amount of \$3,932,376.61 against Optim Energy and Twin Oaks LP, for which Blackstone will receive a total cash payment of \$1,478,101.00 in full satisfaction of the Blackstone General Unsecured Claims.

(f) *Support of Plan.* Each Party hereto agrees for itself, that it will, unless and until this Agreement terminates:

- (i) promptly upon execution of this Agreement, negotiate in good faith to prepare the documentation to implement this Agreement, including the Plan and Disclosure Statement, which shall contain provisions consistent with this Agreement;

- (ii) from and after the date of this Agreement, not support any other chapter 11 plan or take any action that is inconsistent with, or could reasonably be expected to prevent, delay or impede solicitation, confirmation or consummation of the Plan or any document filed with the Bankruptcy Court in furtherance of soliciting or confirming the Plan or consummating the transactions contemplated thereby;
 - (iii) from and after the date of this Agreement, agree not to directly or indirectly propose, sponsor, support, or solicit votes in favor of any other chapter 11 plan other than the Plan;
 - (iv) not encourage any other entity to object to, delay, impede, appeal, or take any other action, directly or indirectly, to interfere with entry of the order approving the Disclosure Statement or the Plan;
 - (v) following receipt of the Disclosure Statement and other related solicitation materials approved by the Bankruptcy Court, vote all claims that it holds or controls in favor of the Plan (including, without limitation, the Allowed Pre-Petition Secured Parties Secured Claim and the Blackstone General Unsecured Claims) by delivering its duly executed and timely completed ballot or ballots accepting the Plan to the balloting agent for the Plan, and it shall not thereafter withdraw or change such vote so long as the Plan, the Disclosure Statement and this Agreement are not modified except in accordance with this Agreement or terminated; and
 - (vi) not object to or otherwise commence any proceeding or take any other action opposing any of the terms of this Agreement, the Disclosure Statement or the Plan.
- (g) *Transfer of Claims.*
- (i) Blackstone Claims. Blackstone may sell, assign, transfer, hypothecate or otherwise dispose of, directly or indirectly (each such transfer, a "***Transfer***"), all or any of the Blackstone Claims (or any right related thereto and including any voting rights associated with such Blackstone Claims); provided, that the transferee thereof is not an "insider" as the term is defined under section 101(31) of the Bankruptcy Code and (i) executes on the same date as the Transfer an assumption agreement in substantially the form attached hereto as Exhibit A (an "***Assumption Agreement***"), in which case such person shall be bound by the terms of this Agreement (each such transferee becoming, upon the Transfer, a Party hereunder) and (ii) promptly delivers such writing to the Debtors and the Pre-Petition Secured Parties. Any Transfer of a Blackstone Claim that does not comply with the procedure set

forth in the first sentence of this Section 3(g) shall be deemed void *ab initio*; and

- (ii) Allowed Pre-Petition Secured Parties Secured Claims. The Pre-Petition Secured Parties may Transfer all or any of the Allowed Pre-Petition Secured Parties Secured Claim (or any right related thereto and including any voting rights associated with such Allowed Pre-Petition Secured Parties Secured Claims); provided, that the transferee thereof (i) executes on the same date as the Transfer an Assumption Agreement, in which case such person shall be bound by the terms of this Agreement (each such transferee becoming, upon the Transfer, a Party hereunder), and (ii) promptly delivers such writing to the Debtors and Blackstone. Any Transfer of the Allowed Pre-Petition Secured Parties Secured Claim that does not comply with the procedure set forth in the first sentence of this Section 3(g) shall be deemed void *ab initio*.

4. **Representations, Warranties, and Covenants.** Each Party makes the following representations and warranties, solely with respect to itself, to each of the other Parties:

- (a) *Holder of Record.* Blackstone is the holder of record of the Blackstone Claims, and has all requisite power and authority to enter into this Agreement and settle and comprise the Blackstone Claims.
- (b) *No Additional Claims.* Other than the Blackstone Claims, Blackstone has no other claims it has asserted or may assert against any Debtor, either directly or indirectly, as of the date of this Agreement.
- (c) *Enforceability.* Subject to the provisions of sections 1125 and 1126 of the Bankruptcy Code, and except as set forth herein, this Agreement is a legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms, except as enforcement may be limited by applicable laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability;
- (d) *No Consent or Approval.* Except as expressly provided in this Agreement, no consent or approval is required by any other entity for such Party to carry out the provisions of this Agreement;
- (e) *Power and Authority.* Except as expressly provided in this Agreement, such Party has all requisite power and authority to enter into this Agreement and to carry out the transactions contemplated by, and perform its respective obligations under, this Agreement and the Plan;
- (f) *Authorization.* Except as expressly provided in this Agreement, the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized by all necessary action on its part;

(g) *No Conflicts.* The execution, delivery and performance of this Agreement does not and shall not (i) violate any provision of law, rule or regulations applicable to it or any of such Party's subsidiaries, (ii) violate such Party's certificate of incorporation, bylaws or other organizational documents or those of any of its subsidiaries or (iii) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any material contractual obligation to which such Party or any of its subsidiaries is a party; provided, that nothing herein shall be deemed to be an amendment of the Final DIP Order or the DIP Credit Agreement, as amended, which shall remain fully enforceable.

5. **Preservation of Rights.** This Agreement and the Plan are part of a proposed settlement of disputes among the Parties. Without limiting the foregoing sentence in any way, if the transactions contemplated by this Agreement or otherwise set forth in the Plan are not consummated as provided herein, the Parties each fully reserve any and all of their respective rights, remedies, claims, interests and defenses (including with respect to the WC Rejection Damages Claim).

6. **Acknowledgement.** This Agreement and the Plan and the transactions contemplated herein and therein are the product of negotiations between the Parties and their respective representatives. This Agreement is not and shall not be deemed to be a solicitation of votes for the acceptance of a plan of reorganization for the purposes of sections 1125 and 1126 of the Bankruptcy Code or otherwise. The Other Debtors will not solicit acceptances of the Plan from any holder of a claim (as defined in section 101(5) of the Bankruptcy Code) in any manner inconsistent with the Bankruptcy Code or applicable nonbankruptcy law.

7. **Termination.**

(a) This Agreement shall expire upon the occurrence of (x) any Non-Debtor Termination Event, following which any Debtor, in its sole discretion, seeks to terminate this Agreement; (y) any Agreement Termination Event, unless the affected Party(ies) agree to waive the Agreement Termination Event in writing, or (z) any Other Termination Event. Upon the termination of this Agreement, any and all acceptances in favor of the Plan by the Parties prior to such expiration shall be deemed, for all purposes, to be null and void and shall not be considered or otherwise used in any manner by the Parties in connection with this Agreement.

The term "*Non-Debtor Termination Event*," wherever used in this Agreement, means any of the following events, following which the Debtors shall have delivered written notice to the other Party(ies) of any such breach, and such breach shall have remained uncured by the breaching Party(ies) for a period of five (5) business days from the receipt of such notice (whatever the reason for such Non-Debtor Termination Event and whether it is voluntary or involuntary):

- (i) a non-Debtor Party shall have breached any material covenant or provision of this Agreement;
- (ii) any representation or warranty in this Agreement made by a non-Debtor Party shall have been untrue in any material respect

when made or shall have become untrue in any material respect;
or

- (iii) there shall have been issued any order, decree, or ruling by any court or governmental body having jurisdiction that restrains or enjoins the consummation of, or renders illegal the transactions contemplated by, this Agreement.

The term "***Agreement Termination Event***," wherever used in this Agreement, means any of the following events, following which a non-breaching Party(ies) shall have delivered written notice to the other Party(ies) of any such breach, and such breach shall have remained uncured by the breaching Party(ies) for a period of five (5) business days from the receipt of such notice (whatever the reason for such Agreement Termination Event and whether it is voluntary or involuntary):

- (i) the receipt by a non-Debtor Party of a Fiduciary Out Notice pursuant to Section 10(a) hereof;
- (ii) any Debtor shall have breached any material covenant or provision of this Agreement;
- (iii) any representation or warranty in this Agreement made by any Debtor shall have been untrue in any material respect when made or shall have become untrue in any material respect;
- (iv) any material term or condition of this Agreement and/or the Plan shall be (whether due to an order of the Bankruptcy Court or otherwise) materially different and adverse to any Party than as agreed by the Parties except to the extent such materially different and adverse term or condition is agreed by each such adversely affected Party;
- (v) there shall have been issued or reinstated any suspension order or similar order by a court or other governmental body of competent jurisdiction that adversely affects the benefits intended to be received by the Parties hereunder, or prevents the Debtors from consummating the transactions contemplated by this Agreement, and (A) such proceeding or order was issued or reinstated at the request or with the acquiescence of the Debtors or any of its affiliates or (B) in all other circumstances, such order shall not have been stayed, reversed, or vacated within fifteen (15) days after such issuance or reinstatement;
- (vi) the Bankruptcy Court shall have granted relief that is inconsistent with this Agreement, the PSA Approval Order, or the Plan and such relief is adverse, in any material respect, to any Party;

- (vii) a trustee or examiner with enlarged powers shall have been appointed under sections 1104 or 1105 of the Bankruptcy Code for service in the Chapter 11 Cases; or
- (viii) either or both of the Chapter 11 Cases of Optim Energy and Twin Oaks LP shall have been converted to a case under chapter 7 of the Bankruptcy Code or otherwise dismissed.

The term "***Other Termination Event***," wherever used in this Agreement, means any of the following events:

- (i) upon the written consent of the Parties;
- (ii) this Agreement is not approved by the Bankruptcy Court on or before September 16, 2015; or
- (iii) the Plan is not confirmed and has not become effective by March 31, 2016.

A Non-Debtor Termination Event, an Agreement Termination Event, and an Other Termination Event shall each be a "***Termination Event***."

(b) Outside Date. If not previously terminated in accordance with the provisions hereof, this Agreement shall expire upon the Bankruptcy Court having entered a final decree closing the Chapter 11 Cases.

8. **Miscellaneous Terms.**

(a) *Binding Obligation; Assignment.*

- (i) Binding Obligation. Subject to the provisions of sections 1125 and 1126 of the Bankruptcy Code, this Agreement is a legally valid and binding obligation of the Parties, enforceable in accordance with its terms, and shall inure to the benefit of the Parties and their representatives. Nothing in this Agreement, express or implied, shall give to any entity, other than the Parties and their respective members, officers, directors, managers, agents, financial advisors, attorneys, employees, partners, affiliates, successors, assigns, heirs, executors, administrators and representatives, any benefit or any legal or equitable right, remedy or claim under this Agreement.
- (ii) Good Faith Negotiation. This Agreement was negotiated in good faith between the Debtors and sophisticated non-Debtor Parties with significant interests with respect to the Plan, and this Agreement memorializes the written commitment of the Parties.

- (iii) Assignment. No rights or obligations of any Party under this Agreement may be assigned or transferred to any other entity except as provided in Section 3(g) hereof.

(b) *Further Assurances*. The Parties agree to execute and deliver such other instruments and perform such acts, in addition to the matters herein specified, as may be reasonably appropriate or necessary, from time to time, to effectuate the agreements and understandings of the Parties, whether the same occurs before or after the date of this Agreement.

(c) *Headings*. The headings of all sections of this Agreement are inserted solely for the convenience of reference and are not a part of and are not intended to govern, limit or aid in the construction or interpretation of any term or provision hereof.

(d) *Governing Law*. THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE, WITHOUT GIVING EFFECT TO THE CHOICE OF LAWS PRINCIPLES THEREOF. By its execution and delivery of this Agreement, each of the Parties hereto hereby irrevocably and unconditionally agrees that any legal action, suit or proceeding with respect to any matter under or arising out of or in connection with this Agreement or for recognition or enforcement of any judgment rendered in any such action, suit or proceeding, shall be brought exclusively in the Bankruptcy Court. By execution and delivery of this Agreement, each of the Parties hereto hereby irrevocably accepts and submits itself to the exclusive jurisdiction of the Bankruptcy Court, generally and unconditionally, with respect to any such action, suit or proceeding relating hereto.

(e) *Specific Performance*. The Parties hereby acknowledge that the rights of the Parties under this Agreement are unique and that remedies at law for breach or threatened breach of any provision of this Agreement would be inadequate and, in recognition of this fact, agree that, in the event of a breach or threatened breach of the provisions of this Agreement, in addition to any remedies at law, the Parties shall, without posting any bond, be entitled to obtain equitable relief in the form of specific performance, a temporary restraining order, a temporary or permanent injunction or any other equitable remedy which may then be available and the Parties hereby waive any objection to the imposition of such relief other than as to a Party's entitlement to such relief on the merits of any claim.

(f) *Complete Agreement; Interpretation; Modification*.

- (i) Complete Agreement. This Agreement, and the other agreements, exhibits and other documents referenced herein and therein, constitute the complete agreement between the Parties with respect to the subject matter hereof and supersede all prior agreements, oral or written, between or among the Parties with respect thereto.
- (ii) Interpretation. This Agreement is the product of negotiation by and among the Parties. Any Party enforcing or interpreting this

Agreement shall interpret it in a neutral manner. There shall be no presumption concerning whether to interpret this Agreement for or against any Party by reason of that Party having drafted this Agreement, or any portion thereof, or caused it or any portion thereof to be drafted.

- (iii) Modification of this Agreement. This Agreement may only be modified, altered, amended or supplemented, or otherwise deviated from by waiver (including, without limitation, any waiver of any of the Termination Events), consent or otherwise, by an agreement in writing signed by the Parties hereto. The Plan with respect to any provisions or terms affecting a Party hereto shall be in a form acceptable to such Party.

(g) *Conditions to Effectiveness.* This Agreement shall become effective upon the satisfaction of the following conditions precedent (unless waived in writing by the Parties in their respective sole discretion):

- (i) each Party hereto shall have duly executed and delivered a counterpart to this Agreement to each other Party hereto; and
- (ii) entry of the PSA Approval Order on the Bankruptcy Court's docket.

(h) *Execution of this Agreement.* This Agreement may be executed and delivered (by facsimile or otherwise) in any number of counterparts, each of which, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same agreement. Except as expressly provided in this Agreement, each individual executing this Agreement on behalf of a Party has been duly authorized and empowered to execute and deliver this Agreement on behalf of said Party.

(i) *Settlement Discussions.* This Agreement and the Plan are part of a proposed settlement of a dispute between the Parties. Nothing herein shall be deemed an admission of any kind. Pursuant to Federal Rule of Evidence 408 and any applicable state rules of evidence, this Agreement and all negotiations relating thereto shall not be admissible into evidence in any proceeding other than a proceeding to seek Bankruptcy Court approval of this Agreement pursuant to Section 2(a) hereof, or to enforce the terms of this Agreement.

(j) *Consideration.* The Parties hereby acknowledge that no consideration, other than that specifically described herein and in the Plan, shall be due or paid to any Party for its agreement to vote to accept the Plan in accordance with the terms and conditions of this Agreement, other than the Debtors' representations, warranties and agreement to use their reasonable best efforts to obtain approval of the Disclosure Statement and to seek to confirm and consummate the Plan.

(k) *Notices.* All notices hereunder shall be deemed given if in writing and delivered, if sent by email, courier or by registered or certified mail (return receipt requested) to the following addresses:

(i) If to the Debtors, to:

c/o Competitive Power Ventures, Inc.
8403 Colesville Road, Suite 915
Silver Spring, Maryland 20910
Attn: Nick Rahn

with copies (which shall not constitute notice) to:

Bracewell & Giuliani LLP
CityPlace I, 34th Floor
185 Asylum Street
Hartford, Connecticut 06103
Attn: Kurt Mayr
Email: kurt.mayr@bgllp.com

-and-

Bracewell & Giuliani LLP
1251 Avenue of Americas, 49th Floor
New York, New York 10020
Attn: Robert G. Burns
Email: robert.burns@bgllp.com

(ii) If to the Pre-Petition Secured Parties, to:

Cascade Investment, L.L.C.
2365 Carillon Point
Kirkland, Washington 98033
Attn: Mike B. Rodden, Esq.

with copies (which shall not constitute notice) to:

Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, New York 10006
Attn: Lindsee P. Granfield and Luke A. Barefoot
Email: lgranfield@cgsh.com, lbarefoot@cgsh.com

(iii) If to Blackstone, to:

Blackstone Group, L.P.
345 Park Avenue
New York, New York 10154
Attn: Sean Klimczak

with copies (which shall not constitute notice) to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attn: Paul M. Basta and Joshua A. Sussberg
Email: paul.basta@kirkland.com, joshua.sussberg@kirkland.com

-and-

Kirkland & Ellis LLP
300 North LaSalle
Chicago, Illinois 60654
Attn: James A. Stempel
Email: james.stempel@kirkland.com

(l) *Time is of the Essence.* The Parties agree that time is of the essence with respect to each and every term and provision of this Agreement.

9. **Releases.** The Parties agree that, without limitation of the discharge, release, injunction and exculpation provisions of the Plan, as of the date that the effective dates of the Third Amended Plan and the Plan both have occurred, for good and valuable consideration, the receipt of which is hereby acknowledged each of the Parties, on behalf of itself, its affiliates, and each and all of its and its affiliates' respective past, present and future agents, heirs, executors, administrators, conservators, successors, assigns, noteholders, participants, co-participants, direct and indirect parents, principals, subsidiaries, affiliates, related companies, shareholders, interest holders, investors, members, partners (including general and limited partners), managers, representatives, advisors, agents, receivers, attorneys and beneficiaries, and the past, present and future officers, directors and employees of each of them (all such releasing persons and entities collectively, the "***Releasors***"), does hereby fully, unconditionally and irrevocably release, relieve, waive, relinquish, remise, acquit and forever discharge the other Parties and their respective affiliates, and each of the other Parties' and their affiliates' respective past, present and future agents, heirs, executors, administrators, conservators, successors, assigns, noteholders, participants, co-participants, direct and indirect parents, principals, subsidiaries, affiliates, related companies, shareholders, interest holders, investors, members, partners (including general and limited partners), managers, directors, representatives, advisors, agents, receivers, attorneys and beneficiaries, and the past, present and future officers, directors, and employees of each of them (all such released persons and entities collectively, the "***Released Persons***") from, against, and in respect of, any and all past, present and future claims, cross-claims, counterclaims, third-party claims, demands, liabilities, obligations, debts, liens, damages, losses, costs, expenses, controversies, actions, rights, suits, assessments, penalties, charges, indemnities, guaranties, promises, commitments, or causes of action of whatsoever nature, whether based in contract, tort or otherwise, whether in law or equity and whether direct or indirect, known or unknown, asserted or unasserted, foreseen or unforeseen, fixed or contingent, that any of the Parties have or may have against any of the other Parties since the beginning of time, pre-petition and post-petition, relating to any and all actions

or inaction relating to one or more of the Debtors or the Chapter 11 Cases, including (for the avoidance of doubt) a release of any retained causes of action by the Reorganizing Debtors pursuant to the provisions of the Third Amended Plan; provided, however, that this release does not release (1) the rights of Blackstone or the Pre-Petition Secured Parties under the Third Amended Plan, as confirmed, (2) the contractual rights and obligations of Twin Oaks LP and Major Oak under the Twin Oaks Purchase Agreement; and (3) and all rights under the Plan, as confirmed, which rights and obligations are expressly preserved.

10. **Fiduciary Duties.**


(a) Notwithstanding anything to the contrary herein, nothing in this Agreement shall require the Debtors, or any of their respective directors, managers, or officer (in such Person's capacity as a director, manager or officer) to take any action, or to refrain from taking any action, to the extent that taking such action or refraining from taking such action would be inconsistent with such Person's fiduciary obligations under applicable law (the rights of the Debtors, or any of their respective directors, managers, or officer under this Section 10, the "***Fiduciary Out***"); provided, that the Debtors shall promptly notify in writing the non-Debtor Parties if any such action is taken, or refrained from being taken, that would otherwise be in violation of this Agreement (a "***Fiduciary Out Notice***").

(b) None of the non-Debtors Parties shall have any fiduciary duty or other duties or responsibilities in any kind or form to each other, the Debtors, or any of the Debtors' other creditors or other stakeholders as a result of this Agreement or the transactions contemplated hereby. Each of the non-Debtor Parties has negotiated this Agreement on its own behalf and not on behalf of any other Party. Except as expressly provided in this Agreement, there are no commitments among or between the Parties. Further, the Parties agree that, except as set forth in the Plan or the Disclosure Statement, this Agreement does not constitute a commitment to, nor shall it obligate any of the Parties to, provide any new financing or credit support.


[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have entered into this Agreement on the date specified above.


Optim Energy, LLC

By: 
Name: Nicholas R. Rahn
Title: Chief Executive Officer


Optim Energy Marketing, LLC

By: 
Name: Nicholas R. Rahn
Title: Manager


OEM 1, LLC

By: 
Name: Nicholas R. Rahn
Title: Manager

Optim Energy Generation, LLC

By: 
Name: Nicholas R. Rahn
Title: Manager

Optim Energy Cedar Bayou 4, LLC

By: 
Name: Nicholas R. Rahn
Title: Manager

Optim Energy Altura Cogen, LLC

By:



Name: Nicholas R. Rahn

Title: Manager

Optim Energy Twin Oaks GP, LLC

By:



Name: Nicholas R. Rahn

Title: Manager

Optim Energy Twin Oaks, LP

By Optim Energy Twin Oaks GP, LLC its General
Partner

By:

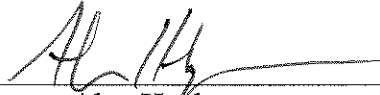



Name: Nicholas R. Rahn

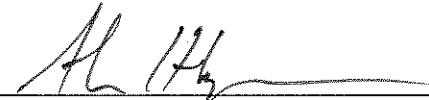

Title: Manager

IN WITNESS WHEREOF, the Parties have entered into this Agreement on the date specified above.

Cascade Investment, L.L.C., as Pre-Petition Secured
Party and Majority Lender under the DIP Credit
Agreement

By:  
Name: Alan Heuberger
Title: Authorized Representative

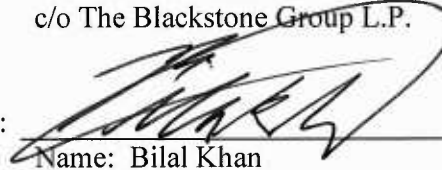
ECJV Holdings, LLC, as Pre-Petition Secured Party

By:  
Name: Alan Heuberger
Title: Authorized Representative

IN WITNESS WHEREOF, the Parties have entered into this Agreement on the date specified above.

Black Walnut Mining, LLC
Lonestar Generation LLC
Major Oak Power, LLC
The Blackstone Group L.P.
Walnut Creek Mining Company
c/o The Blackstone Group L.P.

By:

A handwritten signature in black ink, appearing to read 'Bilal Khan', is written over a horizontal line.

Name: Bilal Khan

Title: Principal

EXHIBIT A

Form of Assumption Agreement

[Exhibit A to Plan Support Agreement]

Assumption Agreement

Reference is hereby made to the PLAN SUPPORT AGREEMENT (the "**Agreement**") made and entered into as of [____], 2015, by and among the Parties thereto. Capitalized terms that are used but are not otherwise defined herein shall have the meanings given to them in the Agreement.

The entity hereto hereby agrees as follows:

1. This ASSUMPTION AGREEMENT (the "**Assumption Agreement**") is being executed and delivered in connection with the undersigned entity (the "**Joining Party**") becoming a Party to the Agreement with respect to the claims identified on the signature page(s) hereto.

2. Joinder. From and after the date of this Assumption Agreement, the Joining Party hereby (a) joins as and will for all purposes be a party to the Agreement; (b) agrees to be bound by the obligations set forth in the Agreement; and (c) otherwise agrees to be subject to all of the covenants, agreements, terms and conditions applicable to a non-Debtor Party under the Agreement.

3. Effective Date. This Assumption Agreement shall be effective as of the date specified in the signature page(s) hereto.

4. Execution. This Assumption Agreement may be executed and delivered by email, courier or by registered or certified mail (return receipt requested) in any number of counterparts, each of which, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same agreement. Except as expressly provided in this Assumption Agreement, each individual executing this Assumption Agreement on behalf of a Joining Party has been duly authorized and empowered to execute and deliver this Assumption Agreement on behalf of said Joining Party.

5. Headings. The headings of all sections of this Assumption Agreement are inserted solely for the convenience of reference and are not a part of and are not intended to govern, limit or aid in the construction or interpretation of any term or provision hereof.

6. Amendments. This Assumption Agreement may not be modified, amended or supplemented.

7. Governing Law. THIS ASSUMPTION AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE, WITHOUT GIVING EFFECT TO THE CHOICE OF LAWS PRINCIPLES THEREOF. By its execution and delivery of this Assumption Agreement, the Joining Party hereby irrevocably and unconditionally agrees that any legal action, suit or proceeding with respect to any matter under or arising out of or in connection with this Assumption Agreement or for recognition or enforcement of any judgment rendered in any such action, suit or proceeding, shall be brought exclusively in the Bankruptcy Court. By execution and delivery of this Assumption Agreement, the Joining Party hereby irrevocably accepts and

submits itself to the exclusive jurisdiction of each such court, generally and unconditionally, with respect to any such action, suit or proceeding.

[Signature page follows]

IN WITNESS WHEREOF, each of the undersigned has caused this Assumption Agreement to be executed and delivered by its duly authorized officer as of the date specified below.

Dated: [____], 2015

JOINING PARTY:

[_____]

By: _____

Name:

Title:

Claim Amount Held:

Contact Information for Notice:

Address: [_____]

Attention: [_____]

Email: [_____]