

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re

Lordstown Motors Corp., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 23-10831 (MFW)

(Jointly Administered)

**Re: Docket Nos. 651, 657, 766 941, 1014  
& 1016**

**NOTICE OF FILING OF SECOND SUPPLEMENTAL PLAN  
SUPPLEMENT FOR THE THIRD MODIFIED FIRST  
AMENDED JOINT CHAPTER 11 PLAN OF LORDSTOWN  
MOTORS CORP. AND ITS AFFILIATED DEBTORS**

**PLEASE TAKE NOTICE** that on November 1, 2023, the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) entered an order [Docket No. 651] (the “**Disclosure Statement Order**”): (a) approving the *Disclosure Statement Pursuant to 11 U.S.C. § 1125 with Respect to Modified First Amended Joint Chapter 11 Plan of Lordstown Motors Corp. and Its Affiliated Debtors* (together with all schedules and exhibits thereto, and as may be modified, amended, or supplemented from time to time, the “**Disclosure Statement**”) and the form and manner of notice; (b) approving procedures for soliciting, receiving, and tabulating votes on the Plan and for filing objections to the Plan (the “**Solicitation Procedures**”); (c) approving the forms of ballots; (d) approving the form, manner and scope of confirmation notices; (e) establishing certain deadlines in connection with approval of the Disclosure Statement and confirmation of the Plan (defined below); and (f) granting related relief.

**PLEASE TAKE FURTHER NOTICE** that, on December 1, 2023, the Debtors filed *Notice of Filing of Plan Supplement for the Modified First Amended Joint Chapter 11 Plan of Lordstown Motors Corp. and Its Affiliated Debtors* [Docket No. 766] (the “**Original Plan Supplement**”).

**PLEASE TAKE FURTHER NOTICE** that, on January 31, 2024, the Debtors filed the *Second Modified First Amended Joint Chapter 11 Plan of Lordstown Motors Corp. and Its Affiliated Debtors* [Docket No. 941].

**PLEASE TAKE FURTHER NOTICE** that, on February 28, 2024, the Debtors filed the *Third Modified First Amended Joint Chapter 11 Plan of Lordstown Motors Corp. and Its Affiliated*

<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are: Lordstown Motors Corp. (3239); Lordstown EV Corporation (2250); and Lordstown EV Sales LLC (9101). The Debtors’ service address is 27000 Hills Tech Ct., Farmington Hills, MI 48331.



*Debtors* [Docket No. 1014] (together with all schedules and exhibits thereto, and as may be modified, amended, or supplemented from time to time, the “**Plan**”).

**PLEASE TAKE FURTHER NOTICE** that, the Debtors filed *Notice of Filing of First Supplemental Plan Supplement for the Modified First Amended Joint Chapter 11 Plan of Lordstown Motors Corp. and Its Affiliated Debtors* [Docket No. 1016] (the “**First Supplemental Plan Supplement**”).<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE** that, by this notice (the “**Second Supplemental Plan Supplement**,” and together with the Original Plan Supplement and the First Supplemental Plan Supplement, the “**Plan Supplement**”) the Debtors hereby file (a) the following revised exhibits: (i) a revised Schedule of Retained Causes of Action (attached as **Exhibit C-1**), along with a blackline to the draft included in the First Supplemental Plan Supplement (attached as **Exhibit C-2**), (ii) a revised disclosure regarding the Identity of the Claims Ombudsman and Rates (attached as **Exhibit F-1**), along with a blackline to the draft included in the First Supplemental Plan Supplement (attached as **Exhibit F-2**), and (iii) a revised disclosure regarding the Identity of the Claims Ombudsman and Rates (attached as **Exhibit H-1**), along with a blackline to the draft included in the First Supplemental Plan Supplement (attached as **Exhibit H-2**); and (b) the proposed longform notice and proof of claim form related to the Ohio Securities Litigation Settlement (attached as **Exhibit K-3**, and **Exhibit K-4**), which were not previously included in the Original Plan Supplement or the First Supplemental Plan Supplement. A chart of the complete Plan Supplement is as follows:

| <b>Exhibit</b> | <b>Document<sup>3</sup></b>  | <b>Reference</b>                      |
|----------------|--|---------------------------------------|
| A              | New Organizational Documents   | Docket No. 1016, Ex. A-1              |
| B              | Identities of members of the New Board and Officers of Post-Effective Date Debtors | Docket No. 766, Ex. B                 |
| C-1            | Schedule of Retained Causes of Action  | Attached hereto as <b>Exhibit C-1</b> |
| C-2            | Blackline of Schedule of Retained Causes of Action to December 1, 2023 Draft       | Attached hereto as <b>Exhibit C-2</b> |
| D              | Post-Effective Date Debtor Amount  | Docket No. 766, Ex. D                 |
| E              | GUC Reserve  | Docket No. 1016, Ex. E                |
| F-1            | Identity of Claims Ombudsman and Rates   | Attached hereto as <b>Exhibit F-1</b> |
| F-2            | Blackline of Identity of Claims Ombudsman and Disclosure Regarding Rates           | Attached hereto as <b>Exhibit F-2</b> |
| G              | Identity of Litigation Trustee   | Docket No. 1016, Ex. G                |

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Plan or the Disclosure Statement, as applicable.

<sup>3</sup> The exhibits set forth in the Plan Supplement remain subject to ongoing review and material revision in all respects.

| Exhibit | Document <sup>3</sup>                                 | Reference                                    |
|---------|---|--|
| H-1     | Litigation Trust Agreement                            | Attached hereto as <b><u>Exhibit H-1</u></b> |
| H-2     | Blackline of Litigation Trust Agreement               | Attached hereto as <b><u>Exhibit H-2</u></b> |
| I       | Schedule of Contracts Rejected Pursuant to Plan       | Docket No. 1016, Ex. I                       |
| J       | Asserted Claims Schedule                              | Docket No. 1016, Ex. J                       |
| K-1     | Ohio Settlement Notice – Post-Card Notice             | Docket No. 1016, Ex. K-1                     |
| K-2     | Ohio Settlement Notice – Publication Notice           | Docket No. 1016, Ex. K-2                     |
| K-3     | Ohio Settlement Notice – Longform Notice <sup>4</sup> | Attached hereto as <b><u>Exhibit K-3</u></b> |
| K-4     | Ohio Settlement Notice – Proof of Claim Form          | Attached hereto as <b><u>Exhibit K-4</u></b> |

**PLEASE TAKE FURTHER NOTICE** that the documents, schedules, and other information contained in this Plan Supplement (in each case, as may be amended, modified, or supplemented) are integral to and part of the Plan. These documents have not yet been approved by the Bankruptcy Court. If the Plan is approved, the documents contained in the Plan Supplement will be approved by the Bankruptcy Court pursuant to the Confirmation Order.

**PLEASE TAKE FURTHER NOTICE** that the Debtors reserve all rights to amend, modify, or supplement the Plan Supplement, and any of the documents contained therein, in accordance with the terms of the Plan. If material amendments or modifications are made to any of these documents, the Debtors will file a blackline with the Bankruptcy Court prior to the Confirmation Hearing marked to reflect the same.

**PLEASE TAKE FURTHER NOTICE THAT** a hearing to consider confirmation of the Plan (the “**Confirmation Hearing**”) has been scheduled for **March 5, 2024 at 3:00 p.m. (prevailing Eastern Time)**, before the Honorable Mary F. Walrath, United States Bankruptcy Judge, at the Bankruptcy Court, located at 824 North Market Street, Fifth Floor, Courtroom No. 4, Wilmington, Delaware 19801. **The Confirmation Hearing may be adjourned or continued from time to time by the Bankruptcy Court or the Debtors without further notice other than adjournments announced in open court or as indicated in any notice of agenda of matters scheduled for hearing filed by the Debtors with the Bankruptcy Court.**

**PLEASE TAKE FURTHER NOTICE THAT** you may obtain the Plan, the Disclosure Statement, the Plan Supplement, or related documents from Kurtzman Carson Consultants LLC

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<sup>4</sup> The longform Ohio Settlement Notice was drafted by Ohio Class Counsel for their distribution to the Ohio Litigation Settlement Class Members. It does not reflect the views of any other party (including the Debtors, the Post-Effective Date Debtors, the UCC, or the EC) on the matters or construal of facts contained therein. By including the longform notice in this Plan Supplement and seeking approval of the same in connection with confirmation of the Plan, such other parties make no admission or concession and reserve all rights.

(the “**Solicitation Agent**”) free of charge by: (a) calling the Debtors’ toll-free restructuring hotline at (877) 709-4757 (U.S./Canada) or (424) 236-7235 (international); (b) visiting the Debtors’ restructuring website at <https://www.kccllc.net/lordstown>; (c) writing to Lordstown Processing Center, c/o Kurtzman Carson Consultants LLC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245; or (d) emailing [lordstowninfo@kccllc.com](mailto:lordstowninfo@kccllc.com) (with ‘Lordstown’ in the subject line).

You may also access from these materials for a fee via PACER at <http://www.deb.uscourts.gov/>.

**YOU ARE ADVISED TO CAREFULLY REVIEW AND CONSIDER THE PLAN, INCLUDING THE DISCHARGE, INJUNCTION, RELEASE, AND EXCULPATION PROVISIONS CONTAINED IN ARTICLE VIII OF THE PLAN. ARTICLE VIII.D OF THE PLAN CONTAINS THIRD-PARTY RELEASES. THUS, YOU ARE ADVISED TO REVIEW AND CONSIDER THE PLAN CAREFULLY BECAUSE YOUR RIGHTS MIGHT BE AFFECTED THEREUNDER.**

**THIS NOTICE IS BEING SENT TO YOU FOR INFORMATIONAL PURPOSES ONLY. IF YOU HAVE QUESTIONS WITH RESPECT TO YOUR RIGHTS UNDER THE PLAN OR ABOUT ANYTHING STATED HEREIN OR IF YOU WOULD LIKE TO OBTAIN ADDITIONAL INFORMATION, PLEASE CONTACT THE SOLICITATION AGENT AS SPECIFIED ABOVE. PLEASE NOTE THAT THE SOLICITATION AGENT MAY NOT PROVIDE LEGAL ADVICE. IF YOU NEED LEGAL ADVICE, PLEASE CONSULT WITH YOUR ATTORNEY.**

Dated: March 1, 2024

Respectfully submitted,

/s/ Morgan L. Patterson

**WOMBLE BOND DICKINSON (US)  
LLP**

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**Exhibit A-1**

**New Organizational Documents**

[See Docket No. 1016, Ex. A-1]

**Exhibit B**

**New Board and Officers of Post-Effective Date Debtors**

[See Docket No. 766, Ex. B]

**Exhibit C-1**

**Schedule of Retained Causes of Action**



## SCHEDULE OF RETAINED CAUSES OF ACTION

In accordance with Articles V.E and V.J of the Plan<sup>1</sup> and except as expressly provided in Article VIII of the Plan, nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any Causes of Action, including but not limited to any rights, claims, rights of setoff or recoupment, or other legal or equitable defenses that the Debtors had immediately before the Effective Date on behalf of the Estates or themselves in accordance with any provision of the Bankruptcy Code or any applicable nonbankruptcy law, including any affirmative Causes of Action against any parties other than the Causes of Action released under the Plan as to Released Parties. On or after the Effective Date, the Post-Effective Date Debtors shall retain and be authorized (but not required) to take any such actions to (as applicable) prosecute, pursue, compromise, settlement, or otherwise dispose of the Retained Causes of Action and the Retained Claims Objections, subject to applicable law. **No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement, in each case including any supplement, amendment, or modification thereto, to any Cause of Action against it as any indication that the Post-Effective Date Debtors shall not pursue any and all available Causes of Action against it. The Debtors and the Post-Effective Date Debtors expressly reserve all rights to prosecute any and all Causes of Action against any Person or Entity, except as otherwise expressly provided in the Plan, including under Article V.J, Article VIII.C and Article VIII.E of the Plan.**

Notwithstanding and without limiting the generality of the foregoing or anything herein to the contrary, the Debtors and the Post-Effective Date Debtors shall not retain any claims or Causes of Action against any of the Released Parties that are released pursuant to the Plan (except that such claims or Causes of Action may be asserted as a defense to a Disputed Claim in connection with the claims reconciliation procedures).

For the avoidance of doubt, the following specific types of Causes of Action are indicative, but is in no way exclusive, of the Causes of Action retained in connection with the Plan, which include, but are not limited to, the following Debtors' Causes of Action:

- Except as provided for in Article VII.I of the Plan, to the extent not expressly waived, relinquished, exculpated, released, compromised, assigned, or settled prior to the Effective Date by Final Order entered through the Bankruptcy Court or pursuant to the Confirmation Order or Article VIII of the Plan, all Avoidance Actions shall be retained by the Debtors and the Post-Effective Date Debtors.
- Causes of Action against Foxconn that have been or could be alleged in the adversary proceeding captioned, *Lordstown Motors Corp. et al. v. Foxconn Ventures Pte. Ltd. et al.*, Adv. Proc. No. 23-50414 (MFW) (Bankr. D. Del.) and any other Causes of Action against Foxconn or its directors, officers, employees or affiliates;

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the *Modified First Amended Joint Chapter 11 Plan of Lordstown Motors Corp. and Its Affiliated Debtors* (the “**Plan**”).

- Causes of Action against the Former Directors and Officers and other non-debtor defendants, other than Released Parties for claims released under the Plan, that have been or could be asserted in the litigation captioned, *Karma Automotive LLC v. Lordstown Motors Corp. et al.*, Case No. 20-cv-02104, filed in the U.S. District Court for the Central District of California, including without limitation Claims arising from or related to the facts or circumstances set forth in such action;
- Causes of Action against the Former Directors and Officers and other non-debtor defendants, other than Released Parties for claims released under the Plan, that have been or could be asserted in: (i) *In re Lordstown Motors Corp. Securities Litigation*, Case No. 4:21-cv-00616 (DAR) (N.D. Ohio), (ii) *In re Lordstown Motors Corp. Stockholders Litig.*, C.A. No. 2021-1066-LWW (Del. Ch.), (iii) *Thai v. Burns et al.*, No. 4:21-cv-01267 (N.D. Ohio), (iv) *In re Lordstown Motors Corp. Shareholder Derivative Litigation*, No. 21-00604-SB (D. Del.), and (v) *In re Lordstown Motors Corp. Stockholder Derivative Litigation*, C.A. No. 2021-1049-LWW (Del. Ch.), including without limitation Claims arising from or related to the facts or circumstances set forth in such putative class actions;
- Causes of Action against Debtors' Directors and Officers, the Securities and Exchange Commission, Foxconn, Holders Section 510(b) Claims, Holders of RIDE Section 510(b) Claims and any other Entity asserting a Claim for contribution or reimbursement, if any, in connection with the allowance of their respective Claims filed in the Chapter 11 Cases;
- Causes of Action against the following entities, including, in each case, such entities' affiliates, successors, assigns, insiders, managers, officers, directors, employees, and shareholders, related to or in connection with such entities' pre-orders, letters of intent, promotions, or other indications of interest as to the Debtors' vehicles, which led to losses or damages suffered by the Debtors:
  - American Electric Power;
  - Ameripride;
  - Brinks;
  - Catholic Cemeteries Association;
  - City of Kent.
  - City of Orlando;
  - City of Ravenna;
  - Clean Fuels Ohio;
  - Climb2Glory;
  - Duke Energy;

- Elaphe;
  - E-Squared Energy Advisors;
  - FirstEnergy Solutions;
  - General Motors, Inc.;
  - Goodyear;
  - GridX;
  - Holman Enterprises;
  - Innervations LLC;
  - Mike Albert Fleet Solutions;
  - Momentum Groups;
  - Portland General Electric;
  - PSE&G;
  - Ryder Systems, Inc.;
  - Samsung;
  - Servepro;
  - Smart Cites Columbus;
  - Southern California Public Power Authority;
  - Summit Petroleum Inc.;
  - Turner Mining Group;
  - Western Washington Clean Cities; and
  - Workhorse Group Inc.
- Causes of Action against LAS Capital LLC following consummation of the APA;
  - Causes of Action against Clark Schaefer Hackett & Co. (and such firm's affiliates, successors, assigns, insiders, managers, officers, directors, employees, and shareholders) related to or in connection with such firm's involvement in losses or damages suffered by the Debtors; and

- Causes of Action not released under the Plan, including against any of the entities or individuals identified previously (other than Causes of Action against Released Parties that are released pursuant to the Plan), arising out of or related to the findings made by the Securities and Exchange Commission in the OIP.

In addition to the foregoing, and notwithstanding and without limiting the generality of Article V.J of the Plan, the Debtors and the Post-Effective Date Debtors, as applicable, expressly reserve their rights with respect to all Causes of Action that are not expressly released under the Plan, including the following types of claims:

1. Claims Related to Contracts and Leases

Unless otherwise released by the Plan, Debtors reserve all Causes of Action based in whole or in part upon any and all contracts and leases to which any Debtor or Post-Effective Date Debtor is a party or pursuant to which any Debtor or Post-Effective Date Debtor has any rights whatsoever. The claims and Causes of Action reserved include, without limitation, Causes of Action against vendors, Foxconn, suppliers of goods or services, customers, or any other parties, unless such claims or Causes of Action were previously released through the Plan (including any claims against Released Parties that are released pursuant to the Plan) or a separate written agreement executed by the Debtors (including any subsequent settlement agreement), for: (i) overpayments, back charges, duplicate payments, improper holdbacks, deductions owing or improper deductions taken, deposits, warranties, guarantees, indemnities, recoupment, or setoff; (ii) wrongful or improper termination, suspension of services or supply of goods, or failure to meet other contractual or regulatory obligations; (iii) failure to fully perform or to condition performance on additional requirements under contracts with any one or more of the Debtors before the assumption or rejection, if applicable, of such contracts; (iv) indemnification or any other post-closing obligation of counterparties to any contract for sale or assignment of any Debtor's assets or interests, regardless of whether such contract is an executory contract; (v) payments, deposits, holdbacks, reserves, or other amounts owed by any creditor, utility, supplier, vendor, insurer, surety or any other party; (vi) any liens, including mechanics', artisans', warehousemen's, materialmen's, possessory, or statutory liens held by any one or more of the Debtors; (vii) environmental or contaminant exposure matters against environmental consultants, environmental agencies, or suppliers of environmental services or goods; (viii) counter-claims and defenses related to any contractual obligations; and (ix) unfair competition, interference with contract or potential business advantage, breach of contract, infringement of intellectual property, or any business tort claims.

2. Claims Related to Customer and Vendor Obligations

Unless otherwise released by the Plan, the Debtors reserve all Causes of Action against or related to all former and current customers, service providers or vendors (including Foxconn) that owe or may in the future owe money to the Debtors or the Post-Effective Date Debtors whether for unpaid invoices, warranty obligations, breach of contract or any other matter whatsoever, regardless of whether such Cause of Action is identified herein.

3. Claims Related to Insurance Policies

The Debtors expressly reserve all Causes of Action based in whole or in part upon any and all insurance contracts, insurance policies, occurrence and claims made policies, occurrence and claims made contracts, and similar agreements to which any Debtor or Post-Effective Date Debtor is or was a party or pursuant to which any Debtor or Post-Effective Date Debtor has any rights whatsoever, regardless of whether such contract or policy is specifically identified in the Plan, this Plan Supplement, or any amendments thereto, including, Causes of Action against current or former insurance carriers, reinsurance carriers, insurance brokers, underwriters, occurrence carriers, third-party claims administrators, or surety bond issuers relating to coverage, indemnification, subrogation, contribution, reimbursement, overpayment of premiums and fees, breach of contract, or any other matters.

4. Claims Related to Prepayments, Deposits, Adequate Assurance Postings, and Other Collateral Postings

Unless otherwise released by the Plan, the Debtors reserve all Causes of Action based in whole or in part upon any prepayment made to and setoff against any vendor, service provider, or supplier and all postings of a deposit, security deposit, adequate assurance posting, or any other type of deposit, prepayment, or collateral, regardless of whether such posting of a deposit, security deposit, adequate assurance posting, or any other type of deposit, prepayment, or collateral is specifically identified herein.

5. Claims Related to Liens

Unless otherwise released by the Plan, the Debtors reserve all Causes of Action based in whole or in part upon any and all liens regardless of whether such lien is specifically identified herein.

6. Claims, Defenses, Cross-Claims, and Counter-Claims Related to Pending and Potential Litigation

Unless otherwise released by the Plan, the Debtors reserve all Causes of Action and defenses against or related to all Persons or Entities that are party to or that may in the future become party to litigation, arbitration, or any other type of adversarial proceeding or dispute resolution proceeding against the Debtors or to which any Debtor is or may in the future become a party, whether formal or informal or judicial or non-judicial, including, without limitation, all actual or potential (i) contract and tort actions that may exist or may subsequently arise; (ii) actions under federal or state statutory or common law arising from or related to the employment or termination of any Person by the Debtors; (iii) consumer protection proceedings; (iv) actions relating to environmental and product liability matters, and (v) actions arising out of, or relating to, the Debtors' intellectual property rights. For the avoidance of doubt, nothing herein shall be read as an admission as to the validity or allowance of any claim against any Debtor, and any and all prepetition claims against the Debtors that may be identified herein shall be treated in accordance with the Plan and the Bankruptcy Code.

7. Claims Related to Accounts Receivable and Accounts Payable

The Debtors expressly reserve all Causes of Action against or related to any Person or Entity that owe or that may in the future owe money to the Debtors or the Post-Effective Date

Debtors, regardless of whether such Person or Entity is expressly identified in the Plan, the Plan Supplement, or any amendments thereto. Furthermore, the Debtors expressly reserve all Causes of Action against or related to all Persons or Entities who assert or may assert that the Debtors or the Post-Effective Date Debtors, as applicable, owe money to them.

8. Claims Related to Taxes, Fees, and Tax or Fee Refunds or Credits

The Debtors expressly reserve all Causes of Action against or related to all Persons or Entities that owe or that may in the future owe money related to tax or fee refunds, credits, overpayments, recoupments, offsets, or other tax obligations that may be due and owing to the Debtors or the Post-Effective Date Debtors, regardless of whether such Person or Entity is specifically identified herein. Furthermore, the Debtors expressly reserve all Causes of Action against or related to all Persons or Entities who assert or may assert that the Debtors or the Post-Effective Date Debtors owe taxes to them. Without limiting the generality of the foregoing, the Debtors expressly reserve all Causes of Action against the United States of America or any other federal, state, local, province, or other taxing authorities.

**The Debtors reserve all rights to amend, revise, or supplement this Plan Supplement schedule, and any of the documents and designations contained herein, at any time before the Effective Date of the Plan, or any such other date as may be provided for by the Plan or by order of the Bankruptcy Court. Nothing herein shall prevent the Debtors from later settling any Retained Cause of Action and granting releases in connection with such settlement, subject to Bankruptcy Court approval (if required).**

**Exhibit C-2**

**Blackline of Schedule of Retained Causes of Action**

## SCHEDULE OF RETAINED CAUSES OF ACTION

In accordance with Articles V.E and V.J of the Plan<sup>1</sup> and except as expressly provided in Article VIII of the Plan, nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any Causes of Action, including but not limited to any rights, claims, rights of setoff or recoupment, or other legal or equitable defenses that the Debtors had immediately before the Effective Date on behalf of the Estates or themselves in accordance with any provision of the Bankruptcy Code or any applicable nonbankruptcy law, including any affirmative Causes of Action against any parties other than the [Causes of Action released under the Plan as to Released Parties](#). On or after the Effective Date, the Post-Effective Date Debtors shall retain and be authorized (but not required) to take any such actions to (as applicable) prosecute, pursue, compromise, settlement, or otherwise dispose of the Retained Causes of Action and the Retained Claims Objections, subject to applicable law. **No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement, in each case including any supplement, amendment, or modification thereto, to any Cause of Action against it as any indication that the Post-Effective Date Debtors shall not pursue any and all available Causes of Action against it. The Debtors and the Post-Effective Date Debtors expressly reserve all rights to prosecute any and all Causes of Action against any Person or Entity, except as otherwise expressly provided in the Plan, including under Article V.[J](#), Article VIII.C and Article VIII.E of the Plan.**

Notwithstanding and without limiting the generality of the foregoing or anything herein to the contrary, the Debtors and the Post-Effective Date Debtors shall not retain any claims or Causes of Action against any of the Released Parties that are released pursuant to the Plan (except that such claims or Causes of Action may be asserted as a defense to a Disputed Claim in connection with the claims reconciliation procedures).

For the avoidance of doubt, the following specific types of Causes of Action are indicative, but is in no way exclusive, of the Causes of Action retained in connection with the Plan, which include, but are not limited to, the following Debtors' Causes of Action:

- Except as provided for in Article VII.I of the Plan, to the extent not expressly waived, relinquished, exculpated, released, compromised, assigned, or settled prior to the Effective Date by Final Order entered through the Bankruptcy Court or pursuant to the Confirmation Order or Article VIII of the Plan, all Avoidance Actions shall be retained by the Debtors and the Post-Effective Date Debtors.
- Causes of Action against Foxconn that have been or could be alleged in the adversary proceeding captioned, *Lordstown Motors Corp. et al. v. Foxconn Ventures Pte. Ltd. et al.*, Adv. Proc. No. 23-50414 (MFW) (Bankr. D. Del.) and any other Causes of Action against Foxconn or [isits](#) directors, officers, employees or affiliates;

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the *Modified First Amended Joint Chapter 11 Plan of Lordstown Motors Corp. and Its Affiliated Debtors* (the "Plan").



- Causes of Action against the Former Directors and Officers and other non-debtor defendants, other than Released Parties (~~as defined in~~ [for claims released under](#) the Plan), that have been or could be asserted in the litigation captioned, *Karma Automotive LLC v. Lordstown Motors Corp. et al.*, Case No. 20-cv-02104, filed in the U.S. District Court for the Central District of California, including without limitation Claims arising from or related to the facts or circumstances set forth in such action;
- Causes of Action against the Former Directors and Officers and other non-debtor defendants, other than Released Parties (~~as defined in~~ [for claims released under](#) the Plan), that have been or could be asserted in: (i) *In re Lordstown Motors Corp. Securities Litigation*, Case No. 4:21-cv-00616 (DAR) (N.D. Ohio), (ii) *In re Lordstown Motors Corp. Stockholders Litig.*, C.A. No. 2021-1066-LWW (Del. Ch.), (iii) *Thai v. Burns et al.*, No. 4:21-cv-01267 (N.D. Ohio), (iv) *In re Lordstown Motors Corp. Shareholder Derivative Litigation*, No. 21-00604-SB (D. Del.), and (v) *In re Lordstown Motors Corp. Stockholder Derivative Litigation*, C.A. No. 2021-1049-LWW (Del. Ch.), including without limitation Claims arising from or related to the facts or circumstances set forth in such putative class actions;
- Causes of Action against Debtors' Directors and Officers, the Securities and Exchange Commission, Foxconn, Holders Section 510(b) Claims, Holders of RIDE Section 510(b) Claims and any other Entity asserting a Claim for contribution or reimbursement, if any, in connection with the allowance of their respective Claims filed in the Chapter 11 Cases;
- Causes of Action against the following entities, including, in each case, such entities' affiliates, successors, assigns, insiders, managers, officers, directors, employees, and shareholders, related to or in connection with such entities' pre-orders, letters of intent, promotions, or other indications of interest as to the Debtors' vehicles, which led to losses or damages suffered by the Debtors:
  - American Electric Power;
  - Ameripride;
  - Brinks;
  - Catholic Cemeteries Association;
  - City of Kent.
  - City of Orlando;
  - City of Ravenna;
  - Clean Fuels Ohio;
  - Climb2Glory;

- [Duke Energy;](#)
- [Elaphe;](#)
- [E-Squared Energy Advisors;](#)
- [FirstEnergy Solutions;](#)
- [General Motors, Inc.;](#)
- [Goodyear;](#)
- [GridX;](#)
- [Holman Enterprises;](#)
- [Innervations LLC;](#)
- [Mike Albert Fleet Solutions;](#)
- [Momentum Groups;](#)
- [Portland General Electric;](#)
- [PSE&G;](#)
- [Ryder Systems, Inc.;](#)
- [Samsung;](#)
- [Servepro;](#)
- [Smart Cites Columbus;](#)
- [Southern California Public Power Authority;](#)
- [Summit Petroleum Inc.;](#)
- [Turner Mining Group;](#)
- [Western Washington Clean Cities; and](#)
- ~~Causes of Action against~~ Workhorse Group Inc.; and
- Causes of Action against LAS Capital LLC following consummation of the APA;
- Causes of Action against Clark Schaefer Hackett & Co. (and such firm's affiliates, successors, assigns, insiders, managers, officers, directors, employees, and shareholders)

related to or in connection with such firm's involvement in losses or damages suffered by the Debtors; and

- Causes of Action not released under the Plan, including against any of the entities or individuals identified previously (other than Causes of Action against Released Parties that are released pursuant to the Plan), arising out of or related to the findings made by the Securities and Exchange Commission in the OIP.

In addition to the foregoing, and notwithstanding and without limiting the generality of Article V.J of the Plan, the Debtors and the Post-Effective Date Debtors, as applicable, expressly reserve their rights with respect to all Causes of Action that are not expressly released under the Plan, including the following types of claims:

1. Claims Related to Contracts and Leases

Unless otherwise released by the Plan, Debtors reserve all Causes of Action based in whole or in part upon any and all contracts and leases to which any Debtor or Post-Effective Date Debtor is a party or pursuant to which any Debtor or Post-Effective Date Debtor has any rights whatsoever. The claims and Causes of Action reserved include, without limitation, Causes of Action against vendors, Foxconn, suppliers of goods or services, customers, or any other parties, unless such claims or Causes of Action were previously released through the Plan (including any claims against Released Parties that are released pursuant to the Plan) or a separate written agreement executed by the Debtors (including any subsequent settlement agreement), for: (i) overpayments, back charges, duplicate payments, improper holdbacks, deductions owing or improper deductions taken, deposits, warranties, guarantees, indemnities, recoupment, or setoff; (ii) wrongful or improper termination, suspension of services or supply of goods, or failure to meet other contractual or regulatory obligations; (iii) failure to fully perform or to condition performance on additional requirements under contracts with any one or more of the Debtors before the assumption or rejection, if applicable, of such contracts; (iv) indemnification or any other post-closing obligation of counterparties to any contract for sale or assignment of any Debtor's assets or interests, regardless of whether such contract is an executory contract; (v) payments, deposits, holdbacks, reserves, or other amounts owed by any creditor, utility, supplier, vendor, insurer, surety or any other party; (vi) any liens, including mechanics', artisans', warehousemen's, materialmen's, possessory, or statutory liens held by any one or more of the Debtors; (vii) environmental or contaminant exposure matters against environmental consultants, environmental agencies, or suppliers of environmental services or goods; (viii) counter-claims and defenses related to any contractual obligations; and (ix) unfair competition, interference with contract or potential business advantage, breach of contract, infringement of intellectual property, or any business tort claims.

2. Claims Related to Customer and Vendor Obligations

Unless otherwise released by the Plan, the Debtors reserve all Causes of Action against or related to all former and current customers, service providers or vendors (including Foxconn) that owe or may in the future owe money to the Debtors or the Post-Effective Date Debtors whether for unpaid invoices, warranty obligations, breach of contract or any other matter whatsoever, regardless of whether such Cause of Action is identified herein.

3. Claims Related to Insurance Policies

The Debtors expressly reserve all Causes of Action based in whole or in part upon any and all insurance contracts, insurance policies, occurrence and claims made policies, occurrence and claims made contracts, and similar agreements to which any Debtor or Post-Effective Date Debtor is or was a party or pursuant to which any Debtor or Post-Effective Date Debtor has any rights whatsoever, regardless of whether such contract or policy is specifically identified in the Plan, this Plan Supplement, or any amendments thereto, including, Causes of Action against current or former insurance carriers, reinsurance carriers, insurance brokers, underwriters, occurrence carriers, third-party claims administrators, or surety bond issuers relating to coverage, indemnification, subrogation, contribution, reimbursement, overpayment of premiums and fees, breach of contract, or any other matters.

4. Claims Related to Prepayments, Deposits, Adequate Assurance Postings, and Other Collateral Postings

Unless otherwise released by the Plan, the Debtors reserve all Causes of Action based in whole or in part upon any prepayment made to and setoff against any vendor, service provider, or supplier and all postings of a deposit, security deposit, adequate assurance posting, or any other type of deposit, prepayment, or collateral, regardless of whether such posting of a deposit, security deposit, adequate assurance posting, or any other type of deposit, prepayment, or collateral is specifically identified herein.

5. Claims Related to Liens

Unless otherwise released by the Plan, the Debtors reserve all Causes of Action based in whole or in part upon any and all liens regardless of whether such lien is specifically identified herein.

6. Claims, Defenses, Cross-Claims, and Counter-Claims Related to Pending and Potential Litigation

Unless otherwise released by the Plan, the Debtors reserve all Causes of Action and defenses against or related to all Persons or Entities that are party to or that may in the future become party to litigation, arbitration, or any other type of adversarial proceeding or dispute resolution proceeding against the Debtors or to which any Debtor is or may in the future become a party, whether formal or informal or judicial or non-judicial, including, without limitation, all actual or potential (i) contract and tort actions that may exist or may subsequently arise; (ii) actions under federal or state statutory or common law arising from or related to the employment or termination of any Person by the Debtors; (iii) consumer protection proceedings; (iv) actions relating to environmental and product liability matters, and (v) actions arising out of, or relating to, the Debtors' intellectual property rights. For the avoidance of doubt, nothing herein shall be read as an admission as to the validity or allowance of any claim against any Debtor, and any and all prepetition claims against the Debtors that may be identified herein shall be treated in accordance with the Plan and the Bankruptcy Code.

7. Claims Related to Accounts Receivable and Accounts Payable

The Debtors expressly reserve all Causes of Action against or related to any Person or Entity that owe or that may in the future owe money to the Debtors or the Post-Effective Date Debtors, regardless of whether such Person or Entity is expressly identified in the Plan, the Plan Supplement, or any amendments thereto. Furthermore, the Debtors expressly reserve all Causes of Action against or related to all Persons or Entities who assert or may assert that the Debtors or the Post-Effective Date Debtors, as applicable, owe money to them.

8. Claims Related to Taxes, Fees, and Tax or Fee Refunds or Credits

The Debtors expressly reserve all Causes of Action against or related to all Persons or Entities that owe or that may in the future owe money related to tax or fee refunds, credits, overpayments, recoupments, offsets, or other tax obligations that may be due and owing to the Debtors or the Post-Effective Date Debtors, regardless of whether such Person or Entity is specifically identified herein. Furthermore, the Debtors expressly reserve all Causes of Action against or related to all Persons or Entities who assert or may assert that the Debtors or the Post-Effective Date Debtors owe taxes to them. Without limiting the generality of the foregoing, the Debtors expressly reserve all Causes of Action against the United States of America or any other federal, state, local, province, or other taxing authorities.

**The Debtors reserve all rights to amend, revise, or supplement this Plan Supplement schedule, and any of the documents and designations contained herein, at any time before the Effective Date of the Plan, or any such other date as may be provided for by the Plan or by order of the Bankruptcy Court. Nothing herein shall prevent the Debtors from later settling any Retained Cause of Action and granting releases in connection with such settlement, subject to Bankruptcy Court approval (if required).**

| <b>Summary report:</b>   |           |
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| Embedded Excel   | 0         |
| Format changes   | 0         |
| <b>Total Changes:</b>  | <b>86</b> |

**Exhibit D**

**Post-Effective Date Debtor Amount**

[See Docket No. 766, Ex. D]

**Exhibit E**

**GUC Reserve**

[See Docket No. 1016, Ex. E]



**Exhibit F-1**

**Identity of Claims Ombudsman and Rates**

Pursuant to the Plan, the Claims Ombudsman is the person selected by the UCC and EC, with the consent of the Debtors (such consent not to be unreasonably withheld), charged with overseeing the tasks set forth in Article V.D of the Plan.

The Claims Ombudsman shall be Alan D. Halperin. Mr. Halperin, as Claims Ombudsman, will be entitled to receive compensation at his normal hourly rate (as may be adjusted periodically) and reimbursement of his reasonable and actual out-of-pocket expenses, paid by the Post-Effective Date Debtors from the Post-Effective Date Debtor Cash. As of the date hereof, Mr. Halperin's hourly rate is \$845.

**Exhibit F-2**

**Blackline of Identity of Claims Ombudsman and Rates**

**EXHIBIT F-1**

**Identity of Claims Ombudsman and Rates**

Pursuant to the Plan, the Claims Ombudsman is the person selected by the UCC and EC, with the consent of the Debtors (such consent not to be unreasonably withheld), charged with overseeing the tasks set forth in Article V.D of the Plan.

The Claims Ombudsman shall be Alan D. Halperin. Mr. Halperin, as Claims Ombudsman, will be entitled to receive compensation at his normal hourly rate (as may be adjusted periodically) and reimbursement of his reasonable and actual out-of-pocket expenses, paid by the Post-Effective Date Debtors from the Post-Effective Date Debtor Cash. As of the date hereof, Mr. Halperin's hourly rate is \$845.

| <b>Summary report:</b>  |          |
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| <b>Total Changes:</b>   | <b>3</b> |

**EXHIBIT G**

**Identity of Litigation Trustee**

[See Docket No. 1016, Ex. G]

**EXHIBIT H-1**

**LMC LITIGATION TRUST**

**LMC LITIGATION TRUST AGREEMENT**

**Dated as of \_\_, 2024**

***Pursuant to the Third Modified First Amended Joint Chapter 11 Plan of Lordstown Motors Corp. and its Affiliated Debtors Dated February [ ], 2024***



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## LMC LITIGATION TRUST AGREEMENT

This LMC Litigation Trust Agreement (this “**Trust Agreement**”), dated the date set forth on the signature page hereof and effective as of the Effective Date, is entered into pursuant to the *Third Modified First Amended Joint Plan of Reorganization of Lordstown Motors Corp. and its Affiliated Debtors* [Docket No. ] (as may be further amended or modified, the “**Plan**”),<sup>1</sup> in Case No. 23-10831 (MFW) in the United States Bankruptcy Court for the District of Delaware (“**Bankruptcy Court**”) by Lordstown Motors Corp. (the “**Settlor**”), [ ] (the “**Delaware Trustee**”), the Trustee identified on the signature pages hereof (the “**Trustee**”), and the members of the Trust Oversight Committee identified on the signature pages hereof (the “**TOC**” and, together with the Delaware Trustee and the Trustee, the “**Parties**”).

### RECITALS

**WHEREAS**, the Plan contemplates the creation of a Litigation Trust (the “**Trust**”);

**WHEREAS**, the Confirmation Order has been entered by the Bankruptcy Court;

**WHEREAS**, pursuant to the Plan, the Trust is established to collect assets and make distributions to Lordstown Motors Corp. (the “**Post-Effective Date Debtor**”) in accordance with the Plan, the Confirmation Order and this Trust Agreement;<sup>2</sup>

**WHEREAS**, the Trustee shall administer the Trust in accordance with the terms of the Plan, the Confirmation Order and this Trust Agreement (the “**Governing Documents**”); and

---

<sup>1</sup> All capitalized terms not otherwise defined herein shall have their respective meanings as set forth in the Plan, and such definitions are incorporated herein by reference. All capitalized terms not defined herein or in the Plan, but defined in the Bankruptcy Code or Bankruptcy Rules, shall have the meanings ascribed to them by the Bankruptcy Code and Bankruptcy Rules, and such definitions are incorporated herein by reference.

<sup>2</sup> To the extent the Post-Effective Date Debtor has obligations with respect to directing proceeds received from the Trust, those obligations should be set forth in the Plan and Confirmation Order; only the Post-Effective Date Debtor shall be a beneficial owner of this Trust.

**WHEREAS**, the Trust is intended to qualify a “grantor trust” and the Settlor is intended to qualify as the “grantor” under the provisions of Sections 671 *et seq.* of the Internal Revenue Code of 1986, as amended (the “**Internal Revenue Code**”).

**NOW, THEREFORE**, it is hereby agreed as follows:

## ARTICLE I

### AGREEMENT OF TRUST

1.1 **Creation and Name.** There is hereby created a trust known as the “LMC Litigation Trust.” The Trustee of the Trust may transact the business and affairs of the Trust in the name of the Trust, and references herein to the Trust shall include the Trustee acting on behalf of the Trust. It is the intention of the Parties that the Trust constitutes a statutory trust under Chapter 38 of title 12 of the Delaware Code, 12 Del. C. Section 3801 *et seq.* (the “**Act**”) and that this Trust Agreement constitutes the governing instrument of the Trust. The Trustee and the Delaware Trustee are hereby authorized and directed to execute and file a Certificate of Trust with the Delaware Secretary of State in the form attached hereto as **Exhibit 1**. The Trustee is hereby authorized and directed to execute and file with the Delaware Secretary of State such certificates as may from time to time be required under the Act and any other Delaware law.

1.2 **Purposes.** The purposes of the Trust are to

- (a) receive claims and causes of action described on **Exhibit 2** to this Trust Agreement (the “**Causes of Action**”)<sup>3</sup> pursuant to the terms of the Plan and the Confirmation Order;
- (b) hold, manage, protect and monetize the Causes of Action, together with any income or gain earned thereon and proceeds derived therefrom (collectively, the “**Trust Assets**”)

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<sup>3</sup> Schedule to be updated by the EC and Debtors prior to the Effective Date.

in accordance with the terms of the Governing Documents for the benefit of the Beneficial Owner (as defined herein);

(c) engage in any lawful activity that is appropriate and in furtherance of the purposes of the Trust to the extent consistent with the Governing Documents; and

(d) make or cause to be made distributions of Trust Assets in accordance with and subject to the terms of the Governing Documents.

1.3 **Transfer of Assets.** Pursuant to, and in accordance with Article VI of the Plan, the Trust has received the assignment of the Causes of Action. Except as otherwise provided in the Governing Documents, the Causes of Action and any other assets to be transferred to the Trust under the Plan will be transferred to the Trust free and clear of any liens or other claims by the Debtors, the Post-Effective Date Debtors, any creditor, or other entity.

1.4 **Trust Acceptance of Assets.**

(a) In furtherance of the purposes of the Trust, the Trust hereby expressly accepts the transfer to the Trust of the Causes of Action as, and subject to the terms, contemplated in the Plan.

(b) In this Trust Agreement, the words “must,” “will,” and “shall” are intended to have the same mandatory force and effect, while the word “may” is intended to be permissive rather than mandatory.

(c) To the extent required by the Act, the beneficial owner (within the meaning of the Act) of the Trust (the “**Beneficial Owner**”) shall be deemed to be the Post-Effective Date Debtor; provided that Post-Effective Date Debtor shall be subject to the terms of the Governing Documents with respect to its obligations on or after the Effective Date.

1.5 **Jurisdiction.** The Bankruptcy Court shall have continuing jurisdiction over the Trust provided, however, that the courts of the State of Delaware, including any federal court located therein, shall also have jurisdiction over the Trust.

## ARTICLE II

### **POWERS AND TRUST ADMINISTRATION**

#### 2.1 **Powers.**

(a) The Trustee is and shall act as a fiduciary to the Trust in accordance with the provisions of the Governing Documents. The Trustee shall, at all times, administer the Trust in accordance with the purposes set forth in Section 1.2 above and the Plan. Subject to the limitations set forth in this Trust Agreement and the Plan, the Trustee shall have the power to take any and all actions that, in the judgment of the Trustee, are necessary or proper to fulfill the purposes of the Trust, including, without limitation, each power expressly granted in this Section 2.1, any power reasonably incidental thereto and not inconsistent with the requirements of Section 2.2, and any trust power now or hereafter permitted under the laws of the State of Delaware.

(b) Except as required by applicable law or as otherwise specified herein or in the Plan or the Confirmation Order, the Trustee need not obtain the order or approval of any court in the exercise of any power or discretion conferred hereunder.

(c) Without limiting the generality of Section 2.1(a) above, and except as limited below or by the Plan, the Trustee shall have the power to:

(i) receive the Causes of Action and exercise all rights with respect thereto, including without limitation by reviewing, reconciling, pursuing, commencing, prosecuting, compromising, settling, dismissing, releasing, waiving, withdrawing, abandoning, resolving, or electing not to pursue all Causes of Action;

(ii) seek the examination of, and examining, any Person pursuant to Federal Rule of Bankruptcy Procedure 2004;

(iii) invest monies held from time to time by the Trust in accordance with the Investment Guidelines pursuant to Section 3.2 below;

(iv) make or arrange to make payment of expenses and other obligations of the Trust as set forth in the Governing Documents;

(v) establish such funds, reserves, and accounts within the Trust, as the Trustee deems useful in carrying out the purposes of the Trust;

(vi) make or cause to be made distributions to the Beneficial Owner pursuant to the terms of this Trust Agreement and the Plan;

(vii) appoint such officers and retain such employees, consultants, advisors, independent contractors, experts, and agents and engage in such legal, financial, administrative, accounting, investment, auditing, forecasting, and alternative dispute resolution services and activities as the Trust requires, and delegate to such persons such powers and authorities as the fiduciary duties of the Trustee permit and as the Trustee, in his or her discretion, deems advisable or necessary in order to carry out the terms of this Trust Agreement;

(viii) compensate the Trustee, the Delaware Trustee, and their employees, consultants, advisors, independent contractors, experts and agents, and reimburse the Trustee and the Delaware Trustee for all reasonable out-of-pocket costs and expenses incurred by such persons in connection with the performance of their duties hereunder;

(ix) record all expenses incurred by the Trust on the books and records of the Trust;

(x) enter into such other arrangements with third parties as the Trustee deems useful in carrying out the purposes of the Trust, provided such arrangements do not conflict with any other provision of this Trust Agreement or the Plan;

(xi) in accordance with Section 4.4 below, defend, indemnify, and hold harmless (and purchase insurance indemnifying) the Trust Indemnified Parties (as defined in Section 4.4 below), to the fullest extent that a statutory trust organized under the laws of the State of Delaware is from time to time entitled to defend, indemnify, hold harmless, and/or insure its directors, trustees, officers, employees, consultants, advisors, agents, and representatives. No party shall be indemnified in any way for any liability, expense, claim, damage, or loss for which he or she is liable under Section 4.4 below;

(xii) obtain the consent of the TOC with respect to the matters set forth in Section 2.2(d) below; and

(xiii) exercise any and all other rights, and take any and all other actions as are permitted, of the Trustee in accordance with the terms of this Trust Agreement and the Plan.

(d) The Trustee shall not have the power to guarantee any debt of other persons.

(e) The Trustee shall endeavor to make timely distributions and not unduly prolong the duration of the Trust.

## 2.2 **General Administration.**

(a) The Trustee shall act in accordance with the Governing Documents. In the event of a conflict between the terms or provisions of the Plan or this Trust Agreement, the terms



of the Plan shall have first priority, followed by the Trust Agreement. For the avoidance of doubt, this Trust Agreement shall be construed and implemented in accordance with the Plan, regardless of whether any provision herein explicitly references the Plan.

(b) The Trustee shall (i) timely file such income tax and other returns and statements required to be filed and shall cause to be paid timely all taxes required to be paid by the Trust, if any, (ii) comply with all applicable reporting and withholding obligations, (iii) satisfy all requirements necessary to qualify and maintain qualification of the Trust as a grantor trust. The Trustee may request an expedited determination of taxes under Bankruptcy Code section 505(b) for all tax returns filed by or on behalf of the Trust for all taxable periods through the dissolution thereof.

(c) The Trustee shall timely account to the Bankruptcy Court as follows:

(i) The Trustee shall cause to be prepared and filed with the Bankruptcy Court, as soon as available, and in any event no later than one hundred and twenty (120) days following the end of each fiscal year, an annual report (the “**Annual Report**”) containing special-purpose financial statements of the Trust (including, without limitation, a special-purpose statement of assets, liabilities and net claimants’ equity, a special-purpose statement of changes in net claimants’ equity and a special-purpose statement of cash flows). The Trustee shall not be required to obtain an audit of the Annual Report by a firm of independent certified public accountants. The Trustee shall provide a copy of such Annual Report to the TOC when such report is filed with the Bankruptcy Court.

(d) The Trustee shall be required to obtain the consent of the TOC, pursuant to the consent process set forth in Section 5.7 below:

- (i) to settle any Cause of Action where the face amount of the asserted Claim or Vested Cause of Action exceeds \$1,000,000;
- (ii) to commence and/or participate, as a party or otherwise, in any judicial, administrative, arbitral, or other proceeding that exceeds \$1,000,000;
- (iii) to modify the compensation of the Trustee;
- (iv) to acquire an interest in and/or merge with and/or contract with another settlement trust; or
- (v) to effectuate any material amendment of this Trust Agreement, which shall be in accordance with Section 6.3; provided that no such amendment shall be in contravention of the Plan.

### ARTICLE III

#### ACCOUNTS, INVESTMENTS, AND PAYMENTS

##### 3.1 Accounts.

- (a) The Trustee shall maintain one or more accounts (the “**Trust Accounts**”) on behalf of the Trust with one or more financial depository institutions (each a “**Financial Institution**”).
- (b) The Trustee may replace any retained Financial Institution with a successor Financial Institution at any time.
- (c) The Trustee may, from time to time, create such accounts and reasonable reserves within the Trust Accounts as authorized in this Section 3.1 and as he or she may deem necessary, prudent or useful in order to provide for distributions to the Beneficial Owner and the payment of Trust operating expenses and may, with respect to any such account or reserve, restrict the use of money therein for a specified purpose (the “**Trust Subaccounts**”). Any such Trust

Subaccounts established by the Trustee shall be held as Trust Assets and are not intended to be subject to separate entity tax treatment as a “disputed claims reserve” or a “disputed ownership fund” within the meaning of the IRC or Treasury Regulations.

3.2 **Investment Guidelines.**

(a) The Trustee may invest the Trust Assets in accordance with the Investment Guidelines, attached hereto as **Exhibit 3** (the “**Investment Guidelines**”).

(b) In the event the Trust holds any non-liquid assets, the Trustee shall own, protect, oversee, and monetize such non-liquid assets in accordance with the Governing Documents. This Section 3.2(b) is intended to modify the application to the Trust of the “prudent person” rule, “prudent investor” rule, and any other rule of law that would require the Trustee to diversify the Trust Assets.

(c) Cash proceeds received by the Trust in connection with its monetization of the non-liquid Trust Assets shall be invested in accordance with the Investment Guidelines until needed for the purposes of the Trust as set forth in Section 1.2 above.

(d) All income of the Trust shall be distributed or held for future distribution to the Post-Effective Date Debtor, consistent with Section 677 of the Internal Revenue Code.

3.3 **Payment of Operating Expenses**

All operating expenses of the Trust shall be paid by the Trust except that the Post-Effective Date Debtor shall fund the operating expenses of the Trust on a monthly basis for the duration of the Trust. The Trust may periodically provide to the Post-Effective Date Debtor invoices or other documentation with respect to such operating expenses of the Trust to be paid and the Post-Effective Date Debtor shall timely pay such expenses or shall timely remit to the Trust such amounts as are necessary to enable the Trust to timely pay such expenses. None of the Trustee,

Delaware Trustee, the TOC, nor any of their officers, agents, advisors, professionals or employees shall be personally liable for the payment of any operating expense or other liability of the Trust.

3.4 **Distributions.**

The Trustee will make or cause to be made distributions to the Beneficial Owner in accordance with the Governing Documents.

**ARTICLE IV**

**TRUSTEE; DELAWARE TRUSTEE**

4.1 **Number.** In addition to the Delaware Trustee appointed pursuant to Section 4.9, there shall be one (1) Trustee who shall be the person named on the signature pages hereof. For the avoidance of doubt, any reference herein to the term Trustee does not refer to the Delaware Trustee.

4.2 **Term of Service.**

(a) The Trustee shall serve from the Effective Date until the earliest of (i) his or her death, (ii) his or her resignation pursuant to Section 4.2(b) below, (iii) his or her removal pursuant to Section 4.2(c) below, or (iv) the termination of the Trust pursuant to Section 6.2 below.

(b) The Trustee may resign at any time upon written notice to the TOC with such notice filed with the Bankruptcy Court. Such notice shall specify a date when such resignation shall take effect, which shall not be less than ninety (90) days after the date such notice is given, where practicable.

(c) The Trustee may be removed by the unanimous consent of the TOC in the event the Trustee becomes unable to discharge his or her duties hereunder due to accident, physical deterioration, mental incompetence, or for other good cause, provided the Trustee has received reasonable notice and an opportunity to be heard. Other good cause shall mean fraud, self-dealing,

intentional misrepresentation, willful misconduct, indictment for or conviction of a felony in each case whether or not connected to the Trust, or a consistent pattern of neglect and failure to perform or participate in performing the duties of Trustee hereunder. For the avoidance of doubt, any removal of a Trustee by the TOC pursuant to this Section 4.2(c) shall require the approval of the Bankruptcy Court and shall take effect at such time as the Bankruptcy Court shall determine.

(d) In the event of any vacancy in the office of the Trustee, including the death, resignation, or removal of the Trustee, such vacancy shall be filled by the unanimous consent of the TOC, subject to the approval of the Bankruptcy Court. In the event the TOC cannot agree on a successor Trustee, the provisions of Section 6.12 below shall apply.

(e) Immediately upon the appointment of any successor Trustee pursuant to Section 4.2(d) above, all rights, titles, duties, powers and authority of the predecessor Trustee hereunder shall be vested in and undertaken by the successor Trustee without any further act. No successor Trustee shall be liable personally for any act or omission of his or her predecessor Trustee. No predecessor Trustee shall be liable personally for any act or omission of his or her successor Trustee. No successor Trustee shall have any duty to investigate the acts or omissions of his or her predecessor Trustee.

(f) Each successor Trustee shall serve until the earliest of (i) his or her death, (ii) his or her resignation pursuant to Section 4.2(b) above, (iii) his or her removal pursuant to Section 4.2(c) above, and (iv) the termination of the Trust pursuant to Section 6.2 below.

#### 4.3 **Compensation and Expenses of the Trustee.**

(a) The Trustee shall receive compensation on an hourly basis for his or her services as Trustee on matters related to the operation of the Trust. The hourly rate shall be the Trustee's usual and customary rate then in effect, currently \$1,205 per hour. The compensation

payable to the Trustee hereunder shall be reviewed every year by the TOC and may be appropriately adjusted for changes in the cost of living. The Trust will reimburse the Trustee for fees and expenses incurred prior to the Effective Date in connection with this Trust Agreement and effectuating a timely, orderly, and efficient transition of duties and obligations to the Trustee as of the Effective Date, (such amount not to exceed \$15,000), which shall be paid promptly after the Effective Date.

(b) The Trust will promptly reimburse the Trustee for all reasonable and documented out-of-pocket costs and expenses incurred by the Trustee in connection with the performance of his or her duties hereunder.

(c) The Trust shall include in the Annual Report a description of the amounts paid under this Section 4.3.

#### 4.4 **Standard of Care; Exculpation.**

(a) As used herein, the term “**Trust Indemnified Party**” shall mean each of (i) the Trustee, (ii) the Delaware Trustee, (iii) the TOC and its members, and (iv) the officers, employees, consultants, advisors, and agents of each of the Trust, the Trustee, the Delaware Trustee, and the TOC.

(b) To the maximum extent permitted by applicable law, the Trust Indemnified Parties shall not have or incur any liability for actions taken or omitted in their capacities as Trust Indemnified Parties, or on behalf of the Trust, except those acts found by a final order of a court of competent jurisdiction (“**Final Order**”) to be arising out of their willful misconduct, bad faith, gross negligence, or fraud, and shall be entitled to indemnification and reimbursement for reasonable fees and expenses in defending any and all of their actions or inactions in their capacity as Trust Indemnified Parties, or on behalf of the Trust, and for any other liabilities, losses,

damages, claims, costs, and expenses arising out of or due to the implementation or administration of the Plan or the Trust Agreement (other than taxes in the nature of income taxes imposed on compensation paid to such persons), in each case except for any actions or inactions found by Final Order to be arising out of their willful misconduct, bad faith, gross negligence or fraud. Any valid indemnification claim of any of the Trust Indemnified Parties shall be satisfied from the Trust.

(c) To the extent that, at law or in equity, the Trust Indemnified Parties have duties (including fiduciary duties) or liability related thereto, to the Trust or the Beneficial Owner, it is hereby understood and agreed by the Parties that such duties and liabilities are eliminated to the fullest extent permitted by applicable law, and replaced by the duties and liabilities expressly set forth in this Trust Agreement with respect to the Trust Indemnified Parties; provided, however, that with respect to the Trust Indemnified Parties other than the Delaware Trustee the duties of care and loyalty are not eliminated but are limited and subject to the terms of this Trust Agreement, including but not limited to this Section 4.4 and its subparts.

(d) The Trust will maintain appropriate insurance coverage for the protection of the Trust Indemnified Parties, as determined by the Trustee at his or her discretion.

#### 4.5 **Protective Provisions.**

(a) Every provision of this Trust Agreement relating to the conduct or affecting the liability of or affording protection to Trust Indemnified Parties shall be subject to the provisions of this Section 4.5.

(b) In the event the Trustee retains counsel (including at the expense of the Trust), the Trustee shall be afforded the benefit of the attorney-client privilege with respect to all communications with such counsel, and in no event shall the Trustee be deemed to have waived any right or privilege including, without limitation, the attorney-client privilege even if the

communications with counsel had the effect of guiding the Trustee in the performance of duties hereunder. A successor Trustee shall succeed to and hold the same respective rights and benefits of the predecessor for purposes of privilege, including the attorney-client privilege. No Party or other person may raise any exception to the attorney-client privilege described herein as any such exceptions are hereby waived by all Parties.

(c) No Trust Indemnified Party shall be personally liable under any circumstances, except for his or her own willful misconduct, bad faith, gross negligence or fraud as determined by a Final Order. Notwithstanding the foregoing, the parties (a) acknowledge that the initial Trustee has been appointed as a representative of M3 Advisory Partners, LP and (b) agree that such initial Trustee shall have no personal liability under any circumstances and, instead, any liability that otherwise would be owing by such initial Trustee hereunder shall be the obligation of M3 Advisory Partners, LP.

(d) No provision of this Trust Agreement shall require the Trust Indemnified Parties to expend or risk their own personal funds or otherwise incur financial liability in the performance of their rights, duties and powers hereunder.

(e) In the exercise or administration of the Trust hereunder, the Trust Indemnified Parties (i) may act directly or through their respective agents or attorneys pursuant to agreements entered into with any of them, and the Trust Indemnified Parties shall not be liable for the default or misconduct of such agents or attorneys if such agents or attorneys have been selected by the Trust Indemnified Parties in good faith and with due care, and (ii) may consult with counsel, accountants and other professionals to be selected by them in good faith and with due care and employed by them, and shall not be liable for anything done, suffered or omitted in good faith by



them in accordance with the advice or opinion of any such counsel, accountants or other professionals.

4.6 **Indemnification.**

(a) To the maximum extent permitted by applicable law, the Trust Indemnified Parties shall be entitled to indemnification and reimbursement for reasonable fees and expenses (including attorneys' fees and costs but excluding taxes in the nature of income taxes imposed on compensation paid to the Trust Indemnified Parties) in defending any and all of their actions or inactions in their capacity as Trust Indemnified Parties, or on behalf of the Trust, and for any other liabilities, losses, damages, claims, costs, and expenses arising out of or due to the implementation or administration of the Plan or the Trust Agreement (other than taxes in the nature of income taxes imposed on compensation paid to such persons), in each case, except for any actions or inactions found by Final Order to be arising out of their willful misconduct, bad faith, gross negligence, or fraud. Any valid indemnification claim of any of the Trust Indemnified Parties shall be satisfied from the Trust.

(b) Reasonable expenses, costs and fees (including attorneys' fees and costs) incurred by or on behalf of the Trust Indemnified Parties in connection with any action, suit or proceeding, whether civil, administrative or arbitral, from which they are indemnified by the Trust shall be paid by the Trust in advance of the final disposition thereof upon receipt of an undertaking, by or on behalf of the Trust Indemnified Parties, to repay such amount in the event that it shall be determined ultimately by Final Order that the Trust Indemnified Parties or any other potential indemnitee are not entitled to be indemnified by the Trust. The Trustee may, in his or her discretion, authorize an advance of reasonable expenses, costs, and fees (including attorneys' fees and costs) to be incurred by or on behalf of the Trust Indemnified Parties, as set forth herein.

(c) The indemnification provisions of this Trust Agreement with respect to any Trust Indemnified Party shall survive the termination of such Trust Indemnified Party from the capacity for which such Trust Indemnified Party is indemnified. Modification of this Trust Agreement shall not affect any indemnification rights or obligations in existence at such time. In making a determination with respect to entitlement to indemnification of any Trust Indemnified Party hereunder, the person, persons or entity making such determination shall presume that such Trust Indemnified Party is entitled to indemnification under this Trust Agreement, and any person seeking to overcome such presumption shall have the burden of proof to overcome the presumption.

(d) The rights to indemnification hereunder are not exclusive of other rights which any Trust Indemnified Party may otherwise have at law or in equity, including common law rights to indemnification or contribution.

4.7 **No Bond.** Neither the Trustee nor the Delaware Trustee shall be required to post any bond or other form of surety or security unless otherwise ordered by the Bankruptcy Court.

4.8 **Delaware Trustee.**

(a) There shall at all times be a Delaware Trustee to serve in accordance with the requirements of the Act. The Delaware Trustee shall either be (i) a natural person who is at least twenty-one (21) years of age and a resident of the State of Delaware or (ii) a legal entity that has its principal place of business in the State of Delaware, otherwise meets the requirements of applicable Delaware law to be eligible to serve as the Delaware Trustee, and shall act through one or more persons authorized to bind such entity. If at any time the Delaware Trustee shall cease to be eligible to serve as the Delaware Trustee in accordance with the provisions of this Section 4.9, it shall resign immediately in the manner and with the effect hereinafter specified in Section 4.9(c)

below. For the avoidance of doubt, the Delaware Trustee will only have such rights, duties (including fiduciary duties) and obligations as expressly provided by reference to the Delaware Trustee hereunder. The Trustee shall have no liability for the acts or omissions of any Delaware Trustee.

(b) The Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities of the Trustee set forth herein. The Delaware Trustee shall be a trustee of the Trust for the sole and limited purpose of fulfilling the requirements of Section 3807(a) of the Act and for taking such actions as are required to be taken by a Delaware Trustee under the Act. The duties (including fiduciary duties), liabilities and obligations of the Delaware Trustee shall be limited to accepting legal process served on the Trust in the State of Delaware and the execution of any certificates required to be filed with the Secretary of State of the State of Delaware that the Delaware Trustee is required to execute under Section 3811 of the Act. There shall be no other duties (including fiduciary duties) or obligations, express or implied, at law or in equity, of the Delaware Trustee. To the extent that, at law or in equity, the Delaware Trustee has duties (including fiduciary duties) and liabilities relating to the Trust or the Beneficial Owner, such duties and liabilities are replaced by the duties and liabilities of the Delaware Trustee expressly set forth in this Trust Agreement. The Delaware Trustee shall have no liability for the acts or omissions of the Trustee. The Delaware Trustee undertakes to perform such duties and only such duties as are specifically and expressly set forth in this Trust Agreement. These duties shall be deemed purely ministerial in nature, and the Delaware Trustee shall not be liable except for the performance of such duties, and no implied covenants or obligations shall be read into this Trust Agreement against the Delaware Trustee. Any permissive rights of the Delaware Trustee to do things enumerated in this Trust Agreement shall not be construed as a duty

and, with respect to any such permissive rights, the Delaware Trustee shall not be answerable for other than its willful misconduct, bad faith, gross negligence or fraud. The Delaware Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Trust Agreement at the request or direction of the Trustee or any other person pursuant to the provisions of this Trust Agreement unless the Trustee or such other person shall have offered to the Delaware Trustee security or indemnity (satisfactory to the Delaware Trustee in its discretion) against the costs, expenses and liabilities that may be incurred by it in compliance with such request or direction. The Delaware Trustee shall be entitled to request and receive written instructions from the Trustee and shall have no responsibility or liability for any losses or damages of any nature that may arise from any action taken or not taken by the Delaware Trustee in accordance with the written direction of the Trustee. The Delaware Trustee may, at the expense of the Trust, request, rely on and act in accordance with officer's certificates and/or opinions of counsel, and shall incur no liability and shall be fully protected in acting or refraining from acting in accordance with such officer's certificates and opinions of counsel.

(c) The Delaware Trustee shall serve until such time as the Trustee removes the Delaware Trustee or the Delaware Trustee resigns and a successor Delaware Trustee is appointed by the Trustee in accordance with the terms of Section 4.9(d) below. The Delaware Trustee may resign at any time upon the giving of at least thirty (30) days' advance written notice to the Trustee; provided that such resignation shall not become effective unless and until a successor Delaware Trustee shall have been appointed by the Trustee in accordance with Section 4.9(d) below; provided further that if any amounts due and owing to the Delaware Trustee hereunder remain unpaid for more than ninety (90) days, the Delaware Trustee shall be entitled to resign immediately by giving written notice to the Trustee. If the Trustee does not act within such thirty (30) day

period, the Delaware Trustee, at the expense of the Trust, may apply to the Court of Chancery of the State of Delaware or any other court of competent jurisdiction for the appointment of a successor Delaware Trustee.

(d) Upon the resignation or removal of the Delaware Trustee, the Trustee shall appoint a successor Delaware Trustee by delivering a written instrument to the outgoing Delaware Trustee. Any successor Delaware Trustee must satisfy the requirements of Section 3807 of the Act. Any resignation or removal of the Delaware Trustee and appointment of a successor Delaware Trustee shall not become effective until a written acceptance of appointment is delivered by the successor Delaware Trustee to the outgoing Delaware Trustee and the Trustee, and any fees and expenses due to the outgoing Delaware Trustee are paid. Following compliance with the preceding sentence, the successor Delaware Trustee shall become fully vested with all of the rights, powers, duties and obligations of the outgoing Delaware Trustee under this Trust Agreement, with like effect as if originally named as Delaware Trustee, and the outgoing Delaware Trustee shall be discharged of his or her duties and obligations under this Trust Agreement. The successor Delaware Trustee shall make any related filings required under the Act, including filing a Certificate of Amendment to the Certificate of Trust of the Trust in accordance with Section 3810 of the Act.

(e) Notwithstanding anything herein to the contrary, any business entity into which the Delaware Trustee may be merged or converted or with which it may be consolidated or any entity resulting from any merger, conversion, or consolidation to which the Delaware Trustee shall be a party, or any entity succeeding to all or substantially all of the corporate trust business of the Delaware Trustee, shall be the successor of the Delaware Trustee hereunder and will have

and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

(f) The Delaware Trustee shall be entitled to compensation for its services as agreed pursuant to a separate fee agreement between the Trust and the Delaware Trustee, which compensation shall be paid by the Trust. Such compensation is intended for the Delaware Trustee's services as contemplated by this Trust Agreement. The terms of this paragraph shall survive termination of this Trust Agreement and/or the earlier resignation or removal of the Delaware Trustee.

(g) The Delaware Trustee shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument, or document, other than this Trust Agreement, whether or not, an original or a copy of such agreement has been provided to the Delaware Trustee. The Delaware Trustee shall have no duty to know or inquire as to the performance or nonperformance of any provision of any other agreement, instrument or document, other than this Trust Agreement. Neither the Delaware Trustee nor any of its directors, officers, employees, agents or affiliates shall be responsible for nor have any duty to monitor the performance or any action of the Trust, the Trustee or any other person, or any of their directors, members, officers, agents, affiliates or employee, nor shall it have any liability in connection with the malfeasance or nonfeasance by such party. The Delaware Trustee may assume performance by all such persons of their respective obligations. The Delaware Trustee shall have no enforcement or notification obligations relating to breaches of representations or warranties of any other person. The Delaware Trustee shall have no responsibilities (except as expressly set forth herein) as to the validity, sufficiency, value, genuineness, ownership or transferability of any Trust Asset, written

instructions, or any other documents in connection therewith, and will not be regarded as making, nor be required to make, any representations thereto.

(h) The Delaware Trustee shall have no liability for any action taken, or errors in judgment made, in good faith by it or any of its officers, employees or agents, unless it shall have been negligent in ascertaining the pertinent facts. Nothing in this Trust Agreement shall require the Delaware Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder. In no event shall the Delaware Trustee be responsible or liable for special, indirect, punitive, incidental or consequential losses or damages of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Delaware Trustee has been advised of the likelihood of any such loss or damage and regardless of the form of action.

(i) The Delaware Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by them to be genuine and to have been signed or presented by the proper party or parties not only as to due execution, validity, and effectiveness, but also as to the truth and accuracy of any information contained therein.

(j) The Corporate Transparency Act (31 U.S.C § 5336) and its implementing regulations (collectively, the “CTA”), may require the Trust to file reports with the Financial Crimes Enforcement Network (“FinCEN”) from time to time. It shall be the Trustee’s duty and not the Delaware Trustee’s duty to cause the Trust to make such filings, as applicable, and to cause the Trust to comply with its obligations under the CTA, if any. The parties hereto acknowledge that the Delaware Trustee acts solely as a directed trustee at the direction of the Trustee hereunder

and that the Trustee is and shall be deemed to be the party with the power and authority to exercise substantial control over the Trust.

(k) The Delaware Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations under this Trust Agreement arising out of, or caused, directly or indirectly, by circumstances beyond its control, including without limitation, any act or provision of any present or future law or regulation or governmental authority, acts of God, earthquakes, fires, floods, wars, terrorism, civil or military disturbances, sabotage, epidemics, riots, interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service, accidents, labor disputes, acts of civil or military authority or governmental actions, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility.

## ARTICLE V

### **TRUST OVERSIGHT COMMITTEE**

5.1 **Members.** The TOC shall consist of not more than five (5) members.<sup>4</sup> For the avoidance of doubt, the members of the TOC are expected to be members of the New Board. To the extent that a member of the TOC elects to resign from the TOC in accordance with Section 5.3(b) below or is removed pursuant to Section 5.3(c) below, a successor shall be appointed pursuant to Section 5.4(a).

5.2 **Duties.** The members of the TOC shall serve in a fiduciary capacity and shall have no fiduciary obligations or duties to any party other than the Beneficial Owner. The Trustee must obtain the consent of the TOC on matters identified in Section 2.2(d) above. Except for the duties and obligations expressed in the Governing Documents, there shall be no other duties (including

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<sup>4</sup> The initial members of the TOC shall be: Alexander Matina, Andrew L. Sole, Michael Wartell, Neil Weiner, and Alexandre Zygnier.



fiduciary duties) or obligations, express or implied, at law or in equity, of the TOC. To the extent that, at law or in equity, the TOC has duties (including fiduciary duties) and liabilities relating thereto to the Trust, the other Parties hereto or the Beneficial Owner of the Trust, it is hereby understood and agreed by the other Parties hereto that such duties and liabilities are replaced by the duties and liabilities of the TOC expressly set forth in the Governing Documents.

**5.3 Term of Office.**

(a) Each member of the TOC shall serve until the earlier of (i) his or her death, (ii) his or her resignation pursuant to Section 5.3(b) below, (iii) his or her removal pursuant to Section 5.3(c) below, or (iv) the termination of the Trust pursuant to Section 6.2 below.

(b) A member of the TOC may resign at any time by written notice to the other members of the TOC and the Trustee. Such notice shall specify a date when such resignation shall take effect, which shall not be less than thirty (30) days after the date such notice is given, where practicable.

(c) A member of the TOC may be removed in the event that he or she becomes unable to discharge his or her duties hereunder due to accident, physical deterioration, mental incompetence, or a consistent pattern of neglect and failure to perform or to participate in performing the duties of such member hereunder, such as repeated non-attendance at scheduled meetings, or for other good cause. Such removal may be made by the recommendation of the remaining members of the TOC with the approval of the Trustee.

**5.4 Appointment of Successors.**

(a) If a member of the TOC dies, resigns pursuant to Section 5.3(b) above, or is removed pursuant to Section 5.3(c) above, the vacancy shall be filled with an individual selected by the remaining TOC members with the approval of the Trustee, provided however, that if the

remaining TOC members and the Trustee cannot agree on the successor the matter shall be resolved pursuant to Section 6.12 below.

(b) Each successor TOC member shall serve until the earlier of (i) his or her death, (ii) his or her resignation pursuant to Section 5.3(b) above, (iii) his or her removal pursuant to Section 5.3(c) above, or (iv) the termination of the Trust pursuant to Section 6.2 below.

(c) No successor TOC member shall be liable personally for any act or omission of his or her predecessor TOC member. No successor TOC member shall have any duty to investigate the acts or omissions of his or her predecessor TOC member.

5.5 **Compensation and Expenses of the TOC.** The members of the TOC shall not receive compensation from the Trust for their services as TOC members, but shall be reimbursed for all reasonable out-of-pocket costs or expenses incurred in connection with the performance of such member's duties hereunder. A description of the amounts paid under this Section 5.5 shall be included in the Annual Report.

5.6 **No Bond.** The members of the TOC shall not be required to post any bond or other form of surety or security unless otherwise ordered by the Bankruptcy Court.

5.7 **Procedures for Obtaining Consent of the TOC**

(a) Where the Trustee is required to obtain the consent of the TOC pursuant to Section 2.2(d) above, the Trustee shall provide the TOC with a written notice (e-mail is sufficient) stating that its consent is being sought pursuant to that provision, describing in detail the nature and scope of the action the Trustee proposes to take, and explaining in detail the reasons why the Trustee desires to take such action. The Trustee shall provide the TOC as much relevant information concerning the proposed action as is reasonably practicable under the circumstances. The Trustee shall also provide the TOC with reasonable access to the professionals or experts

retained by the Trust and its staff (if any) as the TOC may reasonably request during the time that the Trustee is considering such action, and shall also provide the TOC the opportunity, at reasonable times and for reasonable periods of time, to discuss and comment on such action with the Trustee.

(b) The TOC must consider in good faith and in a timely fashion any request for its consent by the Trustee and must in any event advise the Trustee in writing (e-mail is sufficient) of its consent or objection to the proposed action within five (5) business days of receiving the original request for consent from the Trustee. The TOC may not withhold its consent unreasonably. If the TOC decides to withhold consent, it must explain in detail its objections to the proposed action. If the TOC does not advise the Trustee in writing of its consent or objections to the proposed action within five (5) days of receiving notice regarding such request, then consent of the TOC to the proposed action shall be deemed to have been affirmatively granted.

(c) If, after following the procedures specified in this Section 5.7, the TOC continues to object to the proposed action and to withhold its consent to the proposed action, the Trustee and the TOC shall resolve their dispute pursuant to Section 6.12. The TOC shall bear the burden of proving that it reasonably withheld its consent. If the TOC meets that burden, the Trust shall then bear the burden of showing why it should be permitted to take the proposed action notwithstanding the TOC's reasonable objection.

(d) Action by the TOC shall require the affirmative vote of the majority of the TOC members then in office.

## ARTICLE VI

### GENERAL PROVISIONS

6.1 **Irrevocability.** To the fullest extent permitted by applicable law, the Trust is irrevocable.

6.2 **Term; Termination.**

(a) The term for which the Trust is to exist shall commence on the date of the filing of the Certificate of Trust and shall terminate pursuant to the provisions of this Section 6.2.

(b) The Trust shall automatically dissolve as soon as practicable but no later than ninety (90) days after the date on which the Bankruptcy Court approves the dissolution upon the satisfaction of the purposes of the Trust, wherein (i) all reasonably expected assets have been collected, (ii) all distributions have been made, (iii) necessary arrangements and reserves have been made to discharge all anticipated remaining obligations and operating expenses in a manner consistent with the Governing Documents, and (iv) a final accounting has been filed with the Bankruptcy Court (the “**Dissolution Date**”).

(c) On the Dissolution Date or as soon as reasonably practicable thereafter, after the wind-up of the affairs of the Trust by the Trustee and payment of all of the Trust’s liabilities have been provided for as required by applicable law including Section 3808 of the Act, all monies remaining in the Trust shall be distributed or disbursed in accordance with Section 3.4.

(d) Following the dissolution and distribution of the assets of the Trust, the Trust shall terminate, and the Trustee shall execute and cause a Certificate of Cancellation of the Certificate of Trust of the Trust to be filed in accordance with the Act (without the need for the Delaware Trustee’s consent or signature). Notwithstanding anything to the contrary contained in this Trust Agreement, the existence of the Trust as a separate legal entity shall continue until the

filing of such Certificate of Cancellation. A certified copy of the Certificate of Cancellation shall be given to the Delaware Trustee for its records promptly following such filing.

6.3 **Amendments.** Any amendment to or modification of this Trust Agreement may be made in writing and only pursuant to an order of the Bankruptcy Court; provided, however, the Trustee may amend this Trust Agreement with the unanimous consent of the TOC from time to time without the consent, approval or other authorization of, but with notice to, the Bankruptcy Court, to make: (i) minor modifications or clarifying amendments necessary to enable the Trustee to effectuate the provisions of this Trust Agreement; or (ii) modifications to satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, statute, ruling or regulation of any federal, state or foreign governmental entity. Notwithstanding the foregoing: (i) no amendment or modification of this Trust Agreement shall modify this Trust Agreement in a manner that is inconsistent with the Plan or the Confirmation Order, other than to make minor modifications or clarifying amendments as necessary to enable the Trustee to effectuate the provisions of this Trust Agreement; (ii) neither this Trust Agreement nor any Exhibit to this Trust Agreement shall be modified or amended in any way that could jeopardize, impair, or modify the Trust's grantor trust status; and (iii) any amendment or modification of this Trust Agreement, or Exhibit hereto, affecting the rights, duties, immunities or liabilities of the Delaware Trustee shall require the Delaware Trustee's written consent.

6.4 **Severability.** Should any provision in this Trust Agreement be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of this Trust Agreement.

6.5 **Notices.**

(a) Any notices or other communications required or permitted hereunder to the following Parties shall be in writing and delivered to the addresses or e-mail addresses designated below, or to such other addresses or e-mail addresses as may hereafter be furnished in writing to each of the other Parties listed below in compliance with the terms hereof.

To the Trust:

M3 Capital Partners  
Attention: Robert Winning  
1700 Broadway, 19<sup>th</sup> Floor  
New York, NY 10019  
rwinning@m3-partners.com

With a copy (which shall not constitute notice) to:

[ ]

To the Delaware Trustee;

[ ]

With a copy (which shall not constitute notice) to:

[ ]

To the TOC:

[ ]

(b) All such notices and communications if mailed shall be effective when physically delivered at the designated addresses or, if electronically transmitted, when the communication is received at the designated addresses.

6.6 **Successors and Assigns**. The provisions of this Trust Agreement shall be binding upon and inure to the benefit of the Trust, the TOC, the Delaware Trustee, the Trustee, and their respective successors and assigns, except that neither the Trust, the TOC, the Delaware Trustee, nor the Trustee, may assign or otherwise transfer any of their rights or obligations, if any, under this Trust Agreement except in the case of the Delaware Trustee in accordance with Section 4.9(d),

and in the case of the Trustee in accordance with Section 4.2(d) above, and in the case of the TOC members in accordance with Section 5.4(a) above.

6.7 **Limitation on Interests for Securities Laws Purposes.** Rights of the Beneficial Owner, and any interests therein: (a) shall not be assigned, conveyed, hypothecated, pledged, or otherwise transferred, voluntarily or involuntarily, directly or indirectly, except by operation of law; (b) shall not be evidenced by a certificate or other instrument; (c) shall not possess any voting rights; and (d) shall not be entitled to receive any dividends or interest.

6.8 **Exemption from Registration.** The Parties hereto intend that the interests of the Beneficial Owner under this Trust Agreement shall not be “securities” under applicable laws, but none of the Parties hereto represent or warrant that such rights shall not be securities or shall be entitled to exemption from registration under applicable securities laws. If it should be determined that any such interest constitutes a “security,” the Parties hereto intend that the exemption provisions of Bankruptcy Code Section 1145 will be satisfied and the offer and sale under the Plan of the beneficial interest in the Trust will be exempt from registration under the Securities Act, all rules and regulations promulgated thereunder, and all applicable state and local securities laws and regulations.

6.9 **Entire Agreement; No Waiver.** The entire agreement of the Parties relating to the subject matter of this Trust Agreement is contained herein and in the documents referred to herein (including the Plan), and this Trust Agreement and such documents supersede any prior oral or written agreements concerning the subject matter hereof. No failure to exercise or delay in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise

thereof or of any other right, power, or privilege. The rights and remedies herein provided are cumulative and are not exclusive of rights under law or in equity.

6.10 **Headings.** The headings used in this Trust Agreement are inserted for convenience only and do not constitute a portion of this Trust Agreement, nor in any manner affect the construction of the provisions of this Trust Agreement.

6.11 **Governing Law.** The validity and construction of this Trust Agreement and all amendments hereto and thereto shall be governed by the laws of the State of Delaware, and the rights of all Parties hereto and the effect of every provision hereof shall be subject to and construed according to the laws of the State of Delaware without regard to the conflicts of law provisions thereof that would purport to apply the law of any other jurisdiction; provided, however, that the Parties hereto intend that the provisions hereof shall control and there shall not be applicable to the Trust, the Trustee, the Delaware Trustee, the TOC, or this Trust Agreement, any provision of the laws (statutory or common) of the State of Delaware pertaining to trusts that relate to or regulate in a manner inconsistent with the terms hereof: (a) the filing with any court or governmental body or agency of Trustee accounts or schedules of Trustee fees and charges; (b) affirmative requirements to post bonds for the Trustee, officers, agents, or employees of a trust; (c) the necessity for obtaining court or other governmental approval concerning the acquisition, holding, or disposition of real or personal property; (d) fees or other sums payable to the Trustee, officers, agents, or employees of a trust; (e) the allocation of receipts and expenditures to income or principal; (f) restrictions or limitations on the permissible nature, amount, or concentration of trust investments or requirements relating to the titling, storage, or other manner of holding of trust assets; (g) the existence of rights or interests (beneficial or otherwise) in trust assets; (h) the ability of beneficial owners or other persons to terminate or dissolve a trust; or (i) the establishment of



fiduciary or other standards or responsibilities or limitations on the acts or powers of the Trustee or beneficial owners that are inconsistent with the limitations on liability or authorities and powers of the Trustee, the Delaware Trustee, or the TOC, set forth or referenced in this Trust Agreement. Section 3540 of the Act shall not apply to the Trust.

6.12 **Dispute Resolution.**

(a) Unless otherwise expressly provided for herein or in Article VIII of the Plan, the dispute resolution procedures of this Section 6.12 shall be the exclusive mechanism to resolve any dispute arising under or with respect to this Trust Agreement. For the avoidance of doubt, this Section 6.12 shall not apply to the Delaware Trustee or in any dispute with respect to Claims.

(b) **Informal Dispute Resolution.** Any dispute under this Trust Agreement shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when a disputing party sends to the counterparty or counterparties a written notice of dispute (“**Notice of Dispute**”). Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) days from the date the Notice of Dispute is received by the counterparty or counterparties, unless that period is modified by written agreement of the disputing party and counterparty or counterparties. If the disputing party and the counterparty or counterparties cannot resolve the dispute by informal negotiations, then the disputing party may invoke the formal dispute resolution procedures as set forth below.

(c) **Formal Dispute Resolution.** The disputing party shall invoke formal dispute resolution procedures, within the time period provided in the preceding subparagraph, by serving on the counterparty or counterparties a written statement of position regarding the matter in dispute (“**Statement of Position**”). The Statement of Position shall include, but need not be

limited to, any factual data, analysis or opinion supporting the disputing party's position and any supporting documentation and legal authorities relied upon by the disputing party. Each counterparty shall serve its Statement of Position within thirty (30) days of receipt of the disputing party's Statement of Position, which shall also include, but need not be limited to, any factual data, analysis or opinion supporting the counterparty's position and any supporting documentation and legal authorities relied upon by the counterparty. If the disputing party and the counterparty or counterparties are unable to consensually resolve the dispute within thirty (30) days after the last of all counterparties have served its Statement of Position on the disputing party, the disputing party may file with the Bankruptcy Court a motion for judicial review of the dispute in accordance with Section 6.12(d).

(d) **Judicial Review.** The disputing party may seek judicial review of the dispute by filing with the Bankruptcy Court (or, if the Bankruptcy Court shall not have jurisdiction over such dispute, such court as has jurisdiction pursuant to Section 1.5 above) and serving on the counterparty or counterparties and the Trustee, a motion requesting judicial resolution of the dispute. The motion must be filed within forty-five (45) days of receipt of the last counterparty's Statement of Position pursuant to the preceding subparagraph. The motion shall contain a written statement of the disputing party's position on the matter in dispute, including any supporting factual data, analysis, opinion, documentation and legal authorities, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly administration of the Trust. Each counterparty shall respond to the motion within the time period allowed by the rules of the court, and the disputing party may file a reply memorandum, to the extent permitted by the rules of the court.

6.13 **Effectiveness.** This Trust Agreement shall become effective on the Effective Date.

6.14 **Counterpart Signatures.** This Trust Agreement may be executed in any number of counterparts and by different Parties on separate counterparts (including by PDF transmitted by e-mail), and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

6.15 **Waiver of Jury Trial.** Each Party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to a trial by jury in any legal proceeding arising out of or relating to this Trust Agreement to the extent any such proceeding is subject to the jurisdiction of the Bankruptcy Court; provided, however, the foregoing waiver shall not apply to the extent any such proceeding is not subject to the jurisdiction of the Bankruptcy Court in accordance with the terms of this Trust Agreement.

IN WITNESS WHEREOF, the Parties have executed this Trust Agreement this \_\_\_\_ day  
of \_\_\_\_\_, 2024.

**SETTLOR**

---

**TRUSTEE**

---

**DELAWARE TRUSTEE**

||

By: \_\_\_\_\_

**TRUST OVERSIGHT COMMITTEE**

**EXHIBIT 1**

**CERTIFICATE OF TRUST OF THE LMC LITIGATION TRUST**

## CERTIFICATE OF TRUST OF THE LMC LITIGATION TRUST

This Certificate of Trust of the LMC Litigation Trust (the “*Trust*”) is being duly executed and filed on behalf of the Trust by the undersigned trustees to form a statutory trust under the Delaware Statutory Trust Act (12 Del. C. Section 3801 *et seq.*) (the “*Act*”).

Name. The name of the trust formed hereby is: **LMC Litigation Trust**

Registered Office; Registered Agent. The name and address of the trustee of the Trust with a principal place of business in the State of Delaware is:

[Wilmington Trust, National Association  
1100 North Market Street  
Wilmington, Delaware 19890-1605  
Attention: Corporate Trust Administration]

Effective Date. This Certificate of Trust shall be effective upon filing.



IN WITNESS WHEREOF, the undersigned have duly executed this Certificate of Trust in accordance with Section 3811(a) of the Act.

TRUSTEE:

DELAWARE TRUSTEE:

[not in its individual capacity, but  
solely as  
Delaware Trustee]

By: \_\_\_\_\_

By: \_\_\_\_\_

**EXHIBIT 2**

**LIST OF CAUSES OF ACTION**

[To come]

### EXHIBIT 3

#### INVESTMENT GUIDELINES

**In General.** Only the following investments will be permitted:

- (i) Demand and time deposits, such as certificates of deposit, in banks or other savings institutions whose deposits are federally insured;
- (ii) U.S. Treasury bills, bonds, and notes, including, but not limited to, long-term U.S. Treasury bills, bonds, notes, and other Government Securities as defined under Section 2(a)(16) of the Investment Company Act of 1940, 15 U.S.C. § 80a-2(a)(16), including, but not limited to, Fannie Mae, Freddie Mac, Federal Home Loan Bank, and Federal Farm Credit;
- (iii) Repurchase agreements for U.S. Treasury bills, bonds, and notes;
- (iv) AA or AAA corporate bonds (with the rating awarded by at least two of the three major rating agencies (Standard & Poor's, Moody's, or Fitch)); or
- (v) Open-ended mutual funds owning only assets described in subparts (i) through (iv) of this subsection.

The value of bonds of any single company and its affiliates owned by the Trust directly rather than through a mutual fund shall not exceed 10% of the investment portfolio at time of purchase; this restriction does not apply to any of the following: Repurchase Agreements; Money Market Funds; U.S. Treasuries; and U.S. Government Agencies.

Any such investments shall be made consistently with the Uniform Prudent Investor Act. The determination of the rating of any investments shall be made by the Trust's financial advisor on the date of acquisition of any such investment or on the date of re-investment. The Trust's financial advisor shall reconfirm that all investments of Trust Assets still meet the original rating requirement on a quarterly basis. If the Trust's financial advisors determine that any particular investment no longer meets the rating requirement, there shall be a substitution of that investment with an investment that meets the ratings requirement as promptly as practicable, but in no event later than the next reporting period. Previously purchased securities downgraded below AA may be held for a reasonable and prudent period of time if the Trust's financial advisor believes it is in the interest of the Trust to do so.

The borrowing of funds or securities for the purpose of leveraging, shorting, or other investments is prohibited. Investment in non-U.S. dollar denominated bonds is prohibited. The standing default investment instruction for all cash in any account or subaccount that holds any Trust Assets in cash shall be invested in the BlackRock Fed Fund (CUSIP 09248U809).

See example fund-level requirements table on following page.

### Fund Level Requirements

1. OTC Derivatives Counterparty Exposure – Not allowed
2. Non-U.S. dollar denominated bonds – Not allowed

| TYPE OF INVESTMENT   | ELIGIBLE  | PROHIBITED | COMMENTS |
|--|---|------------|----------|
| U.S. Treasury Securities   | X   |            |          |
| U.S. Agency Securities   | X   |            |          |
| Mortgage-Related Securities  |   | x          |          |
| Asset-Backed Securities  |   | x          |          |
| Corporate Securities (public)  | X   |            |          |
| Municipal bonds  | x   |            |          |
| <b>DERIVATIVES:</b>  |   |            |          |
|  | No investment, including futures, options and other derivatives, may be purchased if its return is directly or indirectly determined by an investment prohibited elsewhere in these guidelines. |            |          |
| Futures  |   | x          |          |
| Options  |   | x          |          |
| Currency Forwards  |   | x          |          |
| Currency Futures   |   | x          |          |
| Currency Options   |   | x          |          |
| Currency Swaps   |   | x          |          |
| Interest Rate Swaps  |   | x          |          |
| Total Return Swaps   |   | x          |          |
| Structured Notes   |   | X          |          |
| Collateralized Debt Obligations  |   | x          |          |
| Credit Default Swaps   |   | X          |          |
| Mortgage-Related Derivatives   |   | X          |          |
| <b>FOREIGN / NON-U.S. DOLLAR:</b>                                      |   |            |          |
| Foreign CDs  |   | X          |          |
| Foreign U.S. Dollar Denominated Securities                             |   | X          |          |
| Non-U.S. Dollar Denominated Bonds                                      |   | X          |          |
| Supranational U.S. Dollar Denominated Securities                       |   | X          |          |
| <b>COMMINGLED VEHICLES (except STIF):</b>                              |   |            |          |
| Collective Funds   |   | X          |          |
| Commingled Trust Funds (open ended mutual funds only)                  |   | X          |          |
| Common Trust Funds   |   | X          |          |
| Registered Investment Companies  |   | X          |          |
| <b>MONEY MARKET SECURITIES:</b>  |   |            |          |
| Qualified STIF   |   | x          |          |
| Interest Bearing Bank Obligations Insured by a Federal or State Agency | X   |            |          |
| Commercial Paper   |   | x          |          |
| Master Note Agreements and Demand Notes                                |   | x          |          |
| Repurchase Agreements  |   | x          |          |
| <b>OTHER:</b>  |   |            |          |
| Bank Loans   |   | x          |          |
| Convertibles (e.g., Lyons)   |   | x          |          |
| Municipal Bonds  | X   |            |          |
| Preferred Stock  |   | x          |          |
| Private Placements (excluding 144A)                                    | X   |            |          |
| Rule 144A Issues   | X   |            |          |
| Zero Coupon Bonds  | X   |            |          |
| Commodities  |   | X          |          |
| Catastrophe Bonds  |   | X          |          |

**EXHIBIT H-2**

BR Draft ~~2/27/24~~3/1/24

**LMC LITIGATION TRUST**

BR Draft ~~2/27/24~~3/1/24

**LMC LITIGATION TRUST AGREEMENT**

**Dated as of \_\_, 2024**

***Pursuant to the Third Modified First Amended Joint Chapter 11 Plan of Lordstown Motors Corp. and its Affiliated Debtors Dated February [ ], 2024***

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## LMC LITIGATION TRUST AGREEMENT

This LMC Litigation Trust Agreement (this “**Trust Agreement**”), dated the date set forth on the signature page hereof and effective as of the Effective Date, is entered into pursuant to the *Third Modified First Amended Joint Plan of Reorganization of Lordstown Motors Corp. and its Affiliated Debtors* [Docket No. ] (as may be further amended or modified, the “**Plan**”),<sup>1</sup> in Case No. 23-10831 (MFW) in the United States Bankruptcy Court for the District of Delaware (“**Bankruptcy Court**”) by Lordstown Motors Corp. (the “**Settlor**”), [ ] (the “**Delaware Trustee**”), the Trustee identified on the signature pages hereof (the “**Trustee**”), and the members of the Trust Oversight Committee identified on the signature pages hereof (the “**TOC**” and, together with the Delaware Trustee and the Trustee, the “**Parties**”).

### RECITALS

**WHEREAS**, the Plan contemplates the creation of a Litigation Trust (the “**Trust**”);

**WHEREAS**, the Confirmation Order has been entered by the Bankruptcy Court;

**WHEREAS**, pursuant to the Plan, the Trust is established to collect assets and make distributions to Lordstown Motors Corp. (the “**Post-Effective Date Debtor**”) in accordance with the Plan, the Confirmation Order and this Trust Agreement;<sup>2</sup>

**WHEREAS**, the Trustee shall administer the Trust in accordance with the terms of the Plan, the Confirmation Order and this Trust Agreement (the “**Governing Documents**”); and

<sup>1</sup> All capitalized terms not otherwise defined herein shall have their respective meanings as set forth in the Plan, and such definitions are incorporated herein by reference. All capitalized terms not defined herein or in the Plan, but defined in the Bankruptcy Code or Bankruptcy Rules, shall have the meanings ascribed to them by the Bankruptcy Code and Bankruptcy Rules, and such definitions are incorporated herein by reference.

<sup>2</sup> To the extent the Post-Effective Date Debtor has obligations with respect to directing proceeds received from the Trust, those obligations should be set forth in the Plan and Confirmation Order; only the Post-Effective Date Debtor shall be a beneficial owner of this Trust.

**WHEREAS**, the Trust is intended to qualify a “grantor trust” and the Settlor is intended to qualify as the “grantor” under the provisions of Sections 671 *et seq.* of the Internal Revenue Code of 1986, as amended (the “**Internal Revenue Code**”).

**NOW, THEREFORE**, it is hereby agreed as follows:

## **ARTICLE I**

### **AGREEMENT OF TRUST**

1.1 **Creation and Name.** There is hereby created a trust known as the “LMC Litigation Trust.” The Trustee of the Trust may transact the business and affairs of the Trust in the name of the Trust, and references herein to the Trust shall include the Trustee acting on behalf of the Trust. It is the intention of the Parties that the Trust constitutes a statutory trust under Chapter 38 of title 12 of the Delaware Code, 12 Del. C. Section 3801 *et seq.* (the “**Act**”) and that this Trust Agreement constitutes the governing instrument of the Trust. The Trustee and the Delaware Trustee are hereby authorized and directed to execute and file a Certificate of Trust with the Delaware Secretary of State in the form attached hereto as **Exhibit 1**. The Trustee is hereby authorized and directed to execute and file with the Delaware Secretary of State such certificates as may from time to time be required under the Act and any other Delaware law.

1.2 **Purposes.** The purposes of the Trust are to

(a) receive claims and causes of action described on ~~[Schedule \_\_ to the Plan Supplement]~~**Exhibit 2 to this Trust Agreement** (the “**Causes of Action**”)<sup>3</sup> pursuant to the terms of the Plan and the Confirmation Order;

(b) hold, manage, protect and monetize the Causes of Action, together with any income or gain earned thereon and proceeds derived therefrom (collectively, the “**Trust**”

<sup>3</sup> Schedule to be updated by the EC and Debtors prior to the Effective Date.

**Assets**”) in accordance with the terms of the Governing Documents for the benefit of the Beneficial Owner (as defined herein);

(c) engage in any lawful activity that is appropriate and in furtherance of the purposes of the Trust to the extent consistent with the Governing Documents; and

(d) make or cause to be made distributions of Trust Assets in accordance with and subject to the terms of the Governing Documents.

1.3 **Transfer of Assets.** Pursuant to, and in accordance with Article VI of the Plan, the Trust has received the assignment of the Causes of Action. Except as otherwise provided in the Governing Documents, the Causes of Action and any other assets to be transferred to the Trust under the Plan will be transferred to the Trust free and clear of any liens or other claims by the Debtors, the Post-Effective Date Debtors, any creditor, or other entity.

1.4 **Trust Acceptance of Assets.**

(a) In furtherance of the purposes of the Trust, the Trust hereby expressly accepts the transfer to the Trust of the Causes of Action as, and subject to the terms, contemplated in the Plan.

(b) In this Trust Agreement, the words “must,” “will,” and “shall” are intended to have the same mandatory force and effect, while the word “may” is intended to be permissive rather than mandatory.

(c) To the extent required by the Act, the beneficial owner (within the meaning of the Act) of the Trust (the “**Beneficial Owner**”) shall be deemed to be the Post-Effective Date Debtor; provided that Post-Effective Date Debtor shall be subject to the terms of the Governing Documents with respect to its obligations on or after the Effective Date.

1.5 **Jurisdiction.** The Bankruptcy Court shall have continuing jurisdiction over the Trust provided, however, that the courts of the State of Delaware, including any federal court located therein, shall also have jurisdiction over the Trust.

## ARTICLE II

### **POWERS AND TRUST ADMINISTRATION**

#### 2.1 **Powers.**

(a) The Trustee is and shall act as a fiduciary to the Trust in accordance with the provisions of the Governing Documents. The Trustee shall, at all times, administer the Trust in accordance with the purposes set forth in Section 1.2 above and the Plan. Subject to the limitations set forth in this Trust Agreement and the Plan, the Trustee shall have the power to take any and all actions that, in the judgment of the Trustee, are necessary or proper to fulfill the purposes of the Trust, including, without limitation, each power expressly granted in this Section 2.1, any power reasonably incidental thereto and not inconsistent with the requirements of Section 2.2, and any trust power now or hereafter permitted under the laws of the State of Delaware.

(b) Except as required by applicable law or as otherwise specified herein or in the Plan or the Confirmation Order, the Trustee need not obtain the order or approval of any court in the exercise of any power or discretion conferred hereunder.

(c) Without limiting the generality of Section 2.1(a) above, and except as limited below or by the Plan, the Trustee shall have the power to:

(i) receive the Causes of Action and exercise all rights with respect thereto, including without limitation by reviewing, reconciling, pursuing, commencing,

prosecuting, compromising, settling, dismissing, releasing, waiving, withdrawing, abandoning, resolving, or electing not to pursue all Causes of Action;

(ii) seek the examination of, and examining, any Person pursuant to Federal Rule of Bankruptcy Procedure 2004;

(iii) invest monies held from time to time by the Trust in accordance with the Investment Guidelines pursuant to Section 3.2 below;

(iv) make or arrange to make payment of expenses and other obligations of the Trust as set forth in the Governing Documents;

(v) establish such funds, reserves, and accounts within the Trust, as the Trustee deems useful in carrying out the purposes of the Trust;

(vi) make or cause to be made distributions to the Beneficial Owner pursuant to the terms of this Trust Agreement and the Plan;

(vii) appoint such officers and retain such employees, consultants, advisors, independent contractors, experts, and agents and engage in such legal, financial, administrative, accounting, investment, auditing, forecasting, and alternative dispute resolution services and activities as the Trust requires, and delegate to such persons such powers and authorities as the fiduciary duties of the Trustee permit and as the Trustee, in his or her discretion, deems advisable or necessary in order to carry out the terms of this Trust Agreement;

(viii) compensate the Trustee, the Delaware Trustee, and their employees, consultants, advisors, independent contractors, experts and agents, and reimburse the Trustee and the Delaware Trustee for all reasonable out-of-pocket costs

and expenses incurred by such persons in connection with the performance of their duties hereunder;

(ix) record all expenses incurred by the Trust on the books and records of the Trust;

(x) enter into such other arrangements with third parties as the Trustee deems useful in carrying out the purposes of the Trust, provided such arrangements do not conflict with any other provision of this Trust Agreement or the Plan;

(xi) in accordance with Section 4.4 below, defend, indemnify, and hold harmless (and purchase insurance indemnifying) the Trust Indemnified Parties (as defined in Section 4.4 below), to the fullest extent that a statutory trust organized under the laws of the State of Delaware is from time to time entitled to defend, indemnify, hold harmless, and/or insure its directors, trustees, officers, employees, consultants, advisors, agents, and representatives. No party shall be indemnified in any way for any liability, expense, claim, damage, or loss for which he or she is liable under Section 4.4 below;

(xii) obtain the consent of the TOC with respect to the matters set forth in Section 2.2(d) below; and

(xiii) exercise any and all other rights, and take any and all other actions as are permitted, of the Trustee in accordance with the terms of this Trust Agreement and the Plan.

(d) The Trustee shall not have the power to guarantee any debt of other persons.

(e) The Trustee shall endeavor to make timely distributions and not unduly prolong the duration of the Trust.

2.2 **General Administration.**

(a) The Trustee shall act in accordance with the Governing Documents. In the event of a conflict between the terms or provisions of the Plan or this Trust Agreement, the terms of the Plan shall have first priority, followed by the Trust Agreement. For the avoidance of doubt, this Trust Agreement shall be construed and implemented in accordance with the Plan, regardless of whether any provision herein explicitly references the Plan.

(b) The Trustee shall (i) timely file such income tax and other returns and statements required to be filed and shall cause to be paid timely all taxes required to be paid by the Trust, if any, (ii) comply with all applicable reporting and withholding obligations, (iii) satisfy all requirements necessary to qualify and maintain qualification of the Trust as a grantor trust. The Trustee may request an expedited determination of taxes under Bankruptcy Code section 505(b) for all tax returns filed by or on behalf of the Trust for all taxable periods through the dissolution thereof.

(c) The Trustee shall timely account to the Bankruptcy Court as follows:

(i) The Trustee shall cause to be prepared and filed with the Bankruptcy Court, as soon as available, and in any event no later than one hundred and twenty (120) days following the end of each fiscal year, an annual report (the “**Annual Report**”) containing special-purpose financial statements of the Trust (including, without limitation, a special-purpose statement of assets, liabilities and net claimants’ equity, a special-purpose statement of changes in net claimants’ equity and a special-purpose statement of cash flows). The Trustee shall not be required to obtain an audit of the Annual Report by a firm of independent certified public accountants. The Trustee shall



provide a copy of such Annual Report to the TOC when such report is filed with the Bankruptcy Court.

(d) The Trustee shall be required to obtain the consent of the TOC, pursuant to the consent process set forth in Section 5.7 below:

(i) to settle any Cause of Action where the face amount of the asserted Claim or Vested Cause of Action exceeds \$1,000,000;

(ii) to commence and/or participate, as a party or otherwise, in any judicial, administrative, arbitral, or other proceeding that exceeds \$1,000,000;

(iii) to modify the compensation of the Trustee;

(iv) to acquire an interest in and/or merge with and/or contract with another settlement trust; or

(v) to effectuate any material amendment of this Trust Agreement, which shall be in accordance with Section 6.3; provided that no such amendment shall be in contravention of the Plan.

### ARTICLE III

#### ACCOUNTS, INVESTMENTS, AND PAYMENTS

##### 3.1 Accounts.

(a) The Trustee shall maintain one or more accounts (the “**Trust Accounts**”) on behalf of the Trust with one or more financial depository institutions (each a “**Financial Institution**”).

(b) The Trustee may replace any retained Financial Institution with a successor Financial Institution at any time.

(c) The Trustee may, from time to time, create such accounts and reasonable reserves within the Trust Accounts as authorized in this Section 3.1 and as he or she may deem necessary, prudent or useful in order to provide for distributions to the Beneficial Owner and the payment of Trust operating expenses and may, with respect to any such account or reserve, restrict the use of money therein for a specified purpose (the “**Trust Subaccounts**”). Any such Trust Subaccounts established by the Trustee shall be held as Trust Assets and are not intended to be subject to separate entity tax treatment as a “disputed claims reserve” or a “disputed ownership fund” within the meaning of the IRC or Treasury Regulations.

3.2 **Investment Guidelines.**

(a) The Trustee may invest the Trust Assets in accordance with the Investment Guidelines, attached hereto as **Exhibit 23** (the “**Investment Guidelines**”).

(b) In the event the Trust holds any non-liquid assets, the Trustee shall own, protect, oversee, and monetize such non-liquid assets in accordance with the Governing Documents. This Section 3.2(b) is intended to modify the application to the Trust of the “prudent person” rule, “prudent investor” rule, and any other rule of law that would require the Trustee to diversify the Trust Assets.

(c) Cash proceeds received by the Trust in connection with its monetization of the non-liquid Trust Assets shall be invested in accordance with the Investment Guidelines until needed for the purposes of the Trust as set forth in Section 1.2 above.

(d) All income of the Trust shall be distributed or held for future distribution to the Post-Effective Date Debtor, consistent with Section 677 of the Internal Revenue Code.

3.3 **Payment of Operating Expenses**

All operating expenses of the Trust shall be paid by the Trust except that the Post-Effective Date Debtor shall fund the operating expenses of the Trust on a monthly basis for the duration of the Trust. The Trust may periodically provide to the Post-Effective Date Debtor invoices or other documentation with respect to such operating expenses of the Trust to be paid and the Post-Effective Date Debtor shall timely pay such expenses or shall timely remit to the Trust such amounts as are necessary to enable the Trust to timely pay such expenses. None of the Trustee, Delaware Trustee, the TOC, nor any of their officers, agents, advisors, professionals or employees shall be personally liable for the payment of any operating expense or other liability of the Trust.

3.4 **Distributions.**

The Trustee will make or cause to be made distributions to the Beneficial Owner in accordance with the Governing Documents.

**ARTICLE IV**

**TRUSTEE; DELAWARE TRUSTEE**

4.1 **Number.** In addition to the Delaware Trustee appointed pursuant to Section 4.9, there shall be one (1) Trustee who shall be the person named on the signature pages hereof. For the avoidance of doubt, any reference herein to the term Trustee does not refer to the Delaware Trustee.

4.2 **Term of Service.**

(a) The Trustee shall serve from the Effective Date until the earliest of (i) his or her death, (ii) his or her resignation pursuant to Section 4.2(b) below, (iii) his or her removal

pursuant to Section 4.2(c) below, or (iv) the termination of the Trust pursuant to Section 6.2 below.

(b) The Trustee may resign at any time upon written notice to the TOC with such notice filed with the Bankruptcy Court. Such notice shall specify a date when such resignation shall take effect, which shall not be less than ninety (90) days after the date such notice is given, where practicable.

(c) The Trustee may be removed by the unanimous consent of the TOC in the event the Trustee becomes unable to discharge his or her duties hereunder due to accident, physical deterioration, mental incompetence, or for other good cause, provided the Trustee has received reasonable notice and an opportunity to be heard. Other good cause shall mean fraud, self-dealing, intentional misrepresentation, willful misconduct, indictment for or conviction of a felony in each case whether or not connected to the Trust, or a consistent pattern of neglect and failure to perform or participate in performing the duties of Trustee hereunder. For the avoidance of doubt, any removal of a Trustee by the TOC pursuant to this Section 4.2(c) shall require the approval of the Bankruptcy Court and shall take effect at such time as the Bankruptcy Court shall determine.

(d) In the event of any vacancy in the office of the Trustee, including the death, resignation, or removal of the Trustee, such vacancy shall be filled by the unanimous consent of the TOC, subject to the approval of the Bankruptcy Court. In the event the TOC cannot agree on a successor Trustee, the provisions of Section 6.12 below shall apply.

(e) Immediately upon the appointment of any successor Trustee pursuant to Section 4.2(d) above, all rights, titles, duties, powers and authority of the predecessor Trustee hereunder shall be vested in and undertaken by the successor Trustee without any further act. No

successor Trustee shall be liable personally for any act or omission of his or her predecessor Trustee. No predecessor Trustee shall be liable personally for any act or omission of his or her successor Trustee. No successor Trustee shall have any duty to investigate the acts or omissions of his or her predecessor Trustee.

(f) Each successor Trustee shall serve until the earliest of (i) his or her death, (ii) his or her resignation pursuant to Section 4.2(b) above, (iii) his or her removal pursuant to Section 4.2(c) above, and (iv) the termination of the Trust pursuant to Section 6.2 below.

4.3 **Compensation and Expenses of the Trustee.**

(a) The Trustee shall receive compensation on an hourly basis for his or her services as Trustee on matters related to the operation of the Trust. The hourly rate shall be the Trustee's usual and customary rate then in effect, currently \$1,205 per hour. The compensation payable to the Trustee hereunder shall be reviewed every year by the TOC and may be appropriately adjusted for changes in the cost of living. The Trust will reimburse the Trustee for fees and expenses incurred prior to the Effective Date in connection with this Trust Agreement and effectuating a timely, orderly, and efficient transition of duties and obligations to the Trustee as of the Effective Date, (such amount not to exceed \$15,000), which shall be paid promptly after the Effective Date.

(b) The Trust will promptly reimburse the Trustee for all reasonable and documented out-of-pocket costs and expenses incurred by the Trustee in connection with the performance of his or her duties hereunder.

(c) The Trust shall include in the Annual Report a description of the amounts paid under this Section 4.3.

4.4 **Standard of Care; Exculpation.**

(a) As used herein, the term “**Trust Indemnified Party**” shall mean each of (i) the Trustee, (ii) the Delaware Trustee, (iii) the TOC and its members, and (iv) the officers, employees, consultants, advisors, and agents of each of the Trust, the Trustee, the Delaware Trustee, and the TOC.

(b) To the maximum extent permitted by applicable law, the Trust Indemnified Parties shall not have or incur any liability for actions taken or omitted in their capacities as Trust Indemnified Parties, or on behalf of the Trust, except those acts found by a final order of a court of competent jurisdiction (“**Final Order**”) to be arising out of their willful misconduct, bad faith, gross negligence, or fraud, and shall be entitled to indemnification and reimbursement for reasonable fees and expenses in defending any and all of their actions or inactions in their capacity as Trust Indemnified Parties, or on behalf of the Trust, and for any other liabilities, losses, damages, claims, costs, and expenses arising out of or due to the implementation or administration of the Plan or the Trust Agreement (other than taxes in the nature of income taxes imposed on compensation paid to such persons), in each case except for any actions or inactions found by Final Order to be arising out of their willful misconduct, bad faith, gross negligence or fraud. Any valid indemnification claim of any of the Trust Indemnified Parties shall be satisfied from the Trust.

(c) To the extent that, at law or in equity, the Trust Indemnified Parties have duties (including fiduciary duties) or liability related thereto, to the Trust or the Beneficial Owner, it is hereby understood and agreed by the Parties that such duties and liabilities are eliminated to the fullest extent permitted by applicable law, and replaced by the duties and liabilities expressly set forth in this Trust Agreement with respect to the Trust Indemnified

Parties; provided, however, that with respect to the Trust Indemnified Parties other than the Delaware Trustee the duties of care and loyalty are not eliminated but are limited and subject to the terms of this Trust Agreement, including but not limited to this Section 4.4 and its subparts.

(d) The Trust will maintain appropriate insurance coverage for the protection of the Trust Indemnified Parties, as determined by the Trustee at his or her discretion.

#### 4.5 **Protective Provisions.**

(a) Every provision of this Trust Agreement relating to the conduct or affecting the liability of or affording protection to Trust Indemnified Parties shall be subject to the provisions of this Section 4.5.

(b) In the event the Trustee retains counsel (including at the expense of the Trust), the Trustee shall be afforded the benefit of the attorney-client privilege with respect to all communications with such counsel, and in no event shall the Trustee be deemed to have waived any right or privilege including, without limitation, the attorney-client privilege even if the communications with counsel had the effect of guiding the Trustee in the performance of duties hereunder. A successor Trustee shall succeed to and hold the same respective rights and benefits of the predecessor for purposes of privilege, including the attorney-client privilege. No Party or other person may raise any exception to the attorney-client privilege described herein as any such exceptions are hereby waived by all Parties.

(c) No Trust Indemnified Party shall be personally liable under any circumstances, except for his or her own willful misconduct, bad faith, gross negligence or fraud as determined by a Final Order. Notwithstanding the foregoing, the parties (a) acknowledge that the initial Trustee has been appointed as a representative of M3 Advisory Partners, LP and (b) agree that such initial Trustee shall have no personal liability under any circumstances and,

instead, any liability that otherwise would be owing by such initial Trustee hereunder shall be the obligation of M3 Advisory Partners, LP.

(d) No provision of this Trust Agreement shall require the Trust Indemnified Parties to expend or risk their own personal funds or otherwise incur financial liability in the performance of their rights, duties and powers hereunder.

(e) In the exercise or administration of the Trust hereunder, the Trust Indemnified Parties (i) may act directly or through their respective agents or attorneys pursuant to agreements entered into with any of them, and the Trust Indemnified Parties shall not be liable for the default or misconduct of such agents or attorneys if such agents or attorneys have been selected by the Trust Indemnified Parties in good faith and with due care, and (ii) may consult with counsel, accountants and other professionals to be selected by them in good faith and with due care and employed by them, and shall not be liable for anything done, suffered or omitted in good faith by them in accordance with the advice or opinion of any such counsel, accountants or other professionals.

#### 4.6 **Indemnification.**

(a) To the maximum extent permitted by applicable law, the Trust Indemnified Parties shall be entitled to indemnification and reimbursement for reasonable fees and expenses (including attorneys' fees and costs but excluding taxes in the nature of income taxes imposed on compensation paid to the Trust Indemnified Parties) in defending any and all of their actions or inactions in their capacity as Trust Indemnified Parties, or on behalf of the Trust, and for any other liabilities, losses, damages, claims, costs, and expenses arising out of or due to the implementation or administration of the Plan or the Trust Agreement (other than taxes in the nature of income taxes imposed on compensation paid to such persons), in each case,



except for any actions or inactions found by Final Order to be arising out of their willful misconduct, bad faith, gross negligence, or fraud. Any valid indemnification claim of any of the Trust Indemnified Parties shall be satisfied from the Trust.

(b) Reasonable expenses, costs and fees (including attorneys' fees and costs) incurred by or on behalf of the Trust Indemnified Parties in connection with any action, suit or proceeding, whether civil, administrative or arbitrative, from which they are indemnified by the Trust shall be paid by the Trust in advance of the final disposition thereof upon receipt of an undertaking, by or on behalf of the Trust Indemnified Parties, to repay such amount in the event that it shall be determined ultimately by Final Order that the Trust Indemnified Parties or any other potential indemnitee are not entitled to be indemnified by the Trust. The Trustee may, in his or her discretion, authorize an advance of reasonable expenses, costs, and fees (including attorneys' fees and costs) to be incurred by or on behalf of the Trust Indemnified Parties, as set forth herein.

(c) The indemnification provisions of this Trust Agreement with respect to any Trust Indemnified Party shall survive the termination of such Trust Indemnified Party from the capacity for which such Trust Indemnified Party is indemnified. Modification of this Trust Agreement shall not affect any indemnification rights or obligations in existence at such time. In making a determination with respect to entitlement to indemnification of any Trust Indemnified Party hereunder, the person, persons or entity making such determination shall presume that such Trust Indemnified Party is entitled to indemnification under this Trust Agreement, and any person seeking to overcome such presumption shall have the burden of proof to overcome the presumption.

(d) The rights to indemnification hereunder are not exclusive of other rights which any Trust Indemnified Party may otherwise have at law or in equity, including common law rights to indemnification or contribution.

4.7 **No Bond.** Neither the Trustee nor the Delaware Trustee shall be required to post any bond or other form of surety or security unless otherwise ordered by the Bankruptcy Court.

4.8 **Delaware Trustee.**

(a) There shall at all times be a Delaware Trustee to serve in accordance with the requirements of the Act. The Delaware Trustee shall either be (i) a natural person who is at least twenty-one (21) years of age and a resident of the State of Delaware or (ii) a legal entity that has its principal place of business in the State of Delaware, otherwise meets the requirements of applicable Delaware law to be eligible to serve as the Delaware Trustee, and shall act through one or more persons authorized to bind such entity. If at any time the Delaware Trustee shall cease to be eligible to serve as the Delaware Trustee in accordance with the provisions of this Section 4.9, it shall resign immediately in the manner and with the effect hereinafter specified in Section 4.9(c) below. For the avoidance of doubt, the Delaware Trustee will only have such rights, duties (including fiduciary duties) and obligations as expressly provided by reference to the Delaware Trustee hereunder. The Trustee shall have no liability for the acts or omissions of any Delaware Trustee.

(b) The Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities of the Trustee set forth herein. The Delaware Trustee shall be a trustee of the Trust for the sole and limited purpose of fulfilling the requirements of Section 3807(a) of the Act and for taking such actions as are required to be taken by a Delaware Trustee under the Act. The duties (including fiduciary

duties), liabilities and obligations of the Delaware Trustee shall be limited to accepting legal process served on the Trust in the State of Delaware and the execution of any certificates required to be filed with the Secretary of State of the State of Delaware that the Delaware Trustee is required to execute under Section 3811 of the Act. There shall be no other duties (including fiduciary duties) or obligations, express or implied, at law or in equity, of the Delaware Trustee. To the extent that, at law or in equity, the Delaware Trustee has duties (including fiduciary duties) and liabilities relating to the Trust or the Beneficial Owner, such duties and liabilities are replaced by the duties and liabilities of the Delaware Trustee expressly set forth in this Trust Agreement. The Delaware Trustee shall have no liability for the acts or omissions of the Trustee. The Delaware Trustee undertakes to perform such duties and only such duties as are specifically and expressly set forth in this Trust Agreement. These duties shall be deemed purely ministerial in nature, and the Delaware Trustee shall not be liable except for the performance of such duties, and no implied covenants or obligations shall be read into this Trust Agreement against the Delaware Trustee. Any permissive rights of the Delaware Trustee to do things enumerated in this Trust Agreement shall not be construed as a duty and, with respect to any such permissive rights, the Delaware Trustee shall not be answerable for other than its willful misconduct, bad faith, gross negligence or fraud. The Delaware Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Trust Agreement at the request or direction of the Trustee or any other person pursuant to the provisions of this Trust Agreement unless the Trustee or such other person shall have offered to the Delaware Trustee security or indemnity (satisfactory to the Delaware Trustee in its discretion) against the costs, expenses and liabilities that may be incurred by it in compliance with such request or direction. The Delaware Trustee shall be entitled to request and receive written instructions from the

Trustee and shall have no responsibility or liability for any losses or damages of any nature that may arise from any action taken or not taken by the Delaware Trustee in accordance with the written direction of the Trustee. The Delaware Trustee may, at the expense of the Trust, request, rely on and act in accordance with officer's certificates and/or opinions of counsel, and shall incur no liability and shall be fully protected in acting or refraining from acting in accordance with such officer's certificates and opinions of counsel.

(c) The Delaware Trustee shall serve until such time as the Trustee removes the Delaware Trustee or the Delaware Trustee resigns and a successor Delaware Trustee is appointed by the Trustee in accordance with the terms of Section 4.9(d) below. The Delaware Trustee may resign at any time upon the giving of at least thirty (30) days' advance written notice to the Trustee; provided that such resignation shall not become effective unless and until a successor Delaware Trustee shall have been appointed by the Trustee in accordance with Section 4.9(d) below; provided further that if any amounts due and owing to the Delaware Trustee hereunder remain unpaid for more than ninety (90) days, the Delaware Trustee shall be entitled to resign immediately by giving written notice to the Trustee. If the Trustee does not act within such thirty (30) day period, the Delaware Trustee, at the expense of the Trust, may apply to the Court of Chancery of the State of Delaware or any other court of competent jurisdiction for the appointment of a successor Delaware Trustee.

(d) Upon the resignation or removal of the Delaware Trustee, the Trustee shall appoint a successor Delaware Trustee by delivering a written instrument to the outgoing Delaware Trustee. Any successor Delaware Trustee must satisfy the requirements of Section 3807 of the Act. Any resignation or removal of the Delaware Trustee and appointment of a successor Delaware Trustee shall not become effective until a written acceptance of appointment

is delivered by the successor Delaware Trustee to the outgoing Delaware Trustee and the Trustee, and any fees and expenses due to the outgoing Delaware Trustee are paid. Following compliance with the preceding sentence, the successor Delaware Trustee shall become fully vested with all of the rights, powers, duties and obligations of the outgoing Delaware Trustee under this Trust Agreement, with like effect as if originally named as Delaware Trustee, and the outgoing Delaware Trustee shall be discharged of his or her duties and obligations under this Trust Agreement. The successor Delaware Trustee shall make any related filings required under the Act, including filing a Certificate of Amendment to the Certificate of Trust of the Trust in accordance with Section 3810 of the Act.

(e) Notwithstanding anything herein to the contrary, any business entity into which the Delaware Trustee may be merged or converted or with which it may be consolidated or any entity resulting from any merger, conversion, or consolidation to which the Delaware Trustee shall be a party, or any entity succeeding to all or substantially all of the corporate trust business of the Delaware Trustee, shall be the successor of the Delaware Trustee hereunder and will have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

(f) The Delaware Trustee shall be entitled to compensation for its services as agreed pursuant to a separate fee agreement between the Trust and the Delaware Trustee, which compensation shall be paid by the Trust. Such compensation is intended for the Delaware Trustee's services as contemplated by this Trust Agreement. The terms of this paragraph shall survive termination of this Trust Agreement and/or the earlier resignation or removal of the Delaware Trustee.

(g) The Delaware Trustee shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument, or document, other than this Trust Agreement, whether or not, an original or a copy of such agreement has been provided to the Delaware Trustee. The Delaware Trustee shall have no duty to know or inquire as to the performance or nonperformance of any provision of any other agreement, instrument or document, other than this Trust Agreement. Neither the Delaware Trustee nor any of its directors, officers, employees, agents or affiliates shall be responsible for nor have any duty to monitor the performance or any action of the Trust, the Trustee or any other person, or any of their directors, members, officers, agents, affiliates or employee, nor shall it have any liability in connection with the malfeasance or nonfeasance by such party. The Delaware Trustee may assume performance by all such persons of their respective obligations. The Delaware Trustee shall have no enforcement or notification obligations relating to breaches of representations or warranties of any other person. The Delaware Trustee shall have no responsibilities (except as expressly set forth herein) as to the validity, sufficiency, value, genuineness, ownership or transferability of any Trust Asset, written instructions, or any other documents in connection therewith, and will not be regarded as making, nor be required to make, any representations thereto.

(h) The Delaware Trustee shall have no liability for any action taken, or errors in judgment made, in good faith by it or any of its officers, employees or agents, unless it shall have been negligent in ascertaining the pertinent facts. Nothing in this Trust Agreement shall require the Delaware Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder. In no event shall the Delaware Trustee be responsible or liable for special, indirect,

punitive, incidental or consequential losses or damages of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Delaware Trustee has been advised of the likelihood of any such loss or damage and regardless of the form of action.

(i) The Delaware Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by them to be genuine and to have been signed or presented by the proper party or parties not only as to due execution, validity, and effectiveness, but also as to the truth and accuracy of any information contained therein.

(j) The Corporate Transparency Act (31 U.S.C § 5336) and its implementing regulations (collectively, the “CTA”), may require the Trust to file reports with the Financial Crimes Enforcement Network (“FinCEN”) from time to time. It shall be the Trustee’s duty and not the Delaware Trustee’s duty to cause the Trust to make such filings, as applicable, and to cause the Trust to comply with its obligations under the CTA, if any. The parties hereto acknowledge that the Delaware Trustee acts solely as a directed trustee at the direction of the Trustee hereunder and that the Trustee is and shall deemed to be the party with the power and authority to exercise substantial control over the Trust.

(k) The Delaware Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations under this Trust Agreement arising out of, or caused, directly or indirectly, by circumstances beyond its control, including without limitation, any act or provision of any present or future law or regulation or governmental authority, acts of God, earthquakes, fires, floods, wars, terrorism, civil or military disturbances, sabotage, epidemics, riots, interruptions, loss or malfunctions of utilities, computer (hardware or software) or

communications service, accidents, labor disputes, acts of civil or military authority or governmental actions, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility.

## **ARTICLE V**

### **TRUST OVERSIGHT COMMITTEE**

5.1 **Members.** The TOC shall consist of not more than five (5) members.<sup>4</sup> For the avoidance of doubt, the members of the TOC are expected to be members of the New Board. To the extent that a member of the TOC elects to resign from the TOC in accordance with Section 5.3(b) below or is removed pursuant to Section 5.3(c) below, a successor shall be appointed pursuant to Section 5.4(a).

5.2 **Duties.** The members of the TOC shall serve in a fiduciary capacity and shall have no fiduciary obligations or duties to any party other than the Beneficial Owner. The Trustee must obtain the consent of the TOC on matters identified in Section 2.2(d) above. Except for the duties and obligations expressed in the Governing Documents, there shall be no other duties (including fiduciary duties) or obligations, express or implied, at law or in equity, of the TOC. To the extent that, at law or in equity, the TOC has duties (including fiduciary duties) and liabilities relating thereto to the Trust, the other Parties hereto or the Beneficial Owner of the Trust, it is hereby understood and agreed by the other Parties hereto that such duties and liabilities are replaced by the duties and liabilities of the TOC expressly set forth in the Governing Documents.

<sup>4</sup> The initial members of the TOC shall be: Alexander Matina, Andrew L. Sole, Michael Wartell, Neil Weiner, and Alexandre Zygnier.



5.3 **Term of Office.**

(a) Each member of the TOC shall serve until the earlier of (i) his or her death, (ii) his or her resignation pursuant to Section 5.3(b) below, (iii) his or her removal pursuant to Section 5.3(c) below, or (iv) the termination of the Trust pursuant to Section 6.2 below.

(b) A member of the TOC may resign at any time by written notice to the other members of the TOC and the Trustee. Such notice shall specify a date when such resignation shall take effect, which shall not be less than thirty (30) days after the date such notice is given, where practicable.

(c) A member of the TOC may be removed in the event that he or she becomes unable to discharge his or her duties hereunder due to accident, physical deterioration, mental incompetence, or a consistent pattern of neglect and failure to perform or to participate in performing the duties of such member hereunder, such as repeated non-attendance at scheduled meetings, or for other good cause. Such removal may be made by the recommendation of the remaining members of the TOC with the approval of the Trustee.

5.4 **Appointment of Successors.**

(a) If a member of the TOC dies, resigns pursuant to Section 5.3(b) above, or is removed pursuant to Section 5.3(c) above, the vacancy shall be filled with an individual selected by the remaining TOC members with the approval of the Trustee, provided however, that if the remaining TOC members and the Trustee cannot agree on the successor the matter shall be resolved pursuant to Section 6.12 below.

(b) Each successor TOC member shall serve until the earlier of (i) his or her death, (ii) his or her resignation pursuant to Section 5.3(b) above, (iii) his or her removal

pursuant to Section 5.3(c) above, or (iv) the termination of the Trust pursuant to Section 6.2 below.

(c) No successor TOC member shall be liable personally for any act or omission of his or her predecessor TOC member. No successor TOC member shall have any duty to investigate the acts or omissions of his or her predecessor TOC member.

5.5 **Compensation and Expenses of the TOC.** The members of the TOC shall not receive compensation from the Trust for their services as TOC members, but shall be reimbursed for all reasonable out-of-pocket costs or expenses incurred in connection with the performance of such member's duties hereunder. A description of the amounts paid under this Section 5.5 shall be included in the Annual Report.

5.6 **No Bond.** The members of the TOC shall not be required to post any bond or other form of surety or security unless otherwise ordered by the Bankruptcy Court.

5.7 **Procedures for Obtaining Consent of the TOC**

(a) Where the Trustee is required to obtain the consent of the TOC pursuant to Section 2.2(d) above, the Trustee shall provide the TOC with a written notice (e-mail is sufficient) stating that its consent is being sought pursuant to that provision, describing in detail the nature and scope of the action the Trustee proposes to take, and explaining in detail the reasons why the Trustee desires to take such action. The Trustee shall provide the TOC as much relevant information concerning the proposed action as is reasonably practicable under the circumstances. The Trustee shall also provide the TOC with reasonable access to the professionals or experts retained by the Trust and its staff (if any) as the TOC may reasonably request during the time that the Trustee is considering such action, and shall also provide the

TOC the opportunity, at reasonable times and for reasonable periods of time, to discuss and comment on such action with the Trustee.

(b) The TOC must consider in good faith and in a timely fashion any request for its consent by the Trustee and must in any event advise the Trustee in writing (e-mail is sufficient) of its consent or objection to the proposed action within five (5) business days of receiving the original request for consent from the Trustee. The TOC may not withhold its consent unreasonably. If the TOC decides to withhold consent, it must explain in detail its objections to the proposed action. If the TOC does not advise the Trustee in writing of its consent or objections to the proposed action within five (5) days of receiving notice regarding such request, then consent of the TOC to the proposed action shall be deemed to have been affirmatively granted.

(c) If, after following the procedures specified in this Section 5.7, the TOC continues to object to the proposed action and to withhold its consent to the proposed action, the Trustee and the TOC shall resolve their dispute pursuant to Section 6.12. The TOC shall bear the burden of proving that it reasonably withheld its consent. If the TOC meets that burden, the Trust shall then bear the burden of showing why it should be permitted to take the proposed action notwithstanding the TOC's reasonable objection.

(d) Action by the TOC shall require the affirmative vote of the majority of the TOC members then in office.

## ARTICLE VI

### GENERAL PROVISIONS

6.1 **Irrevocability.** To the fullest extent permitted by applicable law, the Trust is irrevocable.

6.2 **Term; Termination.**

(a) The term for which the Trust is to exist shall commence on the date of the filing of the Certificate of Trust and shall terminate pursuant to the provisions of this Section 6.2.

(b) The Trust shall automatically dissolve as soon as practicable but no later than ninety (90) days after the date on which the Bankruptcy Court approves the dissolution upon the satisfaction of the purposes of the Trust, wherein (i) all reasonably expected assets have been collected, (ii) all distributions have been made, (iii) necessary arrangements and reserves have been made to discharge all anticipated remaining obligations and operating expenses in a manner consistent with the Governing Documents, and (iv) a final accounting has been filed with the Bankruptcy Court (the “**Dissolution Date**”).

(c) On the Dissolution Date or as soon as reasonably practicable thereafter, after the wind-up of the affairs of the Trust by the Trustee and payment of all of the Trust’s liabilities have been provided for as required by applicable law including Section 3808 of the Act, all monies remaining in the Trust shall be distributed or disbursed in accordance with Section 3.4.

(d) Following the dissolution and distribution of the assets of the Trust, the Trust shall terminate, and the Trustee shall execute and cause a Certificate of Cancellation of the Certificate of Trust of the Trust to be filed in accordance with the Act (without the need for the Delaware Trustee’s consent or signature). Notwithstanding anything to the contrary contained in this Trust Agreement, the existence of the Trust as a separate legal entity shall continue until the filing of such Certificate of Cancellation. A certified copy of the Certificate of Cancellation shall be given to the Delaware Trustee for its records promptly following such filing.

6.3 **Amendments.** Any amendment to or modification of this Trust Agreement may be made in writing and only pursuant to an order of the Bankruptcy Court; provided, however, the Trustee may amend this Trust Agreement with the unanimous consent of the TOC from time to time without the consent, approval or other authorization of, but with notice to, the Bankruptcy Court, to make: (i) minor modifications or clarifying amendments necessary to enable the Trustee to effectuate the provisions of this Trust Agreement; or (ii) modifications to satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, statute, ruling or regulation of any federal, state or foreign governmental entity. Notwithstanding the foregoing: (i) no amendment or modification of this Trust Agreement shall modify this Trust Agreement in a manner that is inconsistent with the Plan or the Confirmation Order, other than to make minor modifications or clarifying amendments as necessary to enable the Trustee to effectuate the provisions of this Trust Agreement; (ii) neither this Trust Agreement nor any Exhibit to this Trust Agreement shall be modified or amended in any way that could jeopardize, impair, or modify the Trust's grantor trust status; and (iii) any amendment or modification of this Trust Agreement, or Exhibit hereto, affecting the rights, duties, immunities or liabilities of the Delaware Trustee shall require the Delaware Trustee's written consent.

6.4 **Severability.** Should any provision in this Trust Agreement be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of this Trust Agreement.

6.5 **Notices.**

(a) Any notices or other communications required or permitted hereunder to the following Parties shall be in writing and delivered to the addresses or e-mail addresses

designated below, or to such other addresses or e-mail addresses as may hereafter be furnished in writing to each of the other Parties listed below in compliance with the terms hereof.

To the Trust:

M3 Capital Partners  
Attention: Robert Winning  
1700 Broadway, 19<sup>th</sup> Floor  
New York, NY 10019  
rwinning@m3-partners.com

With a copy (which shall not constitute notice) to:

[ ]

To the Delaware Trustee;

[ ]

With a copy (which shall not constitute notice) to:

[ ]

To the TOC:

[ ]

(b) All such notices and communications if mailed shall be effective when physically delivered at the designated addresses or, if electronically transmitted, when the communication is received at the designated addresses.

6.6 **Successors and Assigns**. The provisions of this Trust Agreement shall be binding upon and inure to the benefit of the Trust, the TOC, the Delaware Trustee, the Trustee, and their respective successors and assigns, except that neither the Trust, the TOC, the Delaware Trustee, nor the Trustee, may assign or otherwise transfer any of their rights or obligations, if any, under this Trust Agreement except in the case of the Delaware Trustee in accordance with Section

4.9(d), and in the case of the Trustee in accordance with Section 4.2(d) above, and in the case of the TOC members in accordance with Section 5.4(a) above.

6.7 **Limitation on Interests for Securities Laws Purposes.** Rights of the Beneficial Owner, and any interests therein: (a) shall not be assigned, conveyed, hypothecated, pledged, or otherwise transferred, voluntarily or involuntarily, directly or indirectly, except by operation of law; (b) shall not be evidenced by a certificate or other instrument; (c) shall not possess any voting rights; and (d) shall not be entitled to receive any dividends or interest.

6.8 **Exemption from Registration.** The Parties hereto intend that the interests of the Beneficial Owner under this Trust Agreement shall not be “securities” under applicable laws, but none of the Parties hereto represent or warrant that such rights shall not be securities or shall be entitled to exemption from registration under applicable securities laws. If it should be determined that any such interest constitutes a “security,” the Parties hereto intend that the exemption provisions of Bankruptcy Code Section 1145 will be satisfied and the offer and sale under the Plan of the beneficial interest in the Trust will be exempt from registration under the Securities Act, all rules and regulations promulgated thereunder, and all applicable state and local securities laws and regulations.

6.9 **Entire Agreement; No Waiver.** The entire agreement of the Parties relating to the subject matter of this Trust Agreement is contained herein and in the documents referred to herein (including the Plan), and this Trust Agreement and such documents supersede any prior oral or written agreements concerning the subject matter hereof. No failure to exercise or delay in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further

exercise thereof or of any other right, power, or privilege. The rights and remedies herein provided are cumulative and are not exclusive of rights under law or in equity.

6.10 **Headings.** The headings used in this Trust Agreement are inserted for convenience only and do not constitute a portion of this Trust Agreement, nor in any manner affect the construction of the provisions of this Trust Agreement.

6.11 **Governing Law.** The validity and construction of this Trust Agreement and all amendments hereto and thereto shall be governed by the laws of the State of Delaware, and the rights of all Parties hereto and the effect of every provision hereof shall be subject to and construed according to the laws of the State of Delaware without regard to the conflicts of law provisions thereof that would purport to apply the law of any other jurisdiction; provided, however, that the Parties hereto intend that the provisions hereof shall control and there shall not be applicable to the Trust, the Trustee, the Delaware Trustee, the TOC, or this Trust Agreement, any provision of the laws (statutory or common) of the State of Delaware pertaining to trusts that relate to or regulate in a manner inconsistent with the terms hereof: (a) the filing with any court or governmental body or agency of Trustee accounts or schedules of Trustee fees and charges; (b) affirmative requirements to post bonds for the Trustee, officers, agents, or employees of a trust; (c) the necessity for obtaining court or other governmental approval concerning the acquisition, holding, or disposition of real or personal property; (d) fees or other sums payable to the Trustee, officers, agents, or employees of a trust; (e) the allocation of receipts and expenditures to income or principal; (f) restrictions or limitations on the permissible nature, amount, or concentration of trust investments or requirements relating to the titling, storage, or other manner of holding of trust assets; (g) the existence of rights or interests (beneficial or otherwise) in trust assets; (h) the ability of beneficial owners or other persons to terminate or



dissolve a trust; or (i) the establishment of fiduciary or other standards or responsibilities or limitations on the acts or powers of the Trustee or beneficial owners that are inconsistent with the limitations on liability or authorities and powers of the Trustee, the Delaware Trustee, or the TOC, set forth or referenced in this Trust Agreement. Section 3540 of the Act shall not apply to the Trust.

6.12 **Dispute Resolution.**

(a) Unless otherwise expressly provided for herein or in Article VIII of the Plan, the dispute resolution procedures of this Section 6.12 shall be the exclusive mechanism to resolve any dispute arising under or with respect to this Trust Agreement. For the avoidance of doubt, this Section 6.12 shall not apply to the Delaware Trustee or in any dispute with respect to Claims.

(b) **Informal Dispute Resolution.** Any dispute under this Trust Agreement shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when a disputing party sends to the counterparty or counterparties a written notice of dispute (“**Notice of Dispute**”). Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) days from the date the Notice of Dispute is received by the counterparty or counterparties, unless that period is modified by written agreement of the disputing party and counterparty or counterparties. If the disputing party and the counterparty or counterparties cannot resolve the dispute by informal negotiations, then the disputing party may invoke the formal dispute resolution procedures as set forth below.

(c) **Formal Dispute Resolution.** The disputing party shall invoke formal dispute resolution procedures, within the time period provided in the preceding subparagraph, by serving on the counterparty or counterparties a written statement of position regarding the matter

in dispute (“**Statement of Position**”). The Statement of Position shall include, but need not be limited to, any factual data, analysis or opinion supporting the disputing party’s position and any supporting documentation and legal authorities relied upon by the disputing party. Each counterparty shall serve its Statement of Position within thirty (30) days of receipt of the disputing party’s Statement of Position, which shall also include, but need not be limited to, any factual data, analysis or opinion supporting the counterparty’s position and any supporting documentation and legal authorities relied upon by the counterparty. If the disputing party and the counterparty or counterparties are unable to consensually resolve the dispute within thirty (30) days after the last of all counterparties have served its Statement of Position on the disputing party, the disputing party may file with the Bankruptcy Court a motion for judicial review of the dispute in accordance with Section 6.12(d).

(d) **Judicial Review.** The disputing party may seek judicial review of the dispute by filing with the Bankruptcy Court (or, if the Bankruptcy Court shall not have jurisdiction over such dispute, such court as has jurisdiction pursuant to Section 1.5 above) and serving on the counterparty or counterparties and the Trustee, a motion requesting judicial resolution of the dispute. The motion must be filed within forty-five (45) days of receipt of the last counterparty’s Statement of Position pursuant to the preceding subparagraph. The motion shall contain a written statement of the disputing party’s position on the matter in dispute, including any supporting factual data, analysis, opinion, documentation and legal authorities, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly administration of the Trust. Each counterparty shall respond to the motion within the time period allowed by the rules of the court, and the disputing party may file a reply memorandum, to the extent permitted by the rules of the court.

6.13 **Effectiveness.** This Trust Agreement shall become effective on the Effective Date.

6.14 **Counterpart Signatures.** This Trust Agreement may be executed in any number of counterparts and by different Parties on separate counterparts (including by PDF transmitted by e-mail), and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

6.15 **Waiver of Jury Trial.** Each Party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to a trial by jury in any legal proceeding arising out of or relating to this Trust Agreement to the extent any such proceeding is subject to the jurisdiction of the Bankruptcy Court; provided, however, the foregoing waiver shall not apply to the extent any such proceeding is not subject to the jurisdiction of the Bankruptcy Court in accordance with the terms of this Trust Agreement.

IN WITNESS WHEREOF, the Parties have executed this Trust Agreement this \_\_\_\_ day  
of \_\_\_\_\_, 2024.

**SETTLOR**

\_\_\_\_\_

**TRUSTEE**

\_\_\_\_\_

**DELAWARE TRUSTEE**

||

By: \_\_\_\_\_

**TRUST OVERSIGHT COMMITTEE**

**EXHIBIT 1**

**CERTIFICATE OF TRUST OF THE LMC LITIGATION TRUST**

## CERTIFICATE OF TRUST OF THE LMC LITIGATION TRUST

This Certificate of Trust of the LMC Litigation Trust (the “*Trust*”) is being duly executed and filed on behalf of the Trust by the undersigned trustees to form a statutory trust under the Delaware Statutory Trust Act (12 Del. C. Section 3801 *et seq.*) (the “*Act*”).

Name. The name of the trust formed hereby is: **LMC Litigation Trust**

Registered Office; Registered Agent. The name and address of the trustee of the Trust with a principal place of business in the State of Delaware is:

[Wilmington Trust, National Association  
1100 North Market Street  
Wilmington, Delaware 19890-1605  
Attention: Corporate Trust Administration]

Effective Date. This Certificate of Trust shall be effective upon filing.



IN WITNESS WHEREOF, the undersigned have duly executed this Certificate of Trust in accordance with Section 3811(a) of the Act.

TRUSTEE:

DELAWARE TRUSTEE:

[not in its individual capacity, but solely as Delaware Trustee]

By: \_\_\_\_\_

By: \_\_\_\_\_

**EXHIBIT 2**

**LIST OF CAUSES OF ACTION**

[To come]

**EXHIBIT 23**

**INVESTMENT GUIDELINES**

**In General.** Only the following investments will be permitted:

- (i) Demand and time deposits, such as certificates of deposit, in banks or other savings institutions whose deposits are federally insured;
- (ii) U.S. Treasury bills, bonds, and notes, including, but not limited to, long-term U.S. Treasury bills, bonds, notes, and other Government Securities as defined under Section 2(a)(16) of the Investment Company Act of 1940, 15 U.S.C. § 80a-2(a)(16), including, but not limited to, Fannie Mae, Freddie Mac, Federal Home Loan Bank, and Federal Farm Credit;
- (iii) Repurchase agreements for U.S. Treasury bills, bonds, and notes;
- (iv) AA or AAA corporate bonds (with the rating awarded by at least two of the three major rating agencies (Standard & Poor's, Moody's, or Fitch)); or
- (v) Open-ended mutual funds owning only assets described in subparts (i) through (iv) of this subsection.

The value of bonds of any single company and its affiliates owned by the Trust directly rather than through a mutual fund shall not exceed 10% of the investment portfolio at time of purchase; this restriction does not apply to any of the following: Repurchase Agreements; Money Market Funds; U.S. Treasuries; and U.S. Government Agencies.

Any such investments shall be made consistently with the Uniform Prudent Investor Act. The determination of the rating of any investments shall be made by the Trust's financial advisor on the date of acquisition of any such investment or on the date of re-investment. The Trust's financial advisor shall reconfirm that all investments of Trust Assets still meet the original rating requirement on a quarterly basis. If the Trust's financial advisors determine that any particular investment no longer meets the rating requirement, there shall be a substitution of that investment with an investment that meets the ratings requirement as promptly as practicable, but in no event later than the next reporting period. Previously purchased securities downgraded below AA may be held for a reasonable and prudent period of time if the Trust's financial advisor believes it is in the interest of the Trust to do so.

The borrowing of funds or securities for the purpose of leveraging, shorting, or other investments is prohibited. Investment in non-U.S. dollar denominated bonds is prohibited. The standing default investment instruction for all cash in any account or subaccount that holds any Trust Assets in cash shall be invested in the BlackRock Fed Fund (CUSIP 09248U809).

See example fund-level requirements table on following page.

### Fund Level Requirements

1. OTC Derivatives Counterparty Exposure – Not allowed
2. Non-U.S. dollar denominated bonds – Not allowed

| TYPE OF INVESTMENT   | ELIGIBLE | PROHIBITED | COMMENTS  |
|--|----------|------------|---|
| U.S. Treasury Securities   | X        |            |   |
| U.S. Agency Securities   | X        |            |   |
| Mortgage-Related Securities  |          | x          |   |
| Asset-Backed Securities  |          | x          |   |
| Corporate Securities (public)  | X        |            |   |
| Municipal bonds  | x        |            |   |
| <b>DERIVATIVES:</b>  |          |            | No investment, including futures, options and other derivatives, may be purchased if its return is directly or indirectly determined by an investment prohibited elsewhere in these guidelines. |
| Futures  |          | x          |   |
| Options  |          | x          |   |
| Currency Forwards  |          | x          |   |
| Currency Futures   |          | x          |   |
| Currency Options   |          | x          |   |
| Currency Swaps   |          | x          |   |
| Interest Rate Swaps  |          | x          |   |
| Total Return Swaps   |          | x          |   |
| Structured Notes   |          | X          |   |
| Collateralized Debt Obligations  |          | x          |   |
| Credit Default Swaps   |          | X          |   |
| Mortgage-Related Derivatives   |          | X          |   |
| <b>FOREIGN / NON-U.S. DOLLAR:</b>                                      |          |            |   |
| Foreign CDs  |          | X          |   |
| Foreign U.S. Dollar Denominated Securities                             |          | X          |   |
| Non-U.S. Dollar Denominated Bonds                                      |          | X          |   |
| Supranational U.S. Dollar Denominated Securities                       |          | X          |   |
| <b>COMMINGLED VEHICLES (except STIF):</b>                              |          |            |   |
| Collective Funds   |          | X          |   |
| Commingled Trust Funds (open ended mutual funds only)                  |          | X          |   |
| Common Trust Funds   |          | X          |   |
| Registered Investment Companies  |          | X          |   |
| <b>MONEY MARKET SECURITIES:</b>  |          |            |   |
| Qualified STIF   |          | x          |   |
| Interest Bearing Bank Obligations Insured by a Federal or State Agency | X        |            |   |
| Commercial Paper   |          | x          |   |
| Master Note Agreements and Demand Notes                                |          | x          |   |
| Repurchase Agreements  |          | x          |   |
| <b>OTHER:</b>  |          |            |   |
| Bank Loans   |          | x          |   |
| Convertibles (e.g., Lyons)   |          | x          |   |
| Municipal Bonds  | X        |            |   |
| Preferred Stock  |          | x          |   |
| Private Placements (excluding 144A)                                    | X        |            |   |
| Rule 144A Issues   | X        |            |   |
| Zero Coupon Bonds  | X        |            |   |
| Commodities  |          | X          |   |
| Catastrophe Bonds  |          | X          |   |

65208423-v3



| <b>Summary report:</b>   |           |
|--|-----------|
| <b>Litera Compare for Word 11.3.0.46 Document comparison done on 3/1/2024<br/>4:43:12 PM</b> |           |
| <b>Style name:</b> Default Style   |           |
| <b>Intelligent Table Comparison:</b> Active  |           |
| <b>Original filename:</b> LMC - Plan Supplement Ex. H - Litigation Trust Agmt.DOC            |           |
| <b>Modified filename:</b> LMC Litigation Trust Agmt (BR Draft 3-1-24)-v5.docx                |           |
| <b>Changes:</b>  |           |
| Add  | 15        |
| Delete   | 10        |
| Move From  | 0         |
| Move To  | 0         |
| Table Insert   | 0         |
| Table Delete   | 0         |
| Table moves to   | 0         |
| Table moves from   | 0         |
| Embedded Graphics (Visio, ChemDraw, Images etc.)   | 0         |
| Embedded Excel   | 0         |
| Format changes   | 0         |
| <b>Total Changes:</b>  | <b>25</b> |

**Exhibit I**

**Schedule of Contracts Rejected Pursuant to Plan**

[See Docket No. 1016, Ex. I]

**Exhibit J**

**Asserted Claims Schedule**

[See Docket No. 1016, Ex. J]



**Exhibit K-1**

**Ohio Settlement Notice – Postcard Notice**

[See Docket No. 1016, Ex. K-1]

**Exhibit K-2**

**Ohio Settlement Notice – Publication Notice**

[See Docket No. 1016, Ex. K-2]

**Exhibit K-3**<sup>5</sup>

**Ohio Settlement Notice – Longform Notice**

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<sup>5</sup> The longform Ohio Settlement Notice was drafted by Ohio Class Counsel for their distribution to the Ohio Litigation Settlement Class Members. It does not reflect the views of any other party (including the Debtors, the Post-Effective Date Debtors, the UCC, or the EC) on the matters or construal of facts contained therein. By including the longform notice in this Plan Supplement and seeking approval of the same in connection with confirmation of the Plan, such other parties make no admission or concession and reserve all rights.

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

In re:

Lordstown Motors Corp., *et al.*,

Debtors.

Chapter 11

Case No. 23-10831 (MFW)  
(Jointly Administered)

Related D.I.: 668, 696 & 699

**NOTICE OF CERTIFICATION OF SETTLEMENT CLASS, PROPOSED  
SETTLEMENT, AND MOTION FOR ATTORNEYS' FEES AND EXPENSES**

**If you purchased the publicly traded securities of Lordstown Motors Corp. (“LMC”) during the period from August 3, 2020 through July 2, 2021, and/or held LMC’s publicly traded Class A Common Stock on September 21, 2020, and were damaged thereby, you may be entitled to a payment from a settlement.<sup>1</sup>**

*A U.S. Bankruptcy Court authorized this Notice. This is not a solicitation from a lawyer.*

- After extensive arm’s-length negotiations, Class Representative George Troicky, on behalf of himself and all members of the Ohio Settlement Class, and LMC and its subsidiaries (together, the “**Debtors**”), have reached a proposed settlement of all claims against certain of the Debtors and David Hamamoto (“**Settling Defendants**”)<sup>2</sup> asserted in the class action, *In re Lordstown Motors Corp. Sec. Litig.*, No. 4:21-cv-00616 (N.D. Ohio) (“**Ohio Securities Litigation**”), which were also asserted against certain of the Debtors in the above-captioned Chapter 11 Cases (the “**Chapter 11 Cases**” or “**Bankruptcy Cases**”). Other directors and officers of the Debtors who were serving in such roles as of December 12, 2023 but who are not defendants in the Ohio Securities Litigation (such directors and officers, together with the Settling Defendants, the “**Released Parties**”) are also released in connection with the Settlement.

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<sup>1</sup> “**LMC Securities**” means LMC’s publicly traded Class A Common Stock (ticker: “**RIDE**” and prior ticker: “**DPHC**”), LMC’s publicly traded warrants (ticker: “**RIDEW**” and prior ticker: “**DPHCW**”), LMC’s publicly traded units (ticker: “**DPHCU**”), and any exchange-traded option to purchase or sell LMC’s publicly traded Class A Common Stock.

<sup>2</sup> The Settling Defendants are Lordstown Motors Corp. F/K/A DiamondPeak Holding Corp., Lordstown EV Corporation F/K/A Lordstown Motors Corp. (“**LEVC**,” and, collectively with LMC, the “**Company**”), and David Hamamoto. The Settling Defendants and Class Representative George Troicky are, collectively, the “**Settling Parties**.”

- On March \_\_, 2024, the U.S. Bankruptcy Court for District of Delaware (“**Bankruptcy Court**” or “**Court**”), entered an order confirming the Debtors’ *Third Modified First Amended Joint Chapter 11 Plan of Lordstown Motors Corp. and Its Affiliated Debtors* (together with all schedules and exhibits thereto, and as the same may be modified in accordance with its terms, the “**Plan**”), preliminarily approving the proposed settlement (the “**Ohio Securities Litigation Settlement**” or “**Settlement**”), and certifying the “**Ohio Settlement Class**” pursuant to Federal Rule 23, made applicable by Bankruptcy Rule 7023, for settlement purposes only.<sup>3</sup>
- If the Settlement is approved on a final basis, the Settlement will also resolve class claims in the Ohio Securities Litigation alleging that the Settling Defendants violated Sections 10(b), 14(a), and 20(a) of the Securities Exchange Act of 1934. The Ohio Securities Litigation will continue to proceed with respect to all other defendants. The Settlement also does not impact the consolidated stockholders class action pending in the Delaware Court of Chancery called *In re Lordstown Motors Corp. Stockholders Litig.*, C.A. No. 2021-1066-LWW (Del. Ch.) (the “**Delaware Shareholder Class Action**”), or the putative securities class action filed against the Debtors’ current Chief Executive Officer (Edward Hightower), Chief Financial Officer (Adam Kroll), and Executive Chairman (Daniel Ninivaggi) in the United States District Court for the Northern District of Ohio, called *Bandol Lim et al. v. Edward Hightower et al.*, No.: 4:23-cv-01454-BYP (N.D. Ohio) (the “**Post-Petition Securities Action**”).
- The Settlement will be implemented in accordance with the provisions of the Plan, which provide for the creation of the Ohio Securities Litigation Settlement Fund in the amount of at least \$3 million, and subsequent additional funding of up to \$7 million, plus earned interest, if any, for the benefit of the Ohio Settlement Class after the deduction of Court-approved attorneys’ fees and expenses, notice and administration expenses, and taxes.
- This Notice describes important rights you may have if you are a member of the Ohio Settlement Class (defined below) and what steps you must take if you wish to receive a payment as a result of the Settlement, wish to object, or wish to seek to be excluded from the Ohio Settlement Class.

**IF YOU ARE IN THE OHIO SETTLEMENT CLASS, YOUR LEGAL RIGHTS WILL  
BE AFFECTED WHETHER YOU ACT OR DO NOT ACT.  
PLEASE READ THIS NOTICE CAREFULLY.**

| <b>Your Legal Rights and Options</b> |  |
|--------------------------------------|--|
| <b>SUBMIT AN OHIO CLAIM</b>          | The <u>only</u> way to get a payment from the Settlement. <i>See</i> |

<sup>3</sup> The primary terms of the Settlement are in the Plan and the March \_\_, 2024 order confirming the Plan (the “**Confirmation Order**”), which can be viewed at [www.strategicclaims.net/lordstown/](http://www.strategicclaims.net/lordstown/). All capitalized terms not defined in this Notice have the same meanings as in the Plan and the Confirmation Order, or the Ohio Settlement Plan of Allocation governing the calculation of class members’ claims submitted in connection with the Settlement (the “**Ohio Settlement Plan of Allocation**” or “**Plan of Allocation**”), which is reported in paragraphs \_\_ to \_\_ below.

|  |   |
|--|---|
| <b>FORM ON OR BEFORE _____, 2024</b>   | Question __ for details. This is different from any claim you may have submitted in the Chapter 11 Cases.   |
| <b>EXCLUDE YOURSELF FROM THE OHIO SETTLEMENT CLASS ON OR BEFORE _____, 2024</b>                        | Get no payment from the Settlement. This is the only option that potentially may allow you to ever bring or be part of any other lawsuit against the Settling Defendants and the other Released Parties (defined above) concerning the Released Claims (defined below). <i>With respect to the Debtors, your ability to bring claims against them may be limited by the Plan and whether you timely filed an individual claim in the Chapter 11 Cases, regardless of whether you request exclusion from the Ohio Settlement Class. See Question __ for details.</i> |
| <b>OBJECT ON OR BEFORE _____, 2024</b>   | Write to the Bankruptcy Court about why you do not like the Settlement, the Ohio Settlement Plan of Allocation, or Ohio Class Counsel’s motion for an award of attorneys’ fees and expenses. If you object, you will still be in the Ohio Settlement Class and you can still file an Ohio Claim Form. <i>See Question __ for details.</i>   |
| <b>PARTICIPATE IN A HEARING ON _____, 2024 AND FILE A NOTICE OF INTENTION TO APPEAR BY _____, 2024</b> | Ask to speak to the Bankruptcy Court at the Ohio Securities Litigation Final Approval Hearing about the Settlement. <i>See Question __ for details.</i>   |
| <b>DO NOTHING</b>  | Get no payment as part of the Settlement. Give up rights and still be bound by the terms of the Settlement.   |

- These rights and options—and the deadlines to exercise them—are explained below.
- The Bankruptcy Court still has to decide whether to approve the proposed Settlement on a final basis. Payments will be made to members of the Ohio Settlement Class who timely submit valid Ohio Claim Forms if the Bankruptcy Court approves the Settlement and any appeals are resolved favorably.

### SUMMARY OF THIS NOTICE

#### Statement of the Ohio Settlement Class’s Recovery

1. Class Representative has entered into the proposed Settlement in exchange for a payment of \$3 million (the “**Ohio Securities Litigation Payment**”) to be paid into the Ohio Securities Litigation Escrow Account on the Effective Date of the Plan, with subsequent additional

funding by the Post-Effective Date Debtors or the Litigation Trustee, as applicable, into the Ohio Securities Litigation Escrow Account, of up to an additional \$7 million. Based on Class Representative's consulting damages expert's estimate of the number of LMC Securities eligible to participate in the Settlement, and assuming that all class members eligible to participate do so, it is estimated that the average gross recovery, before deduction of any Court-approved attorneys' fees, litigation expenses, award to Class Representative pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), taxes, and notice and administration expenses, would be approximately \$0.014 per allegedly damaged share if the Settlement payment totals \$3 million and \$0.045 per allegedly damaged share if the Settlement payments ultimately total \$10 million.<sup>4</sup> If the Bankruptcy Court approves Ohio Class Counsel Fee and Expense Application (discussed below), the average recovery would be approximately \$0.003 per allegedly damaged share if the Settlement payment totals \$3 million and \$0.024 per allegedly damaged share if the Settlement payments ultimately total \$10 million. **These average recovery amounts are only estimates and Settlement Class Members may recover more or less than these estimates.** A Settlement Class Member's actual recovery will depend on, for example: (i) the number and value of claims submitted; (ii) the amount of the Net Ohio Securities Litigation Settlement Fund; (iii) when and how many shares of LMC Securities the Settlement Class Member purchased during the Ohio Settlement Class Period; and (iv) whether and when the Settlement Class Member sold their shares. See the Ohio Settlement Plan of Allocation beginning on page [ ] for information on the calculation of your Recognized Claim.

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<sup>4</sup> An allegedly damaged share might have been traded, and potentially damaged, more than once during the Ohio Settlement Class Period, and the average recovery indicated above represents the estimated average recovery for each share that allegedly incurred damages.

**Statement of Potential Outcome if the Ohio Settlement Class's Released Claims Continued to Be Litigated Against the Debtors**

2. The Settling Parties disagree about both liability and damages and do not agree about the amount of damages that would be recoverable if Class Representative and the Settlement Class were to prevail on each claim. The issues that the Settling Parties disagree about include, for example: (i) whether the Settling Defendants made any statements or omitted any facts that were materially false or misleading, or otherwise actionable under the federal securities laws; (ii) whether any such statements or omissions were made with the requisite level of intent or recklessness; (iii) the amounts by which the prices of LMC Securities were allegedly artificially inflated, if at all; (iv) the extent to which factors unrelated to the alleged fraud, such as general market, economic, and industry conditions, influenced the trading prices of LMC Securities; and (v) whether a class should be certified for litigation purposes.

3. Settling Defendants have denied, and continue to deny, any and all allegations of wrongdoing or fault, deny that they have committed any act or omission giving rise to any liability or violation of law, and deny that Class Representative and the Ohio Settlement Class have suffered any loss attributable to defendants' actions or omissions.

**Statement of Attorneys' Fees and Expenses to Be Sought**

4. Ohio Class Counsel, Labaton Keller Sucharow LLP, will apply to the Bankruptcy Court, on behalf of Plaintiffs' Counsel, for an award of attorneys' fees from the Ohio Securities Litigation Settlement Fund in an amount not to exceed 33% of the Settlement Fund, plus accrued interest at the same rate earned by the Settlement Fund, if any. Ohio Class Counsel will also apply for payment of litigation expenses incurred in prosecuting the claims to date in an amount not to exceed \$1,500,000, plus accrued interest at the same rate earned by the Settlement Fund, which may include an application pursuant to the PSLRA for the reasonable costs and expenses



(including lost wages) of Class Representative directly related to his representation of the Settlement Class. If the Bankruptcy Court approves Ohio Class Counsel's Fee and Expense Application in full, the average amount of fees and expenses is estimated to be approximately \$0.011 per allegedly damaged share if the Settlement payment totals \$3 million and \$0.021 per allegedly damaged share if the Settlement payments ultimately total \$10 million. A copy of the Ohio Fee and Expense Application will be posted on [www.strategicclaims.net/lordstown/](http://www.strategicclaims.net/lordstown/) after it has been filed with the Bankruptcy Court.

### **Reasons for the Settlement**

5. For Class Representative, the principal reason for entering into the Settlement is the guaranteed cash benefit to the Ohio Settlement Class. This benefit must be compared to: (i) the low likelihood of being able to recover more from LMC and LEVC given the Chapter 11 Cases and funds available for distribution, even if the class's claims were allowed; (ii) whether the Bankruptcy Court would certify a class over the objections of the Debtors and other parties in interest; (iii) the risk that the courts may grant some or all of the anticipated dispositive motions to be filed by the Settling Defendants before a trial of the claims; (iv) the uncertainty of being able to prove the allegations against the Settling Defendants; (v) the uncertainty of a greater recovery after a trial and appeals; and (vi) the difficulties and delays inherent in such litigation.

6. For the Settling Defendants, who deny all allegations of wrongdoing or liability whatsoever and deny that Ohio Settlement Class Members were damaged, the principal reasons for entering into the Settlement are to end the burdens, expense, uncertainty, and risk of further litigation.

### **Identification of Representatives**

7. Class Representative and the Ohio Settlement Class are represented by Ohio Class Counsel: Jake Bissell-Linsk, Esq., Labaton Keller Sucharow LLP, 140 Broadway, New York, NY 10005, www.labaton.com, settlementquestions@labaton.com, (888) 219-6877.

8. Further information regarding the Settlement and this Notice may be obtained by contacting the Ohio Settlement Claims Administrator: *Lordstown Bankruptcy Settlement*, c/o Strategic Claims Services, \_\_\_\_\_, \_\_\_\_\_, \_\_\_@\_\_\_, (\_\_\_) \_\_\_ - \_\_\_\_\_.  
www.strategicclaims.net/lordstown/.

**Please Do Not Call the Bankruptcy Court, LMC or the Debtors' Claims and Noticing Agent with Questions About the Settlement.**

### BASIC INFORMATION

|                                      |
|--------------------------------------|
| <b>1. Why did I get this Notice?</b> |
|--------------------------------------|

9. The Bankruptcy Court authorized that this Notice be provided to you because you or someone in your family may have purchased or otherwise acquired LMC Securities during the period from August 3, 2020 through July 2, 2021, inclusive (the “**Ohio Settlement Class Period**”) or held LMC’s publicly traded Class A Common Stock on September 21, 2020. **Receipt of this Notice does not mean that you are a member of the Ohio Settlement Class or that you will be entitled to receive a payment from the Settlement. The Settling Parties do not have access to your individual investment information. If you wish to be eligible for a payment, you are required to submit the Ohio Claim Form. See Question \_\_\_ below.**

10. The Bankruptcy Court directed that this Notice be provided to Ohio Settlement Class Members because they have a right to know about the proposed Settlement, and about all of their options, before the Court decides whether to approve the Settlement.

11. The Court in charge of the Settlement is the United States Bankruptcy Court for the District of Delaware, and the Settlement is part of the Debtors’ bankruptcy proceedings known

as *In re Lordstown Motors Corp. et al.*, Case No. 23-10831 (MFW). These proceedings are assigned to the Honorable Mary F. Walrath.

|  |
|--|
| <b>2. How do I know if I am part of the Ohio Settlement Class?</b> |
|--|

12. On March \_\_, 2024, the Bankruptcy Court entered an order confirming the Debtors' Plan and preliminarily approving the proposed Settlement and certifying the Ohio Settlement Class pursuant to Federal Rule 23, made applicable by Bankruptcy Rule 7023, for the purposes of the proposed Settlement only. Everyone who fits the following description is a member of the Ohio Settlement Class and subject to the Settlement, unless they are excluded by definition (*see* Question \_\_ below) or take steps to exclude themselves from the Ohio Settlement Class (*see* Question \_\_ below):

**all persons and entities that (i) purchased or otherwise acquired LMC's publicly traded Class A Common Stock (ticker: "RIDE" and prior ticker: "DPHC"), LMC's publicly traded warrants (ticker: "RIDEW" and prior ticker: "DPHCW"), LMC's publicly traded units (ticker: "DPHCU"), or any exchange-traded option to purchase or sell LMC's publicly traded Class A Common Stock during the period from August 3, 2020 through July 2, 2021, inclusive (the Class Period), and were damaged thereby; and/or (ii) held LMC's publicly traded Class A Common Stock (ticker: "RIDE" and prior ticker: "DPHC") on September 21, 2020, and were damaged thereby.**

13. If one of your mutual funds purchased LMC Securities that does not make you a member of the Ohio Settlement Class, although your mutual fund may be. You are a member of the Ohio Settlement Class only if you purchased or acquired LMC Securities during the Class Period or held LMC publicly traded Class A common stock on September 21, 2020, and were

damaged thereby. Check your investment records or contact your broker to see if you have any eligible purchases or acquisitions. **The Settling Parties do not independently have access to your trading information.**

**3. Are there exceptions to being included?**

14. Yes. There are some individuals and entities who are excluded from the Ohio Settlement Class by definition. Excluded from the Ohio Settlement Class are: (i) any defendants in the Ohio Securities Litigation and the immediate family of any defendant who is an individual, (ii) any current or former officers and/or directors of the Debtors and their immediate family; (iii) any person who is or was a control person, officer or director of LMC or LEVC; (iv) any company, firm, trust, corporation, or other entity in which any defendant in the Ohio Securities Litigation has or had a controlling interest; (v) affiliates of LMC or LEVC, including their employee retirement and benefit plan(s) and their participants or beneficiaries, to the extent they made purchases through such plan(s); and (vi) the legal representatives, affiliates, heirs, successors-in-interest, or assigns of any such excluded person or entity in (i)-(iv), in their capacities as such.

15. Also excluded from the Ohio Settlement Class is anyone who timely and validly seeks exclusion from the Ohio Settlement Class in accordance with the procedures described in Question \_\_\_ below. ***However, please be advised that with respect to the Debtors, your ability to independently bring claims against them may be limited by the Plan and whether you timely filed an individual claim in the Chapter 11 Cases, if you request exclusion from the Ohio Settlement Class.***

**4. Why is this a class action?**

16. In a class action, one or more persons or entities (in this case, Class Representative), sue on behalf of people and entities who have similar claims. Together, these

people and entities are a “class,” and each is a “class member.” A class action allows one court to resolve, in a single case, many similar claims that, if brought separately by individual people, might be too small economically to litigate. One court resolves the issues for all class members at the same time, except for those who exclude themselves, or “opt-out,” from the class. In this case, the Bankruptcy Court has designated George Troicky as the class representative and has appointed Labaton Keller Sucharow LLP to serve as class counsel.

**5. What is the Ohio Securities Litigation about and what has happened so far?**

17. Beginning on March 18, 2021, six putative securities class action lawsuits were filed against LMC, LEVC, and certain of the Company’s directors and officers in the U.S. District Court for the Northern District of Ohio (the “**Ohio District Court**”), alleging violations of Section 10(b), Section 14(a), Section 20(a), and Section 20A of the Securities Exchange Act of 1934 and SEC Rule 10b-5 promulgated thereunder.

18. On September 10, 2021, after the Ohio District Court consolidated the actions into one action called, *In re Lordstown Motors Corp. Sec. Litig.*, No. 4:21-cv-00616 (DAR) (the Ohio Securities Litigation) and appointed George Troicky as Lead Plaintiff, Mr. Troicky filed a consolidated amended class action complaint. The complaint alleges that the defendants, including the Settling Defendants, made materially false and misleading statements relating to the production capabilities, timeline, and the extent of customer pre-orders for the Debtors’ flagship vehicle, the Endurance, in order to, among other reasons, raise funding and persuade DiamondPeak Holding Corp. shareholders to approve a merger between LMC and DiamondPeak (the “**Merger**”). According to the complaint, these alleged misstatements artificially inflated the prices of Debtors’ publicly traded securities, and the subsequent alleged revelation of the truth caused the securities’

prices to drop. The complaint also alleges that, had they known the truth, DiamondPeak shareholders would have exercised their redemption rights prior to the Merger.

19. On November 9, 2021, the Settling Defendants and other defendants in the Ohio Securities Litigation filed a motion to dismiss the complaint. Pursuant to the Private Securities Litigation Reform Act of 1995, discovery was stayed pending resolution of the motion to dismiss. The motion has been fully briefed since March 3, 2022 and was awaiting the scheduling of a hearing and ruling when the Chapter 11 Cases were filed. On June 28, 2023, the Debtors and other defendants filed a suggestion of bankruptcy in the Ohio Securities Litigation. Accordingly, the Ohio District Court stayed the case and denied the motion to dismiss without prejudice to defendants filing a renewed motion at a later time.

#### **Overview of Relevant Events in Chapter 11 Cases**

20. On June 27, 2023, the Debtors each commenced a voluntary case under chapter 11 of the Bankruptcy Code in the Bankruptcy Court. The Chapter 11 Cases are being jointly administered for procedural purposes only pursuant to Bankruptcy Rule 1015(b).

21. Additional factual background and information regarding the Debtors, including their business operations, their corporate and capital structure, their restructuring activities, and the events leading to the commencement of the Chapter 11 Cases, is set forth in detail in the *Declaration of Adam Kroll in Support of the Debtors' Chapter 11 Petitions and First Day Motions*, filed June 27, 2023, [Dkt. No. 15].<sup>5</sup>

22. On October 10, 2023, Class Representative filed six proofs of claim: one proof of claim against each of the three Debtors on behalf of himself, individually, each in an unliquidated

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<sup>5</sup> All filings in the Chapter 11 Cases can be found, free of charge, on the Debtors' claims and noticing agent's website at [www.kccllc.net/lordstown/document/list/5892](http://www.kccllc.net/lordstown/document/list/5892).

amount [Claim Nos. 1379, 1380, and 1394], and one proof of claim against each of the three Debtors on behalf of the Ohio Settlement Class, as lead plaintiff in the Ohio Securities Litigation [Claim Nos. 1368, 1426, and 1434] (the “**Class Claims**,” and together with the Individual Claims, the “**Claims**”).

23. On November 6, 2023, Class Representative filed, on behalf of himself and the Ohio Settlement Class, Lead Plaintiff’s Motion To Apply Bankruptcy Rule 7023 To Class Claims [Dkt. No. 668] (the “**7023 Motion**”), seeking entry of an order (i) directing that Bankruptcy Rule 7023 applies to the Class Claims, and (ii) establishing a briefing schedule for, and scheduling a hearing on, certification of the Ohio Settlement Class for all purposes in the Chapter 11 Cases, which the Debtors opposed.

24. On February 5, 2024, the Bankruptcy Court entered an Order approving the Stipulation Between Debtors, Ohio Securities Litigation Lead Plaintiff, Official Committee of Unsecured Creditors, and Official Committee of Equity Security Holders Regarding Ohio Securities Litigation Lead Plaintiff’s Motion To Apply Bankruptcy Rule 7023 To Class Claims and Proofs of Claim Numbers 1368, 1379, 1380, 1394, 1426, and 1434 (the “**Stipulation**”), which was entered into after vigorous, arm’s-length negotiations to settle and resolve the 7023 Motion, the 7023 Objections, and the Claims. The Order, for settlement purposes only, certified the Ohio Settlement Class and designated George Troicky as Class Representative and Labaton Keller Sucharow LLP as Ohio Class Counsel.

25. On February 28, 2024, the Debtors filed their Third Modified First Amended Joint Chapter 11 Plan of Lordstown Motors Corp. and Its Affiliated Debtors (the Plan) [Dkt. No. 1014]. After a hearing held on \_\_\_\_\_, 2024, the Bankruptcy Court entered the Order (I) Confirming Third Modified First Amended Joint Chapter 11 Plan of Lordstown Motors Corp. and its Affiliated

Debtors and (II) Granting Related Relief. In addition to confirming the Plan, among other things, the Confirmation Order preliminarily approved the proposed Settlement, approved the forms and methods of notice, and scheduled the Ohio Securities Litigation Final Approval Hearing to determine whether the Bankruptcy Court should: (i) approve the proposed Settlement on a final basis as fair, reasonable, and adequate; (ii) approve the proposed Plan of Allocation for distribution of the Net Settlement Fund; and (iii) approve Ohio Class Counsel's motion for payment of attorneys' fees and expenses from the Settlement Fund.

26. The Plan became effective on March \_\_\_\_, 2024.

**Settlement Negotiations**

27. The Settling Parties began exploring the possibility of a negotiated resolution of the claims in the Ohio Securities Litigation in mid-2022. They agreed to engage in mediation and subsequently retained David Murphy, an experienced mediator well-versed in securities class actions, to act as mediator. Following the exchange of mediation statements, the first mediation session occurred on September 9, 2022. The session ended without any agreement being reached. Thereafter, the parties continued discussions with and without the mediator to further explore the possibility of a settlement.

28. The parties subsequently met for three additional in-person or telephonic mediation sessions, and the parties participated in over two dozen additional calls negotiating possible resolutions. Through these mediation sessions and calls, several of which were attended by Lordstown's current senior leadership, Ohio Class Counsel developed a thorough understanding of the defendants' potential defenses, the strengths and weaknesses of their claims, and the additional issues resulting from the filing of the Chapter 11 Cases.



29. The discussions were well-informed by Ohio Class Counsel’s wide-ranging investigation of the allegedly fraudulent misrepresentations and omissions. The investigation included, among other things: (a) the review and analysis of public filings with the U.S. Securities and Exchange Commission (“SEC”); (b) the review and analysis of press releases, analyst reports, news articles, and other publications; (c) a review of interviews with and other public statements by defendants; (d) interviews with former employees of the Company, as well as customers, business partners, and affiliates; (e) consultation with experts in the automotive industry; (f) the review of court filings in other matters concerning the Company and its current or former affiliates; (g) the review of information obtained through freedom of information requests, such as police reports; and (h) consultations with an expert on damages and loss causation and experienced bankruptcy counsel. In addition, Ohio Class Counsel reviewed documents produced by defendants in connection with mediation efforts, including documents the Company had previously produced in response to “books and records” requests to other parties pursuant to Delaware law, and documents concerning the Company’s financial condition and future plans. Ohio Class Counsel was further informed by: (i) the preparation of a detailed amended class action complaint; (iv) litigation of motions to unseal relevant documents filed in the Delaware Shareholder Class Action; and (iii) opposing defendants’ comprehensive motion to dismiss the amended complaint.

30. The Debtors and Class Representative continued their arm’s-length discussions into the fall of 2023, ultimately reaching an agreement in principle consistent with the terms of the proposed Settlement.

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| <b>6. What are the reasons for the Settlement?</b> |
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31. No court has finally decided in favor Class Representative or the Settling Defendants. Instead, the Settling Parties agreed to settle.

32. Class Representative and Ohio Class Counsel believe that the claims asserted against the Settling Defendants are strong, however in agreeing to the Settlement, they considered a variety of factors and were informed by a wide-ranging investigation; the advice of experts in the fields of the automotive industry, as well as economics and damages; and more than a year and a half of rigorous settlement discussions. Key considerations included: (i) the guaranteed cash benefit to the Ohio Settlement Class, compared to the low likelihood of being able to recover more from LMC and LEVC given the Chapter 11 Cases and the Company's liquidation value; (ii) the value of information the Debtors and Mr. Hamamoto may be able to provide in connection with the ongoing Ohio Securities Litigation; (iii) that the courts may grant some or all of the anticipated dispositive motions to be filed by the Settling Defendants before a trial of the claims; (iv) the uncertainty of being able to prove the allegations against the Settling Defendants; and (v) the difficulties and delays inherent in such litigation. In light of the Settlement and the guaranteed cash recovery to the Ohio Settlement Class, Class Representative and Ohio Class Counsel believe that the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Ohio Settlement Class.

33. Settling Defendants have denied and continue to deny each and every one of the claims alleged in the Ohio Securities Litigation and the Chapter 11 Cases, and specifically deny any wrongdoing and that they have committed any act or omission giving rise to any liability or violation of law. Settling Defendants deny that any member of the Ohio Settlement Class has suffered damages; that the prices of LMC Securities were artificially inflated by reason of the alleged misrepresentations, omissions, or otherwise; or that members of the Ohio Settlement Class were harmed by the conduct alleged. Nonetheless, Settling Defendants have concluded that continuation of the claims would be protracted and costly, and have taken into account the

uncertainty and risks inherent in any litigation, especially a complex securities class action, and the intervening Chapter 11 Cases.

## THE SETTLEMENT BENEFITS

### 7. What does the Settlement provide to the Ohio Settlement Class?

34. In exchange for the releases and dismissals contemplated by the Plan and the Settlement (*see* Question \_\_\_ below), the Settling Defendants have agreed to, among other things, a payment of at minimum \$3 million, and subsequent additional funding of up to \$7 million, which, along with any interest earned, will be distributed after the deduction of Court-awarded attorneys' fees and expenses, taxes, and notice and administration expenses (the Net Ohio Securities Litigation Settlement Fund), to Ohio Settlement Class Members who submit valid and timely Ohio Claim Forms and are found to be eligible to receive a distribution from the fund.

35. More specifically, the Debtors' Plan, as confirmed by the Bankruptcy Court on March \_\_\_, 2024, provides:

(a) The Debtors shall pay the \$3 million Ohio Securities Litigation Payment into the Ohio Securities Litigation Escrow Account on the Effective Date of the Plan;

(b) The Post-Effective Date Debtors or the Litigation Trustee, as applicable, shall pay the Ohio Securities Litigation Supplemental Amount, when and as received, into the Ohio Securities Litigation Escrow Account. The Ohio Securities Litigation Supplemental Amount means a payment of an amount equal to the lesser of (i) twenty-five percent (25%) of all Net Litigation Proceeds (which would be paid by the Litigation Trustee) and (ii) \$7 million (which would be paid by the Post-Effective Date Debtors).

(c) The Net Litigation Proceeds relate to future litigation matters retained by the Post-Effective Date Debtors and the Litigation Trustee concerning, among other things, claims and defenses related to "Foxconn," including those alleged in the adversary proceeding called

*Lordstown Motors Corp. et al. v. Foxconn Ventures Pte. Ltd. et al.*, Adv. Proc. No. 23-50414 (MFW) (Bankr. D. Del.);<sup>6</sup> claims against certain creditors, vendors, and customers; claims relating to insurance contracts and insurance policies; and claims against certain of the Company's former directors and officers. The value of the Net Litigation Proceeds will be net of the costs of such litigation, including reasonable attorneys' fees.

(d) The Plan provides that the Ohio Securities Litigation Supplemental Amount, equal to up to \$7 million, can be paid from two potential sources. First, if the Post-Effective Date Debtors and/or the Litigation Trustee is successful in pursuing and collecting judgments or settlements from third parties, then 25% of all litigation proceeds received (after deducting the fees and costs of litigation) will be contributed to the Ohio Securities Litigation Settlement Fund, up to \$7 million. Second, if the Post-Effective Date Debtors and/or the Litigation Trustee litigation proceeds are insufficient to provide for payments of up to \$7 million to the Ohio Securities Litigation Settlement Fund, then Foxconn has agreed to contribute up to \$5 million to the Ohio Securities Litigation Settlement Fund from distributions that Foxconn would have otherwise received from the Post-Effective Date Debtors.

36. The Settlement also provides that after the Effective Date of the Plan, the Post-Effective Date Debtors or Litigation Trustee, as applicable, will provide to Class Representative, for use in the continued prosecution of the Ohio Securities Litigation, all documents that were previously produced by the Debtors in response to any request for documents by (a) the SEC; (b) any party in the Delaware Shareholder Class Action, (c) any party to the case *In re Lordstown*

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<sup>6</sup> The dispute between the Debtors and Foxconn relates to, among other things, affirmative claims by the Debtors against Foxconn, and Foxconn's claims against the Debtors based upon Foxconn's holdings of preferred stock interests of the Debtors. Distributions made by the Debtors, if any, to Foxconn will depend on the outcome of the Foxconn litigation.

*Motors Corp. S'holder Derivative Litig.*, No. 1:21-CV-00604-SB (D. Del.). If providing these documents requires the Debtors, the Post-Effective Date Debtors, or Litigation Trustee (as applicable) to incur any costs with litigation support vendors, such costs shall be paid from the Ohio Securities Litigation Settlement Fund. Mr. Hamamoto has also agreed to make himself available to Ohio Class Counsel for interviews in order to provide Class Representative with information concerning any matter relevant to the Ohio Securities Litigation.

**8. How can I receive a payment?**

37. To qualify for a payment from the Net Ohio Securities Litigation Settlement Fund, you must submit a timely and valid Ohio Claim Form. (This is different from any claim you may have submitted in the Chapter 11 Cases.) A Claim Form may be obtained from the Ohio Settlement Claims Administrator's website: [www.strategicclaims.net/lordstown/](http://www.strategicclaims.net/lordstown/), or you can submit one online at [www.strategicclaims.net/lordstown/](http://www.strategicclaims.net/lordstown/). You can also request that a Claim Form be mailed to you by calling the Ohio Settlement Claims Administrator toll-free at (866) 274-4004 or emailing them at \_\_\_\_\_. **(Please do not contact the Debtors' Claims and Noticing Agent.)**

38. Please read the instructions contained in the Ohio Claim Form carefully, fill out the form, include all the documents the form requests, sign it, and mail or submit it electronically to the Ohio Settlement Claims Administrator so that it is **postmarked or received no later than** \_\_\_\_\_, 2024.

**PLAN OF ALLOCATION OF THE NET OHIO SECURITIES LITIGATION  
SETTLEMENT FUND**

**9. How will my claim be calculated?**

39. The Ohio Settlement Plan of Allocation set forth below is the plan for distributing the proceeds of the Ohio Securities Litigation Settlement among eligible Ohio Settlement Class Members that is being proposed by the Class Representative to the Bankruptcy Court for approval.

The Bankruptcy Court may approve this Plan of Allocation or modify it without additional individual notice to the Ohio Settlement Class. Any order modifying the Plan of Allocation will be posted on the Ohio Settlement Claims Administrator's website at: [www.strategicclaims.net/lordstown/](http://www.strategicclaims.net/lordstown/) and at [www.labaton.com](http://www.labaton.com).

40. The amounts paid in exchange for the Ohio Securities Litigation Settlement, plus any interest earned thereon, is the "Ohio Securities Litigation Settlement Fund." The terms "Net Ohio Securities Litigation Settlement Fund" and "Net Settlement Fund" refer to the Ohio Securities Litigation Settlement Fund after the deduction of Bankruptcy Court approved attorneys' fees and expenses, notice and administration costs, taxes, and any other fees or expenses approved by the Court.

41. LMC's (i) publicly traded Class A Common Stock (ticker: "RIDE" and prior ticker: "DPHC"), (ii) publicly traded warrants (ticker: "RIDEW" and prior ticker: "DPHCW"), (iii) publicly traded units (ticker: "DPHCU"), and (iv) exchange-traded options to purchase or sell LMC's publicly traded Class A Common Stock (together, LMC Securities)<sup>7</sup> are the only securities eligible for a recovery under the Plan of Allocation.<sup>8</sup> The Net Settlement Fund will be distributed to members of the Ohio Settlement Class who timely submit valid Ohio Claim Forms that result in a Recognized Claim, as set forth below ("**Authorized Claimants**").

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<sup>7</sup> LMC common stock traded under the symbol "DPHC" through October 22, 2020 and experienced a symbol change to "RIDE" on October 23, 2020. LMC warrants traded under the symbol "DPHCW" through October 22, 2020 and experienced a symbol change to "RIDEW" on October 23, 2020. LMC units traded under the symbol "DPHCU" until the units were delisted on October 23, 2020.

<sup>8</sup> LMC common stock experienced a 1 for 15 reverse stock split on May 23, 2023. For purposes of this Plan of Allocation (and because the claims at issue relate to purchases and sales before the split), all prices and inflation per share of LMC Securities found in this plan are listed in split-*unadjusted* terms – that is, at the prices that were in effect *prior* to the reverse stock split on May 23, 2023. Where Claim Form documentation contains post-split figures, the Claims Administrator will adjust the shares and prices to their pre-split equivalents.

42. To design this Plan of Allocation, Ohio Class Counsel has conferred with its consulting damages expert. The Plan of Allocation, however, is not a damages analysis. Because the Net Settlement Fund is less than the total losses alleged to have been suffered by the Ohio Settlement Class, the formulas described below for calculating recognized losses are not intended to estimate the amounts that will actually be paid to Authorized Claimants or intended to serve as factual or legal determinations of actual losses suffered. Rather, the Recognized Loss Amounts will be used to calculate each Claimant's *pro rata* recovery from the Net Settlement Fund, as follows: Authorized Claimants will receive a recovery equal to the sum of their Recognized Loss Amounts (their "**Recognized Claim**"), divided by (b) the aggregate sum total of all Recognized Claims, multiplied by (c) the amount of the Net Ohio Securities Litigation Settlement Fund available at the time of distribution.<sup>9</sup>

43. The Debtors, Post-Effective Date Debtors, and their respective counsel will have no responsibility or liability for the investment of the Ohio Securities Litigation Settlement Fund, the distribution of the Net Settlement Fund, the Plan of Allocation, or the payment of any Ohio Claim. Plaintiffs, Plaintiffs' Counsel, and anyone acting on their behalf, likewise, will have no liability for their reasonable efforts to execute, administer, and distribute the Ohio Securities Litigation Settlement Fund.

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<sup>9</sup> As explained above, the Settlement will be funded by an initial payment of \$3 million. The amount available for distribution will be increased as additional funds are recovered over time. Additional funds that are received after a distribution is made will be paid to Authorized Claimants who have negotiated their prior settlement payment and who would receive at least \$10.00.

### **CALCULATION OF RECOGNIZED LOSS AMOUNTS**

44. Recognized Loss Amounts will be calculated as set forth below for each relevant transaction in LMC Securities that is listed in a Claimant's Ohio Claim Form and for which adequate documentation is provided.

45. For purposes of determining Recognized Loss Amounts, purchases, acquisitions, and sales of the respective LMC Securities will first be matched on a First In/First Out ("FIFO") basis. With respect to LMC common stock, LMC warrants, LMC units, and LMC call options, purchases/acquisitions and sales from August 3, 2020 through July 2, 2021, both dates inclusive, (the Ohio Settlement Class Period) will be matched first against any holdings prior to the opening of trading on August 3, 2020 and then against purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisition made on or after August 3, 2020.

46. For LMC put options, purchases made on or after August 3, 2020 will be matched first to close positions open prior to the opening of trading on August 3, 2020, and then against put options sold (written) on or after August 3, 2020, in chronological order.

47. LMC units were delisted on October 23, 2020 and separated into their component parts. For purposes of FIFO matching and calculating Recognized Loss Amounts, any LMC common stock acquired on October 23, 2020 in connection with the LMC units delisting will be considered a purchase of LMC common stock on October 23, 2020, unless documentation submitted by the Claimant demonstrates a different acquisition date. If documentation for these transactions does not contain a purchase price for the common stock acquisition, the price of \$18.21, the common stock closing price on October 23, 2020, will be applied. However, LMC common stock acquired in connection with the LMC units delisting that is associated with LMC units purchased prior to August 3, 2020 is not eligible for a recovery. In addition, all outstanding LMC warrants were redeemed for LMC common stock on January 15, 2021. For purposes of



FIFO matching and calculating Recognized Loss Amounts, any LMC common stock acquired on January 15, 2021 in connection with the LMC warrants conversion will be considered a purchase of LMC common stock on January 15, 2021 at a price of \$11.50, unless documentation submitted by the Claimant demonstrate a different acquisition date. However, LMC common stock acquired in connection with the LMC warrant conversion that is associated with LMC warrants purchased prior to August 3, 2020 is not eligible for a recovery.

48. On October 23, 2020, the Company issued and sold an aggregate of 50 million shares of LMC common stock in connection with the closing of a business combination (“**PIPE Transaction**”). Purchases pursuant to this PIPE Transaction will have a Recognized Loss Amount of zero, notwithstanding any other calculation herein.

49. In the Ohio Securities Litigation, Plaintiffs alleged that certain of the Debtors, and the current defendants in the litigation, issued false statements and omitted material facts from August 3, 2020, through and including July 2, 2021 prior to 11:28 AM ET, that artificially inflated the prices of LMC common stock, LMC warrants, LMC units, and LMC call options, and artificially deflated the price of LMC put options. It is alleged that corrective information was released to the market on March 12, 2021 (prior to market open), March 17, 2021 (after market close), May 24, 2021 (after market close), June 8, 2021 (at 2:24 PM ET), June 14, 2021 (prior to market open), and July 2, 2021 (at 11:28 AM ET). Thus, pursuant to the calculations below, a Claimant may have a Recognized Loss Amount premised on (i) LMC Securities (other than put options) purchased or otherwise acquired from August 3, 2020, through and including July 2, 2021 prior to 11:28 AM ET, and held through at least one of the alleged corrective disclosure dates listed above, or (ii) with respect to put options, options sold (written) from August 3, 2020, through and

including July 2, 2021 prior to 11:28 AM ET and not closed through at least one of the alleged corrective disclosure dates.

50. Additionally, it has been alleged that as a direct result of certain of the Debtors', and the current defendants', negligent preparation, review, and dissemination of false and/or misleading Proxy Statements, certain members of the Ohio Settlement Class were deprived of their right to be presented with accurate proxy materials when they were asked to vote on the merger between LMC and DiamondPeak. As a result, a Recognized Loss Amount may also arise from shares of LMC common stock that were held on September 21, 2020. To the extent a share of LMC common stock was held on September 21, 2020, the purchase price of that share used in calculations herein shall be the greater of (a) the actual purchase price of that share if purchased between August 3, 2020 and September 21, 2020, or (b) \$10.15 (the price at which the shares could have been redeemed pursuant to investor's redemption rights provided in connection with the Merger). Additionally, the purchase date for any such share that was held prior to August 3, 2020 and was still held on September 21, 2020 shall be deemed to be August 3, 2020 and the purchase price shall be \$10.15.

51. To the extent that the calculation of a Recognized Loss Amount results in a negative number, that number will be set to zero.

**LMC Publicly Traded Common Stock**<sup>10</sup>

52. For each share of LMC common stock purchased or acquired from August 3, 2020 through and including July 2, 2021 prior to 11:28 AM ET,<sup>11</sup> the Recognized Loss Amount for each such share shall be the amount derived through the following calculation:

- A. If the share was sold prior to March 12, 2021, the Recognized Loss Amount for each such share shall be zero.
- B. If the share was sold from March 12, 2021 through July 2, 2021 prior to 11:28 AM ET, the Recognized Loss Amount for each such share shall be *the lesser of*:
  1. the dollar artificial inflation applicable to each such share on the date of purchase/acquisition as set forth in **Table 1**<sup>12</sup> below, *minus* the dollar artificial inflation applicable to each such share on the date of sale as set forth in **Table 1** below; or
  2. the price paid to purchase/acquire each such share, *minus* the price received upon selling such share.
- C. If the share was sold from July 2, 2021 at or after 11:28 AM ET through September 29, 2021, the Recognized Loss Amount for each such share shall be *the least of*:

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<sup>10</sup> This includes common stock acquired through conversion of LMC units and LMC warrants. As mentioned above, any LMC common stock shares acquired on October 23, 2020 in connection with the LMC units delisting shall be considered a purchase of LMC common stock on October 23, 2020, and any LMC common stock acquired on January 15, 2021 in connection with the LMC warrants conversion shall be considered a purchase of LMC common stock on January 15, 2021. However, such common stock acquired through these conversions/redemptions that are associated with LMC units or LMC warrants purchased prior to August 3, 2020 are not eligible for a recovery and have a Recognized Loss Amount of zero.

<sup>11</sup> For purposes of this Plan of Allocation, in the absence of contrary documentation, the Claims Administrator will assume that any shares purchased/acquired or sold on July 2, 2021 at any price less than \$9.70 per share occurred after the allegedly corrective information was released to the market at or after 11:28 AM ET, and that any shares purchased/acquired or sold on July 2, 2021 at any price equal to or greater than \$9.70 per share occurred before the release of the allegedly corrective information at 11:28 AM ET.

<sup>12</sup> For purposes of this Plan of Allocation, in the absence of contrary documentation, the Claims Administrator will assume that any shares purchased/acquired or sold on June 8, 2021 at any price less than \$13.50 per share occurred after the allegedly corrective information was released to the market at or after 2:24 PM ET, and that any shares purchased/acquired or sold on June 8, 2021 at any price equal to or greater than \$13.50 per share occurred before the release of the allegedly corrective information at 2:24 PM ET.

1. the dollar artificial inflation applicable to each such share on the date of purchase/acquisition as set forth in **Table 1** below; or
  2. the price paid to purchase/acquire each such share, *minus* the average closing price from July 2, 2021 up to the date of sale as set forth in **Table 2** below; or
  3. the price paid to purchase/acquire each such share, *minus* the price received upon selling such share.
- D. If the share was held as of the close of trading on September 29, 2021, the Recognized Loss Amount for each such share shall be *the lesser of*:
1. the dollar artificial inflation applicable to each such share on the date of purchase/acquisition as set forth in **Table 1** below; or
  2. the price paid to purchase/acquire each such share *minus* \$6.86.<sup>13</sup>

### **LMC Publicly Traded Units**

53. LMC publicly traded units were delisted on October 23, 2020 and ceased to trade. For each LMC publicly traded unit purchased or acquired from August 3, 2020 through and including October 23, 2020 and sold prior to October 23, 2020, the Recognized Loss Amount for each such unit shall be zero.

54. For each LMC publicly traded unit purchased or acquired from August 3, 2020 through and including October 23, 2020 and held through October 23, 2020 and directly associated with the acquisition of LMC publicly traded common stock, please follow the formulas above for LMC publicly traded common stock.

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<sup>13</sup> Pursuant to Section 21D(e)(1) of the Exchange Act, “in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market.” Consistent with the requirements of the Exchange Act, Recognized Loss Amounts are reduced to an appropriate extent by taking into account the closing prices of LMC common stock during the “90-day look-back period,” July 2, 2021 through September 29, 2021. The mean (average) closing price for LMC common stock during this 90-day look-back period was \$6.86.

**LMC Publicly Traded Warrants**

55. All outstanding LMC warrants were redeemed for LMC common stock on January 15, 2021. For each LMC publicly traded warrant purchased or acquired from August 3, 2020 through and including January 15, 2021 and not redeemed for LMC publicly traded common stock on January 15, 2021, the Recognized Loss Amount for each such warrant shall be zero.

56. For each LMC publicly traded warrant purchased or acquired from August 3, 2020 through and including January 15, 2021 and redeemed for LMC publicly traded common stock on January 15, 2021, please follow the formulas above for LMC publicly traded common stock.

**LMC Exchange-Traded Options**

57. Exchange-traded options are traded in units called “contracts,” which entitle the holder to buy (in the case of a call option) or sell (in the case of a put option) 100 shares of the underlying security, which in this case is LMC common stock. Throughout this Plan of Allocation, all price quotations of exchange-traded options are per share of the underlying security (i.e., 1/100 of a contract) and references to “shares” within this discussion of options, refer to 1/100 of a contract.

58. Each option contract specifies a strike price and an expiration date. Contracts with the same strike price and expiration date are referred to as a “series.” Under the Plan of Allocation, the dollar artificial inflation per share (i.e., 1/100 of a contract) for each series of LMC call options and the dollar artificial deflation per share (i.e., 1/100 of a contract) for each series of LMC put options has been calculated by Class Representative’s consulting damages expert.

59. **Table 3** sets forth the dollar artificial inflation per share in LMC call options during the Ohio Settlement Class Period.<sup>14</sup> **Table 4** sets forth the dollar artificial deflation per share in LMC put options during the Ohio Settlement Class Period. **Table 3** and **Table 4** list only series of LMC options that had open interest on at least one of the alleged corrective disclosure dates<sup>15</sup> – because any option closed or expiring prior to the market reaction to any alleged corrective disclosure has a Recognized Loss Amount of zero.

60. **For each exchange-traded LMC call option purchased or acquired from August 3, 2020 through and including July 2, 2021 prior to 11:28 AM ET and:**

- A. Closed (through sale, exercise, or expiration) prior to March 12, 2021, the Recognized Loss Amount for each such share shall be zero.
- B. Closed (through sale, exercise, or expiration) from March 12, 2021 through July 2, 2021 prior to 11:28 AM ET, the Recognized Loss Amount for each such share shall be *the least of*:
  1. the dollar artificial inflation applicable to each such share on the date of purchase/acquisition as set forth in **Table 3** below *minus* the dollar artificial inflation applicable to each such share on the date of close as set forth in **Table 3** below; or
  2. the price paid to purchase/acquire each such share *minus* the price received upon selling such share, if closed by sale; or
  3. the price paid to purchase/acquire each such share *minus* the greater of a) the closing price of LMC common stock on the date of exercise or expiration *minus* the strike price of the option, or b) zero, if closed through exercise or expiration.
- C. Open as of July 2, 2021 at or after 11:28 AM ET, the Recognized Loss Amount for each such share shall be *the lesser of*:

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<sup>14</sup> Due to their size, **Table 3** and **Table 4** will be posted at: [www.strategicclaims.net/lordstown/](http://www.strategicclaims.net/lordstown/) and [www.labaton.com](http://www.labaton.com).

<sup>15</sup> For purposes of this Plan of Allocation, in the absence of contrary documentation, the Claims Administrator will assume that transactions on June 8, 2021 occurred prior to the release of the allegedly corrective information to the market and that transactions on July 2, 2021 occurred after the allegedly corrective information was released to the market.

1. the dollar artificial inflation applicable to each such share on the date of purchase/acquisition as set forth in **Table 3** below; or
2. the actual purchase/acquisition price of each such share *minus* the closing price on July 2, 2021 (i.e., the “Holding Price”) as set forth in **Table 3** below.

61. **For each exchange-traded LMC put option sold (written) from August 3, 2020**

**through and including July 2, 2021 prior to 11:28 AM ET, and:**

- A. Closed (through purchase, exercise, or expiration) prior to March 12, 2021, the Recognized Loss Amount for each such share shall be zero.
- B. Closed (through purchase, exercise, or expiration) from March 12, 2021 through July 1, 2021, the Recognized Loss Amount for each such share shall be ***the least of:***
  1. the dollar artificial deflation applicable to each such share on the date of sale (writing) as set forth in **Table 4** below *minus* the dollar artificial deflation applicable to each such share on the date of close as set forth in **Table 4** below; or
  2. the purchase price *minus* the sale price if closed by purchase; or
  3. the greater of a) the strike price of the option *minus* the closing price of LMC common stock on the date of exercise or expiration, or b) zero, *minus* the sale price if closed through exercise or expiration.
- C. Open as of July 2, 2021 at or after 11:28 AM ET, the Recognized Loss Amount for each such share shall be ***the lesser of:***
  1. the dollar artificial deflation applicable to each such share on the date of sale (writing) as set forth in **Table 4** below; or
  2. the closing price on July, 2, 2021 (i.e., the “Holding Price”) as set forth in **Table 4** below *minus* the sale (writing) price.

62. **Reductions and Maximum Recovery for Options:** Each Claimant’s

Recognized Loss Amount calculated for LMC options above shall be reduced by 50% and the aggregate sum total of all Authorized Claimants’ Recognized Loss Amounts calculated for LMC options shall be reduced so that it does not exceed 15% of the aggregate sum total of all Recognized

Claims.<sup>16</sup>**TABLE 1**

**LMC Common Stock  
Artificial Inflation for Purposes of Calculating Purchase and Sale Inflation**

| <b>Transaction Date</b>                               | <b>Artificial Inflation Per Share</b> |
|---|---------------------------------------|
| August 3, 2020 - March 11, 2021                       | \$10.28                               |
| March 12, 2021 - March 17, 2021                       | \$7.35                                |
| March 18, 2021 - May 24, 2021                         | \$6.31                                |
| May 25, 2021 - June 8, 2021 (prior to 2:24 PM ET)     | \$5.68                                |
| June 8, 2021 (at or after 2:24 PM ET) - June 13, 2021 | \$2.51                                |
| June 14, 2021 - July 2, 2021 (prior to 11:28 AM ET)   | \$0.65                                |

**TABLE 2**

**LMC Common Stock  
Closing Price and Average Closing Price  
July 2, 2021 – September 29, 2021**

| <b>Date</b> | <b>Closing Price</b> | <b>Average Closing Price From July 2, 2021 and Date Shown</b> | <b>Date</b> | <b>Closing Price</b> | <b>Average Closing Price From July 2, 2021 and Date Shown</b> |
|-------------|----------------------|---|-------------|----------------------|---|
| 7/2/2021    | \$9.23               | \$9.23  | 8/17/2021   | \$5.49               | \$7.24  |
| 7/6/2021    | \$9.31               | \$9.27  | 8/18/2021   | \$5.27               | \$7.18  |
| 7/7/2021    | \$8.56               | \$9.03  | 8/19/2021   | \$4.77               | \$7.11  |
| 7/8/2021    | \$8.89               | \$9.00  | 8/20/2021   | \$5.23               | \$7.05  |
| 7/9/2021    | \$8.94               | \$8.99  | 8/23/2021   | \$5.52               | \$7.01  |
| 7/12/2021   | \$8.86               | \$8.97  | 8/24/2021   | \$5.75               | \$6.98  |
| 7/13/2021   | \$8.75               | \$8.93  | 8/25/2021   | \$5.51               | \$6.94  |
| 7/14/2021   | \$8.08               | \$8.83  | 8/26/2021   | \$6.49               | \$6.93  |
| 7/15/2021   | \$8.89               | \$8.83  | 8/27/2021   | \$6.48               | \$6.92  |
| 7/16/2021   | \$8.54               | \$8.81  | 8/30/2021   | \$6.47               | \$6.90  |
| 7/19/2021   | \$8.31               | \$8.76  | 8/31/2021   | \$6.58               | \$6.90  |

<sup>16</sup> Based on the analysis of Class Representative's consulting damages expert, unadjusted options damages do not exceed 15% of the combined stock and options damages. In addition, there is greater litigation risk associated with options. Therefore, the discount and limitation on option recoveries is intended to provide a reasonable estimation of the fair recovery for these claims, consistent with an analysis of the strength of those claims relative to others.



|           |        |        |           |        |        |
|-----------|--------|--------|-----------|--------|--------|
| 7/20/2021 | \$8.59 | \$8.75 | 9/1/2021  | \$6.50 | \$6.89 |
| 7/21/2021 | \$8.52 | \$8.73 | 9/2/2021  | \$6.54 | \$6.88 |
| 7/22/2021 | \$8.19 | \$8.69 | 9/3/2021  | \$6.25 | \$6.87 |
| 7/23/2021 | \$7.48 | \$8.61 | 9/7/2021  | \$6.40 | \$6.86 |
| 7/26/2021 | \$7.29 | \$8.53 | 9/8/2021  | \$6.17 | \$6.84 |
| 7/27/2021 | \$6.59 | \$8.41 | 9/9/2021  | \$6.32 | \$6.83 |
| 7/28/2021 | \$6.56 | \$8.31 | 9/10/2021 | \$6.18 | \$6.82 |
| 7/29/2021 | \$6.20 | \$8.20 | 9/13/2021 | \$6.45 | \$6.81 |
| 7/30/2021 | \$6.24 | \$8.10 | 9/14/2021 | \$6.40 | \$6.80 |
| 8/2/2021  | \$6.37 | \$8.02 | 9/15/2021 | \$6.84 | \$6.80 |
| 8/3/2021  | \$5.94 | \$7.92 | 9/16/2021 | \$6.73 | \$6.80 |
| 8/4/2021  | \$5.92 | \$7.84 | 9/17/2021 | \$7.06 | \$6.81 |
| 8/5/2021  | \$5.99 | \$7.76 | 9/20/2021 | \$6.53 | \$6.80 |
| 8/6/2021  | \$5.93 | \$7.69 | 9/21/2021 | \$6.87 | \$6.80 |
| 8/9/2021  | \$5.97 | \$7.62 | 9/22/2021 | \$6.84 | \$6.80 |
| 8/10/2021 | \$5.83 | \$7.55 | 9/23/2021 | \$7.43 | \$6.81 |
| 8/11/2021 | \$5.58 | \$7.48 | 9/24/2021 | \$7.57 | \$6.83 |
| 8/12/2021 | \$5.74 | \$7.42 | 9/27/2021 | \$7.78 | \$6.84 |
| 8/13/2021 | \$5.37 | \$7.36 | 9/28/2021 | \$7.19 | \$6.85 |
| 8/16/2021 | \$5.45 | \$7.29 | 9/29/2021 | \$7.36 | \$6.86 |

#### ADDITIONAL PROVISIONS

63. With respect to LMC common stock purchased or sold through the exercise of an option, the purchase/sale date of the LMC common stock is the exercise date of the option and the purchase/sale price is the exercise price of the option.

64. Purchases, acquisitions and sales of LMC Securities shall be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” or “sale” date. The receipt or grant by gift, inheritance or operation of law of LMC Securities during the Ohio Settlement Class Period shall not be deemed a purchase, acquisition, or sale of such LMC Securities for the calculation of an Authorized Claimant’s Recognized Loss Amounts, nor shall the receipt or grant of such LMC Securities be deemed an assignment of any claim relating to the purchase/acquisition/sale of such LMC Securities unless (i) the donor or decedent purchased, acquired, or sold such shares of LMC Securities during the Ohio Settlement Class Period; (ii) no Ohio Claim Form was submitted by or on behalf of the donor, on behalf of the decedent, or by

anyone else with respect to such LMC Securities; and (iii) it is specifically so provided in the instrument of gift or assignment.

65. In accordance with the Plan of Allocation, the Recognized Loss Amount on any portion of a purchase or acquisition that matches against (or “covers”) a “short sale” is zero. The Recognized Loss Amount on a “short sale” that is not covered by a purchase or acquisition is also zero. In the event that a Claimant has an opening short position in LMC common stock at the start of the Ohio Settlement Class Period, the earliest Class Period purchases or acquisitions shall be matched against such opening short position in accordance with the FIFO matching described above and any portion of such purchases or acquisition that covers such short sales will not be entitled to recovery. In the event that a claimant newly establishes a short position during the Ohio Settlement Class Period, the earliest subsequent Class Period purchase or acquisition shall be matched against such short position on a FIFO basis and will not be entitled to a recovery.

66. If a Claimant has “written” LMC call options, thereby having a short position in the call options, the date of covering such a written position is deemed to be the date of purchase or acquisition of the call option. The date on which the call option was written is deemed to be the date of sale of the call option. In accordance with the Plan of Allocation, the earliest Ohio Settlement Class Period purchases or acquisitions shall be matched against such short positions in accordance with the FIFO matching described above and any portion of such purchases or acquisitions that cover such short positions will not be entitled to recovery.

67. If a Claimant has purchased or acquired LMC put options, thereby having a long position in the put options, the date of purchase/acquisition is deemed to be the date of purchase/acquisition of the put option. The date on which the put option was sold, exercised, or expired is deemed to be the date of sale of the put option. In accordance with the Plan of

Allocation, the earliest sales or dispositions of like put options during the Ohio Settlement Class Period shall be matched against such long positions in accordance with the FIFO matching described above and any portion of the sales that cover such long positions shall not be entitled to a recovery.

68. If the Net Settlement Fund exceeds the sum total of the Recognized Claims of all Authorized Claimants entitled to receive payment out of the Net Settlement Fund, the Net Settlement Fund shall be distributed pro rata to all Authorized Claimants entitled to receive payment.

69. Ohio Settlement Class Members who do not submit acceptable Ohio Claim Forms will not share in the distribution of the Net Settlement Fund, however they will nevertheless be bound by the Ohio Securities Litigation Settlement, the Final Approval Order and all orders relating to the Ohio Securities Litigation Settlement unless they have timely and validly sought exclusion from the Ohio Settlement Class.

70. The Net Settlement Fund will be allocated among Authorized Claimants whose payments are \$10.00 or greater. If the payment to any Authorized Claimant calculates to less than \$10.00, it will not be included in the calculation and no distribution will be made to that Authorized Claimant. As explained above, the Settlement will be funded by an initial payment of \$3 million. The amount available for distribution will be increased as additional funds are recovered over time. Additional funds that are received after a distribution is made will be paid to Authorized Claimants who have negotiated their prior settlement payment and who would receive at least \$10.00.

71. Distributions will be made to Authorized Claimants after all Ohio Claim Forms have been processed and after the Bankruptcy Court has approved the Ohio Securities Litigation Settlement on a final basis and this Plan of Allocation. If any funds remain in the Net Settlement

Fund after an initial distribution by reason of un-cashed payments or otherwise, then, after the Claims Administrator has made reasonable and diligent efforts to have Authorized Claimants who are entitled to participate in the distribution of the Net Settlement Fund cash their distributions, any balance remaining in the Net Settlement Fund at least six months after the initial distribution of such funds may be re-distributed to Authorized Claimants who have cashed their initial distributions in an economical manner, after payment of taxes and any unpaid costs or fees incurred in administering the Net Settlement Fund for such re-distribution. After all payments contemplated by the Settlement have been made, and all anticipated proceeds distributed, any balance that still remains in the Net Settlement Fund after re-distribution(s), which is not feasible or economical to reallocate, after payment of any taxes and unpaid costs or fees incurred in administering the Net Settlement Fund, shall be contributed to Consumer Federation of America, or such other non-sectarian, not-for-profit organization(s) serving the public interest, designated by Ohio Class Counsel and approved by the Bankruptcy Court.

72. Payment pursuant to the Plan of Allocation or such other plan as may be approved by the Bankruptcy Court shall be conclusive against all Claimants. No person shall have any claim against Plaintiffs, Plaintiffs' Counsel, their damages expert, the Ohio Settlement Claims Administrator, or other agent designated by Plaintiffs' Counsel, arising from determinations or distributions to Claimants made substantially in accordance with the Plan of Allocation approved by the Bankruptcy Court, or further orders of the Bankruptcy Court. The Debtors, Post-Effective Date Debtors, and their respective counsel shall have no responsibility for, or liability whatsoever with respect to, the investment or distribution of the Ohio Securities Litigation Settlement Fund or the Net Settlement Fund; the Plan of Allocation; the determination, administration, calculation, or payment of any Ohio Claim; the non-performance of the Claims Administrator; the payment or

withholding of taxes owed by the Ohio Securities Litigation Settlement Fund or any losses incurred in connection therewith.

**10. What am I giving up to receive a payment and by staying in the Ohio Settlement Class?**

73. If you are a member of the Ohio Settlement Class, once the Settlement is approved on a final basis by a final non-appealable order, you will be bound by all the terms of the Settlement and you will have released your individual right to pursue claims against the Debtors in the Chapter 11 Cases and class claims against the Settling Defendants in the Ohio Securities Litigation, and will have released any related claims against the Released Persons pursuant to the Plan. All of the Bankruptcy Court's orders about the Settlement, whether favorable or unfavorable, will apply to you and legally bind you, as will the Confirmation Order and Plan. The main defined terms of the release provisions are stated below. The definitions of all terms can be found in the Plan and the Confirmation Order, which are available at [www.strategicclaims.net/lordstown/](http://www.strategicclaims.net/lordstown/).

74. More specifically, as part of the consideration provided by the Ohio Settlement Class Members in connection with the Settlement, the Ohio Settlement Class Members will constitute Releasing Parties and will be bound by the provisions in Article VIII of the Plan, including the discharge in Article VIII.B, the releases in Article VIII.D and the injunctive provisions in Article VIII.F. For the avoidance of any doubt, nothing in the Settlement, the Plan or the Confirmation Order will impact the claims and causes of action in the Ohio Securities Litigation against any current or future defendant in the action that is not one of the Debtors or Ohio Released Directors and Officers.

75. The Plan states, in relevant part:

**“Released Party”** means each of the following in their capacity as such: (i) the Debtors; (ii) the Post-Effective Date Debtors; (iii) each of the Debtors' Estates; (iv) the UCC, (v) each of the UCC Members, solely in its capacity as a UCC Member; (vi) the EC; (vii) each of the EC

Members, solely in its capacity as an EC Member; and (viii) with respect to each of the foregoing Entities in clauses (i) through (vii), their respective current and former officers, directors, employees, attorneys, accountants, investment bankers, consultants and other professionals other than Excluded Parties, each in its capacity as such; provided that, notwithstanding anything in the foregoing, any Person or Entity that is an Excluded Party shall not be a Released Party; provided further that, notwithstanding anything in the foregoing, any Person or Entity that is entitled to vote on the Plan but does not vote to accept the Plan or otherwise opt in to the releases shall not be a Released Party; provided further that, no defendant in the Ohio Securities Litigation shall be a “Released Party” for purposes of any release provided by any Ohio Settlement Class Members, in their capacities as such, other than the Debtors, the Post-Effective Date Debtors and each of the Ohio Released Directors and Officers.<sup>17</sup>

“**Releasing Party**” means, in relevant part, each of the following in their capacity as such: . . . (ii) each of the Ohio Settlement Class Members, including the Ohio Securities Litigation Lead Plaintiff. . . and (iv) with respect to each of the foregoing Entities in clauses (i), (ii) and (iii), such Entity and its current and former Affiliates, and such Entities’ and their current and former Affiliates’ current and former directors, managers, officers, predecessors, successors, and assigns, subsidiaries, and each of their respective current and former equity holders, officers, directors, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, managed accounts or funds, management companies, fund advisors, investment bankers, consultants, representatives, and other professionals, each in its capacity as such; provided, however, that the Entities identified in part (iv) shall be Releasing Parties only to the extent the corresponding Entities in parts (i), (ii) and (iii) are legally able to bind such Entities in part (iv) to the releases contained in the Plan under applicable law; provided, further, that, subject to the terms of Article VIII.D, the Non-Releasing Putative Class Action Representatives shall not be deemed to be Releasing Parties; provided further that, Foxconn shall not be deemed to be Releasing Parties.

76. Article VIII.B of the Plan states, in relevant part:

**Discharge of Claims and Termination of Interests** - Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or in a contract, instrument, or other agreement or document executed pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims, Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date . . . . The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests

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<sup>17</sup> “**Ohio Released Directors and Officers**” means the Chapter 11 Directors and Officers serving on December 12, 2023. For the avoidance of doubt, none of the defendants already named in the Ohio Securities Litigation, other than David Hamamoto, shall be deemed to be Ohio Released Directors and Officers.

subject to the Effective Date occurring; provided that, notwithstanding anything in the foregoing, Interests treated pursuant to the Plan shall receive such treatment as specified in the Plan.

77. Article VIII.D of the Plan states, in relevant part:

**Releases by Holders of Claims and Interests** - As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, each Releasing Party shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released, waived, and discharged each Debtor, Post-Effective Date Debtor, and other Released Party from any and all Claims, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever (in each case, whether prepetition or postpetition), including any derivative Claims asserted or that may be asserted on behalf of the Debtors or their Estates, that such Entity would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, based on or relating to, or in any manner arising from, in whole or in part, the Debtors or the conduct of their business (in each case, whether prepetition or postpetition) . . . . Without limiting the generality of the foregoing, and subject to the paragraph directly below, pursuant to the Releases set forth in this Article VIII.D, each Releasing Party shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released, waived, and discharged each Released Party from any Claims related to or asserted in the Putative Class Actions (which actions include, for the avoidance of any doubt, the Ohio Securities Litigation, the Delaware Shareholder Class Action, and the Post-Petition Securities Action) . . . .

Notwithstanding anything to the contrary in the preceding paragraph, the releases provided therein by the Ohio Securities Settlement Class Members, including the Ohio Securities Litigation Lead Plaintiff, in their capacities as such, shall be limited to any and all Claims obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever that the Ohio Securities Class Members have asserted or could have asserted against any Released Party relating to, arising from or connected with the Ohio Securities Litigation. Further, notwithstanding anything to the contrary in the preceding paragraph, the Non-Releasing Putative Class Action Representatives shall not be deemed to constitute Releasing Parties; *provided that*, except as set forth in Class 10 and in the Ohio Securities Litigation Stipulation, the Debtors do not concede that the certification of a class is appropriate in any of the Putative Class Actions and the exclusion of the Non-Releasing Putative Class Action Representatives from the releases set forth herein shall not constitute an admission by any Person or Entity, including the Debtors, that a class is appropriate in any of the Putative Class Actions; *provided further that*, the Debtors do not concede that the exclusion of the Non-Releasing Putative Class Action Representatives from the releases set forth herein in any way binds the other members of any putative class or in any way affects the decision of any such putative class members to be a Releasing Party and grant the releases set forth herein. Except as set forth in the treatment of Class 10 Claims hereunder and in the Ohio Securities Litigation Stipulation, all of the rights of the Debtors, the Non-Releasing Putative Class Action Representatives, the Ohio Securities Litigation Lead Plaintiff and any other party in connection with the potential certification of any putative class are expressly reserved in all respects. Further, all of the rights of the Debtors, the Non-Releasing Putative Class Action Representatives and any other party in connection with the granting of releases are expressly reserved in all respects. If the exclusion of the Non-Releasing Putative Class Action Representatives from the releases set forth

herein does not bind other class members (as is the Debtors' contention), each such class member that is a Releasing Party under the terms of the Plan shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released, waived, and discharged each Released Party from any Claims related to or asserted in the applicable Putative Class Actions (which actions include, for the avoidance of any doubt, the Delaware Shareholder Class Action, and the Post-Petition Securities Action) . . . . Additionally, notwithstanding anything to the contrary in this Plan or the Confirmation Order, nothing herein or therein does, shall, or may be construed to release, the Debtors or bar the assertion of claims against them as nominal defendants in the Post-Petition Securities Action for purposes of preserving and enforcing rights to coverage under and recovery of the proceeds of the D&O Liability Insurance Policies.

78. "Effective Date" means, with respect to the Plan, the date that is the first Business Day on which (i) no stay of the Confirmation Order is in effect; (ii) all conditions precedent specified in Article X have been satisfied or waived (in accordance with Article X); and (iii) the Plan is declared effective by the Debtors. Without limiting the foregoing, any action to be taken on the Effective Date may be taken on or as soon as reasonably practicable after the Effective Date.

79. The Settlement will be final when the Final Ohio Securities Action Approval Order has been entered by the Bankruptcy Court and it has become a final non-appealable order.

#### **EXCLUDING YOURSELF FROM THE OHIO SETTLEMENT CLASS**

80. If you are a member of the Ohio Settlement Class and want the potential to keep any right you may have to sue or continue to sue the Settling Defendants and the other Released Parties on your own concerning the Released Claims (if any), then you must take steps to remove yourself from the Ohio Settlement Class and you may need to take other actions in the Chapter 11 Cases. This is called excluding yourself or "opting out." (Opting out at this time will not impact your participation in the ongoing litigation of the Ohio Securities Litigation.) **PLEASE BE ADVISED:** If you decide to exclude yourself from the Ohio Settlement Class, there is a risk that any lawsuit or claim you may file to pursue any Released Claims against any of the Released Parties, including the Settling Defendants, may be dismissed, including because the claims are barred by the Plan and the Confirmation Order. *With respect to the Debtors, your ability to bring*



*individual claims against them may also be limited by whether you timely filed an individual claim in the Chapter 11 Cases, if you request exclusion from the Ohio Settlement Class (see more below). Please speak with your own attorney promptly.*

**11. How do I exclude myself from the Ohio Settlement Class? How can I continue to assert Released Claims against the Debtors?**

81. To exclude yourself from the Ohio Settlement Class, you must mail a signed letter stating that you request to be excluded from the Ohio Settlement Class in *In re: Lordstown Motors Corp., et al.* Chapter 11, No. 23-10831 (D. Del.). You cannot exclude yourself by telephone or email. Each request for exclusion must also: (i) state the name, address, email, and telephone number of the person or entity requesting exclusion; (ii) state the date(s), price(s), and number(s) of LMC Securities purchased/acquired during the Ohio Settlement Class Period and held on September 21, 2020; and (iii) be signed by the person or entity requesting exclusion. Requests must be submitted with documentary proof of membership in the Ohio Settlement Class. (This information is needed to determine whether you are a member of the Ohio Settlement Class.) A request for exclusion must be mailed so that it is **received no later than \_\_\_\_\_, 2024** at:

*Lordstown Bankruptcy Settlement*  
c/o Strategic Claims Services  
P.O. Box \_\_\_\_\_  
\_\_\_\_\_

82. Your request for exclusion will not be effective unless it provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Bankruptcy Court.

83. **IN ADDITION:** Any person or entity that timely and validly requests exclusion from the Ohio Settlement Class according to the procedures above (each an “**Ohio Opt-Out**”), but did not file an individual proof of claim against the Debtors in the Chapter 11 Cases by the

applicable Bar Date, **must file a motion in the Chapter 11 Cases, within 30 calendar days after submitting such Ohio Opt-Out’s exclusion request to the Ohio Settlement Claims Administrator, seeking an order of the Bankruptcy Court permitting such Ohio Opt-Out to file a late proof of claim.** The Post-Effective Date Debtors and all other parties in interest have reserved their rights to oppose such a motion and, to the extent a class member is permitted to file a late proof of claim, to object to such claim (an “**Ohio Securities Litigation Opt-Out Claim**” or “**Ohio Opt-Out Claim**”) on substantive grounds. If such a motion is not timely filed or the motion is denied, the Ohio Opt-Out shall be deemed forever barred by the Plan and the Confirmation Order from asserting any Released Claim against the Debtors.

84. Pursuant to the Settlement, the Plan, and the Confirmation Order, any Ohio Securities Litigation Opt-Out Claims will not be included within the Ohio Securities Litigation Claim, will be separately classified and treated as Section 510(b) Claims held directly by the Holders of such Ohio Securities Litigation Opt-Out Claims, and shall receive the treatment provided in the Plan to Section 510(b) Claims if and when such Ohio Securities Litigation Opt-Out Claims become Allowed in the Chapter 11 Cases.

85. If you ask to be excluded, do not submit an Ohio Claim Form to the Claims Administrator because you cannot receive any payment from the Settlement. Also, you cannot object to the Settlement because you will no longer be an Ohio Settlement Class Member.

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| <p><b>12. If I do not exclude myself, can I sue the Settling Defendants and the other Released Parties for the same reasons later?</b></p> |
|--|

86. No. If you are a member of the Ohio Settlement Class, unless you properly exclude yourself, you will give up any rights to sue the Settling Defendants and the other Released Parties for any and all Released Claims. If you have a pending lawsuit against any of the Released Parties, **speak to your lawyer in that case immediately.** Remember, the exclusion deadline is

\_\_\_\_\_, 2024.

### THE LAWYERS REPRESENTING YOU

#### 13. Do I have a lawyer in this case?

87. Labaton Keller Sucharow LLP (“**Labaton**”) has been designated as Ohio Class Counsel in the Chapter 11 Cases and represents all Ohio Settlement Class Members. Labaton was assisted in the Chapter 11 Cases by Lowenstein Sandler LLP. In addition, Labaton has been assisted by Hagens Berman Sobal Shapiro LLP, The Schall Law Firm, The Rosen Law Firm, P.A., Entwistle & Cappucci LLP (together with Labaton and Lowenstein Sandler, “**Plaintiffs’ Counsel**”). The Bankruptcy Court will determine the amount of attorneys’ fees and expenses payable to Plaintiffs’ Counsel, which will be paid from the Ohio Securities Litigation Settlement Fund. If you want to be represented by your own lawyer, you may hire one at your own expense.

#### 14. How will the lawyers be paid?

88. Plaintiffs’ Counsel have been pursuing the claims and rights of members of the Ohio Settlement Class on a contingent basis and have not been paid for any of their work to date. Ohio Class Counsel, on behalf of itself and the other Plaintiffs’ Counsel, will ask the Bankruptcy Court to approve an attorneys’ fee award of no more than 33% of the Ohio Securities Litigation Settlement Fund, which will include any accrued interest. Ohio Class Counsel will also seek payment of litigation expenses incurred by Plaintiffs’ Counsel to date in the prosecution of the claims of no more than \$1,500,000, plus accrued interest, which may include an application in accordance with the PSLRA for the reasonable costs and expenses (including lost wages) of Class Representative directly related to his representation of the Ohio Settlement Class.

89. As explained above, any attorneys’ fees and expenses awarded by the Bankruptcy Court will be paid from the Settlement Fund. The fee percentage awarded by the Court will be

applied to the amount in the Settlement Fund as payments are received. If there are not enough funds to allow full payment of the awarded expenses and an initial distribution of the Net Settlement Fund to Authorized Claimants, Plaintiffs' Counsel will defer payment of a portion of the expenses until additional payments into the Settlement Fund are received.

**OBJECTING TO THE SETTLEMENT, OHIO SETTLEMENT PLAN OF ALLOCATION, AND/OR OHIO FEE AND EXPENSE APPLICATION**

**15. How do I tell the Bankruptcy Court that I do not like something about the proposed Settlement?**

90. If you are a member of the Ohio Settlement Class, you can object to the Settlement, the Ohio Settlement Plan of Allocation, and/or the Ohio Fee and Expense Application. You may write to the Bankruptcy Court about why you think the Court should not approve any or all of the Settlement terms or related relief. If you would like the Court to consider your views, you must file a proper objection within the deadline, and according to the following procedures.

91. To object, you must send a signed letter stating that you object to the proposed Settlement, the Ohio Settlement Plan of Allocation, and/or the Ohio Fee and Expense Application in *In re: Lordstown Motors Corp., et al.* Chapter 11, No. 23-10831 (D. Del.). The objection must also state: (i) the name, address, telephone number, and email address of the objector and must be signed by the objector; (ii) that the objector is objecting to the proposed Ohio Securities Litigation Settlement, Ohio Settlement Plan of Allocation, and/or the Ohio Fee and Expense Application; (iii) the objection(s) and the specific reasons for each objection, including whether it applies only to the objector, to a specific subset of the Ohio Settlement Class, or to the entire Ohio Settlement Class, and any legal and evidentiary support, and witnesses, the objector wishes to bring to the Bankruptcy Court's attention; and (iv) include documents sufficient to prove the objector's standing to object. Objecting Ohio Settlement Class Members must establish that they are members of the Ohio Settlement Class by providing documentation of their transactions in eligible

LMC Securities in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation as is deemed adequate by the Ohio Settlement Claims Administrator and/or Ohio Class Counsel. Objectors who are represented by counsel must also provide the name, address and telephone number of all counsel, if any, who represent them.

92. Your objection must be mailed or delivered to the following so that it is **received no later than \_\_\_\_\_, 2024:**

| <b><u>Bankruptcy Court</u></b>  | <b><u>Ohio Class Counsel</u></b>  | <b><u>Debtors' Counsel Representative</u></b>   |
|---|---|---|
| <b>Clerk of the Court</b><br>U.S. Bankruptcy Court<br>District of Delaware<br>Hon. Mary F. Walrath<br>824 N. Market Street<br>5th Floor<br>Wilmington, DE 19801 | <b>Labaton Keller Sucharow LLP</b><br>Jake Bissell-Linsk, Esq.<br>140 Broadway 34 <sup>th</sup> Floor<br>New York, NY 10005 | <b>White &amp; Case LLP</b><br>Roberto Kampfner, Esq.<br>555 South Flower Street<br>Suite 2700<br>Los Angeles, CA 90071 |

93. You do not need to attend the Ohio Securities Litigation Final Approval Hearing to have your written objection considered by the Bankruptcy Court. However, any Ohio Settlement Class Member who has complied with the procedures described in this Question \_\_ and below in Question \_\_ may participate at the Final Approval Hearing and be heard, to the extent allowed by the Court. An objector may participate individually or arrange, at his, her, or its own expense, for a lawyer to represent him, her, or it at the Final Approval Hearing.

94. Unless otherwise ordered by the Bankruptcy Court, any Ohio Settlement Class Member who does not object in the manner described in this Notice will be deemed to have waived any objection and will be forever foreclosed from making any objection to the proposed Ohio Securities Litigation Settlement, Ohio Settlement Plan of Allocation, and/or the Ohio Fee and

Expense Application, and shall be bound by the Final Approval Order to be entered and the releases to be given.

**16. What is the difference between objecting and seeking exclusion?**

95. Objecting is telling the Bankruptcy Court that you do not like something about the proposed Settlement. You can still recover money from the Settlement. You can object *only* if you stay in the Ohio Settlement Class. Excluding yourself is telling the Bankruptcy Court that you do not want to be part of the Ohio Settlement Class. If you exclude yourself from the Ohio Settlement Class, you have no basis to object.

**THE OHIO SECURITIES LITIGATION FINAL APPROVAL HEARING**

**17. When and where will the Bankruptcy Court decide whether to approve the Settlement?**

96. The Bankruptcy Court will hold the Ohio Securities Litigation Final Approval Hearing on \_\_\_\_\_, **2024** at \_\_\_\_\_.m. (prevailing Eastern Time), via Zoom unless otherwise directed by the Bankruptcy Court, in Courtroom 4, 824 N. Market Street, 5th Floor, Wilmington, DE 19801.

97. At this hearing, the Honorable Mary F. Walrath will consider whether: (i) the Settlement is fair, reasonable, adequate, and should be approved; (ii) the Ohio Settlement Plan of Allocation is fair, reasonable, and should be approved; and (iii) whether the Ohio Fee and Expense Application should be approved. The Bankruptcy Court will take into consideration any written objections submitted by members of the Ohio Settlement Class in accordance with the instructions in Question \_\_ above. We do not know how long it will take the Bankruptcy Court to make these decisions.

98. The Bankruptcy Court may change the date and time of the Final Approval Hearing without an individual notice being sent to Ohio Settlement Class Members. If you want

to attend the hearing, you should check with Ohio Class Counsel beforehand to be sure that the date and/or time has not changed, or periodically check the Claims Administrator's website at [www.strategicclaims.net/lordstown/](http://www.strategicclaims.net/lordstown/) to see if the hearing stays as scheduled or is changed.

**18. Do I have to come to the Final Approval Hearing?**

99. No. Ohio Class Counsel will answer any questions the Bankruptcy Court may have. But, you are welcome to participate at your own expense. If you submit a valid and timely objection, the Court will consider it and you do not have to come to Court to discuss it. You may have your own lawyer participate (at your own expense), but it is not required. If you do hire your own lawyer, he or she must file and serve a notice of appearance in the manner described in the answer to Question \_\_\_ below **no later than** \_\_\_\_\_, **2024**.

**19. May I speak at the Final Approval Hearing?**

100. You may ask the Bankruptcy Court for permission to speak at the Final Approval Hearing. To do so, you must, **no later than** \_\_\_\_\_, **2024**, submit a statement that you, or your attorney, intend to appear at the Ohio Securities Litigation Final Approval Hearing in *In re: Lordstown Motors Corp., et al.* Chapter 11, No. 23-10831 (D. Del.). If you intend to present evidence at the Final Approval Hearing, you must also include in your objections (prepared and submitted according to the answer to Question \_\_\_ above) the identities of any witnesses you may wish to call to testify and any exhibits you intend to introduce into evidence at the hearing. You may not speak at the Final Approval Hearing if you exclude yourself from the Ohio Settlement Class or if you have not provided written notice of your intention to speak at the Final Approval Hearing in accordance with the procedures described in this Question \_\_\_ and Question \_\_\_ above.

## IF YOU DO NOTHING

### **20. What happens if I do nothing at all?**

101. If you do nothing and you are a member of the Ohio Settlement Class, you will receive no money from the Settlement and you will be precluded from starting a lawsuit or pursuing claims, continuing with a lawsuit or claims, or being part of any other lawsuit or claims against the Settling Defendants and the other Released Parties concerning the Released Claims. To share in the Net Ohio Securities Litigation Settlement Fund, you must submit an Ohio Claim Form (*see* Question \_\_\_ above). To start, continue, or be a part of any other lawsuit or claims against the Settling Defendants and the other Released Parties concerning the Released Claims, you must exclude yourself from the Ohio Settlement Class (*see* Question \_\_\_ above).

## GETTING MORE INFORMATION

### **21. Are there more details about the Settlement?**

102. This Notice summarizes the proposed Settlement. More details are contained in the Debtors' Plan and the Confirmation Order. You may review all documents filed in the Chapter 11 cases, free of charge, on the Debtors' claims and noticing agent's website at <https://www.kccllc.net/lordstown>.

103. Documents filed in the Ohio Securities Litigation, *In re Lordstown Motors Corp. Sec. Litig.*, No. 4:21-cv-00616 (N.D. Ohio), with the Ohio District Court may be reviewed during business hours at the Office of the Clerk of the United States District Court, Northern District of Ohio, Carl B. Stokes U.S. Court House, 801 West Superior Avenue, Cleveland, Ohio 44113. (Please check the Ohio District Court's website, [www.ohnd.uscourts.gov](http://www.ohnd.uscourts.gov), for information about court closures before visiting.) Subscribers to PACER, a fee-based service, can also view the papers filed publicly with the Ohio District Court through its on-line Case Management/Electronic Case Files System at <https://www.pacer.gov>.



104. You can also get a copy of the Plan, the Confirmation Order, other documents related to the Settlement, as well as additional information about the Ohio Securities Litigation, by visiting the webpage dedicated to the Settlement, [www.strategicclaims.net/lordstown/](http://www.strategicclaims.net/lordstown/), or the website of Ohio Class Counsel, [www.labaton.com](http://www.labaton.com). You may also call the Ohio Settlement Claims Administrator toll free at (866) 274-4004 or write to them at *Lordstown Bankruptcy Settlement*, c/o Strategic Claims Services, P.O. Box 230, Media, PA 19063.

**Please Do Not Call the Bankruptcy Court, LMC or the Debtors' Claims and Noticing Agent with Questions About the Settlement.**

**SPECIAL NOTICE TO SECURITIES BROKERS AND NOMINEES**

105. If you purchased or otherwise acquired LMC's publicly traded Class A Common Stock (ticker: RIDE and prior ticker: DPHC), LMC's publicly traded warrants (ticker: RIDEW and prior ticker: DPHCW), and/or LMC's publicly traded units (ticker: DPHCU), during the period from August 3, 2020 through July 2, 2021, and/or held LMC's publicly traded Class A Common Stock on September 21, 2020, for the beneficial interest of a person or entity other than yourself, the Bankruptcy Court has directed that such nominees: **SHALL WITHIN SEVEN (7) CALENDAR DAYS** of receipt of an Ohio Settlement notice, **EITHER: (a)** provide the Ohio Settlement Claims Administrator the name, last known address, and email (to the extent available) of each person or entity for whom or which you purchased such LMC Securities during the Class Period or held them on September 21, 2020; or **(b) WITHIN SEVEN (7) CALENDAR DAYS** of receipt of an Ohio Settlement notice from the Ohio Settlement Claims Administrator **(i)** request from the Ohio Settlement Claims Administrator sufficient copies of the Postcard Notice to forward to all such beneficial owners and **WITHIN SEVEN (7) CALENDAR DAYS** of receipt, forward them to all such beneficial owners or **(ii)** email a copy of the Postcard Notice with a link to [www.strategicclaims.net](http://www.strategicclaims.net) to all such beneficial owners. Nominees who elect to mail or email a

Postcard Notice to their beneficial owners shall also send a statement to the Ohio Settlement Claims Administrator confirming that the dissemination was completed and shall retain their records for use in connection with any further notices that may be provided in the Bankruptcy Cases or the Ohio Securities Litigation.

106. Upon full and timely compliance with these directions, such nominees may seek reimbursement of their reasonable out-of-pocket expenses incurred in providing notice to beneficial owners of up to: \$0.02 per name record provided; \$0.02 per email sent by the nominee; and \$0.02, plus postage at the Ohio Settlement Claims Administrator's rate for bulk mailings, per Postcard mailed by the nominee, by providing the Ohio Settlement Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Such properly documented expenses incurred by nominees in compliance with these provisions shall be paid solely from the Ohio Securities Litigation Settlement Fund, and any unresolved disputes regarding reimbursement of such expenses shall be subject to review by the Bankruptcy Court.

107. All communications concerning the foregoing should be addressed to the Ohio Settlement Claims Administrator:

*Lordstown Bankruptcy Settlement*  
c/o Strategic Claims Services  
P.O. Box 230  
Media, PA 19063  
(866) 274-4004  
info@strategicclaims.net  
www.strategicclaims.net/lordstown/

Dated: \_\_\_\_\_, 2024

BY ORDER OF THE U.S. BANKRUPTCY  
COURT - DISTRICT OF DELAWARE

**Exhibit K-4**

**Ohio Settlement Notice – Proof of Claim Form**

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

In re:

Lordstown Motors Corp., *et al.*,

Debtors.

Chapter 11

Case No. 23-10831 (MFW)  
(Jointly Administered)

**Related D.I.: 668, 696 & 699**

**OHIO SECURITIES LITIGATION PROOF OF CLAIM FORM**

**I. GENERAL INSTRUCTIONS**

1. To recover as a member of the Ohio Settlement Class based on your settled claims in connection with the above-captioned voluntary bankruptcy petitions under Chapter 11 of Title 11 of the U.S. Bankruptcy Code (“**Chapter 11 Cases**”), and claims against certain of the Debtors and David Hamamoto (“**Settling Defendants**”) in the related proposed class action *In re Lordstown Motors Corp. Sec. Litig.*, No. 4:21-cv-00616 (N.D. Ohio) (“**Ohio Securities Litigation**”), you must complete and, on page \_\_\_ below, sign this Ohio Securities Litigation Proof of Claim form (the “**Ohio Claim Form**” or “**Claim Form**”).<sup>1</sup> If you fail to submit a timely and properly addressed (as explained in paragraph \_\_\_ below) Claim Form, your claim may be rejected and you may not receive any recovery from the Net Ohio Securities Litigation Settlement Fund created in connection with the proposed Settlement. Submission of this Claim Form, however, does not assure that you will share in the proceeds of the Settlement or that you are eligible for a recovery.

2. THIS CLAIM FORM, ACCOMPANIED BY COPIES OF THE DOCUMENTS REQUESTED HEREIN, MUST BE SUBMITTED ONLINE AT [WWW.STRATEGICCLAIMS.NET/LORDSTOWN/](http://WWW.STRATEGICCLAIMS.NET/LORDSTOWN/) NO LATER THAN \_\_\_, 2024 OR, IF MAILED, BE POSTMARKED NO LATER THAN \_\_\_, 2024, ADDRESSED AS FOLLOWS:

*Lordstown Bankruptcy Settlement*  
c/o Strategic Claims Services

\_\_\_\_\_  
\_\_\_\_\_

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<sup>1</sup> The terms of the Settlement are in the Debtors’ *Third Modified First Amended Joint Chapter 11 Plan of Lordstown Motors Corp. and Its Affiliated Debtors* (together with all schedules and exhibits thereto, and as the same may be modified in accordance with its terms, the “Plan”). All capitalized terms not defined in this Claim Form have the same meanings as in the Plan, and the order confirming the Plan (the “**Confirmation Order**”). The Plan and Confirmation Order, among other documents, can be viewed at [www.strategicclaims.net/lordstown/](http://www.strategicclaims.net/lordstown/).

www.strategicclaims.net/lordstown/

3. If you are a member of the Ohio Settlement Class and you do not timely and validly request exclusion in response to the Postcard Notice dated \_\_\_\_\_, 2024, you are bound by and subject to all orders entered by the Bankruptcy Court about the Settlement, including the releases provided therein, **WHETHER OR NOT YOU SUBMIT A CLAIM FORM OR RECEIVE A PAYMENT.**

4. Copies of a long-form Notice detailing the Settlement may be downloaded at [www.strategicclaims.net/lordstown/](http://www.strategicclaims.net/lordstown/). The Notice describes the proposed Settlement, and the manner in which the Net Ohio Securities Litigation Settlement Fund will be distributed if the Settlement and Plan of Allocation are approved by the Bankruptcy Court.

**Do Not Call the Bankruptcy Court, LMC or the Debtors' Claims and Noticing Agent with Questions About this Claim Form.**

## **II. CLAIMANT IDENTIFICATION**

5. If you: (i) purchased or otherwise acquired LMC's publicly traded Class A Common Stock (ticker: RIDE and prior ticker: "DPHC"), LMC's publicly traded warrants (ticker: "RIDEW" and prior ticker: "DPHCW"), LMC's publicly traded units (ticker: "DPHCU"), or any exchange-traded option to purchase or sell LMC's publicly traded Class A Common Stock during the period from August 3, 2020 through July 2, 2021, inclusive ("**Ohio Settlement Class Period**" or "**Class Period**"), and were damaged thereby; and/or (ii) held LMC's publicly traded Class A Common Stock (ticker: "RIDE" and prior ticker: "DPHC") on September 21, 2020, and held the security in your name, you are the beneficial owner as well as the record owner. If, however, you purchased or acquired LMC Securities through a third party, such as a brokerage firm, you are the beneficial owner and the third party is the record owner.

6. Use Part A of this form entitled "Claimant Identification" to identify each beneficial owner of LMC Securities that forms the basis of this claim. **THIS CLAIM MUST BE FILED BY THE ACTUAL BENEFICIAL OWNERS OR THE LEGAL REPRESENTATIVE OF SUCH OWNERS.**

7. All joint owners must sign this claim. Executors, administrators, guardians, conservators, legal representatives, and trustees must complete and sign this claim on behalf of persons represented by them and their authority must accompany this claim and their titles or capacities must be stated. The Social Security (or taxpayer identification) number and telephone number of the beneficial owner may be used in verifying the claim. Failure to provide the foregoing information could delay verification of your claim or result in rejection of the claim.

## **III. IDENTIFICATION OF TRANSACTIONS**

8. Use Parts B through E of this form entitled "Schedule of Transactions in LMC Securities" to supply all required details of your transaction(s) in LMC Securities. If you need more

space or additional schedules, attach separate sheets giving all of the required information in substantially the same form. Sign and print or type your name on each additional sheet.

9. On the schedules, provide all of the requested information with respect to your holdings, purchases, and sales of LMC Securities, including whether the transactions resulted in a profit or a loss. Failure to report all such transactions may result in the rejection of your claim.

10. The date of covering a “short sale” is deemed to be the date of purchase of LMC’s publicly traded common stock. The date of a “short sale” is deemed to be the date of sale.

11. On October 23, 2020, the Company issued and sold an aggregate of 50 million shares of LMC common stock in connection with the closing of a business combination (“PIPE Transaction”). Purchases pursuant to this PIPE Transaction will have a Recognized Loss Amount of zero, notwithstanding any other calculation herein.

12. LMC common stock traded under the symbol “DPHC” through October 22, 2020 and experienced a symbol change to “RIDE” on October 23, 2020. LMC warrants traded under the symbol “DPHCW” through October 22, 2020 and experienced a symbol change to “RIDEW” on October 23, 2020. LMC units traded under the symbol “DPHCU” until the units were delisted on October 23, 2020. All outstanding LMC warrants were redeemed for LMC common stock on January 15, 2021.

13. LMC common stock experienced a 1 for 15 reverse stock split on May 23, 2023. Where Claim Form documentation contains post-split figures, the Claims Administrator will adjust the shares and prices to their pre-split equivalents.

14. Copies of broker confirmations or other documentation of your transactions must be submitted with your claim. Failure to provide this documentation could delay verification of your claim or result in rejection of your claim. **THE PARTIES DO NOT HAVE INFORMATION ABOUT YOUR TRANSACTIONS IN LMC SECURITIES.**

15. NOTICE REGARDING INSTITUTIONAL FILERS: Certain filers submitting claims on behalf of other beneficial owners (“Representative Filers”) with large numbers of transactions may request to, or may be asked to, submit information regarding their transactions in electronic files. (This is different than the online claim portal on the Ohio Settlement Claims Administrator’s website.) All such Representative Filers MUST also submit a manually signed paper Claim Form whether or not they also submit electronic copies. Claims should be combined on a legal entity basis, where applicable. Sub-accounts should be rolled up into a parent account if the sub-accounts contain the same tax identification number. If you are a Representative Filer and wish to submit your claim electronically, you must contact the Ohio Settlement Claims Administrator at (866) 274-4004 or visit their website at <https://www.strategicclaims.net/institutional-filers/> to obtain the required file layout. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues to the claimant a written acknowledgment of receipt and acceptance of electronically submitted data.

16. NOTICE REGARDING ONLINE FILING: Claimants who are not Representative Filers may submit their claims online using the electronic version of the Claim Form hosted at [www.strategicclaims.net/lordstown/](http://www.strategicclaims.net/lordstown/). If you are not acting as a Representative Filer, you do not need to contact the Ohio Settlement Claims Administrator prior to filing. You will receive an automated e-mail confirming receipt once your Claim Form has been submitted. If you are unsure if you should submit your claim as a Representative Filer, please contact the Ohio Settlement Claims Administrator at [info@strategicclaims.net](mailto:info@strategicclaims.net) or (866) 274-4004. If you are not a Representative Filer, but your claim contains a large number of transactions, the Claims Administrator may request that you also submit an electronic spreadsheet showing your transactions to accompany your Claim Form.

**PART A – CLAIMANT IDENTIFICATION**

The Ohio Settlement Claims Administrator will use this information for all communications about this Claim Form. If this information changes, you **MUST** notify the Claims Administrator in writing at the address above. Complete names of all persons and entities must be provided.

|   |                                  |  |
|---|----------------------------------|--|
| Beneficial Owner's Name   |                                  |  |
| Co-Beneficial Owner's Name  |                                  |  |
| Entity Name (if claimant is not an individual)  |                                  |  |
| Representative or Custodian Name (if different from Beneficial Owner(s) listed above) |                                  |  |
| Address 1 (street name and number):   |                                  |  |
| Address 2 (apartment, unit, or box number):   |                                  |  |
| City  | State                            | ZIP/Postal Code  |
| Foreign Country (only if not USA)   | Foreign County (only if not USA) |  |
| Telephone Number (home)   | Telephone Number (work)          |  |
| Email Address   |                                  |  |
| Account Number  |                                  |  |
| Social Security Number (last four digits only)  | <b>OR</b>                        | Taxpayer Identification Number (last four digits only) |

Claimant Account Type (check appropriate box):

- Individual (includes joint owner accounts)
- Corporation
- IRA/401K
- Pension Plan
- Estate
- Other \_\_\_\_\_ (please specify)
- Trust



**SCHEDULES OF TRANSACTIONS IN LMC SECURITIES**

**PART B - TRANSACTIONS IN LMC PUBLICLY TRADED CLASS A COMMON STOCK (ticker: RIDE and prior ticker: DPHC)**

| <b>1. BEGINNING HOLDINGS</b> – State the total number of shares of LMC common stock held at the opening of trading on August 3, 2020. If none, write “0” or “Zero.” (Must submit documentation.) _____   |                                  |                             |   |
|--|----------------------------------|-----------------------------|---|
| <b>2. PURCHASES DURING THE CLASS PERIOD</b> – Separately list each and every purchase or acquisition of LMC common stock from August 3, 2020 through and including July 2, 2021 prior to 11:28 AM ET. <sup>2</sup> (Must submit documentation.)            |                                  |                             |   |
| Date of Purchase<br>(List Chronologically)<br>(MM/DD/YY)   | Number of<br>Shares<br>Purchased | Purchase Price Per<br>Share | Total Purchase Price<br>(excluding taxes, commissions,<br>and fees) |
|  |                                  | \$                          | \$  |
|  |                                  | \$                          | \$  |
|  |                                  | \$                          | \$  |
|  |                                  | \$                          | \$  |
|  |                                  | \$                          | \$  |
|  |                                  | \$                          | \$  |
|  |                                  | \$                          | \$  |
| <b>3. NUMBER OF SHARES HELD ON SEPTEMBER 21, 2020:</b> _____ (Must submit documentation.)  |                                  |                             |   |
| <b>4. PURCHASES DURING 90-DAY LOOKBACK PERIOD</b> – State the total number of shares of LMC common stock purchased from July 2, 2021 after 11:28 AM ET through and including September 29, 2021. <sup>3</sup> (Must submit documentation.) _____           |                                  |                             |   |
| <b>5. SALES DURING THE CLASS PERIOD AND DURING THE 90-DAY LOOKBACK PERIOD</b> – Separately list each and every sale of LMC common stock from August 3, 2020 through and including the close of trading on September 29, 2021. (Must submit documentation.) |                                  |                             |   |

<sup>2</sup> Pursuant to the Plan of Allocation, in the absence of contrary documentation, the Claims Administrator will assume that any shares purchased/acquired or sold on July 2, 2021 at any price less than \$9.70 per share occurred after the allegedly corrective information was released to the market at or after 11:28 AM ET, and that any shares purchased/acquired or sold on July 2, 2021 at any price equal to or greater than \$9.70 per share occurred before the release of the allegedly corrective information at 11:28 AM ET.

<sup>3</sup> Information requested about your purchases from July 2, 2021 through and including the close of trading September 29, 2021 is needed only in order for the Claims Administrator to confirm that you have reported all relevant transactions. Purchases during this period are not eligible for a recovery because they are outside the Class Period.

| Date of Sale<br>(List Chronologically)<br>(MM/DD/YY) | Number of<br>Shares Sold | Sale Price Per<br>Share | Total Sale Price<br>(excluding taxes,<br>commissions and fees) |
|--|--------------------------|-------------------------|--|
|  |                          | \$                      | \$   |
|  |                          | \$                      | \$   |
|  |                          | \$                      | \$   |
|  |                          | \$                      | \$   |

**5. ENDING HOLDINGS** – State the total number of shares of LMC common stock held as of the close of trading on September 29, 2021. If none, write “0” or “Zero.” (Must submit documentation.) \_\_\_\_\_

**PART C - TRANSACTIONS IN LMC PUBLICLY TRADED WARRANTS**  
**(ticker: RIDEW and prior ticker: DPHCW)**

| <b>1. BEGINNING HOLDINGS</b> – State the total number of LMC warrants held at the opening of trading on August 3, 2020. If none, write “0” or “Zero.” (Must submit documentation.) _____  |                                    |                               |   |
|---|------------------------------------|-------------------------------|---|
| <b>2. PURCHASES</b> – Separately list each and every purchase or acquisition of LMC warrants from August 3, 2020 through the close of trading on January 15, 2021, the date LMC warrants were redeemed for common stock. (Must submit documentation.) |                                    |                               |   |
| Date of Purchase<br>(List Chronologically)<br>(MM/DD/YY)  | Number of<br>Warrants<br>Purchased | Purchase Price Per<br>Warrant | Total Purchase Price<br>(excluding taxes, commissions,<br>and fees) |
|   |                                    | \$                            | \$  |
|   |                                    | \$                            | \$  |
|   |                                    | \$                            | \$  |
|   |                                    | \$                            | \$  |
|   |                                    | \$                            | \$  |

**3. NUMBER OF WARRANTS HELD THROUGH JANUARY 15, 2021 AND REDEEMED FOR COMMON STOCK:** \_\_\_\_\_ (Must submit documentation.)

**For each LMC warrant held through January 15, 2021 and redeemed for LMC publicly traded common stock, please follow the formulas above for LMC publicly traded common stock to report sales and holdings.**

**IF YOU NEED ADDITIONAL SPACE TO LIST YOUR TRANSACTIONS YOU MUST PHOTOCOPY THIS PAGE, ADD THE TRANSACTIONS, AND CHECK THIS BOX**

**PART D - TRANSACTIONS IN LMC PUBLICLY TRADED UNITS (ticker: DPHCU)**

**1. BEGINNING HOLDINGS** – State the total number of LMC units held at the opening of trading on August 3, 2020. If none, write “0” or “Zero.” (Must submit documentation.)

\_\_\_\_\_

**2. PURCHASES** – Separately list each and every purchase or acquisition of LMC units from August 3, 2020 through the close of trading on October 23, 2020, the date LMC units were delisted and ceased to trade. (Must submit documentation.)

| Date of Purchase<br>(List Chronologically)<br>(MM/DD/YY) | Number of Units<br>Purchased | Purchase Price Per<br>Unit | Total Purchase Price<br>(excluding taxes, commissions,<br>and fees) |
|--|------------------------------|----------------------------|---|
|  |                              | \$                         | \$  |
|  |                              | \$                         | \$  |
|  |                              | \$                         | \$  |
|  |                              | \$                         | \$  |
|  |                              | \$                         | \$  |

**3. NUMBER OF UNITS HELD THROUGH OCTOBER 23, 2020 AND REDEEMED FOR COMMON STOCK:** \_\_\_\_\_ (Must submit documentation.)

**For each LMC unit held through October 23, 2020 and directly associated with the acquisition of LMC publicly traded common stock, please follow the formulas above for LMC publicly traded common stock.**

**IF YOU NEED ADDITIONAL SPACE TO LIST YOUR TRANSACTIONS YOU MUST  
PHOTOCOPY THIS PAGE, ADD THE TRANSACTIONS, AND CHECK THIS BOX**

**PART E: SCHEDULE OF TRANSACTIONS IN EXCHANGE-TRADED LMC OPTIONS**

**PURCHASES/REPURCHASES**

A. I made the following purchases/repurchases of exchange-traded options on LMC common stock during the period from August 3, 2020 through and including July 2, 2021, inclusive:

| Option Type                | Date(s) of transaction<br>(List Chronologically) | Number of<br>Option<br>contracts<br>acquired | Expiry Date<br>(Month/Year) | Strike Price | Transaction price<br>per option contract | [X]expired<br>[A]ssigned<br>[E]xercised |
|----------------------------|--|--|-----------------------------|--------------|--|---|
|                            | M M D D Y Y                                      |  | M M Y Y                     |              |  |   |
| <input type="radio"/> Put  |  |  |                             |              |  |   |
| <input type="radio"/> Call |  |  |                             |              |  |   |
| <input type="radio"/> Put  |  |  |                             |              |  |   |
| <input type="radio"/> Call |  |  |                             |              |  |   |
| <input type="radio"/> Put  |  |  |                             |              |  |   |
| <input type="radio"/> Call |  |  |                             |              |  |   |
| <input type="radio"/> Put  |  |  |                             |              |  |   |
| <input type="radio"/> Call |  |  |                             |              |  |   |
| <input type="radio"/> Put  |  |  |                             |              |  |   |
| <input type="radio"/> Call |  |  |                             |              |  |   |
| <input type="radio"/> Put  |  |  |                             |              |  |   |
| <input type="radio"/> Call |  |  |                             |              |  |   |
| <input type="radio"/> Put  |  |  |                             |              |  |   |
| <input type="radio"/> Call |  |  |                             |              |  |   |
| <input type="radio"/> Put  |  |  |                             |              |  |   |
| <input type="radio"/> Call |  |  |                             |              |  |   |

**SALES/WRITTEN**

B. I sold/wrote the following exchange-traded put options on LMC common stock during the period from August 3, 2020 through and including July 2, 2021, inclusive.

| Option Type                | Date(s) of transaction<br>(List Chronologically) | Number of<br>Option<br>contracts<br>acquired | Expiry Date<br>(Month/Year) | Strike Price | Transaction price<br>per option contract | [X]expired<br>[A]ssigned<br>[E]xercised |
|----------------------------|--|--|-----------------------------|--------------|--|---|
|                            | M M D D Y Y                                      |  | M M Y Y                     |              |  |   |
| <input type="radio"/> Put  |  |  |                             |              |  |   |
| <input type="radio"/> Call |  |  |                             |              |  |   |
| <input type="radio"/> Put  |  |  |                             |              |  |   |
| <input type="radio"/> Call |  |  |                             |              |  |   |
| <input type="radio"/> Put  |  |  |                             |              |  |   |
| <input type="radio"/> Call |  |  |                             |              |  |   |
| <input type="radio"/> Put  |  |  |                             |              |  |   |
| <input type="radio"/> Call |  |  |                             |              |  |   |
| <input type="radio"/> Put  |  |  |                             |              |  |   |
| <input type="radio"/> Call |  |  |                             |              |  |   |
| <input type="radio"/> Put  |  |  |                             |              |  |   |
| <input type="radio"/> Call |  |  |                             |              |  |   |
| <input type="radio"/> Put  |  |  |                             |              |  |   |
| <input type="radio"/> Call |  |  |                             |              |  |   |

**YOU MUST READ AND SIGN THE RELEASE ON PAGE \_\_. FAILURE TO SIGN THE RELEASE MAY RESULT IN A DELAY IN PROCESSING OR THE REJECTION OF YOUR CLAIM.**

**IV. SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENT**

17. By signing and submitting this Ohio Claim Form, the Claimant(s) or the person(s) acting on behalf of the Claimant(s) certify(ies) that: I (We) submit this Ohio Claim Form under the terms of the Plan of Allocation described in the Notice available at [www.strategicclaims.net/lordstown/](http://www.strategicclaims.net/lordstown/). I (We) also submit to the jurisdiction of the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) with respect to my (our) claim as an Ohio Settlement Class Member(s) and for purposes of enforcing the releases set forth in the Ohio Securities Litigation Settlement. I (We) further acknowledge that I (we) will be bound by and subject to the terms of any final order entered in connection with the Ohio Securities Litigation Settlement, including the releases set forth therein. I (We) agree to furnish additional information to the Ohio Settlement Claims Administrator to support this claim, such as additional documentation for transactions in LMC Securities, if required to do so. I (We) have not submitted any other claim covering the same transactions in LMC Securities during the Class Period and know of no other person having done so on my (our) behalf.

**V. RELEASES, WARRANTIES, AND CERTIFICATION**

By signing and submitting this Ohio Claim Form, the Claimant(s) or the person(s) acting on behalf of the Claimant(s) certify(ies) as follows:

18. I (We) hereby warrant and represent that I am (we are) an Ohio Settlement Class Member as defined in the Settlement, that I am (we are) not excluded from the Ohio Settlement Class, that I am (we are) not one of the “Released Parties” as defined in the Notice.

19. As an Ohio Settlement Class Member, I (we) hereby acknowledge full and complete satisfaction of, and do hereby fully, finally, and forever compromise, settle, release, resolve, relinquish, waive, and discharge with prejudice the Released Claims as to each and all of the Released Parties (as these terms are defined in the Settlement). This release shall be of no force or effect unless and until the Debtors’ Plan becomes effective.

20. I (We) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any matter released pursuant to this release or any other part or portion thereof.

21. I (We) hereby warrant and represent that I (we) have included information about all of my (our) purchases and sales of LMC Securities that occurred during the relevant periods and the number of LMC Securities held by me (us), to the extent requested.

22. I (We) certify that I am (we are) NOT subject to backup tax withholding. (If you have been notified by the Internal Revenue Service that you are subject to backup withholding,

please strike out the prior sentence.)

23. I (We) declare under penalty of perjury under the laws of the United States of America that all of the foregoing information supplied by the undersigned is true and correct.

24. Executed this \_\_\_\_ day of \_\_\_\_\_, 2024

\_\_\_\_\_  
Signature of Claimant, if any

\_\_\_\_\_  
Type or print name of Claimant

\_\_\_\_\_  
Signature of Joint Claimant, if any

\_\_\_\_\_  
Type or print name of Joint Claimant

\_\_\_\_\_  
Signature of person signing on behalf of Claimant

\_\_\_\_\_  
Type or print name of person signing on behalf of Claimant

\_\_\_\_\_  
Capacity of person signing on behalf of Claimant, if other than an individual (e.g., Administrator, Executor, Trustee, President, Custodian, Power of Attorney, etc.)

**PLEASE DO NOT CALL THE BANKRUPTCY COURT, LMC OR THE DEBTORS' CLAIMS AND NOTICING AGENT WITH QUESTIONS ABOUT THIS CLAIM FORM.**

**REMINDER CHECKLIST:**

1. You must sign this Claim Form.
2. DO NOT HIGHLIGHT THE CLAIM FORM OR YOUR SUPPORTING DOCUMENTATION.
3. Attach only copies of supporting documentation as these documents will not be returned to you.
4. Keep a copy of your Claim Form for your records.
5. The Ohio Settlement Claims Administrator will acknowledge receipt of your Claim Form by mail, within 60 days. Your claim is not deemed submitted until you receive an acknowledgment postcard. If you do not receive an acknowledgment postcard within 60 days, please call the Claims Administrator toll free at (866) 274-4004.
6. If you move after submitting this Claim Form please notify the Claims Administrator of the change in your address, otherwise you may not receive additional notices or payment.