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I.

INTRODUCTION

MTI Technology Corporation, the Debtor in this case, and the Committee jointly provide this Disclosure Statement to Creditors.¹ This Disclosure Statement is furnished for the purpose of soliciting acceptances to the Plan, which has been filed with the Bankruptcy Court. A copy of the Plan accompanies this Disclosure Statement.

Section 1125 of the Bankruptcy Code requires that, at the time when the Plan is delivered to Creditors, the Plan be accompanied by this Disclosure Statement.² The purpose of this Disclosure Statement is to provide adequate information of a kind, and in sufficient detail, so far as is reasonably practicable, in light of the nature and history of the Debtor and the condition of the Debtor's books and records, to enable a typical Creditor to make an informed judgment about the Plan and to enable such Creditor to determine whether it is in his best interest to vote for (accept) or against (reject) the Plan.

This Disclosure Statement contains a description of the Plan and other information relevant to the decision whether to vote to accept or to reject the Plan. The Plan Proponents urge Creditors to read this Disclosure Statement because it contains important information concerning the Debtor's history, business, assets and liabilities and because it sets forth a summary of the Plan.

This Disclosure Statement does not purport to be a complete description of the Plan, the financial data pertaining to the Debtor's business operations, the applicable provisions of the Bankruptcy Code, or any other matters that may be deemed significant by Creditors. Out of practical necessity, this Disclosure Statement represents an attempt to summarize extensive financial data, legal documents and legal principles, including provisions of the Bankruptcy Code, and set them forth in understandable, readable form. Thus, although the Plan Proponents have attempted to

¹ The definitions of the capitalized terms used in this Disclosure Statement are contained in Article II of this Disclosure Statement.

² Section 1125(b) provides, in pertinent part, as follows:

An acceptance or rejection of a plan may not be solicited after the commencement of the case under this title from a holder of a claim or interest with respect to such claim or interest, unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information.

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1 ballot that accompanies this Disclosure Statement and return it, by mail, to Clarkson Gore (Attn:
2 Eve A. Marsella) in the envelope provided, such that the ballot is actually received by Clarkson
3 Gore by 4:00 p.m. on July 15_____, 2010. The mailing address for Clarkson Gore is listed
4 in the upper left-hand corner of the front page of this Disclosure Statement. Each Class of Creditors
5 allowed to vote on the Plan will be deemed to have accepted the Plan if the Plan is accepted by valid
6 ballots cast by Creditors in that Class holding at least two-thirds (2/3) in dollar amount and more
7 than one half (1/2) in number of the Allowed Claims of Creditors in that Class actually voting on the
8 Plan. **ONLY PROPERLY EXECUTED BALLOTS TIMELY TENDERED TO COUNSEL**
9 **FOR THE DEBTOR WILL BE COUNTED AS HAVING VOTED ON THE PLAN.**

10 Since mail delays may occur, and because time is of the essence, it is important that ballots
11 be returned well in advance of the date specified hereinabove as the deadline for Clarkson Gore to
12 receive ballots. Unless otherwise allowed by the Bankruptcy Court, any ballots received after such
13 deadline will not be included in any calculation to determine whether the Debtor's Creditors have
14 accepted or rejected the Plan.

15 At the Confirmation Hearing, the Bankruptcy Court will determine, pursuant to section 1129
16 of the Bankruptcy Code, whether the Plan has been accepted by the necessary Classes of Claims
17 created under the Plan, and, if not, whether the Bankruptcy Court should, nevertheless, confirm the
18 Plan.⁴ If at such hearing the Bankruptcy Court should determine that the Plan meets all of the
19 requirements for confirmation prescribed by the Bankruptcy Code, the Bankruptcy Court will enter
20 a Confirmation Order. Pursuant to section 1141 of the Bankruptcy Code, the effect of the
21 Confirmation Order will be to make the provisions of the Plan binding upon the Debtor, each
22 Creditor, regardless of whether the Creditor voted to accept the Plan, and upon each Interest Holder.

23 Pursuant to section 1128 of the Bankruptcy Code, any party-in-interest may object to the
24 confirmation of the Plan. The Bankruptcy Court has fixed July 15_____, 2010, at
25 4:00 p.m., as the deadline for filing an objection to the Plan and for serving a copy thereof upon the
26 Debtor's attorneys, Clarkson Gore, and upon the Committee's attorneys, Winthrop Couchot, at the
27 respective addresses set forth hereinabove, and upon the United States Trustee. The branch office of
28 _____

⁴ As stated hereinabove, the Class of Interest Holder under the Plan (Class 6) is deemed to have not accepted the Plan.
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1 the United States Trustee in which the Case is being administered is located at 411 West Fourth
2 Street, Suite 9041, Santa Ana, California 92701-8000. Any objections or other written
3 communications to the United States Trustee respecting the Plan or the Case should be mailed to the
4 attention of Frank Cadigan, Esq., at that address.

5 **THIS IS A SOLICITATION BY THE PLAN PROPONENTS. NO**
6 **REPRESENTATIONS CONCERNING THE DEBTOR, INCLUDING, BUT NOT LIMITED**
7 **TO, REPRESENTATIONS AS TO ITS BUSINESS, ASSETS, THE AMOUNT OF CLAIMS**
8 **AGAINST THE ESTATE, OR ANY TAX EFFECT OF THE TRANSACTIONS PROPOSED**
9 **UNDER THE PLAN, ARE AUTHORIZED BY THE PLAN PROPONENTS, OTHER THAN**
10 **AS SET FORTH IN THIS DISCLOSURE STATEMENT.**

11 **UNLESS SPECIFICALLY SET FORTH HEREIN TO THE CONTRARY, THE**
12 **INFORMATION CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT**
13 **HAS NOT BEEN SUBJECT TO CERTIFIED AUDIT. RECORDS KEPT BY THE DEBTOR**
14 **RELY FOR THEIR ACCURACY ON BOOKKEEPING PERFORMED INTERNALLY BY**
15 **THE DEBTOR. THE PLAN PROPONENTS BELIEVE THAT EVERY REASONABLE**
16 **EFFORT HAS BEEN MADE TO PRESENT FINANCIAL INFORMATION AS ACCURATE**
17 **AS IS REASONABLY PRACTICABLE GIVEN THE NATURE AND HISTORY OF THE**
18 **DEBTOR'S BUSINESS AND THE CONDITION OF THE DEBTOR'S BOOKS AND**
19 **RECORDS. HOWEVER, THE RECORDS KEPT BY THE DEBTOR ARE NEITHER**
20 **WARRANTED NOR REPRESENTED TO BE FREE OF INACCURACY. NEITHER**
21 **COUNSEL TO THE DEBTOR NOR THE ACCOUNTANTS TO THE DEBTOR, NOR**
22 **COUNSEL TO THE COMMITTEE NOR THE FINANCIAL ADVISORS TO THE**
23 **COMMITTEE, HAVE INDEPENDENTLY VERIFIED THE INFORMATION CONTAINED**
24 **HEREIN, OR MAKE ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT**
25 **TO THE ACCURACY THEREOF.**

26 **NO RELIANCE SHOULD BE PLACED ON THE FACT THAT A PARTICULAR**
27 **DISPUTED CLAIM OR CAUSE OF ACTION IS NOT IDENTIFIED IN THIS**
28 **DISCLOSURE STATEMENT. IN ACCORDANCE WITH THE PROVISIONS OF THE**

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1 PLAN, THE PLAN AGENT MAY SEEK TO INVESTIGATE, FILE AND PROSECUTE
2 OBJECTIONS TO CLAIMS OR CAUSES OF ACTION, WHETHER OR NOT SUCH
3 OBJECTIONS OR CAUSES OF ACTION ARE IDENTIFIED IN THIS DISCLOSURE
4 STATEMENT.

5 ALL PARTIES ENTITLED TO VOTE ON THE PLAN ARE URGED TO REVIEW
6 CAREFULLY THE PLAN AND THIS DISCLOSURE STATEMENT PRIOR TO VOTING
7 ON THE PLAN. THE CONTENTS OF THIS DISCLOSURE STATEMENT SHOULD NOT
8 BE CONSTRUED IN ANY MANNER TO BE LEGAL, BUSINESS OR TAX ADVICE.
9 EACH CREDITOR SHOULD CONSULT WITH HIS OWN LEGAL COUNSEL, BUSINESS
10 ADVISOR, CONSULTANT OR ACCOUNTANT PRIOR TO VOTING ON THE PLAN IN
11 ORDER TO ENSURE A COMPLETE UNDERSTANDING OF THE TERMS OF THE
12 PLAN. THIS DISCLOSURE STATEMENT IS INTENDED FOR THE SOLE USE OF THE
13 CREDITORS OF THE DEBTOR TO ENABLE THEM TO MAKE AN INFORMED
14 DECISION REGARDING THE PLAN.

15 THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE
16 STATEMENT INDICATES ONLY THAT THE DISCLOSURE STATEMENT CONTAINS
17 ADEQUATE INFORMATION FOR THE PURPOSE OF SOLICITATION OF
18 ACCEPTANCES TO THE PLAN BY THE PLAN PROPONENTS, AND NOT ANY
19 RECOMMENDATION REGARDING WHETHER A CREDITOR SHOULD VOTE TO
20 ACCEPT OR TO REJECT THE PLAN.

21 ANY DISCUSSION OF TAX MATTERS CONTAINED HEREIN IS NOT INTENDED
22 TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF AVOIDING ANY TAX
23 OR TAX PENALTIES THAT MAY BE IMPOSED ON ANY PERSON. NOTHING IN THIS
24 DISCLOSURE STATEMENT MAY BE USED OR REFERRED TO IN PROMOTING,
25 MARKETING OR RECOMMENDING A PARTNERSHIP OR OTHER ENTITY,
26 INVESTMENT PLAN, OR OTHER ARRANGEMENT TO ANY PERSON. ALL
27 CREDITORS AND INTEREST HOLDERS SHOULD CONSULT WITH THEIR OWN
28

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1 (b) with respect to which a Proof of Claim has been filed by the Bar Date, and as to which no
2 objection is filed within the time period fixed by the Bankruptcy Code, the Bankruptcy Rules, the
3 Plan or by order of the Bankruptcy Court, or as to which any such objection has been determined by
4 a Final Order. Under the Plan, the amount of an Allowed Claim will be as follows: (i) if the
5 Creditor did not file a Proof of Claim with the Bankruptcy Court on or before the Bar Date, the
6 amount of the Creditor's Claim as listed in the Bankruptcy Schedules as neither disputed, contingent,
7 unliquidated or unknown; or (ii) if the Creditor filed a Proof of Claim with the Bankruptcy Court on
8 or before the Bar Date, (1) the amount stated in such Proof of Claim if no objection to such Proof of
9 Claim is filed within the time period fixed by the Bankruptcy Code, the Bankruptcy Rules, the Plan
10 or by order of the Bankruptcy Court, or (2) the amount thereof fixed by a Final Order of the
11 Bankruptcy Court if an objection to such Proof of Claim is filed within the time period fixed by the
12 Bankruptcy Code, the Bankruptcy Rules, the Plan or by order of the Bankruptcy Court. Under the
13 Plan, any Claim that is not filed by the Bar Date and that is listed in the Bankruptcy Schedules as
14 disputed, unliquidated, contingent or unknown, or that is not allowed under the terms of the Plan,
15 will be disallowed, and no Distribution will be made on account of such Claim. No default interest
16 or late charges or comparable fees, charges or penalties will be included as part of an Allowed
17 Claim.

18 8. **"Allowed Class *** Claim"** means an Allowed Claim classified in the
19 specified Class.

20 9. **"Allowed Deficiency Claim"** means that portion of an Allowed Claim that is
21 in excess of the value of any Collateral which is security for the repayment of such Claim, calculated
22 in accordance with the provisions of section 506 of the Bankruptcy Code.

23 10. **"Allowed General Unsecured Claim"** means an unsecured Allowed Claim
24 against the Debtor, however arising, not entitled to priority under section 507(a) of the Bankruptcy
25 Code, including, without limitation, an Allowed Deficiency Claim, an Allowed Rejection Claim or
26 an Allowed Avoidance Action Payment Claim.

27 11. **"Allowed Interest"** means an Interest to the extent, and only to the extent, of
28 the amount of such Interest allowed by the Plan or by Final Order of the Bankruptcy Court.

1 12. **“Allowed Penalty Claims”** means a Penalty Claim that is allowed by a Final
2 Order. Any Allowed Penalty Claim will be treated under the Plan as an Allowed Class 5 Claim.

3 13. **“Allowed Priority Non-Tax Claim”** means an unsecured Allowed Claim
4 entitled to priority pursuant to sections 507(a)(4), 507(a)(5), or 507(a)(7) of the Bankruptcy Code.

5 14. **“Allowed Priority Tax Claim”** means an Allowed Claim entitled to priority
6 under section 507(a)(8) of the Bankruptcy Code.

7 15. **“Allowed Rejection Claim”** means any Allowed General Unsecured Claim
8 based upon or arising from the rejection of an executory contract or unexpired lease pursuant to a
9 Final Order of the Bankruptcy Court or pursuant to the Plan. Any Allowed Rejection Claim will be
10 treated under the Plan as a Class 3 Claim.

11 16. **“Allowed Secured Claim”** means an Allowed Claim secured by a valid and
12 unavoidable Lien against property in which the Estate has an interest, or which is subject to setoff
13 under section 553 of the Bankruptcy Code, to the extent of the value, determined in accordance with
14 section 506(a) of the Bankruptcy Code, of the interest of the holder of such Allowed Claim in the
15 Estate’s interest in such property, or to the extent of the amount subject to any setoff, as the case may
16 be. Under the Plan, unpaid principal and any accrued interest allowable under section 506 of the
17 Bankruptcy Code with respect to an Allowed Secured Claim will be computed as of the Effective
18 Date, and the Allowed Secured Claim will thereafter bear interest as provided in the Plan.

19 17. **“Allowed Subordinated Claim”** means any Allowed Claim that is
20 subordinated to Allowed Class 3 Claims to the extent provided by the Bankruptcy Code or a Final
21 Order.

22 18. **“Assets”** means all assets and properties of the Debtor’s Estate including
23 “property of the estate” as described in section 541 of the Bankruptcy Code.

24 19. **“Avoidance Action”** means an adversary proceeding, lawsuit or other action
25 or proceeding filed pursuant to sections 502(d), 506, 510, 542, 543, 544, 545, 547, 548, 549, 550,
26 551, 552 or 553 of the Bankruptcy Code, an adversary proceeding, lawsuit or other action or
27 proceeding based on applicable non-bankruptcy law that may be incorporated or brought under the
28 foregoing sections of the Bankruptcy Code, an adversary proceeding, lawsuit or other action or

1 proceeding arising under, or relating to, any similar state law or federal law, and any other similar
2 action or proceeding filed to recover property for or on behalf of the Estate, or to avoid a Lien or
3 transfer, whether or not such adversary proceeding, lawsuit, action or proceeding is initiated on or
4 before the Effective Date.

5 **20. “Avoidance Action Payment Claim”** means a Claim based upon or arising
6 from an entity’s payment to the Debtor or Reorganized Debtor of a claim asserted against the entity
7 pursuant to an Avoidance Action.

8 **21. “Bankruptcy Code”** means the United States Bankruptcy Code, as set forth
9 in 11 U.S.C. §§ 101-1532, as now in effect and as may be hereafter amended.

10 **22. “Bankruptcy Court”** means the United States Bankruptcy Court for the
11 Central District of California, Santa Ana Division.

12 **23. “Bankruptcy Rules”** means, collectively, the Federal Bankruptcy Rules and
13 the Local Bankruptcy Rules.

14 **24. “Bankruptcy Schedules”** means the Schedules of Assets and Liabilities and
15 Statement of Financial Affairs filed by the Debtor in the Case, as they may have been amended and
16 as they may be amended hereafter from time to time.

17 **25. “Bar Date”** means the last date for Creditors and Interest Holders whose
18 Claims or Interests, respectively, are not scheduled, or whose Claims or Interests are scheduled in
19 the Bankruptcy Schedules as disputed, contingent, unliquidated or unknown as to amount, to file
20 Proofs of Claim or Interests, as set forth in an order of the Bankruptcy Court entered on April 7,
21 2008.

22 **26. “Business Day”** means any day other than a Saturday, Sunday or a legal
23 holiday (as defined in Rule 9006(a) of the Federal Bankruptcy Rules).

24 **27. “Canopy”** means Canopy Group, Inc.

25 **28. “Canopy Claim”** means the Allowed Claim of Canopy.

26 **29. “Canopy Settlement Agreement”** has the meaning set forth in
27 paragraph IV(F)(7)(b) of this Disclosure Statement.

28

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1 30. “Case” means the case under Chapter 11 of the Bankruptcy Code commenced
2 by the Debtor on the Petition Date and bearing Case Number 8:07-13347-ES.

3 31. “Case Closing Date” means the date on which the Bankruptcy Court enters a
4 Final Decree closing the Case, in accordance with section 350 of the Bankruptcy Code.

5 32. “Cash” means cash or cash equivalents including, but not limited to, bank
6 deposits, checks or other similar forms of payment or exchange.

7 33. “Causes of Action” means any and all claims, demands, rights, actions,
8 causes of action and suits of the Debtor or the Estate, of any kind or character whatsoever, known or
9 unknown, suspected or unsuspected, whether arising prior to, on or after the Petition Date, in
10 contract or in tort, at law or in equity or under any other theory of law, that the Debtor or the
11 Debtor’s Estate has or asserts, or may have or assert, against third parties, whether or not brought as
12 of the Effective Date, and which have not been settled or otherwise resolved by Final Order as of the
13 Effective Date, including but not limited to (a) rights of setoff, counterclaim or recoupment,
14 (b) claims on contracts or for breaches of duties imposed by law, (c) rights to object to Claims or
15 Interests, (d) such claims and defenses as fraud, mistake, duress or usury, (e) Avoidance Actions,
16 (f) claims for tax refunds, (g) claims to recover accounts receivable, and (h) any other claims which
17 may be asserted against third parties.

18 34. “Claim” means a “claim” against the Debtor, as such term is defined in
19 section 101(5) of the Bankruptcy Code.

20 35. “Claims Objection Deadline” means the latest of the following dates: (a) the
21 one hundred eightieth (180th) day after the Effective Date; (b) with respect to a specific Claim, the
22 ninetieth (90th) day after a Proof of Claim with respect to such Claim is filed by a Creditor; (c) with
23 respect to a Claim that is not listed in the Bankruptcy Schedules, the ninetieth (90th) day after the
24 Plan Agent learns of the existence of such Claim; or (d) such greater period of limitation as may be
25 fixed or extended by the Bankruptcy Court or by agreement between the Plan Agent and the
26 Creditor.

27 36. “Clarkson Gore” means Clarkson Gore & Marsella, APLC, the Debtor’s
28 general insolvency counsel in the Case.

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Torrance, California

- 1 **49. “Deficiency Claim”** means that portion of a Claim that is in excess of the
2 value of the Collateral which is security for the repayment of such Claim, calculated in accordance
3 with the provisions of section 506 of the Bankruptcy Code.
- 4 **50. “De Minimis Distribution”** has the meaning set forth in section 7.2.3 of the
5 Plan.
- 6 **51. “Disbursing Agent”** means the entity charged with making Distributions
7 under the Plan. The Plan Agent will serve as Disbursing Agent under the Plan.
- 8 **52. “Disclosure Statement”** means this Joint ~~Third~~^{Second} Amended Disclosure
9 Statement relating to the Plan, including, without limitation, all exhibits and schedules hereto, as
10 approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code, as may be
11 amended, modified or supplemented from time to time in accordance with the provisions of the
12 Bankruptcy Code and Bankruptcy Rules.
- 13 **53. “Disclosure Statement Order”** means the Final Order entered by the
14 Bankruptcy Court approving this Disclosure Statement.
- 15 **54. “Disputed Claim”** means any Claim as to which: (a) a Proof of Claim has
16 been filed and the dollar amount of such Claim is not specified in a fixed amount; (b) a Proof of
17 Claim has been filed, to the extent to which the stated amount of such Claim exceeds the amount of
18 such Claim listed in the Bankruptcy Schedules; (c) a Proof of Claim has been filed and such Claim is
19 not listed in the Bankruptcy Schedules; (d) a Proof of Claim has been filed, or is deemed filed under
20 Rule 3003(b)(1) of the Federal Bankruptcy Rules, and is listed in the Bankruptcy Schedules as
21 contingent, disputed, liquidated, or unknown as to amount; or (e) an objection, or request for
22 estimation, has been filed by the Claims Objection Deadline and such objection or request for
23 estimation has neither been withdrawn nor been denied by a Final Order.
- 24 **55. “Disputed Claims Reserve”** has the meaning set forth in
25 paragraph VIII(T)(4)(c) of this Disclosure Statement.
- 26 **56. “Distribution”** means any transfer under the Plan of Cash, or other property
27 or instruments, to the holder of an Allowed Claim.
- 28

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1 applicable, or, in the event that an appeal, writ of certiorari, or proceeding for reargument or
2 rehearing of such order or judgment has been sought, such order or judgment is affirmed by the
3 highest court to which such order or judgment was appealed, or certiorari has been denied, or from
4 which reargument or rehearing was sought, and the time to take any further appeal, petition for
5 certiorari or move for reargument or rehearing has expired.

6 **69. “FusionStorm”** means FusionStorm, a Delaware corporation.

7 **70. “FusionStorm Action”** has the meaning set forth in paragraph V(B)(1)(c) of
8 this Disclosure Statement.

9 **71. “General Unsecured Claim”** means any Claim that is not an Administrative
10 Claim, a Priority Tax Claim, a Priority Non-Tax Claim, a Secured Claim or a Subordinated Claim,
11 including, without limitation, a Rejection Claim, a Deficiency Claim or an Avoidance Action
12 Payment Claim.

13 **72. “Interest”** means an “equity security” in the Debtor, as such term is defined
14 in section 101(16) of the Bankruptcy Code, no matter how held, including, without limitation, issued
15 and outstanding shares of MTI Stock, and all rights and interests arising thereunder, and all rights to
16 acquire equity securities in the Debtor, including, without limitation, pursuant to options, warrants,
17 employee plans, or similar agreements, contracts or instruments, provided that such rights are
18 exercised on or prior to the Effective Date.

19 **73. “Interest Holder”** means a holder of an Interest.

20 **74. “Internal Revenue Code”** means the Internal Revenue Code of 1986, now in
21 effect and as may be hereafter amended.

22 **75. “Late-Filed Claim”** means any General Unsecured Claim described in
23 sections 726(a)(2)(C) or 726(a)(3) of the Bankruptcy Code.

24 **76. “Lien”** means any lien, security interest, mortgage, deed of trust,
25 encumbrance, pledge or other charge against Assets of the Debtor.

26 **77. “Liquidation Analysis”** has the meaning set forth in paragraph XII(G) of this
27 Disclosure Statement.

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- 1 **78. “Local Bankruptcy Rules”** means the Local Bankruptcy Rules applicable to
2 cases pending before the Bankruptcy Court, as now in effect and as may be hereafter amended.
- 3 **79. “Merger Consummation Date”** has the meaning set forth in
4 paragraph VIII(R)(2) of this Disclosure Statement.
- 5 **80. “Merger Transaction”** has the meaning set forth in paragraph VIII(R)(1) of
6 this Disclosure Statement.
- 7 **81. “Mr. Poteracki”** means Scott Poteracki.
- 8 **82. “Mr. Raimondi”** means Thomas P. Raimondi, Jr.
- 9 **83. “MTI Stock”** means the issued and outstanding shares of common stock and
10 preferred stock of the Debtor as of the Effective Date.
- 11 **84. “Net Litigation Proceeds”** has the meaning set forth in
12 paragraph XII(F)(1)(h) of this Disclosure Statement.
- 13 **85. “Omni”** means Omni Management Group, LLC.
- 14 **86. “Ordinary Course Administrative Claim”** means an Administrative Claim
15 allowable under section 503(b) of the Bankruptcy Code, that is incurred in the ordinary course of the
16 Debtor’s operations or the Case, or the payment of which is provided for by an order of the
17 Bankruptcy Court, exclusive of any Pre-Effective Date Professional Fee Claims, Administrative Tax
18 Claims and United States Trustee Fees.
- 19 **87. “Penalty Claim”** means any Claim for any fine, penalty, or forfeiture, or for
20 multiple, exemplary, or punitive damages, arising before the Petition Date, to the extent that such
21 fine, penalty, forfeiture, or damages are not compensation for actual pecuniary loss suffered by the
22 holder of such Claim, as set forth in section 726(a)(4) of the Bankruptcy Code.
- 23 **88. “Pencom Action”** has the meaning set forth in paragraph V(B)(1)(b) of this
24 Disclosure Statement.
- 25 **89. “Pencom Defendants”** has the meaning set forth in paragraph V(B)(1)(b) of
26 this Disclosure Statement.
- 27 **90. “Petition Date”** means October 15, 2007, the date on which the Debtor filed
28 its voluntary petition commencing the Case.

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1 91. “Plan” means the Plan Proponents’ Joint ~~Second~~Third Amended Chapter 11
2 Plan, including, without limitation, all exhibits, supplements, appendices, and schedules thereto,
3 either in its present form or as it may be altered, amended, or modified from time to time.

4 92. “Plan Agent” means the entity appointed by the Plan to administer the Plan
5 and to make the Distributions provided by the Plan, in accordance with the provisions of
6 Section 6.6.1 of the Plan.

7 93. “Plan Agent Certification” has the meaning set forth in paragraph VIII(P) of
8 this Disclosure Statement.

9 94. “Plan Agent Disclosure” has the meaning set forth in paragraph VIII(H)(4)
10 of this Disclosure Statement.

11 95. “Plan Assets” means the Assets, which, pursuant to the Plan, will be
12 transferred in trust to the Plan Agent on the Effective Date of the Plan, free and clear of any Liens
13 that otherwise might have existed in favor of any Secured Creditor.

14 96. “Plan Fund” means a segregated, interest-bearing account established at a
15 financial institution which is an authorized depository under United States Trustee Guidelines, into
16 which the Plan Agent will deposit all Cash of the Estate as of the Effective Date, less the Cash used
17 to make, or reserve for the making of, the Distributions required to be made on or about the Effective
18 Date, and all Cash received by the Reorganized Debtor after the Effective Date. Under the Plan, the
19 Plan Fund Proceeds will be made available for making Distributions to holders of Allowed General
20 Unsecured Claims and any Allowed Subordinated Claims and for paying the Post-Effective Date
21 Plan Expenses.

22 97. “Plan Fund Proceeds” means the Cash available in the Plan Fund for making
23 Distributions on account of Allowed General Unsecured Claims and any Allowed Subordinated
24 Claims and for paying the Post-Effective Date Plan Expenses.

25 98. “Plan Proponents” means, together, the Debtor and the Committee, the
26 proponents of the Plan.

27 99. “Post-Effective Date Committee” means the Committee, as it will be
28 reconstituted and function after the Effective Date, pursuant to the provisions of the Plan.

1 **100. "Post-Effective Date Committee Disclosure"** has the meaning set forth in
2 paragraph VIII(I)(1) of this Disclosure Statement.

3 **101. "Post-Effective Date Notice Parties"** has the meaning set forth in
4 paragraph VIII(P) of this Disclosure Statement.

5 **102. "Post-Effective Date Plan Expenses"** means all voluntary and involuntary
6 costs, expenses, charges, obligations, or liabilities of any kind or nature, whether matured,
7 unmatured, non-contingent, contingent, liquidated, or unliquidated (collectively, "Expenses")
8 incurred after the Effective Date related to the implementation of the Plan, including, but not limited
9 to: (a) the Expenses associated with administering the Plan, including any taxes assessed against the
10 Assets; (b) all United States Trustee Fees; (c) the Expenses associated with making the Distributions
11 required by the Plan; (d) any Expenses associated with preparing and filing tax returns and paying
12 taxes; (e) any reasonable Expenses incurred by a member of the Post-Effective Date Committee, but
13 excluding the attorneys' fees or other professional fees, if any, incurred by it, except for any such
14 fees to which it is entitled by indemnification; (f) the Expenses of independent contractors and
15 Professionals providing services to the Plan Agent or the Post-Effective Date Committee; (g) the
16 Expenses associated with the Plan Agent's indemnity obligations, the purchase of errors and
17 omissions insurance and/or other forms of indemnification; and (h) the fees of the Plan Agent, and
18 the reimbursement of expenses, to which the Plan Agent is entitled under the Plan.

19 **103. "Post-Effective Date Stock"** means any shares of common stock in the
20 Reorganized Debtor issued on account of the holders of Allowed General Unsecured Claims,
21 pursuant to section 1145 of the Bankruptcy Code, in accordance with the provisions of
22 Sections 5.3.1.5 and 6.18 of the Plan.

23 **104. "Postpetition Interest"** means any interest accrual on any Allowed Claim
24 from and after the Petition Date, in accordance with the provisions of Sections 5.3.1.3 and 5.5.1.3 of
25 the Plan. Under the Plan, any Postpetition Interest will accrue at the federal judgment rate, as set
26 forth in 28 U.S.C. § 1961(a), in effect as of the Petition Date.

1 105. “Pre-Effective Date Professional” means a person employed in the Case
2 prior to the Effective Date pursuant to an order of the Bankruptcy Court in accordance with
3 sections 327 or 1103 of the Bankruptcy Code.

4 106. “Pre-Effective Date Professional Fee Claim” means:

5 (a) A Claim of a Pre-Effective Date Professional under sections 327, 328,
6 330, 331, 503(b) or 1103 of the Bankruptcy Code for compensation for services rendered or
7 expenses incurred prior to the Effective Date on behalf of the Estate; or

8 (b) A Claim, arising prior to the Effective Date, either under
9 section 503(b)(4) of the Bankruptcy Code or under section 503(b)(3)(D) of the Bankruptcy Code.

10 107. “Priority Non-Tax Claim” means a Claim, other than an Administrative
11 Claim or a Priority Tax Claim, entitled to priority in right of payment under section 507(a) of the
12 Bankruptcy Code.

13 108. “Priority Tax Claim” means a Claim entitled to priority under
14 section 507(a)(8) of the Bankruptcy Code.

15 109. “Professional” means any attorney, accountant, appraiser, auctioneer, broker,
16 financial consultant, expert or other professional person.

17 110. “Proof of Claim” means a statement under oath filed in the Case by a
18 Creditor in which the Creditor sets forth the amount claimed to be owed to it and detail sufficient to
19 identify the basis for the Claim, in accordance with Rule 3001 of the Federal Bankruptcy Rules.

20 111. “Pro Rata” means proportionately so that the ratio of (a) the amount of
21 consideration distributed on account of an Allowed Claim to (b) the amount of the Allowed Claim is
22 the same as the ratio of (x) the amount of consideration available for distribution on account of all
23 Claims in the Class in which that Allowed Claim is included to (y) the amount of all Claims in that
24 Class.

25 The Pro Rata formula is illustrated as follows:
26
27
28

1	(a) Amount of consideration distributed to a holder of an Allowed Claim	=	(x) Total consideration available for distribution to holders of Claims of that Class
2	(b) Amount of such Allowed Claim		(y) Amount of all Allowed Claims in that Class
3			Class

4 For the purpose of the application of this definition, in calculating the Distributions to be made
5 under the Plan, the Plan Agent, as Disbursing Agent under the Plan, will establish Reserves, on
6 account of Disputed Claims, in accordance with the provisions of Section 8.4.3 of the Plan.

7 **112. “Rejection Claim”** means any General Unsecured Claim based upon or
8 arising from the rejection of an executory contract or unexpired lease pursuant to a Final Order of the
9 Bankruptcy Court or pursuant to the Plan.

10 **113. “Reorganized Debtor”** means the Debtor, as its financial affairs are
11 reorganized from and after the Effective Date. For the purpose of this Disclosure Statement, a
12 reference to the “Reorganized Debtor” will include the Debtor.

13 **114. “Representatives”** has the meaning set forth in paragraph VIII(H)(5) of this
14 Disclosure Statement.

15 **115. “Reserves”** means, collectively, the Disputed Claims Reserve, the Unclaimed
16 Property Reserve, and other reserves that the Plan Agent, as Disbursing Agent under the Plan, is
17 required to establish pursuant to the Plan.

18 **116. “Secured Claim”** means a Claim that is secured by a Lien against property in
19 which the Estate has an interest or that is subject to setoff under section 553 of the Bankruptcy Code.
20 A Claim is a Secured Claim only to the extent of the value, as determined under section 506(a) of the
21 Bankruptcy Code, of the Secured Creditor’s interest in the Collateral securing the Claim or to the
22 extent of the amount subject to setoff, whichever is applicable.

23 **117. “Secured Creditor”** means the holder of a Secured Claim.

24 **118. “Stock Termination Approval”** has the meaning set forth in
25 paragraph VIII(R)(3) of this Disclosure Statement.

26 **119. “Subordinated Claim”** means any Claim that is subordinated to Allowed
27 Class 3 Claims to the extent provided by the Bankruptcy Code or a Final Order.

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1 document as it has been, or may be, amended, modified, restated or supplemented as of the
2 Confirmation Date, and any such exhibit, schedule, instrument or other document will be deemed to
3 be included in this Disclosure Statement, regardless of when it is filed; (8) the phrases “under this
4 Disclosure Statement,” “hereof,” “hereto,” “hereunder,” and similar words or phrases, refer to this
5 Disclosure Statement in its entirety rather than to only a portion of this Disclosure Statement;
6 (9) unless otherwise indicated, all references in this Disclosure Statement to paragraphs, articles or
7 exhibits are references to paragraphs, articles or exhibits in this Disclosure Statement; (10) paragraph
8 captions and headings are used for convenience only and do not affect the meaning of this
9 Disclosure Statement; and (11) any reference to the holder of a Claim or Interest includes that
10 entity’s successor and assigns.

11 **C. Exhibits.**

12 All exhibits to this Disclosure Statement are incorporated into and are a part of this
13 Disclosure Statement as if set forth in full herein.

14 **III.**

15 **OVERVIEW OF THE CHAPTER 11 PROCESS,**

16 **THE PLAN AND VOTING ON THE PLAN**

17 **A. The Chapter 11 Process.**

18 Chapter 11 of the Bankruptcy Code provides debtors with a “breathing spell” within which to
19 propose a restructuring of their obligations to third parties. The filing of a Chapter 11 bankruptcy
20 petition creates a bankruptcy “estate” comprising all of the property interests of the debtor. Unless a
21 trustee is appointed by the bankruptcy court for cause (no trustee has been appointed in the Case), a
22 debtor remains in possession and control of all its assets as a “debtor-in-possession.” The debtor
23 may continue to operate its business in the ordinary course on a day-to-day basis without bankruptcy
24 court approval. Bankruptcy court approval is required only for various kinds of transactions as to
25 which the Bankruptcy Code requires approval (such as certain financing transactions) and
26 transactions out of the ordinary course of a debtor’s business. The filing of the bankruptcy petition
27 gives rise to what is known as the “automatic stay” which, generally, enjoins creditors from taking
28 any action to collect or recover obligations owed by a debtor prior to the commencement of a

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1 Chapter 11 case. The bankruptcy court can, however, grant relief from the automatic stay, under
2 certain specified conditions or for cause.

3 A Chapter 11 debtor may propose a plan providing for the reorganization of the debtor or for
4 the orderly liquidation of the assets of the debtor's estate. A plan provides, among other things, for
5 the treatment of the claims of the debtor's creditors and the interests of the debtor's shareholders.

6 **B. Overview of the Plan Proponents' Proposed Plan.**

7 The following is a brief overview of the material provisions of the Plan and is qualified in its
8 entirety by reference to the full text of the Plan. For a more detailed description of the terms and
9 provisions of the Plan, see Articles VI and VII below.

10 The primary objectives of the Plan are to transfer all Assets of the Debtor, including all
11 Causes of Action, to the Plan Fund, which will liquidate the Assets, including by prosecuting the
12 Causes of Action, and to distribute the proceeds thereof to holders of Allowed Claims in satisfaction
13 of the Debtor's obligations. The holders of Interests will not receive or retain anything on account of
14 their Interests, except as provided for under Section 5.6 of the Plan.

15 The Plan designates five Classes of Claims and one Class of Interests, which include all
16 Claims against, and Interests in, the Debtor. These Classes take into account the differing nature and
17 priority under the Bankruptcy Code of the various Classes and Interests.

18 The following table (the "Plan Summary Table") summarizes the treatment of Claims and
19 Interests under the Plan with: (1) the Plan Proponents' estimates of the amount of Claims in each
20 category or Class, and (2) a brief description of the treatment provided for in the Plan for each Class
21 of Claims or Interests. The amounts of the Claims listed in the Plan Summary Table have been
22 estimated by the Plan Proponents as of the date of this Disclosure Statement and do not constitute an
23 admission by the Plan Proponents as to the validity or amount of any particular Claim. The Plan
24 Proponents reserve the right to dispute the validity or amount of any Claim or Interest that has not
25 already been allowed by the Bankruptcy Court. This information is based on the Debtor's
26 Schedules, the Debtor's financial books and records, and the Plan Proponents' review of the Proofs
27 of Claim filed in the Case.

28

SUMMARY OF CLAIMS AND INTERESTS UNDER THE PLAN

Class	Claim/Interest	Summary of Treatment ⁵	Estimated Aggregate Amount of Claims ⁶
n/a	Allowed Administrative Claims	Payment in full, in Cash, on or about the Effective Date or as an Administrative Claim is allowed by the Bankruptcy Court.	\$1,114,557
n/a	Allowed Priority Tax Claims	Payment in full, in Cash, on or about the Effective Date, or as a Priority Tax Claim is allowed by the Bankruptcy Court.	\$463,729
1	Allowed Secured Claims	Entitled to receive one of the payment options, elected by the Plan Agent, set forth in Section 5.1 of the Plan.	\$33,810
2	Allowed Priority Non-Tax Claims	Payment in full, in Cash, on or about the Effective Date, or as a Priority Non-Tax Claim is allowed by the Bankruptcy Court ⁷ .	\$564,182
3	Allowed General Unsecured Claims	Payment of Distributions from Plan Fund over the course of the Plan, as set forth in Section 5.3 of the Plan.	\$13,243,758
4	The Canopy Claim	The Canopy Claim will be paid in accordance with the terms of the Canopy Settlement Agreement (Exhibit "1" to the Plan).	Up to \$1,000,000.00
5	Allowed Subordinated Claims	Payment only if all other Allowed Claims are paid in full.	To be determined. No Claims subordinated by the Bankruptcy Court as of the date of this Disclosure Statement
6	Allowed Interests	On the Effective Date of the Plan, the Interests will be cancelled. Interest Holders will receive Distributions only if all Allowed Claims, including all Allowed Subordinated Claims, are paid in full.	- 0 -

Set forth in paragraph XII(F) hereof is a discussion of the projected recoveries by Creditors in the Case.

C. Plan Confirmation and Voting and Objections to the Plan.

The Bankruptcy Court has not yet confirmed the Plan described in this Disclosure Statement. In other words, the terms of the Plan are not yet binding on the Debtor, Creditors and Interest

⁵ This is only a summary of the treatment of Claims and Interests under the Plan. Creditors and Interest Holders should refer to Articles VI and VII of this Disclosure Statement for a more complete discussion of the treatment of Allowed Claims and Allowed Interests under the Plan.

⁶ These amounts are estimates as of February 28, 2010. **Note that these amounts reflect a substantial amount of Disputed Claims.** See paragraph XII(F) hereof for a more complete discussion of the Claims and the estimated amount of Claims that will be allowed in the Case.

⁷ The Debtor may seek from the Bankruptcy Court authority to pay Allowed Priority Non-Tax Claims prior to the Effective Date; however, such payment, if authorized, will not impact or affect the rights of holders of Allowed General Unsecured Claims, or the Liquidation Analysis or Feasibility Analysis insofar as they reflect the disposition of Allowed General Unsecured Claims, as Allowed Priority Non-Tax Claims must be paid prior to payment of Allowed General Unsecured Claims.

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1 Holders. However, if the Bankruptcy Court confirms the Plan, the Plan will be binding on the
2 Debtor and on all Creditors and Interest Holders in the Case.

3 **1. Voting on the Plan.**

4 A Creditor may vote to accept or to reject the Plan by filling out and mailing to the
5 Debtor's counsel the form of the ballot that has been provided herewith. Ballots should be mailed
6 to Clarkson, Gore & Marsella, APLC, located at 3424 Carson Street, Suite 330, Torrance, California
7 90503 (Attn: Eve A. Marsella). **No telefaxed or e-mailed ballots will be accepted.**

8 Any Creditor holding Claims in more than one impaired Class must submit one
9 ballot for each such Class. If a Creditor has received an incorrect ballot, or believes that he is
10 entitled to vote in more than one Class, additional ballots may be obtained upon written request
11 made to Clarkson Gore (Attn: Eve A. Marsella).

12 In order to vote for or against the Plan, a Creditor must have filed a Proof of Claim
13 on or before the Bar Date, unless his Claim is listed in the Bankruptcy Schedules filed in the Case by
14 the Debtor as not being disputed, unliquidated or contingent. Any such Creditor is, to the extent
15 listed in the Bankruptcy Schedules, deemed to have filed a Claim, and absent a timely objection to
16 the Claim, such Claim is deemed allowed. In order to determine whether a Creditor is entitled to
17 vote on the Plan notwithstanding any failure to timely file a Proof of Claim, the Creditor should
18 review the Debtor's Bankruptcy Schedules on file with the Bankruptcy Court. If a Creditor's Claim
19 is not scheduled, or, if it is scheduled as contingent, disputed, or unliquidated and the Creditor did
20 not file a Proof of Claim prior to the Bar Date, the Creditor may not be entitled to vote on the Plan.

21 The following types of Claims are not entitled to vote on the Plan: (a) Claims that
22 have been disallowed; (b) Claims in an unimpaired Class; and (c) Administrative Claims and Priority
23 Tax Claims. Claims in unimpaired Classes are not entitled to vote because such Classes are deemed
24 to have accepted the Plan. Administrative Claims and Priority Tax Claims are not entitled to vote
25 because such Claims are not placed in Classes and they are required to receive certain treatment
26 specified by the Bankruptcy Code. **EVEN IF YOUR CLAIM IS OF THE TYPE DESCRIBED**
27 **ABOVE, YOU MAY STILL HAVE A RIGHT TO OBJECT TO THE CONFIRMATION OF**
28 **THE PLAN.**

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1 **2. Deadline for Voting for or Against the Plan.**

2 The Bankruptcy Court has fixed July 15_____, 2010, at 4:00 p.m. Pacific
3 Time, as the last date by which ballots must be received by Clarkson Gore, the Debtor's counsel.
4 Subject to review and determination by the Bankruptcy Court, votes received by Clarkson Gore after
5 that date may not be counted. Whether or not a Creditor votes on the Plan, he will be bound by the
6 terms of the Plan and the treatment of his Claim set forth in the Plan if the Plan is confirmed by the
7 Bankruptcy Court. Absent some affirmative act constituting a vote, a Creditor will not be included
8 in the voting tally. Allowance of a Claim for voting purposes does not necessarily mean that all or a
9 portion of the Claim will be allowed for distribution purposes.

10 Since, subject only to any order of the Bankruptcy Court to the contrary, only the
11 votes of those Creditors whose ballots are timely received may be counted in determining whether a
12 Class has accepted the Plan, Creditors are urged to fill in, date, sign and promptly mail the enclosed
13 ballot.

14 **3. Time and Place of the Confirmation Hearing.**

15 Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice,
16 to hold a hearing on confirmation of the Plan. The hearing at which the Bankruptcy Court will
17 determine whether or not to confirm the Plan will take place on August 26_____, 2010, at _____
18 —10:30 a.m., in Courtroom 5A, 411 West Fourth Street, Santa Ana, California. The Confirmation
19 Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except
20 for an announcement made at the Confirmation Hearing.

21 **4. Deadline For Objecting to the Confirmation of the Plan.**

22 Section 1128(b) of the Bankruptcy Code provides that any party-in-interest may
23 object to the confirmation of the Plan. Objections to the confirmation of the Plan must be in writing
24 and conform to the requirements of the Bankruptcy Rules and must be filed with the Bankruptcy
25 Court and served upon counsel to the Debtor, Clarkson, Gore & Marsella, APLC, Attn: Eve A.
26 Marsella, 3424 Carson Street, Suite 350, Torrance, CA 90503, upon counsel for the Committee,
27 Winthrop Couchot Professional Corporation, Attn: Robert E. Opera, 660 Newport Center Drive,
28 Suite 400, Newport Beach, CA 92660, and upon the United States Trustee, Attn: Frank Cadigan,

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1 Esq., 411 Fourth Street, Suite 9041, Santa Ana, CA 92701, so as to be received by 4:00 p.m. (Pacific
2 Time) on July 15, _____, 2010. Objections to confirmation of the Plan are governed by Rule
3 9014 of the Federal Bankruptcy Rules. **UNLESS AN OBJECTION TO CONFIRMATION IS**
4 **TIMELY AND PROPERLY SERVED AND FILED, IT MAY NOT BE CONSIDERED BY**
5 **THE BANKRUPTCY COURT.**

6 **5. Plan Confirmation.**

7 The Bankruptcy Court will confirm the Plan if the requirements of section 1129 of
8 the Bankruptcy Code are satisfied. Section 1129 requires, among other things, that: (a) with respect
9 to each Class of Claims, each holder of a Claim in that Class has accepted the Plan, or will receive or
10 retain under the Plan on account of such Claim, property of a value that is not less than the amount
11 that such holder would receive if the Debtor were to liquidate its assets under Chapter 7 of the
12 Bankruptcy Code; (b) confirmation of the Plan is not likely to be followed by a liquidation of the
13 Debtor or the need for further reorganization of the Debtor unless liquidation or further
14 reorganization is proposed by the Plan; and (c) the Plan be accepted by each Class of Claims that is
15 impaired by the Plan, or the Plan does not discriminate unfairly and is fair and equitable to any
16 impaired Class that has not accepted the Plan.

17 To confirm the Plan, the Bankruptcy Court must determine whether each "impaired"
18 Class entitled to vote on the Plan has accepted the Plan. Pursuant to section 1124 of the Bankruptcy
19 Code, Classes "impaired" by the Plan are those Classes whose legal, equitable or contractual rights
20 are altered pursuant to the Plan. Under section 1126(c) of the Bankruptcy Code, an impaired Class
21 of Claims is deemed to have accepted the Plan if the Plan is accepted by Creditors in that Class
22 holding at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the
23 Allowed Claims of Creditors in that Class actually voting on the Plan.

24 The Plan Proponents intend to request that the Bankruptcy Court confirm the Plan
25 pursuant to the provisions of section 1129(b) of the Bankruptcy Code.⁸ Pursuant to section 1129(b),
26 the Plan may be confirmed despite the failure of a Class of Claims or Interests to accept the Plan if

27 _____
28 ⁸ The Class of Interest Holders under the Plan (Class 6) is deemed not to have accepted the Plan, and, accordingly, the
Plan Proponents will seek to obtain confirmation of the Plan by resorting to the "cram down" provisions of
section 1129(b) of the Bankruptcy Code. -27-

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1 the Bankruptcy Court determines that the Plan does not discriminate unfairly and is fair and
2 equitable with respect to each Class of Claims or Interests that is impaired under, and that has not
3 accepted, the Plan, and determines that the Plan otherwise complies with the requirements of
4 section 1129(b) of the Bankruptcy Code. The condition that the Plan be fair and equitable with
5 respect to such nonaccepting Classes includes certain legal requirements more fully set forth in
6 section 1129(b).

7 **6. Identity of Persons to Contact for More Information**
8 **Regarding this Disclosure Statement or the Plan.**

9 Any interested party desiring further information about this Disclosure Statement or
10 the Plan should contact counsel for the Debtor, Clarkson, Gore & Marsella, APLC, Attn: Eve A.
11 Marsella, 3424 Carson Street, Suite 350, Torrance, CA 90503; telephone no. (310) 542-0111, or
12 counsel for the Committee, Winthrop Couchot Professional Corporation, Attn: Robert E. Opera,
13 660 Newport Center Drive, Suite 400, Newport Beach, California 92660; telephone no. (949)
14 720-4100.

15 **IV.**

16 **BACKGROUND OF THE DEBTOR**

17 **A. Description and History of the Debtor's Business.**

18 While the Debtor operated, the Debtor was a global provider of end-to-end information
19 infrastructure solutions for mid to large size companies. The Debtor offered a wide range of storage
20 systems, software, services and solutions designed to assist organizations to maximize their
21 information technology assets. With more than 20 years of experience delivering technology
22 solutions and more than 5 million hours of providing professional services, the Debtor was a leader
23 in end-to-end information infrastructure solutions and had strategic technology and services
24 relationships with industry leaders including, EMC Corporation ("EMC"), Microsoft, VMWARE,
25 Symantec and Cisco.

26 The Debtor was also a reseller and service provider of EMC Automated Networked Storage
27 systems and software pursuant to a reseller agreement with EMC. The sale of EMC products
28 accounted for 88% and 56% of the Debtor's net product revenue and total revenue, respectively, for

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1 the three months ended July 7, 2007 and 89% and 70% of net product revenue and total revenue,
2 respectively, for the three months ended July 1, 2006.

3 In 2007, the Debtor served more than 3,500 customers throughout North America and
4 Europe (directly and through wholly-owned subsidiaries). The Debtor's revenues for its fiscal year
5 2006 exceeded \$135,000,000.00.

6 As of or just prior to the Petition Date (October 15, 2007), the Debtor had the following
7 operations:

8 **1. European Subsidiaries.**

9 The Debtor owned all of the issued and outstanding capital stock of the following
10 entities: MTI Technology GmbH, incorporated in Germany; MTI Technology Limited, incorporated
11 in Scotland; and MTI France S.A.S., incorporated in France (collectively, the "European
12 Subsidiaries").

13 **2. Collective.**

14 A United States-based service division known as "Collective."⁹

15 **3. Domestic Sales and Service Division.**

16 A United States-based sales and service division separate from Collective.

17 **B. Corporate History.**

18 The Debtor was incorporated in California in March 1981 and reincorporated in Delaware in
19 April 1992. The Debtor's principal place of business is located in Tustin, Orange County, California.
20 On or about April 7, 1994, the MTI Stock was listed on the NASDAQ Capital Market. The MTI
21 Stock was delisted from The NASDAQ Capital Market on June 1, 2007 for failure to meet certain
22 listing standards. Market maker quotes for the Debtor's common stock are currently published by
23 Pink Sheets LLC (the "Pink Sheets").

24
25
26
27

28 ⁹ In July 2006, the Debtor acquired Collective Technologies, Inc., which became the Debtor's "Collective" service division.

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1 **C. Events Precipitating the Debtor's Bankruptcy Filing.**

2 Commencing in 1986, the Debtor was a developer, manufacturer and seller of computer
3 storage equipment. From about 1986 through about 2000, the Debtor enjoyed a period of strong
4 growth that ended with the severe slowdown of the technology sector in about 2000.

5 In about 2003, the Debtor undertook a series of actions in support of a revised business
6 strategy. When such strategy was fully implemented, all development and manufacturing operations
7 of the Debtor were discontinued. The Debtor sold its intellectual property to EMC and the Debtor
8 became an EMC reseller and strategic partner. The Debtor also raised, in a preferred stock offering,
9 approximately \$15 million in support of such business strategy.

10 Although the Debtor's growth resumed under the Debtor's EMC reseller strategy, as a result
11 of the high costs associated with being a public entity, the legacy costs associated with the Debtor's
12 having been a manufacturing company and the narrowing margins of a system integrator, the Debtor
13 continued to struggle to attain profitability, although it made progress in reducing its operating
14 losses.

15 In about 2005, the Debtor further revised its business strategy in an attempt to achieve
16 profitability. In about 2005, the Debtor determined to attempt to increase substantially the mix of
17 information technology consulting services that it sold and delivered. To achieve this goal, in
18 November 2005, the Debtor raised \$20 million in a Series "B" preferred offering. \$3.5 million of
19 the proceeds from this offering were used to provide needed working capital for the European
20 Subsidiaries, which were focusing on providing such services on behalf of the Debtor.

21 In 2006, the Debtor acquired Collective, an information technology consulting services
22 company, for a total of \$11 million in cash, debt, stock and warrants. The Debtor's attempt to
23 convert to an information technology consulting services-focused company proved to be more
24 difficult and required more investment than the Debtor had anticipated. The synergies that the
25 Debtor anticipated obtaining from the Collective acquisition were not realized fully by the Debtor
26 and the Debtor's losses continued.

27 In the first half of 2007, the Debtor hired Needham & Company, an investment banking firm,
28 to advise the Debtor regarding its strategic alternatives. The Debtor determined to attempt to find

1 strategic partners with which to merge the Debtor's business, or to sell the Debtor's business. With
2 the assistance of Needham & Company, the Debtor contacted over 130 companies to gauge their
3 interest in effectuating a strategic transaction with the Debtor. Ultimately, no merger partner or
4 buyer for the Debtor emerged.

5 The process of the Debtor's trying to locate a strategy partner or a buyer for the Debtor's
6 business took much longer than the Debtor had anticipated and was costly for the Debtor. In 2007,
7 the Debtor's domestic product sales unexpectedly took a downward turn, leaving the Debtor faced
8 with a significant cash flow issues.

9 **D. Management of the Debtor Before and After the Petition Date.**

10 **1. Prior to the Petition Date.**

11 Prior to the Petition Date, the key managers and directors of the Debtor were as
12 follows:

13 **a. Key Managers.**

- 14 Edward Kimbauer, Vice President & Corporate Controller
- 15 Keith Clark, Executive Vice President, Europe and Worldwide Operations
- 16 Scott Poteracki, Executive Vice President, Chief Financial Officer and Secretary
- 17 Thomas P. Raimondi, Jr., Chief Executive Officer and President
- 18 Edward Ateyeh, Executive Vice President, United States Services
- 19 William J. Kerley, Chief Operating Officer, United States Services

20 **b. Corporate Directors.**

- 21 Lawrence P. Begley, Director
- 22 Franz L. Cristiani, Director
- 23 Michael Pehl, Director
- 24 Kent D. Smith, Director
- 25 Ronald E. Heinz, Jr., Director
- 26 William Atkins, Director
- 27 Thomas P. Raimondi, Jr., Chairman of the Board

28 **2. After the Petition Date.**

At this time, the Debtor's management consists of the following individuals:

a. Scott Poteracki.

Mr. Poteracki serves as Chief Reorganization Officer of the Debtor. He is compensated at the rate of \$250.00 per hour for 20 hours monthly (any time in excess of 20 hours requires Committee approval) and receives limited benefits.

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1 **4. Canopy.**

2 An insider of the Debtor, Canopy, refused to provide to the Debtor access to
3 additional credit lines.

4 As a result of the foregoing, the Debtor experienced substantial cash flow difficulties which
5 made continued business operations impossible and which compelled the Debtor to file, on
6 October 15, 2007, a Chapter 11 petition for relief, commencing the Case.

7 **F. Significant Events During the Case.**

8 Since the Petition Date, the Debtor has continued to manage its assets, as debtor-in-
9 possession pursuant to Bankruptcy Code sections 1107(a) and 1108. The Debtor has ceased all
10 business operations with the exception of collecting its accounts receivable, disposing of its Assets
11 and assisting the Debtor’s counsel and the Committee with various recovery analyses, Claims
12 review, the prosecution of Causes of Action and the development of the Plan.

13 The following is a list of significant events which have occurred during the Case.

14 **1. Case Administration.**

15 **a. Omni.**

16 The Debtor employed, as its claims and noticing agent in the Case, Omni
17 Management Group, LLC (“Omni”) to assist the Debtor with respect to preparing the Bankruptcy
18 Schedules, maintaining Claims information, assisting the Debtor to comply with the reporting
19 requirements of the United States Trustee, providing advice related to the Debtor’s banking and
20 financial matters, and assisting the Debtor with respect to serving notice of proceedings in the Case.

21 **b. Rejection of Leases.**

22 The Debtor has rejected its leases of its business premises, as well as all of its
23 known personal property leases and executory contracts, except for those which are related to its
24 post-petition operations.

25 **2. First-Day Motions and Early Case Motions.**

26 The Debtor filed several “first-day” motions, the relief sought by which was needed
27 by the Debtor on an emergency basis. By these motions, the Debtor requested that the Bankruptcy
28 Court enter orders authorizing the following: (a) the Debtor’s borrowing, on an interim basis, up to

1 **5. Post-Petition Financing.**

2 On October 16, 2007, the Bankruptcy Court approved the Debtor's request to obtain
3 from Zinc the Interim DIP Financing of up to \$1,000,000, and, at a final hearing held on
4 November 7, 2007, the Bankruptcy Court approved the Debtor's request to obtain from Zinc
5 financing in an amount up to \$5,000,000. On December 22, 2007, the Debtor paid to Zinc the full
6 amount of such financing that the Debtor had borrowed from Zinc.

7 **6. Sale of Various United States Assets.**

8 During the Case, the Debtor has worked to liquidate various Assets based in the
9 United States, including the following:

10 **a. Collective.**

11 On the eve of the Petition Date, the Debtor entered into a Client Transition
12 Agreement with The Collective Group in which it licensed to The Collective Group the right to use
13 the Debtor's assets associated with the Debtor's Collective information technology services division,
14 previously located in Austin, Texas, in exchange for 10% of certain revenues generated as a result of
15 services performed by The Collective Group. The Client Transition Agreement contemplated the
16 parties' entering into an asset purchase agreement for the licensed assets. The Debtor filed a motion
17 to assume the Client Transition Agreement ("CTA Assumption Motion"). Fusionware thereafter
18 notified the Debtor of Fusionware's interest in overbidding on the assumption of the Client
19 Transition Agreement and negotiations ensued involving the Committee, the Debtor, The Collective
20 Group and Fusionware, resulting in The Collective Group's providing to the Debtor an offer to enter
21 into an Amended and Restated Client Transition Agreement, pursuant to which The Collective
22 Group agreed to purchase the licensed assets for \$125,000 (less amounts paid pursuant to the Client
23 Transition Agreement) plus 20% of new business generated with the Debtor's former customers over
24 a period of 12 months. Such offer was accepted by the Debtor.

25 The Collective Group commenced making payments to the Debtor pursuant
26 to the terms of the original Client Transition Agreement, resulting in payment to the Estate of
27 approximately \$50,000, and commenced aiding the Debtor in its efforts to collect approximately
28 \$500,000 in receivables owed to the Debtor with respect to the Debtor's Collective business

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1 division. The Debtor withdrew the CTA Assumption Motion and prepared and filed a motion to sell
2 and assign to The Collective Group the assets associated with the Collective business division, in
3 place of the Client Transition Agreement. Such motion was approved by the Bankruptcy Court on
4 May 15, 2008. The Debtor believes that the Collective Group has made all of the required payments
5 to the Debtor.

6 **b. Furniture and Equipment Auction.**

7 On or about December 28, 2007, the Debtor filed an application to employ
8 CMA Business Credit Services as an auctioneer and to obtain authority to conduct an auction of
9 excess personal property at the Debtor's premises (e.g., office equipment, computers, printers,
10 servers, and office furniture). The application was approved by an order of the Bankruptcy Court
11 entered on January 16, 2008. The auction of such property was conducted on January 26, 2008, and
12 resulted in net proceeds of approximately \$25,000 to the Estate.

13 **c. National Customer Engineering, Inc.**

14 On December 13, 2007, the Debtor filed a motion seeking from the
15 Bankruptcy Court approval of an agreement for the sale of assets of the Debtor to National Customer
16 Engineering, Inc. ("NCE"). Pursuant to the parties' purchase and sale agreement ("NCE
17 Agreement"), NCE agreed to: (i) purchase certain fixed assets associated with the Debtor's "Legacy
18 Hardware" (essentially spare parts and testing equipment); (ii) perform and discharge all of the
19 Debtor's obligations to the Legacy Hardware customers under the Debtor's prepaid maintenance and
20 support agreements with such customers (for which such customers had paid an estimated \$400,000-
21 \$600,000); (iii) pay to the Debtor 10% of amounts that would be collected by NCE in connection
22 with Legacy contracts that would be renewed or extended by NCE after the closing of the NCE
23 Agreement, for a period of up to one year after the Bankruptcy Court's approval of the NCE
24 Agreement; and (iv) allow the Debtor to collect any accounts receivable existing as of the closing of
25 the NCE Agreement. This motion was approved by an order of the Bankruptcy Court entered on
26 January 3, 2008. NCE has paid to the Debtor approximately \$38,102 in connection with such
27 transaction.
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7. The Debtor's Secured Creditors as of the Petition Date.

On the Petition Date, the Debtor had two primary Secured Creditors, Wells Fargo Bank, National Association, acting through its Wells Fargo Business Credit operating division ("Wells Fargo"), and Canopy. A description of the Secured Claims of these Creditors is as follows.

a. Wells Fargo Facility.

Pursuant to an Account Purchase Agreement, dated November 27, 2006 (which was thereafter amended, supplemented and modified prior to the Petition Date), entered into between the Debtor and Wells Fargo, the Debtor sold and assigned to Wells Fargo certain of the Debtor's accounts receivable. In connection with this transaction, the Debtor granted to Wells Fargo a first-priority security interest and lien on the Debtor's then existing or thereafter arising accounts, and any contract rights, inventory, general intangibles, chattel paper, documents, books and records, proceeds and products, pertaining to such accounts. As of the Petition Date, the Debtor owed to Wells Fargo approximately \$1,741,745. The Debtor paid in full its obligation to Wells Fargo within forty-five (45) days after the Petition Date; however, there remained an open question as to whether Wells Fargo was inappropriately paid approximately \$120,000 as a penalty for an early termination of the Wells Fargo facility. Discussions among Wells Fargo and the Committee resolved this issue without litigation, and Wells Fargo repaid to the Debtor the full amount of the penalty.

b. The Canopy Facility.

Pursuant to a Loan Agreement, dated June 27, 2002 (which was thereafter amended, supplemented, and modified prior to the Petition Date), Canopy guaranteed the Debtor's obligations under a Loan and Security Agreement between the Debtor and Comerica Bank-California (the "Comerica Line of Credit"), and Canopy secured its guarantee of the Comerica Line of Credit by pledging in favor of Comerica Bank-California a Seven Million Dollar (\$7,000,000) letter of credit issued by Bank of America ("Canopy Letter of Credit"). To secure the Debtor's contingent obligation to Canopy, the Debtor granted to Canopy a security interest and lien on all of the Debtor's then existing and after-acquired general intangibles, accounts, inventory, equipment, goods, fixtures, chattel paper, documents, instruments and records.

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1 Prior to the Petition Date, the Debtor did not comply with its obligations
2 under the Comerica Line of Credit, and Comerica Bank-California called upon the Canopy Letter of
3 Credit and used it to satisfy in full the Comerica Line of Credit. As a result thereof, as of the
4 Petition Date, the Debtor owed to Canopy approximately \$5,190,546, plus interest and attorneys'
5 fees and costs, in connection with the Canopy facility.

6 The Committee evaluated thoroughly Canopy's Secured Claim and
7 determined to challenge the perfection of Canopy's security interest, asserting that such security
8 interest was avoidable as a preferential transfer. Canopy disputed such assertion. Extensive
9 negotiations were conducted between Canopy and the Committee in order to attempt to resolve such
10 disputes. On or about July 28, 2008, the Debtor, the Committee, and Canopy negotiated that
11 Settlement Agreement and Mutual Release of Claims ("Canopy Settlement Agreement"), resolving
12 the disputes regarding the validity and payment of Canopy's Secured Claim. The Canopy
13 Settlement Agreement was approved by an order of the Bankruptcy Court entered on November 13,
14 2008. Pursuant to the Canopy Settlement Agreement, the Debtor paid to Canopy \$2,500,000 on
15 account of Canopy's Secured Claim and the Debtor received approximately \$3,500,000. Pursuant to
16 the Canopy Settlement Agreement, the Debtor agreed to assign to Canopy a share of the aggregate
17 amount of any Avoidance Action proceeds received by the Debtor's Estate, payable to Canopy as
18 follows: (i) if the gross proceeds of the Avoidance Actions are less than \$1,000,000, Canopy
19 receives no payment; (ii) if the gross proceeds of the Avoidance Actions are between \$1,000,000 and
20 \$2,000,000, Canopy receives 5% of such proceeds; (iii) if the gross proceeds of the Avoidance
21 Actions are between \$2,000,000 and \$3,000,000, Canopy receives 10% of such proceeds; and (iv) if
22 the gross proceeds of the Avoidance Actions exceed \$3,000,000, Canopy receives 15% of such
23 proceeds, up to a maximum of \$1,000,000. A copy of the Canopy Settlement Agreement is attached
24 as Exhibit "1" to the Plan.

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8. Accounts Receivable Collection/Litigation with Lenox.

a. Accounts Receivable.

During the Case, the Debtor has made diligent efforts to collect its accounts receivable. The Debtor believes that it now has collected virtually all of its collectable receivables.¹⁰

b. Lenox.

The Debtor filed in the Bankruptcy Court a complaint against Lenox Financial Mortgage Corporation (“Lenox”) to collect approximately \$95,385 that Lenox owed to the Debtor. Lenox asserted defenses to the Debtor’s action. The parties thereafter agreed to settle their disputes, but Lenox defaulted in paying its obligations in connection with such settlement. The Debtor ultimately collected the full amount of its claim against Lenox.

c. Rockwell.

The Debtor entered into a settlement agreement with Rockwell Collins, Inc. (“Rockwell”) pursuant to which Rockwell agreed to pay to the Debtor the amount of \$69,575 with respect to a delinquent account owed to the Debtor. In turn, the Debtor agreed to provide to Rockwell an Allowed General Unsecured Claim in the amount of \$47,240. This agreement was approved by the Bankruptcy Court by an order entered on December 21, 2009.

9. Employment of Professionals.

The Bankruptcy Court has approved the employment of the following Professionals in the Case:

- a. Clarkson Gore -- Debtor’s general insolvency counsel;
- b. Omni -- the Debtor’s claims and noticing agent;
- c. Manatt, Phelps & Phillips, LLP -- the Debtor’s corporate counsel;
- d. Beachcroft LLP; J.P. Karsenty Et Associes; Schmalz Rechtsanwälte; and Tods Murray LLP -- the Debtor’s European corporate counsels in connection with the December 2007 sale of the Debtor’s interests in the European Subsidiaries;

¹⁰ The Debtor has a receivable owed by Dell in the amount of approximately \$73,868, which the Debtor will continue to try to collect but which may provide to be uncollectable. -39-
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1 The Debtor intends to file, in March 2010, a motion, pursuant to Rule 9019
2 of the Federal Bankruptcy Rules to obtain approval of its proposed settlement with EMC. The
3 Committee supports such settlement.

4 **b. Pencom Defendants.**

5 On October 14, 2009, the Committee filed in the Bankruptcy Court a
6 complaint against Pencom Systems, Inc., Edgar Saadi, Wade Saadi and Edward Ateyeh
7 (collectively, "Pencom Defendants"), asserting, in part, the following causes of action: avoidance
8 and recovery of transfers of property; disallowance of claims; and breach of fiduciary duties
9 ("Pencom Action"). By the Pencom Action, the Committee seeks a recovery against the Pencom
10 Defendants in an amount in excess of \$9.0 million. The Pencom Defendants filed a motion to
11 dismiss the Committee's complaint, and a hearing thereon is scheduled for August 5, 2010. The
12 Committee and the Pencom Defendants have agreed to mediate their disputes, and the Bankruptcy
13 Court has ordered that such mediation be held by June 18, 2010.

14 **c. FusionStorm.**

15 On March 4, 2010, the Debtor filed in the Bankruptcy Court its First
16 Amended Complaint for (1) Breach of Contract by FusionStorm, Etc. (the "FusionStorm Action")
17 against FusionStorm, certain of Fusion Storm's employees, and certain former employees of the
18 Debtor asserting against them, *inter alia*, the following causes of action: breach of contract; breach
19 of fiduciary duty; aiding and abetting breach of fiduciary duty; breach of statutory duties of
20 employees; breach of common law duties of loyalty by employees; intentional interference with
21 contract and with prospective economic advantage; unfair competition; breach of covenants of good
22 faith and fair dealing; violation of the automatic stay under section 362 of the Bankruptcy Code;
23 breaches of California's Uniform Trade Secret Act, the Computer Fraud and Abuse Act, and
24 California Penal Code Section 502(c) (regarding unauthorized use of the Debtor's computers,
25 systems and data), objections to proofs of claims filed by certain of the defendants, Robert Owen
26 (Claim No. 246), Christopher Butts (Claim No. 63), Marc Franz (Claim No. 96), and Robert Linsky
27 (Claim No. 497) and equitable subordination thereof; conversion of the Debtor's property, and
28 turnover of the Debtor's property pursuant to section 542 of the Bankruptcy Code. By the

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1 FusionStorm Action, the Debtor has alleged that FusionStorm and the other defendants created
2 and/or participated in an unlawful and anti-competitive scheme to destroy the Debtor's operations in
3 North America and to obtain the Debtor's East Coast division, along with the Debtor's customers
4 and goodwill, without paying the Debtor therefor, and that the defendants' knowing and culpable
5 participation in that scheme ultimately led to the downfall of the Debtor. In particular, the Debtor
6 believes that FusionStorm and the other defendants improperly used the Debtor's confidential and
7 proprietary information and trade secrets, unlawfully solicited, directly or indirectly, former
8 employees of the Debtor for employment by FusionStorm, and unlawfully solicited the Debtor's
9 customers. By the FusionStorm Action, the Debtor seeks a recovery against the defendants in an
10 amount in excess of \$1,000,000 to be proven at trial and seeks the additional relief described therein,
11 including but not limited to, turnover of the Debtor's confidential and proprietary information and
12 trade secrets.

13 **2. Claims Objections.**

14 The Plan Proponents have not completed their review, analysis and investigation of
15 the Proofs of Claim and their preparation of objections to Disputed Claims. The Debtor has filed
16 numerous objections to Disputed Claims, and the Plan Proponents expect that they (and the Plan
17 Agent after the Effective Date) will pursue objections to other Disputed Claims. The Plan
18 Proponents anticipate that the Claims adjudication process will be completed by the end of 2010.

19 **3. Subordination Actions.**

20 The Plan Proponents have not completed their review, analysis and investigation of
21 the Proofs of Claim with regard to determining whether any potential Causes of Action exist to
22 subordinate any Claims from Class 3 to Class 5. The Plan Proponents reserve the right to assert
23 Causes of Action to subordinate any Claims in the Case. If any such Causes of Action are to be
24 asserted in the Case, the Plan Proponents expect that such actions will be filed by December 1, 2010
25 and will be completed within about one year.

1 filed, and is filed, by the Administrative Claims Bar Date, such Administrative Claim will be
2 deemed allowed as of the Administrative Claims Objection Deadline.

3 **d. United States Trustee Fees.**

4 United States Trustee Fees will be paid prior to the Effective Date by the
5 Debtor, and, after the Effective Date by the Plan Agent, in each case, when due in accordance with
6 applicable law until the entry of a Final Decree.

7 **e. Pre-Effective Date Professional Fee Claims.**

8 Each Pre-Effective Date Professional seeking from the Bankruptcy Court an
9 award with respect to a Pre-Effective Date Professional Fee Claim must file its final application for
10 allowance of compensation for services rendered and reimbursement of expenses incurred through
11 the Effective Date by no later than the forty-fifth (45th) day after the Effective Date or such later
12 date as may be fixed by the Bankruptcy Court. Such Pre-Effective Date Professional will receive, in
13 full satisfaction, discharge, exchange and release of its Pre-Effective Date Professional Fee Claim,
14 Cash in such amounts as are allowed by the Bankruptcy Court. All objections to allowance of Pre-
15 Effective Date Professional Fee Claims must be filed and served timely in accordance with the
16 requirements of the Bankruptcy Rules.

17 **2. Priority Tax Claims.**

18 The Plan Proponents project that, as of the Effective Date, the Debtor will owe
19 approximately \$163,729 in Priority Tax Claims. Except to the extent that a holder of an Allowed
20 Priority Tax Claim agrees to a less favorable treatment of its Allowed Priority Tax Claim, each
21 holder of an Allowed Priority Tax Claim will receive, in full satisfaction, discharge, exchange and
22 release of its Allowed Priority Tax Claim, Cash in an amount equal to such Allowed Priority Tax
23 Claim, on the later of (a) the Effective Date or (b) the fifteenth (15th) Business Day after such
24 Priority Tax Claim becomes an Allowed Priority Tax Claim.

25 **D. Classification of Claims and Interests Under the Plan.**

26 **1. Overview.**

27 As required by the Bankruptcy Code, the Plan places Claims and Interests into
28 Classes according to their respective legal rights and interests, including their respective rights to

1 **3. Summary of Classification.**

2 The following table summarizes the Classes of Claims and Interests established by
 3 the Plan:

<u>CLASS</u>	<u>DESCRIPTION</u>	<u>IMPAIRED/ UNIMPAIRED</u>	<u>VOTING STATUS</u>
4 Class 1	Allowed Secured Claims	Unimpaired	Deemed to Accept Plan
5 Class 2	Allowed Priority Non-Tax Claims	Unimpaired	Deemed to Accept Plan
6 Class 3	Allowed General Unsecured Claims	Impaired	Entitled to Vote on Plan
7 Class 4	Canopy Claim	Unimpaired	Deemed to Accept Plan
8 Class 5	Allowed Subordinated Claims	Impaired	Entitled to Vote on Plan
9 Class 6	Interests	Impaired	Deemed to Reject the Plan

10 As set forth above, Classes 1, 2 and 4 are unimpaired by the Plan; holders of Claims
 11 in these Classes are conclusively presumed to have accepted the Plan and, hence, are not entitled to
 12 vote with respect to the Plan. Classes 3 and 5 are impaired by the Plan, and holders of Claims in
 13 these Classes are entitled to vote to accept or reject the Plan. Interests in Class 6 are impaired; the
 14 Plan Proponents believe that it is very likely that Interest Holders will not receive or retain under the
 15 Plan any value on account of their Interests, and, hence, Interest Holders are deemed to reject the
 16 Plan in accordance with section 1126(g) of the Bankruptcy Code.

17 The treatment of Claims and Interests under the Plan is in full and complete satisfaction of
 18 the legal, contractual, and equitable rights that each Creditor or Interest Holder may have in or
 19 against the Debtor or its property. This treatment supersedes and replaces any agreements or rights
 20 which those entities have in or against the Debtor or its property. **NO DISTRIBUTIONS WILL
 21 BE MADE, AND NO RIGHTS WILL BE RETAINED, ON ACCOUNT OF ANY CLAIM
 22 THAT IS NOT AN ALLOWED CLAIM.**

23 **VII.**

24 **TREATMENT OF CLASSES UNDER THE PLAN**

25 The following sets forth the treatment of Classes established by the Plan.

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1 **A. Class 1 -- Any Allowed Secured Claims.**

2 Class 1 consists of any Allowed Secured Claims. The Plan Proponents project that no
3 Allowed Class 1 Claims will be owed as of the Effective Date. Class 1 is unimpaired by the Plan.
4 In the event that there is more than one holder of an Allowed Class 1 Claim, the Allowed Secured
5 Claim of each such Secured Creditor will be deemed to be classified in a separate sub-class of Class
6 1, and each such sub-class of Class 1 will be deemed to be a separate Class under the Plan.

7 **1. Treatment of Allowed Secured Claims.**

8 Within fifteen (15) Business Days after the Effective Date, each Secured Creditor
9 holding an Allowed Class 1 Claim will receive, at the election of the Plan Agent, made in the
10 exercise of its sole and absolute discretion, one of the following treatments in full satisfaction,
11 discharge, exchange and release of the Allowed Class 1 Claim:

12 **a. Option 1.**

13 The holder of the Allowed Class 1 Claim will receive a return of the Collateral
14 in which that Secured Creditor has a security interest. Unless a Secured Creditor holding an
15 Allowed Deficiency Claim should make an election under section 1111(b) of the Bankruptcy Code,
16 its Allowed Deficiency Claim will be treated under the Plan as a Class 3 Allowed General
17 Unsecured Claim.

18 **b. Option 2.**

19 The holder of the Allowed Class 1 Claim will receive any proceeds actually
20 received by the Debtor or Reorganized Debtor (as applicable) from the sale or other disposition of
21 the Collateral in which that Secured Creditor has a security interest. Unless a Secured Creditor
22 holding an Allowed Deficiency Claim should make an election under section 1111(b) of the
23 Bankruptcy Code, its Allowed Deficiency Claim will be treated under the Plan as a Class 3 Allowed
24 General Unsecured Claim

25 **c. Option 3.**

26 The holder of the Allowed Class 1 Claim will receive Cash in the full amount
27 of that Secured Creditor's Allowed Class 1 Claim.

28 **d. Option 4.**

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1 The holder of the Allowed Class 1 Claim will receive such other Distributions
2 or treatment as is necessary to leave the rights of that Secured Creditor unimpaired under the
3 Bankruptcy Code.

4 The Plan Agent will have until the later of the tenth (10th) Business Day before the
5 Confirmation Hearing Date, or the tenth (10th) Business Day after the date on which a Class 1 Claim
6 because an Allowed Secured Claim to elect which treatment set forth under Section 5.1.1 of the Plan
7 to provide to the Secured Creditor holding such Allowed Class 1 Claim.

8 **B. Class 2 -- Allowed Priority Non-Tax Claims.**

9 Class 2 consists of all Allowed Priority Non-Tax Claims. The Plan Proponents project that,
10 as of the Effective Date, the Debtor will owe approximately \$453,585 in Allowed Priority Non-Tax
11 Claims.¹¹ A list of Priority Non-Tax Claims is attached as Exhibit "D" hereto. Class 2 is not
12 impaired by the Plan.

13 Pursuant to the Plan, except to the extent that a holder of an Allowed Priority Non-Tax
14 Claim agrees to a less favorable treatment of its Allowed Priority Non-Tax Claim, each holder of an
15 Allowed Priority Non-Tax Claim will receive, in full satisfaction, discharge, exchange and release
16 of its Allowed Priority Non-Tax Claim, Cash in the full amount of the Allowed Priority Non-Tax
17 Claim on the later of (i) the Effective Date, and (ii) the fifteenth (15th) Business Day after such
18 Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim.

19 **C. Class 3 -- Allowed General Unsecured Claims.**

20 Class 3 consists of all Allowed General Unsecured Claims. The Plan Proponents project
21 that holders of Allowed General Unsecured Claims will receive an approximately 18% to 40%
22 recovery on account of their Allowed General Unsecured Claims; an analysis of such projected
23 recovery is set forth at pages 93-95 hereof. Class 3 is impaired by the Plan.

24 Pursuant to the Plan, the treatment of Allowed Class 3 Claims is as follows:

25 **1. Pro Rata Distribution of Plan Fund Proceeds.**

26
27
28 ¹¹ This projection was made by the Plan Proponents in or about March 2010. After further review of the Priority Non-
Tax Claims asserted in the eCase, the Plan Proponents now estimate that the Debtor will owe approximately \$515,851.07
in Allowed Priority Non-Tax Claims. See Exhibit "D" hereto for a list of Priority Non-Tax Claims.

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1 Subject to the provisions of Sections 5.3.1.3, 5.3.1.4, 5.3.1.5 and 5.3.1.6 of the Plan,
2 except to the extent that the holder of an Allowed General Unsecured Claim agrees to a less
3 favorable treatment of its Allowed General Unsecured Claim, the holder of an Allowed General
4 Unsecured Claim will receive, in full and complete satisfaction, discharge, exchange and release of
5 its Allowed General Unsecured Claim, Pro Rata Distributions of the Plan Fund Proceeds available
6 for distribution to holders of Allowed Class 3 Claims.

7 **2. Timing of Distributions.**

8 The Plan Agent will make Distributions to the holders of Allowed Class 3 Claims
9 from the Plan Fund Proceeds. All holders of Allowed Class 3 Claims will receive an initial
10 Distribution of their Pro Rata share of the Plan Fund Proceeds within 180 days following the
11 Effective Date, or on such later date as the Plan Agent determines to be practicable, in the exercise
12 of its sole and absolute discretion, and will receive thereafter during the Case Distributions of their
13 Pro Rata share of Plan Fund Proceeds on each 180th-day anniversary of the Effective Date, or on
14 such later date as the Plan Agent determines to be practicable in the exercise of its sole and absolute
15 discretion. Holders of Allowed Class 3 Claims will receive any final Distribution of their Pro Rata
16 share of Plan Fund Proceeds within ten (10) days after the filing of the Plan Agent Certification, or
17 as soon thereafter as is practicable. Upon payment of the amount owed to the holder of any Allowed
18 Class 3 Claim under the Plan, such Allowed Class 3 Claim will be deemed to be fully and
19 completely satisfied, discharge and released.

20 **3. Postpetition Interest.**

21 In accordance with section 726(a)(5) of the Bankruptcy Code, an Allowed General
22 Unsecured Claim will not include Postpetition Interest on account of such Allowed General
23 Unsecured Claim, except to the extent that all of the following are satisfied and paid in full: (a) all
24 Allowed Administrative Claims; (b) all Allowed Priority Tax Claims; (c) all Allowed Priority Non-
25 Tax Claims; (d) all Allowed Secured Claims (subject to the elections provided pursuant to
26 Section 5.1.1 of the Plan); (e) all Allowed General Unsecured Claims; (f) the Canopy Claim; (g) all
27 Late-Filed Claims; (h) all Post-Effective Date Plan Expenses; and (i) all Allowed Penalty Claims.

28 Any Postpetition Interest that may be payable on an Allowed General Unsecured Claim will be

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1 calculated from the Petition Date through the date on which such Allowed General Unsecured Claim
2 is paid in full.

3 **4. Conditions to Distributions.**

4 The Plan provides that, notwithstanding any other provision to the contrary contained
5 in the Plan, no Cash Distribution will be made on account of any Allowed General Unsecured Claim
6 until each of the following occurs: (a) all Allowed Administrative Claims are paid; (b) all Allowed
7 Priority Tax Claims are paid; (c) all Allowed Priority Non-Tax Claims are paid; (d) all Allowed
8 Secured Claims are paid (subject to the elections provided pursuant to Section 5.1.1 of the Plan);
9 (e) the Disputed Claims Reserve is adequately funded for the Claims referenced in subsections (a)
10 through (d) of this subparagraph VII(C)(4); and (f) all outstanding Post-Effective Date Plan
11 Expenses have been paid in full and an adequate Reserve is established by the Plan Agent providing
12 for full payment of the estimated amount of all Post-Effective Date Plan Expenses through the Case
13 Closing Date, in an amount to be determined by the Plan Agent in the exercise of its sole and
14 absolute discretion.

15 **5. Distribution of Post-Effective Date Stock.**

16 Each holder of an Allowed General Unsecured Claim will be allocated its Pro Rata
17 number of shares of Post-Effective Date Stock, to be held in trust for such Creditor by the Plan
18 Agent in contemplation of a potential Merger Transaction. Subject to the provisions of Section 6.18
19 of the Plan, each holder of an Allowed General Unsecured Claim will receive a Distribution of any
20 Post-Effective Date Stock, or the net proceeds realized from the disposition of such Post-Effective
21 Date Stock, in connection with any Merger Transaction; provided, however, that the holder of an
22 Allowed General Unsecured Claim will have the right to elect not to receive any Distribution of
23 Post-Effective Date Stock, in accordance with the provisions of Section 6.18.6 of the Plan.

24 **6. Limitation on Distributions.**

25 Notwithstanding anything to the contrary contained in Section 5.3.1 of the Plan, no
26 holder of an Allowed General Unsecured Claim will be entitled to receive more than 100% of the
27 amount of its Allowed General Unsecured Claim, plus any Postpetition Interest thereon payable
28 pursuant to Section 5.3.1.3 of the Plan. For the purpose of Section 5.3.1.6 of the Plan, the value of

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1 any Distribution of Post-Effective Date Stock will be determined pursuant to the provisions of
2 Section 6.18.5 of the Plan.

3 **D. Class 4 -- Canopy Claim.**

4 Class 4 consists of the Canopy Claim. The Canopy Claim is unimpaired under the Plan.

5 Pursuant to the Plan, Canopy will be paid, without alteration or modification, any and all
6 amounts to which Canopy is entitled pursuant to paragraphs 2 and 3 of the Canopy Settlement
7 Agreement.

8 **E. Class 5 -- Allowed Subordinated Claims.**

9 Class 5 consists of all Allowed Subordinated Claims. There are no Allowed Subordinated
10 Claims as of the date of this Disclosure Statement. Class 5 is impaired by the Plan.

11 Pursuant to the Plan, the treatment of any Allowed Class 5 Claim is as follows:

12 **1. Pro Rata Distributions of Plan Fund Proceeds.**

13 Subject to the provisions of Sections 5.5.1.3, 5.5.1.4, 5.5.1.5 and 5.5.1.6 of the Plan,
14 except to the extent that the holder of any Allowed Subordinated Claim agrees to a less favorable
15 treatment of its Allowed Subordinated Claim, in the event that all Allowed General Unsecured
16 Claims are paid in full as set forth in Section 5.3.1 of the Plan, the holder of an Allowed
17 Subordinated Claim will receive, in full and complete satisfaction, discharge, exchange and release
18 of its Allowed Subordinated Claim, solely from the Plan Fund Proceeds, a Pro Rata Distribution of
19 any remaining Plan Fund Proceeds.

20 **2. Timing of Distributions.**

21 The Plan Agent will make Distributions to the holders of Allowed Class 5 Claims,
22 from any Plan Fund Proceeds available for distribution to holders of Allowed Class 5 Claims. All
23 holders of Allowed Class 5 Claims will receive an initial Distribution of their Pro Rata share of any
24 Plan Fund Proceeds available for distribution to holders of Allowed Class 5 Claims on such date as
25 the Plan Agent determines to be practicable, in the exercise of its sole and absolute discretion, and
26 thereafter will receive Distributions of any such Plan Fund Proceeds as the Plan Agent determines to
27 be practicable, in the exercise of its sole and absolute discretion. Holders of Allowed Class 5 Claims
28 will receive any final Distribution of any Plan Fund Proceeds available for distribution to holders of

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1 Allowed Class 5 Claims within ten (10) days after the filing of the Plan Agent Certification, or as
2 soon thereafter as is practicable. Upon payment of the amount, if any, owed to each holder of an
3 Allowed Class 5 Claim under the Plan, such Allowed Class 5 Claim will be deemed to be fully and
4 completely satisfied, discharged and released.

5 **3. Postpetition Interest.**

6 In accordance with section 726(a)(5) of the Bankruptcy Code, an Allowed
7 Subordinated Claim will not include Postpetition Interest on account of such Allowed Subordinated
8 Claim, except to the extent that all of the following are satisfied and paid in full: (a) all Allowed
9 Administrative Claims; (b) all Allowed Priority Tax Claims; (c) all Allowed Priority Non-Tax
10 Claims; (d) all Allowed Secured Claims (subject to the elections provided pursuant to Section 5.1.1
11 of the Plan); (e) all Allowed General Unsecured Claims; (f) the Canopy Claim; (g) all Late-Filed
12 Claims; (h) all Post-Effective Date Plan Expenses; (i) all Allowed Penalty Claims; and (j) all
13 Allowed Subordinated Claims in accordance with the terms thereof. Any Postpetition Interest that
14 may be payable on an Allowed Subordinated Claim will be calculated from the Petition Date
15 through the date on which such Allowed Subordinated Claim is paid in full.

16 **4. Conditions to Distributions.**

17 The Plan provides that, notwithstanding any other provision to the contrary contained
18 in the Plan, no Distribution will be made on account of any Allowed Subordinated Claim until each
19 of the following occurs: (a) all Allowed Administrative Claims are paid; (b) all Allowed Priority
20 Tax Claims are paid; (c) all Allowed Priority Non-Tax Claims are paid; (d) all Allowed Secured
21 Claims are paid (subject to the elections provided pursuant to Section 5.1.1 of the Plan); (e) all
22 Allowed General Unsecured Claims are paid; (f) the Disputed Claims Reserve is adequately funded
23 for the Claims referenced in subsections (a) through (e) of this subparagraph VII(E)(4); and (g) all
24 outstanding Post-Effective Date Plan Expenses have been paid in full and an adequate Reserve is
25 established by the Plan Agent providing for full payment of the estimated amount of all Post-
26 Effective Date Plan Expenses through the Case Closing Date, in an amount to be determined by the
27 Plan Agent in the exercise of its sole and absolute discretion.

28 **5. No Distribution of Post-Effective Date Stock.**

1 No Post-Effective Date Stock, or other equity security interest in the Reorganized
2 Debtor, will be issued on account of an Allowed Subordinated Claim.

3 **6. Limitation on Distributions.**

4 Notwithstanding anything to the contrary contained in Section 5.5.1 of the Plan, no
5 holder of an Allowed Subordinated Claim will be entitled to receive more than 100% of the amount
6 of its Allowed Subordinated Claim, plus any Postpetition Interest thereon payable pursuant to
7 Section 5.5.1.3 of the Plan.

8 **F. Class 6 -- Allowed Interests.**

9 Class 6 consists of all Allowed Interests. Class 6 is impaired under the Plan.

10 Pursuant to the Plan, the treatment of Allowed Interests is as follows:

11 **1. Cancellation of Interests.**

12 On the Effective Date of the Plan, all Interests will be cancelled, and Interest Holders
13 will receive no Post-Effective Date Stock or any other Interest of any nature whatsoever in the
14 Reorganized Debtor. Interest Holders will not receive any Distributions on account of their
15 Interests; provided, however, that, in the event that each Allowed Claim, plus any Postpetition
16 Interest to which the holder thereof is entitled, is paid in full, each holder of an Allowed Interest will
17 receive, in full and complete satisfaction, discharge, exchange and release of such Allowed Interest,
18 Pro Rata Distributions of any Plan Fund Proceeds remaining in the Plan Fund, payable as soon as
19 practicable as the Plan Agent determines in the exercise of its sole and absolute discretion.

20 **2. No Voting on Plan.**

21 It is expected that Class 6 Interest Holders will receive no Distributions under the
22 Plan. Accordingly, for the purpose of the Plan, Interest Holders are deemed not to have accepted the
23 Plan, and are not entitled to vote with respect to the Plan, as provided by section 1126(g) of the
24 Bankruptcy Code.

25 **3. Allowed Interests.**

26 For the purpose only of determining any Distributions to which Interest Holders may
27 be entitled under Section 5.6.1.1 of the Plan, each beneficial owner or holder of record of MTI Stock
28 as of the Effective Date will be deemed to have an Allowed Interest for the number of shares of MTI

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1 Stock held by it as of the Effective Date, and need not file a proof of its Interest with respect thereto.
2 In the event that any entity that is neither the record holder of MTI Stock as of the Effective Date nor
3 the beneficial owner of MTI Stock as of the Effective Date files a proof of right to record status
4 pursuant to Rule 3003(d) of the Federal Bankruptcy Rules, such proof of right will be disallowed
5 automatically and without any need for the Debtor, the Reorganized Debtor, the Plan Agent, or any
6 other party-in-interest to object thereto or otherwise take any act with respect thereto.

7 **VIII.**

8 **MEANS OF EXECUTION AND IMPLEMENTATION OF THE PLAN**

9 **A. Overview.**

10 This Article is intended to explain the means by which the Plan Proponents intend to
11 effectuate the Plan, and how they intend to fund the obligations to Creditors undertaken in the Plan.
12 This Article provides information regarding prospective corporate governance of the Reorganized
13 Debtor, funding sources for Plan obligations, and other material issues bearing upon the
14 performance of the Plan.

15 The Plan provides that, from and after the Effective Date, the Debtor's Assets, including,
16 without limitation, any Causes of Action, will be liquidated and the Plan Fund Proceeds distributed
17 to the holders of Allowed Claims in accordance with the provisions of the Plan. The Plan Agent
18 will be responsible for maintaining the Plan Assets, liquidating the Plan Assets, prosecuting or
19 settling Causes of Action, and making Distributions in payment of Allowed Claims in accordance
20 with the provisions of the Plan. In addition, the Plan Agent will be responsible for evaluating the
21 viability of, and, if appropriate, pursuing a Merger Transaction, in order to enhance the value of the
22 Post-Effective Date Stock issued on account of Allowed General Unsecured Claims, for the benefit
23 of the holders of Allowed General Unsecured Claims.

24 **B. Condition Precedent to Plan Confirmation.**

25 The only condition precedent to the confirmation of the Plan is that the Bankruptcy Court
26 will have entered the Confirmation Order on terms and conditions satisfactory to the Plan
27 Proponents.

28 **C. Conditions Precedent to the Effectiveness of the Plan.**

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1 The following are the conditions precedent to the effectiveness of the Plan and the
2 occurrence of the Effective Date: (1) the Confirmation Order will have become a Final Order;
3 (2) any documents, instruments and agreements, in form and substance satisfactory to the Plan
4 Proponents, provided for by, or appropriate to implement, the Plan will have been executed and
5 delivered by the parties thereto; (3) the Plan Proponents will have received all authorizations,
6 consents, rulings, opinions or other documents that are determined by the Plan Proponents, in the
7 exercise of their sole and absolute discretion, to be appropriate to implement the Plan; and (4) the
8 Plan Proponents will have determined, in the exercise of their sole and absolute discretion, that
9 sufficient Cash exists to pay, or to establish a Reserve for the payment of, all Administrative
10 Claims, Priority Tax Claims, Priority Non-Tax Claims and Secured Claims (subject to the election
11 of the options provided by Section 5.1.1 of the Plan), and to otherwise fund the obligations provided
12 for by the Plan and to pay the expenses associated with the implementation of the Plan.

13 The Plan Proponents may, in the exercise of their sole and absolute discretion, waive any of
14 the conditions to the effectiveness of the Plan and to the occurrence of the Effective Date set forth
15 hereinabove, without the need for any prior notice or hearing with respect thereto. Without limiting
16 the generality of the foregoing, in the event that an appeal, petition for certiorari or motion for
17 reargument or rehearing or comparable post-confirmation relief is filed with respect to the
18 Confirmation Order, and no stay of the effectiveness of the Confirmation Order is obtained, the Plan
19 Proponents may elect, in the exercise of their sole and absolute discretion, to waive any of such
20 conditions, and to proceed with the Effective Date of the Plan and to commence to consummate the
21 Plan, by filing and serving notice of such election upon the United States Trustee and the party
22 seeking such post-confirmation relief.

23 The failure of any such condition to be satisfied constitutes under the Plan good and
24 sufficient cause for the Plan Proponents to have the Plan not become effective regardless of the
25 circumstances giving rise to the failure of such condition to be satisfied (including, without
26 limitation, any act or failure to act by the Plan Proponents).

27 **D. Implementation of Plan.**
28

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1 title and interest in and to the Assets, including Causes of Action, free and clear of all Liens,
2 Claims, and Interests of any kind, except as provided expressly to the contrary in the Plan. All
3 Creditors and other parties-in-interest are required to cooperate with the Debtor and the Plan Agent
4 by executing any documents, and by taking any acts, appropriate to implement the transfers of the
5 Assets to the Plan Agent. From and after the Effective Date, the transfer of the Assets from the
6 Estate to the Plan Agent, and the vesting of the Assets in the Plan Agent, will be deemed to be final
7 and irrevocable.

8 **3. Disposition of Plan Assets.**

9 The Plan Agent, under the supervision of the Post-Effective Date Committee, may
10 administer, manage, use, convey, transfer, encumber, assign and otherwise dispose of any and all of
11 the Plan Assets and take all acts appropriate to effectuate the same, free of any restrictions imposed
12 by the Bankruptcy Code or by the Bankruptcy Rules.

13 **G. Termination of Debtor's Officers, Directors, Employees and Professionals.**

14 Except as otherwise provided by the Plan or as otherwise retained by the Plan Agent, the
15 Debtor's officers, directors, employees and Professionals will be terminated and relieved of any
16 responsibilities to the Debtor or to the Reorganized Debtor as of the Effective Date.

17 **H. Plan Fund Proceeds/Plan Administration.**

18 **1. Distributions of Plan Fund Proceeds.**

19 Distributions of Plan Fund Proceeds will be made solely to the holders of Allowed
20 General Unsecured Claims, and, in accordance with the provisions of Sections 5.5.1.1 and 5.6.1.1
21 of the Plan, in the unlikely event that Allowed General Unsecured Claims are paid in full, holders of
22 Allowed Subordinated Claims, and, if Allowed Subordinated Claims are paid in full, Interest
23 Holders. The holders of Allowed General Unsecured Claims will receive Distributions from the
24 Plan Fund solely as provided for by the Plan.

25 **2. Plan Agent's Implementation of Plan.**

26 The Plan Agent, under the supervision of the Post-Effective Date Committee, will be
27 authorized to, and shall, take all acts appropriate to implement the provisions of the Plan as are
28 contemplated to be taken by the Plan Agent under the Plan, including, without limitation, making

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1 shareholders, agents, members, representatives, and Professionals (collectively, "Representatives")
2 will not have or incur liability to any Creditor, Interest Holder, party-in-interest or to any other
3 entity for an act taken or omission made in good faith in connection with or related to the
4 administration of the Plan Assets, the implementation of the Plan and the making of Distributions
5 under the Plan. The Post-Effective Date Committee, the Plan Agent, the Reorganized Debtor and
6 the Representatives will be entitled in all respects to reasonably rely on the advice of counsel with
7 respect to their respective duties and responsibilities under the Plan. Entry of the Confirmation
8 Order constitute a judicial determination that the exculpation provisions contained in Section 6.8.5
9 of the Plan are necessary to, inter alia, facilitate Confirmation and to minimize potential claims
10 arising after the Effective Date for indemnity, reimbursement or contribution from the Plan Assets.
11 The approval of the Plan by the Confirmation Order constitutes a res judicata determination of the
12 matters included in the exculpation provisions of the Plan. Notwithstanding the foregoing, nothing
13 in Section 6.8.5 of the Plan will absolve the Post-Effective Date Committee, the Plan Agent or the
14 Reorganized Debtor of any potential liability that any of them respectively may have to any
15 Creditor (which liability will be several and not joint) on account of any acts or omissions by it
16 constituting willful misconduct or gross negligence.

17 **6. Funding of Post-Effective Date Plan Expenses.**

18 All Post-Effective Date Plan Expenses will be expenses of the Reorganized Debtor.
19 Except as may be provided expressly to the contrary in the Plan Agent Disclosure, the Plan Agent
20 will have no personal liability for any Post-Effective Date Plan Expenses. The Plan Agent will
21 disburse Plan Fund Proceeds from the Plan Fund for the purpose of funding the Post-Effective Date
22 Plan Expenses.

23 **1. Termination of the Committee and Appointment of the Post-Effective Date**
24 **Committee.**

25 **1. Replacement of the Committee.**

26 As of the Effective Date, the Committee will terminate and disband, and the
27 Committee will be released from and discharged of all further authority, duties, responsibilities and
28 obligations related to the Case. As of the Effective Date, the Committee will be replaced by the

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1 continue to have all corporate powers and rights accorded to it under its Articles of Incorporation,
2 Bylaws and other corporate governance agreements.

3 **2. Board of Directors.**

4 On the Effective Date, the members of the Board of Directors of the Reorganized
5 Debtor will be the following persons: the Plan Agent; Mr. Poteracki; and another individual to be
6 named by the Post-Effective Date Committee. The Reorganized Debtor will maintain customary
7 directors and officers insurance coverage through the Case Closing Date, or as otherwise determined
8 by the Plan Agent. The members of the Board of Directors will be entitled to payment of
9 compensation, for serving on the Reorganized Debtor's Board of Directors, in the amount of
10 \$1,250.00 per calendar quarter, or as otherwise determined reasonably by the Plan Agent in the
11 exercise of its sole and absolute discretion; provided, however, that such compensation paid to the
12 Plan Agent for serving on the Reorganized Debtor's Board of Directors will be applied against the
13 compensation payable to the Plan Agent pursuant to the Plan and as set forth in the Plan Agent
14 Disclosure.

15 **3. Officer of Reorganized Debtor.**

16 As of the Effective Date, the Plan Agent will serve as the Chief Executive Officer of
17 the Reorganized Debtor. The Board of Directors of the Reorganized Debtor may appoint other
18 officers as appropriate to aid in the implementation of the Plan. The Plan Agent will be authorized
19 to take any act, and to execute any documents, necessary to preserve the corporate existence of the
20 Reorganized Debtor, with no additional authorization required for the Plan Agent to do so.

21 **4. Effectuation of Merger Transaction.**

22 The Reorganized Debtor will continue in existence after the Effective Date, as
23 appropriate to effectuate a Merger Transaction. In accordance with the provisions of Section 6.18 of
24 the Plan, the Plan Agent, under the supervision of the Post-Effective Date Committee, will determine
25 whether a Merger Transaction is viable, whether a Merger Transaction should be effectuated for the
26 benefit of holders of Allowed General Unsecured Claims and the terms thereof, and/or whether to
27 terminate any efforts to effectuate a Merger Transaction and instead to wind up the affairs of the
28 Reorganized Debtor; provided, however, that, in accordance with the provisions of Section 6.18.3 of

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1 the Plan, in the event that no Merger Transaction is consummated by the Merger Consummation
2 Date, all efforts to effectuate a Merger Transaction will terminate and the Plan Agent will take all
3 acts appropriate to wind up the affairs of the Reorganized Debtor.

4 **K. Causes of Action.**

5 The right to enforce, file, litigate, prosecute, settle, adjust, retain, enforce, collect and
6 abandon on behalf of the Debtor and the Estate any and all Causes of Action, including, but not
7 limited to, any Avoidance Actions, is deemed automatically transferred on the Effective Date from
8 the Estate to the Plan Agent. From and after the Effective Date, only the Plan Agent will have the
9 right to enforce, file, litigate, prosecute, settle, collect and abandon any Cause of Action.

10 Notwithstanding the rights of the Plan Agent with respect to Causes of Action, nothing in the
11 Plan will require the Plan Agent to file or to prosecute any Cause of Action, both of which may be
12 determined by the Plan Agent, in the exercise of its sole and absolute discretion.

13 **THE PLAN PROPONENTS HAVE NOT COMPLETED THEIR INVESTIGATION**
14 **REGARDING THE EXISTENCE OF CAUSES OF ACTION. THE INVESTIGATION IN**
15 **THIS REGARD IS ONGOING. AS A RESULT, ALL PARTIES-IN-INTEREST ARE**
16 **HEREBY ADVISED THAT, NOTWITHSTANDING THE FACT THAT THE EXISTENCE**
17 **OF ANY PARTICULAR CAUSE OF ACTION MAY NOT BE LISTED, DISCLOSED OR**
18 **SET FORTH IN THE PLAN OR IN THIS DISCLOSURE STATEMENT, A CAUSE OF**
19 **ACTION MAY BE FILED AGAINST ANY CREDITOR OR OTHER PARTY AS THE**
20 **PLAN AGENT MAY DETERMINE, IN THE EXERCISE OF ITS SOLE AND ABSOLUTE**
21 **DISCRETION.**

22 **L. Post-Effective Date Professional Fees.**

23 The Plan Agent may employ, without any need to give notice to Creditors or other parties-in-
24 interest or obtain any approval of the Bankruptcy Court, any Professional to aid the Plan Agent in
25 performing the Plan Agent's duties under the Plan, including, without limitation, in connection with
26 a possible Merger Transaction, as the Plan Agent deems appropriate in the exercise of its sole and
27 absolute discretion. Any Professional employed by the Plan Agent after the Effective Date will be
28 entitled to obtain from the Plan Fund payment of the Professional's fees and costs as a Post-Effective

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1 Date Plan Expense, in the ordinary course, without any need to give notice to Creditors or other
2 parties-in-interest or to obtain any approval of the Bankruptcy Court. Notwithstanding the
3 foregoing, if the Plan Agent should fail to pay any post-Effective Date fees and costs of a
4 Professional entitled to such payment, within thirty (30) days after the Professional's rendering of its
5 billing statement, the Professional will be entitled to seek, by application filed in accordance with the
6 Bankruptcy Rules, an order of the Bankruptcy Court requiring the Plan Agent to forthwith pay to the
7 Professional its fees and costs.

8 **M. Approval for Disposition of Plan Assets.**

9 Except as provided expressly to the contrary in the Plan, from and after the Effective Date,
10 the Plan Agent will be entitled to sell, transfer, assign, encumber or otherwise dispose of any interest
11 in any of the Plan Assets, without any need to give notice to Creditors or parties-in-interest or to
12 obtain any approval of the Bankruptcy Court. Notwithstanding the foregoing, the Plan Agent will be
13 entitled to seek, from the Bankruptcy Court, an order authorizing the sale of any Plan Asset free and
14 clear of Liens pursuant to the provisions of section 363(f) of the Bankruptcy Code.

15 **N. Compromise of Controversies.**

16 From and after the Effective Date, the Plan Agent will be entitled to compromise any
17 objections to Disputed Claims, or any controversies relating to Causes of Action or other litigation
18 pending after the Confirmation Date, without any need to give notice to Creditors or parties-in-
19 interest or to obtain any approval of the Bankruptcy Court.

20 **O. Bankruptcy Court Approval Relative to Post-Confirmation Matters.**

21 Nothing contained in the Plan will be deemed to impair in any manner the right of the Plan
22 Agent or any party-in-interest to seek at any time after the Effective Date orders of the Bankruptcy
23 Court approving actions to be taken consistent with the Plan as may be necessary or desirable to
24 effectuate the provisions of the Plan.

25 **P. Plan Agent Certification.**

26 On or before the date upon which the Plan Agent determines, in the exercise of its sole and
27 absolute discretion, that any Causes of Action and objections to Disputed Claims have been resolved
28 by Final Order, that all other Plan Assets have been liquidated or otherwise disposed of, that a

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1 Merger Transaction has been effectuated or cannot or should not be effectuated by the Merger
2 Consummation Date, and that all Distributions required to be made under the Plan have been made
3 or that final Distributions are being made or will be made by the Plan Agent within ten (10) days or
4 as soon thereafter as is practicable, the Plan Agent is required to file with the Bankruptcy Court and
5 serve upon the United States Trustee, the Post-Effective Date Committee, the Reorganized Debtor
6 and any Creditor that files after the Effective Date a request for notice of any proceedings in the
7 Case (collectively, "Post-Effective Date Notice Parties") a certification attesting to such
8 determination ("Plan Agent Certification").

9 **Q. Final Decree.**

10 Unless earlier filed by the Plan Agent, by the thirtieth (30th) day after the filing of the Plan
11 Agent's Certification, the Plan Agent is required to file, in accordance with Rule 3022 of the Federal
12 Bankruptcy Rules, an application with the Bankruptcy Court to obtain a final decree to close the
13 Case ("Final Decree").

14 **R. Merger Transaction.**

15 **1. Background.**

16 Although, as of the Effective Date, the Reorganized Debtor will have no significant
17 operations, the Reorganized Debtor may possess substantial net operating losses for tax purposes
18 (estimated to be in excess of \$120.0 million), and, as a publicly-traded company, will possess a
19 shareholder base, which may make it an attractive acquisition or merger candidate, including,
20 without limitation, to an operating, privately-held corporation seeking to become a publicly-held
21 company (e.g., through a "reverse merger" transaction). The Plan permits any such acquisition,
22 merger transaction, or other business combination, including, without limitation, a stock exchange,
23 that would benefit the holders of Allowed General Unsecured Claims, as holders of Post-Effective
24 Date Stock in the Reorganized Debtor, by allowing them potentially to have an interest in a viable,
25 operating business enterprise (any such transaction is referred to herein as a "Merger Transaction").
26 The Plan Agent, under the supervision of the Post-Effective Date Committee, will investigate
27 whether a Merger Transaction is viable, and should be pursued for the benefit of holders of Allowed
28 General Unsecured Claims.

1 **2. Merger Consummation Date.**

2 The Reorganized Debtor is required to complete a Merger Transaction by the second-
3 year anniversary of the Effective Date of the Plan (“Merger Consummation Date”); provided,
4 however, that the Plan Agent, after consultation with the Post-Effective Date Committee, will be
5 authorized to request from the Bankruptcy Court an extension of the Merger Consummation Date,
6 for a period not to exceed one additional year. The Plan Agent is required to give to the Post-
7 Effective Date Notice Parties notice of any such request and an opportunity to obtain a hearing on
8 any such request, in accordance with the requirements of the Bankruptcy Rules.

9 **3. Cancellation of Post-Effective Date Stock and Wind-Up of Reorganized**
10 **Debtor.**

11 The Plan Agent, after consultation with the Post-Effective Date Committee, will be
12 authorized to terminate efforts to effectuate a Merger Transaction or to cancel the Post-Effective
13 Date Stock, prior to the Merger Consummation Date, in the event that the Plan Agent determines, in
14 the exercise of its sole and absolute discretion, that a Merger Transaction is not viable, a Merger
15 Transaction should not be effectuated, or the Post-Effective Date Stock is burdensome or is of
16 inconsequential value and benefit to the holders of Allowed General Unsecured Claims. The Plan
17 Agent may terminate any efforts to effectuate a Merger Transaction, or may cancel the Post-
18 Effective Date Stock, only after obtaining approval of the Bankruptcy Court for so doing (“Stock
19 Termination Approval”) after giving to the Post-Effective Date Notice Parties notice and an
20 opportunity to obtain a hearing thereon, in accordance with the requirements of the Bankruptcy
21 Rules. In the event that a Stock Termination Approval is obtained by the Plan Agent, or in the event
22 that no Merger Transaction is consummated by the Merger Consummation Date, the Plan Agent is
23 required to take all acts appropriate to wind up the affairs of the Reorganized Debtor.

24 **4. Terms of any Merger Transaction.**

25 The terms of any Merger Transaction and the terms of any Distribution of Post-
26 Effective Date Stock, including, without limitation, any “lock-up” agreements or other restrictions
27 on the disposition of the Post-Effective Date Stock, will be determined by the Plan Agent, subject to
28 the supervision of the Post-Effective Date Committee. The Plan Agent is required to obtain from the

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1 Bankruptcy Court approval of any such Merger Transaction, after giving to the Post-Effective Date
2 Notice Parties and other parties-in-interest notice and an opportunity to obtain a hearing thereon, in
3 accordance with the requirements of the Bankruptcy Rules.

4 **5. Valuation of Post-Effective Date Stock.**

5 Unless and until a Merger Transaction is effectuated, the Post-Effective Date Stock
6 will be deemed, for all purposes, to have no value of any nature whatsoever. In connection with
7 effectuating any Merger Transaction, the Plan Agent will request that the Bankruptcy Court enter an
8 order determining the value of the Post-Effective Date Stock that will be distributed to holders of
9 Allowed General Unsecured Claims pursuant to the Plan, after giving to the Post-Effective Date
10 Notice Parties and other parties-in-interest notice and an opportunity to obtain a hearing thereon, in
11 accordance with the requirements of the Bankruptcy Rules.

12 **6. Election Not to Receive Post-Effective Date Stock.**

13 Prior to the consummation of any Merger Transaction, a holder of an Allowed
14 General Unsecured Claim may provide to the Plan Proponents or to the Plan Agent, as applicable,
15 written notice of an election not to receive a Distribution of Post-Effective Date Stock. Such an
16 election will be effective, binding and irrevocable upon receipt by the Plan Proponents or the Plan
17 Agent, as applicable, of written notice of such an election. In the event that a holder of an Allowed
18 General Unsecured Claim makes such an election, any Distributions of Plan Fund Proceeds to which
19 such Creditor is entitled under the Plan on account of its Allowed General Unsecured Claim will not
20 be reduced in any manner based upon any value of the Post-Effective Date Stock that such Creditor
21 otherwise would receive under the Plan.

22 **S. Distributions.**

23 **1. Designation and Role of the Disbursing Agent.**

24 **a. Plan Agent to Serve as Disbursing Agent.**

25 The Plan Agent will serve as the Disbursing Agent under the Plan. The terms
26 of the employment of the Plan Agent, including the compensation of the Plan Agent as Disbursing
27 Agent under the Plan, will be disclosed in the Plan Agent Disclosure and will be approved by the
28 Bankruptcy Court pursuant to the Confirmation of the Plan.

1 such a setoff or recoupment nor the allowance of any Claim will constitute a waiver or release by the
2 Debtor, the Estate or the Plan Agent of any such account, claim, right, or cause of action that the
3 Debtor or the Estate may possess against the holder of such Allowed Claim. To the extent that the
4 Plan Agent in allowing a Claim fails to effect a setoff with a Creditor and seeks to collect a claim
5 from such Creditor after a Distribution to such Creditor pursuant to the Plan, the Plan Agent will be
6 entitled to full recovery on its claim against such Creditor, notwithstanding any payment of the
7 Creditor's Allowed Claim pursuant to the Plan.

8 **c. Timeliness of Distributions.**

9 Any Distribution required to be made on the Effective Date will be deemed
10 timely if made as soon as practicable after such date but, in any event, within fourteen (14) days after
11 such date. Any Distribution required to be made upon a Disputed Claim becoming an Allowed
12 Claim and no longer being a Disputed Claim will be deemed timely if made as soon as practicable
13 thereafter but, in any event, within fourteen (14) days thereafter.

14 **d. Limitation on Liability.**

15 Neither the Debtor, the Reorganized Debtor, the Committee, the Post-
16 Effective Date Committee, the Plan Agent, nor any of their respective Representatives will be liable
17 for (i) any acts or omissions (except for gross negligence or willful misconduct) in connection with
18 implementing the Distribution provisions of the Plan and the making or withholding of Distributions
19 pursuant to the Plan, or (ii) any change in the value of Distributions made pursuant to the Plan
20 resulting from any delays in making such Distributions in accordance with the terms of the Plan
21 (including, but not limited to, any delays caused by the resolution of Disputed Claims).

22 **e. Delivery of Distributions.**

23 (i) All Distributions under the Plan on account of an Allowed
24 Claim will be tendered only to the holder of such Allowed Claim, as set forth in
25 Section 7.2.6.2 of the Plan.

26 (ii) Except as provided in Section 7.2.8 of the Plan with respect to
27 Unclaimed Property, Distributions to holders of Allowed Claims and Allowed
28 Administrative Claims will be distributed by mail as follows: (1) with respect to each holder

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1 of an Allowed Claim that has filed a Proof of Claim, at the address for such Creditor
2 reflected in such Proof of Claim; (2) with respect to each holder of an Allowed Claim that
3 has not filed a Proof of Claim, at the address reflected in the Bankruptcy Schedules filed by
4 the Debtor; provided, however, that, if the Plan Agent receives a written notice of a change
5 of address for such Creditor, the address set forth in such notice will be used; or (3) with
6 respect to each holder of an Allowed Administrative Claim, at such address as the holder
7 thereof may specify in writing.

8 f. **Approval for Schedule of Proposed Distributions.**

9 In the discretion of the Plan Agent, the Plan Agent will be entitled to prepare a
10 preliminary schedule of proposed Distributions to Creditors (“Distribution Schedule”), and to apply,
11 on an expedited basis, for an order of the Bankruptcy Court approving the making of such
12 Distributions pursuant to the Distribution Schedule. Notice of any such application will be served on
13 the Post-Effective Date Notice Parties or as otherwise determined by the Bankruptcy Court.

14 g. **Further Assurances Regarding Distributions.**

15 In accordance with the provisions of Section 13.22 of the Plan, as a condition
16 to obtaining Distributions under the Plan, each Creditor must execute and deliver to the Plan Agent,
17 or join in the execution and delivery of, any agreement or instrument appropriate for the
18 consummation of the Plan.

19 h. **Creditor’s Payment of Obligations or Turn Over of Property to the**
20 **Plan Agent.**

21 As a condition to obtaining Distributions under the Plan, any Creditor from
22 which property is recoverable pursuant to a Final Order of the Bankruptcy Court under sections 542,
23 543, 550 or 553 of the Bankruptcy Code, or otherwise, or that is a transferee of a transfer avoidable
24 pursuant to a Final Order of the Bankruptcy Court under sections 522, 544, 545, 547, 548 or 549 of
25 the Bankruptcy Code or otherwise, must pay to the Plan Agent the amount, or turn over to the Plan
26 Agent any such property, for which such Creditor is liable to the Debtor.
27
28

1 **DEADLINE. THE PLAN AGENT WILL HAVE THE RIGHT TO OBJECT TO AMOUNTS**
2 **THAT HAVE BEEN SCHEDULED BY THE DEBTOR, OR THAT ARE REFLECTED IN**
3 **THE DEBTOR'S BOOKS AND RECORDS, AND WHICH ARE FOUND TO BE**
4 **OBJECTIONABLE IN ANY RESPECT.**

5 **4. Treatment of Disputed Claims.**

6 **a. No Distribution Pending Allowance.**

7 All Distributions under the Plan will be made only on account of Allowed
8 Claims. If any portion of a Claim is a Disputed Claim, no Distribution provided for under the Plan
9 will be made on account of such Claim unless and until such Claim becomes an Allowed Claim and
10 is no longer a Disputed Claim.

11 **b. Distribution After Allowance.**

12 Within fourteen (14) days following the date on which a Disputed Claim
13 becomes an Allowed Claim and is no longer a Disputed Claim, the Plan Agent, as Disbursing Agent
14 under the Plan, will distribute to the Creditor holding such Allowed Claim any Cash or other
15 property that would have been distributable to such Creditor as if, at the time of the making of any
16 Distribution to the Class of which such Creditor is a member, such Claim had been an Allowed
17 Claim and not a Disputed Claim. No interest will be paid on such Claim, except as provided in
18 Section 8.4.3 of the Plan.

19 **c. Reserve for Disputed Claims.**

20 On or as soon as practicable after the Effective Date, the Plan Agent, as
21 Disbursing Agent under the Plan, will establish, in a segregated, interest-bearing account, a reserve
22 for any Disputed Claim ("Disputed Claims Reserve") in an amount equal to 100% of the
23 Distribution to which the holder of the Disputed Claim would be entitled under the Plan based upon
24 the liquidated, face amount of its non-duplicative Disputed Claim unless such Claim is estimated by
25 Final Order of the Bankruptcy Court; provided, however, that the Plan Agent, as Disbursing Agent
26 under the Plan, will have the right to seek from the Bankruptcy Court an order reducing the amount
27 of such Reserve pending the resolution of the Disputed Claim. If the Disputed Claim does not set
28 forth a liquidated amount of such Claim, then the amount of the Reserve to be established on account

1 the Causes of Action, without the consent or approval of any third party, and without any further
2 order of the Bankruptcy Court.

3 **2. Plan Agent’s Evaluation of Causes of Action.**

4 The Plan Agent, under the supervision of the Post-Effective Date Committee, will
5 make the decision whether to prosecute or to continue to prosecute any Causes of Action. This
6 decision will be based, in part, upon the Plan Agent’s evaluation of the merits of the Causes of
7 Action as well as the costs required to prosecute such Causes of Action taking into account the
8 resources available to make Distributions to Creditors. The Plan Agent, under the supervision of
9 the Post-Effective Date Committee, will be entitled to determine, in the exercise of its business
10 judgment, not to prosecute, or to abandon, any Cause of Action.

11 **3. Retention of Professionals.**

12 The Plan Agent may retain Professionals to represent it in prosecution of Causes of
13 Action. The Plan Agent will determine the terms of the retention of Professionals, in the exercise of
14 its business judgment, and will be entitled to retain counsel on a contingency fee basis to prosecute
15 some or all of the Causes of Action, and may seek to finance any costs relating to the prosecution of
16 Causes of Action.

17 **4. Preservation of Causes of Action.**

18 Unless a Cause of Action is expressly waived, relinquished, released, compromised,
19 or settled in the Plan or in any Final Order, the Plan Proponents expressly reserve such Cause of
20 Action for later adjudication by the Plan Agent (including, without limitation, Causes of Action of
21 which the Plan Proponents presently may be unaware, or which may arise or exist by reason of facts
22 or circumstances unknown to the Plan Proponents at this time, or facts or circumstances which may
23 change or be different from those which the Plan Proponents now believe to exist) and, therefore,
24 no principle of law or equity, including, without limitation, the doctrines of res judicata, collateral
25 estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable, or otherwise), or
26 laches will apply to the Plan Agent’s prosecution of Causes of Action based on this Disclosure
27 Statement, the Plan, or the Confirmation Order. Without limiting the generality of the foregoing,
28 any entity with respect to which the Debtor has incurred an obligation (whether on account of

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1 unexpired lease has been assumed by the Debtor prior to the Confirmation Date pursuant to an order
2 of the Bankruptcy Court, such assumption will not be affected by the Plan. The assumption of any
3 contract or lease pursuant to the provisions of the Plan will be only to the extent that such assumed
4 contract or lease constitutes an executory contract or unexpired lease within the meaning of
5 section 365 of the Bankruptcy Code. Inclusion of an agreement in Exhibit "2" to the Plan does not
6 constitute an admission by the Plan Proponents that (a) such agreement is an executory contract or
7 unexpired lease within the meaning of section 365 of the Bankruptcy Code, (b) the Debtor must
8 assume such agreement in order to continue to receive or retain rights, benefits, or performance
9 thereunder or that any Claim under such agreement must be paid or any default thereunder must be
10 cured, or (c) such agreement is a valid contract or lease. Any contract or lease assumed pursuant to
11 the Plan will be assumed as previously amended or otherwise modified by the parties thereto,
12 whether before or after the Petition Date.

13 **2. Executory Contracts and Unexpired Leases Being Rejected.**

14 Effective as of, and conditioned on, the occurrence of the Effective Date, the Debtor
15 will reject under the Plan all of the executory contracts and unexpired leases of the Debtor not listed
16 on Exhibit "2" to the Plan, including, without limitation, those executory contracts and unexpired
17 leases listed on Exhibit "3" to the Plan. The Plan Proponents reserve the right to amend, through and
18 including the Confirmation Hearing Date, Exhibit "3" to the Plan to add thereto any executory
19 contract or unexpired lease, or to delete therefrom any executory contract or unexpired lease.
20 However, if any amendments are made to Exhibit "3" to the Plan less than thirty (30) days before the
21 Confirmation Hearing Date, the affected contract or lease parties will have fifteen (15) days from the
22 date of service of notice of such amendments within which to serve on the Plan Proponents a written
23 objection to the same. Upon receipt of any such objection, the Debtor will promptly set a hearing on
24 the same, and the rejection of the affected contract or unexpired lease will be delayed until the
25 Bankruptcy Court makes a determination on such issue (such determination may be made after the
26 Confirmation Date, without delaying the confirmation of the Plan). To the extent that an executory
27 contract or unexpired lease has been rejected by the Debtor prior to the Confirmation Date pursuant
28 to an order of the Bankruptcy Court, such rejection will not be affected by the Plan. The rejection of

1 served, the amount of the Creditor’s Cure Claim will be deemed forever to be the amount set forth in
 2 the Cure Claims Schedule, and any Cure Claim in excess of the amount set forth in the Cure Claims
 3 Schedule will be waived and will be forever barred in the Bankruptcy Case, without further notice.
 4 If the Plan Proponents cannot resolve any such objection with the Creditor, the Debtor may either
 5 (a) elect to reject the executory contract or unexpired lease at the Confirmation Hearing, or (b) have
 6 the Bankruptcy Court determine the merits of the objection on or after the Confirmation Hearing
 7 (without delaying the confirmation of the Plan). Any amount of a Cure Claim payable upon the
 8 assumption of an executory contract or unexpired lease will be due and payable on or before the
 9 fourteenth (14th) day after the entry of a Final Order fixing the amount of the Cure Claim and then
 10 only in the amount fixed by such Final Order.

11 **W. Post-Effective Date Notice.**

12 From and after the Effective Date, any entity that desires to obtain notice of any pleading or
 13 document filed in the Case, or of any hearing in the Bankruptcy Court, or of any matter as to which
 14 notice is to be provided under the Plan, must file a request for post-Effective Date notice and serve
 15 such request on the Plan Agent, the Post-Effective Date Committee, and any counsel for the Plan
 16 Agent; provided, however, that the United States Trustee, the Post-Effective Date Committee, the
 17 Reorganized Debtor and the Plan Agent each will be deemed to have requested such post-Effective
 18 Date notice.

19 **X. Miscellaneous Plan Provisions.**

20 Other provisions of the Plan, including provisions pertaining to the Plan Agent’s duty to file
 21 after the Effective Date reports regarding the status of implementation of the Plan, the Plan
 22 Proponents’ right to revoke the Plan prior to the Confirmation Date, the governing law relating to the
 23 Plan, the Bankruptcy Court’s retention of jurisdiction over the Case and the Plan after the Effective
 24 Date, and the Plan Proponents’ right to seek to modify the Plan are set forth in Article XIII of the
 25 Plan.
 26
 27
 28

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