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IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
POUGHKEEPSIE DIVISION

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In re:	**Chapter 11**
SPECTRAWATT, INC.,	**Case No. 11-37366-CGM**
Debtor.	

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FIRST AMENDED DISCLOSURE STATEMENT FOR THE DEBTOR'S PLAN OF LIQUIDATION UNDER CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE, AS REVISED

As Revised, Dated December 9, 2011

THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE COURT.

DISCLAIMER

[THIS DISCLOSURE STATEMENT HAS BEEN APPROVED BY ORDER OF THE COURT AS CONTAINING INFORMATION OF A KIND, AND IN SUFFICIENT DETAIL, TO ENABLE HOLDERS OF CLAIMS TO MAKE AN INFORMED JUDGMENT IN VOTING TO ACCEPT OR REJECT THE PLAN. APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT, HOWEVER, CONSTITUTE A DETERMINATION OR RECOMMENDATION BY THE BANKRUPTCY COURT AS TO THE FAIRNESS OR THE MERITS OF THE PLAN.

THIS DISCLOSURE STATEMENT CONTAINS A SUMMARY OF CERTAIN PROVISIONS OF THE PLAN, THE EXHIBITS ANNEXED TO THIS DISCLOSURE STATEMENT, AND CERTAIN FINANCIAL INFORMATION. ALTHOUGH THE DEBTOR BELIEVES THAT THESE SUMMARIES ARE FAIR AND ACCURATE AND PROVIDE ADEQUATE INFORMATION WITH RESPECT TO THE DOCUMENTS SUMMARIZED, SUCH SUMMARIES ARE QUALIFIED TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF, OR ARE INCONSISTENT WITH, SUCH DOCUMENTS. FURTHERMORE, ALTHOUGH THE DEBTOR HAS MADE EVERY EFFORT TO BE ACCURATE, THE FINANCIAL INFORMATION CONTAINED HEREIN HAS NOT BEEN THE SUBJECT OF AN AUDIT OR OTHER REVIEW BY AN ACCOUNTING FIRM. IN THE EVENT OF ANY CONFLICT, INCONSISTENCY, OR DISCREPANCY BETWEEN THE TERMS AND PROVISIONS IN THE PLAN, THIS DISCLOSURE STATEMENT, THE EXHIBITS ANNEXED TO THIS DISCLOSURE STATEMENT, OR THE FINANCIAL INFORMATION INCORPORATED HEREIN OR THEREIN BY REFERENCE, THE PLAN SHALL GOVERN FOR ALL PURPOSES. ALL HOLDERS OF CLAIMS SHOULD READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING ON THE PLAN.

THE STATEMENTS AND FINANCIAL INFORMATION CONTAINED HEREIN HAVE BEEN MADE AS OF THE DATE HEREOF UNLESS OTHERWISE SPECIFIED. HOLDERS OF CLAIMS AND INTERESTS REVIEWING THIS DISCLOSURE STATEMENT SHOULD NOT INFER AT THE TIME OF SUCH REVIEW THAT THERE HAVE BEEN NO CHANGES IN THE FACTS SET FORTH HEREIN, UNLESS SO SPECIFIED. ALTHOUGH THE DEBTOR HAS MADE AN EFFORT TO DISCLOSE WHERE CHANGES IN PRESENT CIRCUMSTANCES COULD REASONABLY BE EXPECTED TO AFFECT MATERIALLY THE RECOVERY UNDER THE PLAN, THIS DISCLOSURE STATEMENT IS QUALIFIED TO THE EXTENT CERTAIN EVENTS DO OCCUR.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND NOT IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER APPLICABLE NON-BANKRUPTCY LAW. PERSONS OR ENTITIES HOLDING OR TRADING IN OR OTHERWISE PURCHASING, SELLING, OR TRANSFERRING CLAIMS AGAINST THE DEBTOR SHOULD EVALUATE THIS DISCLOSURE STATEMENT IN LIGHT OF THE PURPOSE FOR WHICH IT WAS PREPARED.

IN ACCORDANCE WITH THE BANKRUPTCY CODE, THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE "SEC"), NOR HAS THE SEC PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN.]

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I. INTRODUCTION

A. Overview

SpectraWatt, Inc. (the "Debtor") hereby submits this First Amended Disclosure Statement for the Debtor's Plan of Liquidation Under Chapter 11 of the United States Bankruptcy Code, dated December 5, 2011.[1] This Disclosure Statement is to be used in connection with the solicitation of votes on the Plan. In the event of any inconsistency between this Disclosure Statement and the Plan, the terms of the Plan shall govern and such inconsistency shall be resolved in favor of the Plan.

The purpose of this Disclosure Statement is to enable Creditors whose Claims are Impaired under the Plan to make an informed decision in exercising their right to accept or reject the Plan. By order dated December [__], 2011 (the "Disclosure Statement Approval Order"), a copy of which is attached hereto as Exhibit E, the United States Bankruptcy Court for the Southern District of New York, Poughkeepsie Division has found that this Disclosure Statement provides adequate information to enable holders of Claims that are Impaired under the Plan to make an informed judgment in exercising their right to vote for acceptance or rejection of the Plan.

B. Summary of the Plan

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under chapter 11, a debtor is authorized to reorganize its business for the benefit of its creditors and shareholders. Chapter 11 also allows a debtor to formulate and consummate a plan of liquidation. A plan of liquidation sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan of liquidation by a bankruptcy court makes the plan binding upon the debtor and any creditor of or interest holder in the debtor, whether or not such creditor or interest holder (i) is impaired under or has accepted the plan or (ii) receives or retains any property under the plan.

The purpose of the Debtor's Plan is to distribute the Debtor's assets to holders of Allowed Claims. In order to maximize recoveries for general unsecured trade creditors of the Debtor, the Plan incorporates an agreement between the Debtor and the Series A-1 Noteholders, who are the holders of the Debtor's pre-petition secured convertible notes. Pursuant to such agreement, the Series A-1 Noteholders have permitted the Debtor to reserve certain proceeds from the Debtor's sale of substantially all of its physical assets, as approved by the Bankruptcy Court on October 7, 2011, and to use those proceeds to satisfy certain claims, as provided in the Plan and as explained in more detail below. Further, the Series A-1 Noteholders have agreed that if the class of general unsecured trade creditors vote in favor of the Plan, the Series A-1 Noteholders will provide a recovery to holders of Allowed General Unsecured Trade Claims equal to the percentage recovery that the Series A-1 Noteholders have received on account of their Secured Claims. Such recovery is estimated to be approximately 12%. The Series A-1 Noteholders have further agreed that if the class of general unsecured trade creditors, which includes the SUMCO Unsecured Claim (Class 6), votes in favor of the Plan, the Series A-1

[1] Capitalized terms not defined herein shall have the meanings ascribed to them in Article I of the Plan.

Noteholders will waive their substantial deficiency claims, and the Debtor has agreed to waive its right to pursue (or transfer to the Liquidating Trust) any Avoidance Actions in that event. Additionally, the Series A-1 Noteholders have agreed to fund a wind-down reserve in an amount not less than $50,000.00 in order fund the costs of winding down the Debtor's estate.

The Plan contemplates the transfer of all of the Debtor's assets into a Liquidating Trust for distribution to holders of Allowed Claims by the Liquidating Trustee. The Liquidating Trustee will be tasked with the winding down of the Debtor's Estate and the resolution of the outstanding Claims against the Debtor pursuant to sections 1129(a) and 1123 of the Bankruptcy Code.

UPON THE EFFECTIVE DATE, ALL ASSETS OF THE DEBTOR WILL BE TRANSFERRED TO A LIQUIDATING TRUST, AND THE LIQUIDATING TRUSTEE WILL BE VESTED WITH THE SOLE AUTHORITY TO, AMONG OTHER THINGS, REVIEW, INITIATE, AND/OR PURSUE ANY AND ALL CAUSES OF ACTION (INCLUDING AVOIDANCE ACTIONS, TO THE EXTENT RETAINED UNDER THE PLAN), FILE CLAIM OBJECTIONS, AND SET RESERVES, AND THE DEBTOR WILL HAVE NO RESPONSIBILITY TO REVIEW, INITIATE, AND/OR PURSUE ANY AND ALL CAUSES OF ACTION (INCLUDING AVOIDANCE ACTIONS). THE LIQUIDATING TRUST, WHICH WILL BE ADMINISTERED BY THE LIQUIDATING TRUSTEE, WILL SERVE PRIMARILY AS THE VEHICLE FOR MAKING THE DISTRIBUTIONS PROVIDED BY THE PLAN.

The Plan provides for the payment in full of Allowed Administrative Expense Claims and Allowed Priority Tax Claims. The Trust Assets will be utilized by the Liquidating Trustee, in his or her sole discretion, to review, initiate, and/or pursue Causes of Action (including Avoidance Actions, to the extent retained under the Plan). To the extent that there is Cash remaining in the Liquidating Trust after the payment of fees and costs associated with the Liquidating Trustee's review, initiation, and/or pursuit of Causes of Action (including Avoidance Actions), the remaining Cash will be distributed by the Liquidating Trustee pursuant to the Plan. **THE DEBTOR BELIEVES THAT UNSECURED TRADE CREDITORS' DISTRIBUTIONS UNDER THE PLAN LIKELY WILL BE LIMITED TO THE RECOVERY PROVIDED BY THE SERIES A-1 NOTEHOLDERS (WHICH AMOUNT WILL ONLY BE PAID IF THE CLASS OF UNSECURED TRADE CREDITORS ACCEPTS THE PLAN) AND ANY REMAINING CASH IN THE DEBTOR'S ESTATE, FOLLOWING THE PAYMENT OF APPLICABLE EXPENSES.**

The Debtor believes that any alternative to confirmation of the Plan, such as conversion to a Chapter 7 case under the Bankruptcy Code or attempts by another party in interest to file a plan, would result in significant delays, litigation, costs, and/or impaired recoveries. Moreover, the Debtor believes that holders of Allowed Claims will receive greater and earlier recoveries under the Plan than those that would be achieved pursuant to a converted Chapter 7 case or under an alternative plan. **FOR THESE REASONS THE DEBTOR URGES YOU TO RETURN YOUR BALLOT "ACCEPTING" THE PLAN.**

The Plan classifies all Claims and Interests of the Debtor into eight (8) separate Classes and three (3) unclassified groups of Claims. The following table summarizes the classification

and treatment afforded under the Plan as further described in Article IV of the Disclosure Statement.[2]

Class	Designation	Impairment	Entitled to Vote
1.	Allowed Series A-1 Noteholder Secured Claims	Impaired	Yes
2.	Allowed Crystalox Secured Claim	Impaired	Yes
3.	Allowed SUMCO Secured Claim	Impaired	Yes
4.	Allowed Other Secured Claims	Unimpaired	No
5.	Allowed Priority Non-Tax Claims	Unimpaired	No
6.	Allowed General Unsecured Trade Claims	Impaired	Yes
7.	Allowed Series A-1 Noteholder Deficiency Claims	Impaired	Yes
8.	Allowed Interests	Impaired	No

The Plan treats Classes 1-3 and 6-7 as Impaired and votes will be solicited from holders of Claims in these Classes. Votes will not be solicited from holders of Claims in Classes 4-5, pursuant to Bankruptcy Code section 1126(f), or from holders of Interests in Class 8, pursuant to Bankruptcy Code section 1126(g).

Pursuant to section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims are not classified for purposes of voting on, or receiving Distributions under, the Plan. Holders of such Claims are not entitled to vote on the Plan. A more complete description of the treatment of Administrative Expense Claims and Priority Tax Claims is provided in Article IV of the Plan.

C. Voting and Confirmation Procedures

Accompanying this Disclosure Statement are copies of the following documents: (1) the Plan; (2) the Disclosure Statement exhibits, including a Liquidation Analysis; (3) the Disclosure Statement Approval Order; and (4) for creditors in Classes 1-3 and 6-7, a Ballot for voting to accept or reject the Plan.

If you did not receive a Ballot in your Solicitation Materials and believe that you should have, please contact:

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[2] This summary contains only a brief description of the classification and treatment of Claims and Interests under the Plan. It does not describe every provision of the Plan. Accordingly, reference should be made to the entire Disclosure Statement (including exhibits) and the entire Plan for a complete description of the classification and treatment of Claims and Interests.

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Attn: Toni Silva

1. Who May Vote

Pursuant to the provisions of the Bankruptcy Code, only Classes of Claims or Interests that are "impaired" and that are not deemed as a matter of law to have rejected a plan of reorganization under Section 1126(g) of the Bankruptcy Code are entitled to vote to accept or reject the Plan. Any class that is "unimpaired" is not entitled to vote to accept or reject a plan of reorganization and is conclusively presumed to have accepted the Plan. As set forth in Section 1124 of the Bankruptcy Code, a class is "impaired" if legal, equitable, or contractual rights attaching to the claims or equity interests of that class are modified or altered. Holders of Interests (Class 8) will not receive or retain any property under the Plan on account of such Interests and are, therefore, deemed to reject the Plan and are not entitled to vote.

A Claim must be "Allowed" for purposes of voting in order for the holder of such Claim to have the right to vote. Generally, for voting purposes a Claim is deemed "Allowed" absent an objection to the Claim if (i) a proof of claim was timely filed before the Bar Date, or (ii) if no proof of claim was filed, the Claim is identified in the Debtor's Schedules as other than "disputed," "contingent," or "unliquidated," and an amount of the Claim (greater than zero) is specified in the Schedules, in which case the Claim will be deemed Allowed for the specified amount. In either case, when an objection to a Claim is filed, the creditor holding the Claim cannot vote unless the Bankruptcy Court, after notice and hearing, either overrules the objection, or allows the Claim for voting purposes. Accordingly, if you did not receive a Ballot and believe that you are entitled to vote on the Plan, you must file a motion pursuant to Bankruptcy Rule 3018 with the Bankruptcy Court for the temporary allowance of your Claim for voting purposes by [MONTH], [DAY], 201[_], at 4:00 p.m. prevailing Eastern Time, or you will not be entitled to vote to accept or reject the Plan.

THE DEBTOR AND THE LIQUIDATING TRUSTEE RESERVE THE RIGHT THROUGH THE CLAIM OBJECTION PROCESS TO OBJECT TO OR SEEK TO DISALLOW ANY CLAIM FOR DISTRIBUTION PURPOSES UNDER THE PLAN.

2. Voting Instructions

All votes to accept or reject the Plan must be cast by using the Ballot enclosed with this Disclosure Statement. No votes other than ones using such Ballots will be counted, except to the extent the Court orders otherwise. The Court has fixed December 6, 2011 (the "Voting Record Date"), as the date for the determination of the holders of Claims who are entitled to (a) receive a copy of this Disclosure Statement and all of the related materials and (b) vote to accept or reject the Plan. After carefully reviewing the Plan and this Disclosure Statement, including the annexed exhibits, please indicate your acceptance or rejection of the Plan on the Ballot and return such Ballot in the enclosed envelope to:

KING & SPALDING LLP
1100 Louisiana, Suite 4000
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Facsimile: (713) 751-3290
Attn: Toni Silva

BALLOTS MUST BE COMPLETED *AND RECEIVED* NO LATER THAN 4:00 P.M. (PREVAILING EASTERN TIME) ON JANUARY 18, 2012 (THE "VOTING DEADLINE"). ANY BALLOT THAT IS NOT EXECUTED BY A DULY AUTHORIZED PERSON WILL NOT BE COUNTED. ANY BALLOT THAT IS EXECUTED BY THE HOLDER OF AN ALLOWED CLAIM BUT THAT DOES NOT INDICATE AN ACCEPTANCE OR REJECTION OF THE PLAN WILL BE DEEMED TO BE AN ACCEPTANCE. EXCEPT AS AGREED TO BY THE DEBTOR, ANY BALLOT THAT IS EMAILED WILL NOT BE COUNTED IN THE VOTING TO ACCEPT OR REJECT THE PLAN.

If you have any questions about the procedure for voting your Claim or the packet of materials you received, please contact the office of the Debtor's legal counsel, as listed above. If you wish to obtain additional copies of the Plan, this Disclosure Statement, or the exhibits to those documents, at your own expense, unless otherwise specifically required by Bankruptcy Rule 3017(d), please contact the office of the Debtor's legal counsel, as listed above. Copies of these documents may also be obtained on PACER.

3. Acceptance or Rejection of the Plan

The Bankruptcy Code requires, as a condition to confirmation of a plan, that each class of Claims against, or equity Interests in, the Debtor that is impaired under a proposed plan vote to accept such plan. The Bankruptcy Code defines "acceptance" of a plan by a class of Claims as acceptance by holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims in that class that cast ballots for acceptance or rejection of the plan.

The Debtor will seek to confirm the Plan under Section 1129(b) of the Bankruptcy Code due to the deemed rejection of the Plan by Class 8 Interests. Section 1129(b) of the Bankruptcy Code permits the confirmation of a plan notwithstanding the rejection of the plan by one or more impaired classes of Claims or Interests. Under that Bankruptcy Code section, a plan may be confirmed if (a) the plan has been accepted by at least one impaired class of Claims and (b) the Bankruptcy Court determines that the plan does not discriminate unfairly and is "fair and equitable" with respect to the non-accepting classes.

4. Confirmation Hearing

Section 1128(a) of the Bankruptcy Code requires the Court, after notice, to hold a Confirmation Hearing. Section 1128(b) of the Bankruptcy Code provides that any party-in-interest may object to confirmation of the Plan. Pursuant to Section 1128 of the Bankruptcy Code and Rule 3017(c) of the Bankruptcy Rules, the Court has scheduled the Confirmation

Hearing to commence on January 25, 2012 at 10:00 a.m. (prevailing Eastern Time), or as soon thereafter as counsel may be heard, before the Honorable Cecelia G. Morris, United States Bankruptcy Judge, United States Bankruptcy Court, 355 Main Street, Poughkeepsie, New York 12601. A notice setting forth the time and date of the Confirmation Hearing has been included along with this Disclosure Statement. The Confirmation Hearing may be adjourned from time to time by the Court without further notice, except for an announcement of such adjourned hearing date by the Court in open court at such hearing.

5. Objections to Confirmation

Any objection to confirmation of the Plan must be in writing, must comply with the Bankruptcy Code, Bankruptcy Rules and the Local Bankruptcy Rules, and must be filed with the United States Bankruptcy Court, 355 Main Street, Poughkeepsie, New York 12601 and served upon the following parties, so as to be received no later than January 18, 2012, at 4:00 p.m. (prevailing Eastern Time): (i) King & Spalding LLP, counsel for the Debtor, 1100 Louisiana Street, Suite 4000, Houston, Texas 77002; Attn: Mark W. Wege, and 1185 Avenue of the Americas New York, New York 10036; Attn: Scott Davidson; (ii) the Office of the United States Trustee, 74 Chapel Street, Suite 200, Albany, NY 12207; Attn: Eric J. Small; and (iii) Lowenstein Sandler PC, counsel for the Series A-1 Noteholder Agent, 65 Livingston Avenue, Roseland, New Jersey 07068, Attn: Sharon L. Levine.

II. GENERAL INFORMATION ABOUT THE DEBTOR AND THE BANKRUPTCY CASE

A. Formation, Business and Capital Structure

The Debtor was a developer and manufacturer of advanced crystalline silicon cells used in the generation of solar electricity. The Debtor was formed in June 2008 with certain intellectual property and other assets acquired from Intel Corporation, together with a $50 million capital contribution from certain investors. The Debtor developed, manufactured and distributed silicon solar cells for use in solar modules. The Debtor also engaged in substantial research and development in the solar cell field. The Debtor's goal was to improve upon current solar cell technology and enable solar-generated electricity to compete, on an unsubsidized basis, with conventional sources of electricity.

In 2009, the Debtor relocated its corporate headquarters from Hillsboro, Oregon to Hopewell Junction, New York to take advantage of incentives provided by the New York State Energy Research and Development Authority and to access the region's large skilled workforce. The Debtor leased facilities at IBM's Hudson Valley Research Park, 2070 Route 52, Bldg 334 Zip 23A, Hopewell Junction, New York 12533 (the "New York Facility"), where the Debtor constructed a state-of-the-art manufacturing facility seeking full-scale production capacity of over two hundred (200) megawatts of production per year.[3] The Debtor began operating the New York Facility in January 2010 at an initial capacity of thirty (30) megawatts per year.

[3] Production of solar cells is measured in megawatts per year. Two hundred (200) megawatts per year is equivalent to approximately fifty million (50,000,000) wafers.

At the time that the Debtor was spun-off by Intel in 2008, the Debtor raised $50 million from the issuance of "Series A" preferred stock (the "Series A Shares") to certain investors including Solon AG, Intel Corporation, Intel Capital Corporation, CalPERS Clean Energy & Technology Fund, LLC f/k/a PCG Clean Energy & Technology Fund, LLC; PCG Clean Energy & Technology Fund (East) LLC, and Cogentrix Energy, LLC (collectively, the "Investors").[4] These funds were used for a variety of purposes, including to finance working capital needs, to obtain a lease and commence the initial construction of the New York Facility, and to develop the Debtor's intellectual property. In addition to preferred stock, the Debtor has also issued shares of common stock and options as employee incentives.

Pursuant to a Loan and Security Agreement dated December 21, 2009 (the "Loan Agreement"), the Debtor also issued senior secured convertible notes with a five-year maturity (the "Series A-1 Notes"). The holders of the Series A-1 Notes include: (a) certain of the original Investors or their affiliates (PCG Clean Energy & Technology Fund, LLC, and PCG Clean Energy & Technology Fund (East), Cogentrix Energy, LLC, and Middlefield Ventures, Inc., who is an affiliate of original Investor Intel Corporation); (b) Roth & Rau; and (c) Crystalox, through an escrow agent. The Loan Agreement provided for the Debtor to issue up to $41.4 million in Series A-1 Notes to the Series A-1 Noteholders in the proportions, and on the terms, stated therein. As of the Petition Date, the Debtor had issued $36.7 million (principal amount) of Series A-1 Notes.

B. Events Leading to the Commencement of the Chapter 11 Case

1. Vendor Disputes and Related Issues

Due primarily to defects in certain vendor-supplied silicon wafers that were a key component of its products, and due to delays over installation of certain equipment, the quality of the Debtor's finished products failed to meet purchaser specifications and the Debtor did not timely advance to its end user market. As a result, the Debtor was forced to sell a large quantity of its finished products at reduced prices and, accordingly, the Debtor suffered from lost revenues and increased expenses. The Debtor's inability to produce finished products at the required specifications also led to customer defections. Ultimately, the Debtor was able to resolve some of these problems, but the financial difficulties caused by these problems contributed to the Debtor's inability to obtain additional financing in late 2010 (which would have allowed the Debtor to continue production), and precluded it from obtaining a strategic equity partner.

Although the Debtor was able to resolve certain vendor disputes during its Bankruptcy Case, the Debtor has not been able to resolve its disputes with SUMCO, who was a supplier of silicon wafers. The Debtor's claims against SUMCO are based on a deposit that the Debtor made to SUMCO in the amount of $4,509,200 to secure payment under a pre-petition wafer supply contract. The has retained special litigation counsel to initiate a lawsuit against SUMCO based on the deposit and the pre-petition contract and the Court has approved such retention. Notwithstanding anything to the contrary in the Plan, the Debtor intends to preserve any and all

[4] $44.6 million in cash was raised from the issuance of the Series A Shares, and the remaining portion of the capital raised from the issuance of the Series A Shares was in the form of non-cash assets.

claims against SUMCO and to transfer such claims to the Liquidating Trust for the benefit of creditors.

2. Deterioration of the Solar Energy Market

The solar energy market, which includes the market for silicon solar cells like those manufactured by the Debtor, has recently faced substantial deterioration. The market is highly competitive worldwide and United States based manufacturers are under a great deal of stress because of the emergence of manufacturers in China and elsewhere, who receive considerable government and financial support. This support, coupled with inexpensive production costs, has created a competitive advantage for foreign manufacturers and allowed them to become price leaders within the industry. Recently, a group of solar cell manufacturers has initiated a complaint with the ITC over alleged "dumping" by Chinese producers.

Moreover, overcapacity in the industry and world-wide reductions in state-sponsored subsidies for solar installation, particularly in Europe, have created downward pressure on prices. The unwillingness of the United States to adopt significant subsidies for clean energy use has only made matters worse. While demand for solar cells is expected to increase in the future, the Debtor expects that significant capacity expansions in low cost manufacturing regions, like China, combined with potential adverse changes in government subsidies will result in continuing pressure on solar cell prices.

The negative market conditions described above are exemplified by recent Chapter 11 filings by Evergreen Solar Inc., Solyndra LLC ("Solyndra") and others. Evergreen is involved in the development and manufacture of silicon wafers, solar cells and panels. In its bankruptcy filings, Evergreen cited increased foreign competition, financing issues, and the need to sell manufacturing plants as the primary reasons for its filing. The Solyndra case, a highly publicized one, involved a different technology than the Debtor and also involved substantial federal loan guarantees. The Debtor received only the sum of $350,000 in total federal grant funding, based on certain milestones and other contractual obligations.

3. Pre-Petition Wind Down of the Debtor's Business and Marketing of Assets

Since late 2010, the Debtor has attempted to wind down the company by simultaneously shuttering its operations, settling claims, and marketing its assets for sale. Based on the problems described above, the Debtor announced in late December 2010 that it would close its manufacturing facilities. By the end of March 2011, the Debtor had completed the shutdown of its manufacturing facilities and laid off all of its workforce in New York and Oregon. The Debtor subsequently closed its remaining Oregon operations and has liquidated its physical assets in Oregon. Following the termination of its employees, the Debtor rehired six (6) of its previous employees, giving them additional responsibilities.[5] Although the Debtor had ceased its manufacturing activities, the Debtor continued to fill orders for its completed product inventory, leaving virtually no remaining finished goods inventory as of the Petition Date, and all inventory has now been sold, returned or disposed of.

[5] As of the Petition Date, the Debtor had five (5) employees.

The Debtor began efforts in early 2011 to resolve claims with its creditors and contract counterparties. As part of this process, the Debtor negotiated with nearly all of its creditors and successfully resolved a large number of claims. The Debtor also resolved disputes with one of its landlords in Oregon and also with various service providers, and has eliminated multiple contractual obligations. In particular, the Debtor took substantial steps pre-petition to resolve a dispute with its primary production equipment vendor, Roth & Rau, which ultimately resulted in a settlement approved by the Bankruptcy Court (described below).

The Debtor settled claims with all but a handful of unsecured creditors, providing a reasonable recovery to those creditors while substantially limiting the universe of creditors in this case and eliminating substantial contract rejection damage claims. The Debtor had negotiations with all remaining creditors as well, but could not reach agreeable pre-petition resolutions with a portion of such creditors (including those described in the next paragraph). Further, on several occasions, first in early 2011 and again in the months leading up to the Petition Date, the Debtor also paid all unsecured creditors who were owed less than $5,000.

Notwithstanding the Debtor's success in resolving claims, the Debtor was unable to resolve claims with a few key creditors, including its lessor, IBM, and a large contract vendor.[6] Thus, pre-petition, the Debtor was unable to reach a complete resolution with all of its primary creditors, which made an asset sale impossible outside of bankruptcy court. With the solar market deteriorating, and unable to reach resolutions with all parties, the Debtor had no choice but to file its Chapter 11 petition in order to realize any value for creditors.[7]

Another component of the Debtor's wind down strategy was to carefully scrutinize the Debtor's business and explore strategic alternatives. After evaluating its strategic alternatives, the Debtor concluded that its best alternative was to market the business for sale as a going-concern. The Debtor further concluded that a sale of the business as a going-concern would permit the Debtor to monetize its assets for distribution to creditors at the maximum attainable value and would permit the business to be owned and operated by a new owner that was better capitalized than the Debtor and had a better chance of succeeding in the increasingly competitive marketplace. The Debtor determined that such a sale would yield significant benefits to the Debtor's creditors, employees, vendors, suppliers, customers and other stakeholders.

Needham & Co. ("Needham"), who the Debtor had initially retained as an investment banker to pursue additional financing, was tapped to lead its marketing efforts. Although Needham contacted more than fifty (50) potential purchasers, Needham was unable to produce a purchaser. Thereafter, a number of preliminary proposals were made to the Debtor directly by potential buyers. The Debtor evaluated the terms and conditions of these proposals (including the consideration offered) and evaluated the financial capabilities of the submitting parties to identify the strongest offers. The Debtor's management entered into negotiations with several potential strategic buyers in an effort to obtain a signed, detailed term sheet proposal that could serve as the basis for a stalking horse transaction in an auction process.

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[6] Settlements, following the Petition Date, were reached with both parties and are described subsequently herein.

[7] As described below, after the Petition Date, the Debtor has been able to resolve claims and reach settlements with nearly all of these key parties.

Following the submission of more detailed bids, the Debtor had advanced discussions with a number of interested parties regarding the terms and conditions pursuant to which such interested parties would be willing to pursue a going-concern acquisition of substantially all of the Debtor's assets. Given the current state of the solar cell manufacturing market, the interested parties which showed serious interest in acquiring the Debtor's assets were primarily companies based outside of the United States.

Following discussions with these foreign companies, the Debtor and its legal advisor determined that most of the potential foreign buyers are either reluctant or unwilling to serve as a stalking horse purchaser in the Debtor's bankruptcy case due to their unfamiliarity, or lack of comfort, with the typical stalking horse process used in Section 363 sales in the United States. In fact, the Debtor was not able to proceed to a formal term sheet with any potential stalking horse buyer, despite substantial interest by a number of parties in the Debtor's assets.

The Debtor believed that it was crucial to proceed with a sale process immediately upon commencing the Bankruptcy Case due to the serious financial distress that has been experienced by other solar energy component manufacturers. This mounting distress was exemplified by the Chapter 11 filing of Evergreen Solar and Solyndra. The Debtor believed that, within 3-6 months from the Petition Date, there was a high likelihood that a significant amount of used solar cell manufacturing equipment and related assets would flood the market and drive down the value of the Debtor's Assets. The Debtor's view proved correct, as evidenced by the recent spate of sales proposed by several bankrupt solar cell producers. Additionally, maintaining the Debtor's operations, including the retention of remaining key employees, a large underutilized facility, and substantial other costs (the so-called "burn rate" of the Debtor), would have depleted the remaining financial resources of the Debtor.

III. SIGNIFICANT EVENTS DURING THE CHAPTER 11 CASE

A. Filing and First Day Pleadings

1. Commencement of the Chapter 11 Case

On August 19, 2011 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court under case number 11-37366. The Debtor also filed its Schedules A-G (Doc. No. 2) on the Petition Date, and on August 24, 2011, the Debtor filed its Statement of Financial Affairs (Doc. No. 27).

2. First Day Orders

On the Petition Date, the Debtor filed certain "first day" motions and applications with the Bankruptcy Court seeking certain relief to aid in the efficient administration of its case and to facilitate the Debtor's transition to debtor-in-possession status. The Bankruptcy Court held an interim hearing on certain of these motions on August 25, 2011, and final hearings on those motions and the other first day motions on September 19, 2011. Among other things, the Bankruptcy Court entered orders which:

- authorized the Debtor to operate its cash management system during the Chapter 11 case in substantially the same manner as it was operated prior to the commencement of the Chapter 11 case (Doc. Nos. 34, 64)

- authorized payment of certain prepetition employee salaries, wages, and benefits and ensured that payroll and benefits to employees during the Chapter 11 case would not be disrupted (Doc. No. 36); and

- approved bidding procedures to be used in connection with the Debtor's Auction and Sale of its assets and scheduled the Auction (Doc. Nos. 35, 65)

B. Use of Cash Collateral

As part of the "first day" motions, the Debtor filed a motion seeking authorization to use cash collateral. The Debtor and the Series A-1 Noteholders, through the Series A-1 Noteholder Agent, reached an agreement, which the Court approved on an interim basis on August 29, 2011, permitting the Debtor to use cash collateral. On September 20, 2011, the Court entered the Final Cash Collateral Order, permitting the Debtor to use cash collateral on a permanent basis pursuant to agreement with the Series A-1 Noteholders.

C. Retention of Debtor's Professionals

During this Chapter 11 Case, the Court has authorized the Debtor to retain certain professionals. On the Petition Date, the Debtor filed applications to retain: (i) King & Spalding LLP ("K&S") as its bankruptcy counsel; (ii) McCabe & Mack LLP as local counsel; (ii) Brad Walker as Chief Restructuring Officer and Chief Executive Officer; and (iii) the Sales Agent as the party responsible for the marketing of the Debtor's assets and for sale and for conducting the Auction. No objections to the foregoing retention applications were filed by any parties, and the Court approved the retentions on September 20, 2011.

In addition, the Debtor was authorized to retain certain attorneys in the ordinary course of its business to provide services relating to certain litigation, pursuant to order of the Court dated September 20, 2011.

D. Settlements With Certain Parties

1. Settlement with Roth & Rau

On September 7, 2011 the Debtor entered into a settlement agreement with Roth & Rau, who was the supplier of the capital equipment that comprised the Debtor's solar cell production line. The settlement agreement resolved substantial disputes between the Debtor and Roth & Rau regarding Roth & Rau's performance under a purchase agreement contract and the Debtor's payment of its obligations under that contract.

The settlement agreement provided, among other things, that Roth & Rau would waive its claims to a purchase money security interest in the equipment provided (which equipment was a key component of the Debtor's Auction) and Roth & Rau would receive new Series A-1 Notes in an amount sufficient to increase Roth & Rau's existing noteholdings from approximately 27%

to a total of 32% of the total principal amount of Series A-1 Notes issued and outstanding. Roth & Rau also agreed to support the Debtor's sale of assets and to consent to the Debtor's use of cash collateral on reasonable terms. The settlement agreement further provided for releases by and between the Debtor and Roth Rau, along with releases between Roth & Rau and other parties, including the other Series A-1 Noteholders. On September 20, 2011, the Bankruptcy Court entered an order, without objection, approving the Roth & Rau settlement agreement.

2. Settlement with IBM

On September 29, 2011, the Debtor filed a motion to approve a settlement with IBM, whose facilities the Debtor leased at IBM's Hudson Valley Research Park, 2070 Route 52, Bldg 334 Zip 23A, Hopewell Junction, New York 12533, pursuant to a Real Estate Lease Agreement dated April 2, 2009. As the tenant under the Lease, the Debtor was required to pay monthly rent in the amount of approximately $95,000, in addition to payment for the use of certain utilities. The Purchaser of the Debtor's assets at the Auction did not request the assumption and assignment of the IBM lease and following the wind-down of its business, the Debtor no longer required use of the premises after November 2011.

In recognition of the fact that neither the Debtor or the Purchaser would require the leased premises, and in an effort to resolve the claims of IBM related to lease rejection and pre- and post-petition rent and utilities claims, the Debtor and IBM agreed to a comprehensive settlement. The settlement provided that IBM would waive (i) any pre-petition claims against the Debtor; (ii) post-petition claims for October 2011 and November 2011 rent; (iii) all post-petition claims for utilities; and (iv) any lease rejection claim. IBM also agreed to permit the Debtor to use and occupy the leased premises until the end of November 2011. In exchange, the Debtor agreed to provide IBM with certain office furniture and equipment and permitted IBM to retain a security deposit in the amount of $275,000. The Bankruptcy Court entered an order, without objection, approving the IBM settlement on October 7, 2011.

3. Settlement with Crystalox

In October, 2011, the Debtor entered into a settlement agreement with Crystalox, who was a supplier of silicon wafers used in the Debtor's production operations. The settlement agreement resolved the claim of Crystalox that the Debtor scheduled as disputed (with an alleged trade claim in the amount of $1,124,900). The settlement agreement also terminated an escrow account that had been established in order to secure payments by the Debtor to Crystalox. The Debtor had initially deposited $8,850,000 in cash into the escrow account pursuant to its agreement with Crystalox. Thereafter, the parties agreed that $2,400,000 from the escrow account would be transferred to Crystalox as a prepayment for goods to be provided to the Debtor and that the remainder from the escrow account (approximately $6,400,000) would be used to purchase Series A-1 Notes.

Under the settlement agreement, the Series A-1 Notes held in the escrow account shall be cancelled and Crystalox will be permitted to retain the $2,400,000 prepayment in full and final satisfaction of its claims against the Debtor, including rejection damage claims. The parties further agreed to mutual releases, and Crystalox and the Series A-1 Noteholders also agreed to release each other. The Debtor submitted a Rule 9019 motion for approval of such settlement on

November 8, 2011. The court indicated its approval of the motion at the hearing on December 6, 2011.

E. United States Trustee

The U.S. Trustee (the "UST") has assigned Eric Small to oversee this Chapter 11 Case. The UST has been active and involved in the case and has entered into negotiations with the Debtor over many of its filings.

F. Rejection and Assumption of Executory Contracts and Unexpired Leases

The Debtor has reviewed its executory contracts and unexpired leases to determine whether those contracts remain beneficial to the Debtor during the wind down process or whether the Purchaser was interested in taking assignment of certain contracts or leases. As a result of this analysis, the Debtor sought and obtained approval from the Bankruptcy Court to reject certain of its executory contracts and unexpired leases. The Debtor rejected a real estate lease in Oregon that was no longer needed after the Debtor closed its Oregon operations, a silicon wafer supply agreement, [and hardware and software leases that were no longer necessary] after the Debtor discontinued its manufacturing operations. The Debtor estimates that the rejection damages arising from these previously rejected contracts to be minimal.[8]

No executory contracts or unexpired leases were assumed in connection with the Debtor's Auction Sale. The Plan contemplates that any remaining executory contracts and unexpired leases will be rejected as of the Effective Date, as follows:

TO THE EXTENT THERE ARE ANY CONTRACTS AND LEASES REMAINING IN THE DEBTOR'S ESTATE THAT HAVE NOT BEEN (I) PREVIOUSLY REJECTED OR (II) THE SUBJECT OF A PENDING MOTION TO ASSUME AND ASSIGN AS OF THE CONFIRMATION DATE, SUCH CONTRACTS AND LEASES SHALL BE REJECTED UNDER THE PLAN. PROOFS OF CLAIM FOR DAMAGES ALLEGEDLY ARISING FROM THE REJECTION PURSUANT TO THE PLAN OF ANY EXECUTORY CONTRACT OR UNEXPIRED LEASE TO WHICH A CLAIMANT IS A PARTY MUST BE FILED WITH THE BANKRUPTCY COURT AND SERVED ON THE DEBTOR AND THE LIQUIDATING TRUST NOT LATER THAN THIRTY (30) DAYS AFTER THE EFFECTIVE DATE. ALL PROOFS OF CLAIM FOR SUCH DAMAGES NOT TIMELY FILED AND PROPERLY SERVED AS SET FORTH HEREIN SHALL BE FOREVER BARRED AND DISCHARGED AND THE HOLDER OF SUCH A CLAIM SHALL NOT BE ENTITLED TO PARTICIPATE IN ANY DISTRIBUTION UNDER THE PLAN.

G. The Marketing Process, Auction, and Sale Order

The Debtor's pre-petition marketing efforts are detailed above in section III(B)(3). In accordance with this Court's Final Order Granting Debtor's Motion Pursuant to 11 U.S.C.

[8] In addition to the foregoing contracts, the Debtor has settled pending disputes with IBM and Roth & Rau which terminated the contracts between those parties and the Debtor and precluded significant rejection damage claims.

§§ 105, 363 and 365 for Entry of an Order (A) Authorizing and Scheduling an Auction at Which the Debtor will Solicit the Highest or Best Bid(s) for the Sale of Substantially all of its Assets, (B) Approving Procedures Related to the Conduct of an Auction, (C) Fixing the Manner and Extent of Notice, and (D) Granting Related Relief (the "Final Bidding Procedures Order"), entered by this Court on September 20, 2011 (docket no. 65), the Debtor and its Sales Agent marketed the Debtor's assets and scheduled an auction (the "Auction") for September 28, 2011.

In preparation for the Auction, the Sales Agent employed by the Debtor engaged in a comprehensive marketing process for the Debtor's assets. The marketing effort was a robust multi-faceted process created and executed to notify a global audience of key industry players of the sale and to identify and contact potential buyers. The Sales Agent placed heavy emphasis on contacting all parties that were targeted by the Debtor and its former investment banker, Needham and Co., and to attract any additional bulk buyers not located in the initial effort.

Over 100 leading parties in the solar industry from across the globe were solicited by a team who emailed and called each party to gauge their interest level as a potential Lot 1 or Lot 2 buyer (as defined in the Bidding Procedures Order). In addition, the marketing campaign included print marketing in targeted newspapers (the New York Times and the Poughkeepsie Journal[9]), web banner marketing on strategic industry websites, search engine marketing, email marketing and print brochure marketing, among other things. In particular, the Sales Agent confirmed that the web banner advertisements were viewed by more than 37,000 parties and that between the "house list" of global purchasers and the lists of contacts rented by the Sales Agent, over 44,000 emails were sent out. The Auction was also advertised prominently on HGP's website.

As provided by the Final Bidding Procedures Order, and with the direction and advice of the Sales Agent, the Debtor held the Auction on September 28, 2011. The marketing efforts proved fruitful, as the Auction was successful and well-attended. The Auction was also webcast on the Sales Agent's website. In total, there were three registered bulk bidders who put forth the required $250,000 deposit, thirty-one (31) bidders who registered to participate live and in person, and ninety-five (95) bidders who registered online.

The Debtor determined, in its business judgment and after consultation with its board of directors (which convened a meeting by telephone during the Auction), its legal counsel and the Sales Agent, that the highest and best bid received was the $4.3 million bid submitted by Canadian Solar, Inc. ("CSI") on Lot 2 (the "Prevailing Bid"). In making its determination that the Prevailing Bid was the highest and best bid, the Debtor considered the amount of the bid and carefully considered the ability and motivation of CSI to tender the purchase price and to consummate the sale transaction. Based on its analysis of CSI's financial capabilities, the Debtor determined that CSI possessed the financial ability to consummate the sale. Further, the Debtor considered the fact that CSI required the purchased equipment to expand its current production capacity. Thus, the Debtor determined that CSI had a material incentive to follow through and close the sale transaction with the Debtor.

[9] The latter advertisement was intended to attract a local audience that would bid on the generic items available (racking, forklifts, furnishings, etc.).

On October 6, 2011, the Bankruptcy Court held a hearing to approve the Debtor's sale of assets to CSI, and on October 7, 2011, the Bankruptcy Court entered the Sale Order approving the sale. Among other things, the Sale Order provided that the Debtor complied with the Bidding Procedures Order in marketing the assets and scheduling the Auction, that interested potential purchasers had a full, fair, and reasonable opportunity to make an offer to purchase the assets, and that the sale of assets to CSI was approved free and clear of liens of claims. The Bankruptcy Court also held that the Debtor and CSI acted in good faith in connection with the sale and that the consideration received by the Debtor was fair and reasonable.

After entry of the Sale Order, CSI tendered the remaining purchase price and the transaction closed. Pursuant to the Sale Order, the Series A-1 Noteholder Agent received the sales proceeds, less the following costs, expenses and holdbacks: i) all cash necessary to pay any commissions due to the Sales Agent not otherwise paid by the Purchaser; ii) all cash necessary to satisfy any negative amount in the budget approved by the Court in the last cash collateral order; iii) all cash necessary to pay priority claims in the case, including but not limited to, claims of professionals employed by the Debtor; iv) all cash necessary, based upon agreement of the Debtor and the Series A-1 Noteholder Agent (but in no event less than $50,000), to fund a wind-down trust; and v) all cash necessary to fund a pari passu distribution to general unsecured trade creditors equivalent to that of the Series A-1 Noteholders under a plan of reorganization. A notice of the proposed distribution of proceeds was filed with the Bankruptcy Court on October 5, 2011. The Debtor made the distributions consistent with such notice.

I. Dissemination of Information About the Case

The Debtor has been actively engaged in providing information about the Debtor's business and proceedings in this case to various parties-in-interest. The Debtor provided creditors extensive information about the Debtor's financial, corporate, and operational status in its schedules and in the monthly reports filed with the Bankruptcy Court throughout this case.

J. Avoidance Actions

On and after the Effective Date, the Liquidating Trustee will be the representative of the Debtor's Estate pursuant to Bankruptcy Code section 1123(b)(3) and as such will have the power to prosecute, in the name of the Liquidating Trust, the Debtor's Estate, or otherwise, any Causes of Action of the Debtor's Estate, which include all Avoidance Actions (including preference actions and fraudulent transfer actions, to the extent retained under the Plan). **UPON THE EFFECTIVE DATE, ALL OF THE DEBTOR'S CAUSES OF ACTION, INCLUDING AVOIDANCE ACTIONS WILL BE TRANSFERRED TO THE LIQUIDATING TRUST, AND THE LIQUIDATING TRUSTEE WILL BE VESTED WITH THE SOLE AUTHORITY TO REVIEW, INITIATE, AND/OR PURSUE ANY AND ALL AVOIDANCE ACTIONS, TO THE EXTENT NOT WAIVED UNDER THE PLAN.**

Among other potential claims, the Debtor possesses a potential Avoidance Action claim against SUMCO based on a deposit that the Debtor made to SUMCO in the amount of $4,509,200 to secure payment under a pre-petition supply contract. The Debtor also possesses the "incentive claims," which are potential claims, including Avoidance Action claims, arising from the grants, incentives and refunds by the state of New York (including any subdivision or

agency thereof) or any entity formed to encourage economic development in New York. These incentive claims include all claims and rights of the Debtor under the "NYSERDA grant," the "Empire State 2010 Grant," and any "Empire Zone" grant, all as described in the Debtor's Schedule B.

Section 3.7.3 of the Plan provides that "[i]n the event that Class 6 accepts the Plan, all Avoidance Actions, with the exception of those against SUMCO and any action related to the Incentive Claims, will be waived by the terms of the Plan." The waiver of these Avoidance Actions reflects an agreement between the Debtor and the Series A-1 Noteholders, which hold deficiency claims that, if not waived, would account for 98.2% of the unsecured Claims against the Debtor.

The Series A-1 Noteholders, as the overwhelming majority holder of unsecured Claims, have expressed their desire to avoid the cost of funding the estate with additional cash to pursue the waived Avoidance Actions when the estimated expected gross recovery is $250,000 or less. This estimate represents the best-case scenario, as the Debtor's analysis of the waived Avoidance Actions has revealed that virtually all of the potentially avoidable payments are subject to one or more of the defenses provided by Bankruptcy Code section 547(c).

Payments by the Debtor to insiders (as reflected in Exhibit C hereto) are subject to the ordinary course of business defense (or other defenses) provided in Bankruptcy Code 547(c). In particular, all of the payments reflected Exhibit C appear to be: (i) expense reimbursements; (ii) regularly scheduled salary payments to employees; or (iii) payments to contract employees made pursuant to the terms of the contract with the employee. Based on the character, timing and nature of these payments, the Debtor believes that they are subject to the ordinary course of business defense and are not avoidable.

The vast majority of payments to non-insiders made within 90 days of the Petition Date (as reflected in Exhibit B hereto) are likewise subject to applicabe defenses. Most of these payments, including regularly scheduled lease payments to IBM and Cisco Systems, insurance related payments to Cigna, Guardian Life, Integro, employee related obligations, and payments to counsel appear to fall squarely within the ordinary course of business defense and/or other applicable defenses. In other cases, all claims against a certain transferrees have been released by agreement. Also, several of the payments listed in Exhibit B resolved very large contractual claims, and any unwinding would actually reduce existing creditor returns, not increase them.

Based on the Debtor's analysis and its agreement with the Series A-1 Noteholders, the Plan provides for waiver of non-SUMCO and non-Incentive Claim Avoidance Actions. The estimated recovery from the waived Avoidance Actions will not meaningfully impact the overall percentage returns in the case. Further, if Class 6 accepts the Plan, holders of Allowed unsecured Claims in Class 6 will receive a *pari passu* distribution equal to the percentage distribution that Series A-1 Noteholders received on account of their Claims pursuant to the Sale Order. The Debtor estimates that this percentage will be approximately 11.4% to 11.8%. The *pari passu* recovery provided if Class 6 accepts the Plan will be far greater than any recoveries from the waived Avoidance Actions.

1. Preferences

Under federal bankruptcy law, a debtor-in-possession may avoid pre-petition transfers of assets of a debtor as "preferential transfers." To constitute a preferential transfer, the transfer must be (1) of the Debtor's property; (2) made on account of an antecedent debt; (3) made while the debtor was insolvent; (4) made within 90 days before the Petition Date or made within one year if to an "insider"[10]; and (5) a transfer that enables the creditor to receive more than it would receive under chapter 7 liquidation of the Debtor's assets. For this purpose, the Bankruptcy Code creates a rebuttable presumption that the Debtor was insolvent during the 90 days immediately before the filing of the bankruptcy petition. All payments made by the Debtor to creditors within 90 days prior to the filing of the bankruptcy petition are listed under question 3(b) of the Debtor's statements of financial affairs. A copy of the relevant portions of the Debtor's statements of financial affairs relating to payments made within 90 days prior to the filing of the bankruptcy petition are attached hereto as Exhibit B. All payments made by the Debtor to "insiders" within one year prior to the filing of the bankruptcy petition are listed under question 3(c) of the Debtor's statements of financial affairs. A copy of the relevant portions of the Debtor's statements of financial affairs relating to payments made to insiders within one year prior to the filing of the bankruptcy petition are attached hereto as Exhibit C. **UPON THE EFFECTIVE DATE, THE LIQUIDATING TRUSTEE WILL BE VESTED WITH THE SOLE AUTHORITY TO REVIEW, INITIATE, AND/OR PURSUE ANY AND ALL PREFERENCE ACTIONS, TO THE EXTENT NOT WAIVED UNDER THE PLAN.**

2. Fraudulent Transfers

Fraudulent transfer law generally is designed to avoid two types of transactions: (i) conveyances that constitute "actual fraud" upon creditors, and (ii) conveyances that constitute "constructive fraud" upon creditors. In the bankruptcy context, fraudulent transfer liability arises under sections 548 and 544 of the Bankruptcy Code. Section 548 permits the debtor-in-possession to "reach back" for a period of two years to avoid fraudulent transfers made by the Debtor or fraudulent obligations incurred by the Debtor, and Section 544 permits the debtor-in-possession to apply applicable state fraudulent transfer law to any such action. Assuming that New York state law were to apply, the debtor-in-possession could challenge conveyances, transfers, or obligations made or incurred by the Debtor within the past four (4) years if similar requirements are met. **UPON THE EFFECTIVE DATE, THE LIQUIDATING TRUSTEE WILL BE VESTED WITH THE SOLE AUTHORITY TO REVIEW, INITIATE, AND/OR PURSUE ANY AND ALL FRAUDULENT TRANSFER ACTIONS, TO THE EXTENT NOT WAIVED UNDER THE PLAN.**

IV. KEY PROVISIONS OF THE PLAN

THE SUMMARY OF THE PLAN SET FORTH HEREIN IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE FULL TEXT OF THE PLAN. IN THE EVENT OF ANY INCONSISTENCY BETWEEN THE PROVISIONS OF THE PLAN AND THE SUMMARY CONTAINED HEREIN, AND REGARDLESS OF WHETHER ANY SUCH

[10] Section 101(31) of the Bankruptcy Code defines an "insider" of a corporation as a: (i) director of the debtor; (ii) officer of the debtor; (iii) person in control of the debtor; (iv) partnership in which the debtor is a general partner; (v) general partner of the debtor; or (vi) relative of a general partner, director, officer, or person in control of the debtor. 11 U.S.C. § 101(31)(B).

INCONSISTENCY IS A STATEMENT OR OMISSION, THE TERMS OF THE PLAN WILL GOVERN.

A. Overview of the Plan

During the Bankruptcy Case, and pursuant to the Sale Order entered by the Bankruptcy Court, the Debtor has sold substantially all of its physical Assets. To the extent not previously distributed pursuant to the Sale Order, the Sale Proceeds, in addition to the remainder of the Debtor's Assets, will be transferred to a Liquidating Trust for liquidation and distribution pursuant to the terms of the Plan (as summarized below).

B. Classification, Treatment and Impairment of Claims and Interests

Classes 1-8 include Allowed Claims against and Allowed Interests in all Debtor. A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim or Interest is also placed in a particular Class for the purpose of receiving Distributions pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim or Interest in that Class and such Claim or Interest has not been paid, released, or otherwise settled prior to the Effective Date. The treatment with respect to each Class of Claims and Interests provided for in Article III shall be in full and complete satisfaction, release and discharge of such Claims and Interests.

Certain Claims have not been classified and are excluded from the following Classes pursuant to Bankruptcy Code section 1123(a)(1). Those Unclassified Claims include Administrative Expense Claims, and Priority Tax Claims and such Claims shall be granted the treatment provided by Article IV.

Class	Designation	Impairment	Entitled to Vote
1.	Allowed Series A-1 Noteholder Secured Claims	Impaired	Yes
2.	Allowed Crystalox Secured Claim	Impaired	Yes
3.	Allowed SUMCO Secured Claim	Impaired	Yes
4.	Allowed Other Secured Claims	Unimpaired	No
5.	Allowed Priority Non-Tax Claims	Unimpaired	No
6.	Allowed General Unsecured Trade Claims	Impaired	Yes
7.	Allowed Series A-1 Noteholder Deficiency Claims	Impaired	Yes

8.	Allowed Interests	Impaired	No

Votes will be solicited from holders of Claims in Classes 1-3 and 6-7. Votes will not be solicited from holders of Claims in Classes 4-5, pursuant to Bankruptcy Code section 1126(f) and Interests in Class 8 pursuant, to Bankruptcy Code section 1126(g).

The Classes of Claims and Interests, as well as their treatment and an analysis of whether they are impaired or unimpaired, are discussed in Article III of the Plan and in more detail as follows (**all numbers are approximates**):

1. ***Class 1 - Allowed Series A-1 Noteholder Secured Claims***

Estimated Allowed Claims: $41,159,724
Estimated Recovery: 11.8%

2. ***Class 2 - Allowed Crystalox Secured Claim***

Estimated Allowed Claims: $0
Estimated Recovery: 0%[11]

3. ***Class 3 - Allowed SUMCO Secured Claim***

Estimated Allowed Claims: Unknown (disputed)
Estimated Recovery: 100% of any Allowed claim up to the amount of the SUMCO Prepayment[12]

4. ***Class 4 - Allowed Other Secured Claims***

Estimated Allowed Claims: $0
Estimated Recovery: 100% of any Allowed Claims

5. ***Class 5 - Allowed Priority Non-Tax Claims***

Estimated Allowed Claims: $0
Estimated Recovery: 100% of any Allowed Claims

6. ***Class 6 - Allowed General Unsecured Trade Claims***

Estimated Allowed Claims: $775,000-$2,300,000
Estimated Recovery if Class 6 votes to accept Plan: Range between 11.4% to 11.8%
Estimated Recovery if Class 6 votes not to accept Plan: 0.0%

7. ***Class 7 -[13] Allowed Series A-1 Noteholder Deficiency Claims***

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[11] Pursuant to the Crystalox Settlement Agreement, Crystalox and the Debtor agreed to cancel the Series A-1 Notes held in escrow for Crystalox and to permit Crystalox to retain a $2,400,000 prepayment in full satisfaction of any claim by Crystalox. Thus, any claim by Crystalox has been satisfied in full prior to any Plan distribution.

[12] The holder of any proved, Allowed Class 3 claim will have the right to offset against the $4,509,200 Sumco Prepayment.

Estimated Allowed Claims: $36,305,535
Estimated Recovery: 0.0%

8. *Class 8 - Allowed Interests*

Estimated Allowed Interests: $50,000,000 (all equity interests are being cancelled pursuant to Article 3.9 of the Plan).
Estimated Recovery: 0%

C. Treatment of Unclassified Claims

The treatment of Unclassified Claims is discussed in Article IV of the Plan and in more detail as follows:

Estimated Allowed Administrative Expense Claims other than Professional Fee Claims: $30,000[14]
Estimated Recovery: 100.00%

Estimated Allowed Priority Tax Claims: $350,000
Estimated Recovery: 100.00%

D. Means for Implementation of the Plan

1. Source of Funding

On the Effective Date, the Trust Assets (including without limitation all undistributed Sale Proceeds, Avoidance Actions (to the extent retained under the Plan) and Causes of Action, including without limitation any and all claims against SUMCO) will be reserved, preserved, assigned, transferred, and conveyed, as the case may be, to the Liquidating Trust free and clear of liens, claims and encumbrances or interests except to the extent that such Liens and Claims are retained under the Plan. It is intended that the Liquidating Trust will be treated for federal income tax purposes as a "liquidating trust," as defined in Treasury Regulation Section 301.7701-4(d), and will therefore be taxed as a grantor trust. The transfer of assets to the Liquidating Trust in accordance with the Plan will be treated for federal income tax purposes as a deemed transfer of assets to the holders of Claims, followed by a deemed transfer of such assets by such holders to the Liquidating Trust. The holders of Claims, as the beneficiaries of the Liquidating Trust, will be treated for federal income tax purposes as the grantors and deemed owners thereof.

2. Creation of the Liquidating Trust and Powers and Duties of Liquidating Trustee

Prior to the Effective Date, the Debtor will retain power and control over the Debtor's Estate. On the Effective Date, the Liquidating Trust will be established and become effective

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[13] Class 7 will only be constituted if Class 6 votes to reject the Plan.

[14] Approximately $475,000 in Administrative expense claims for professional fees and U.S. Trustee fees will be paid from the Carve-Out, as provided in Section 4.2 of the Plan and the Final Cash Collateral Order.

and title to the Trust Assets will automatically vest in the Liquidating Trust, without the need to execute any documents or instruments of transfer.

Within five days prior to the Confirmation Hearing, the Debtor will provide notice to parties in interest of: (a) the identity of the proposed Liquidating Trustee, and (b) the signed version of the Liquidating Trust Agreement.

a. Wind Down of the Estate

The Liquidating Trustee shall take all actions necessary to wind down the Estate, provide for dissolution of the Debtor and provide for final resolution of the Case, including the pursuit of any Claims objections and transactions related to implementation of the Plan, in accordance with the terms of the Trust Agreement and the Plan. The costs, fees, and expenses related to this activity shall be paid from: (a) the Wind-Down Reserve and (b) the Trust Assets.

b. Maintenance, Safekeeping and Distribution of Assets

Subject to the provisions of the Liquidating Trust Agreement and the Plan, the Liquidating Trustee will take possession of the Trust Assets and will conserve, protect, collect and liquidate or otherwise convert into cash all assets that constitute part of the Trust Assets. To the end of accomplishing the purposes of the Plan and the Liquidating Trust, after the Effective Date the Liquidating Trust will make Distributions to creditors and will have the authority to pursue or not to pursue Causes of Action, file claim objections and set reserves, and the Liquidating Trustee will have the sole right, power and discretion to manage the affairs of the Liquidating Trust. On and after the Effective Date, the Liquidating Trustee will be the representative of the Debtor's Estate pursuant to Bankruptcy Code section 1123(b)(3) and as such the Liquidating Trustee will have the power to prosecute, in the name of the Liquidating Trust, the Debtor's Estate, or otherwise, any claims of the Debtor's Estate, including Avoidance Actions (to the extent retained under the Plan). Additionally, the Liquidating Trustee will have the power to: (i) do all acts contemplated by the Plan to be done by the Liquidating Trustee, (ii) do all other acts that may be necessary or appropriate for the final Distribution of Trust Assets, including the execution and delivery of appropriate agreements or other documents of disposition, liquidation, or dissolution containing terms that are consistent with the terms of the Plan and that satisfy the applicable requirements of applicable state law and such other terms to which the applicable entities may agree.

c. Assumption of Liabilities

Except as otherwise provided in the Plan, the Liquidating Trustee shall assume liability for and incur the obligation to make the Distributions required to be made under the Plan and to handle all aspects of the claim contest and dispute process on and after the Effective Date, as described in Article IX of the Plan.

d. Filing of Claims and Causes of Action

The Liquidating Trustee shall have the exclusive right to file and prosecute any Claims and Causes of Action on behalf of the Estate following the Effective Date, including all derivative Causes of Action. The Liquidating Trustee shall have the authority to compromise,

settle, or otherwise resolve all Claims and Causes of Action filed or asserted without approval of the Bankruptcy Court or further notice.

WITHOUT LIMITING THE FOREGOING, THE DEBTOR INTENDS TO RETAIN SPECIAL LITIGATION COUNSEL TO INITIATE A LAWSUIT AGAINST SUMCO BASED ON THE DEPOSIT HELD BY SUCMO AND THE PRE-PETITION CONTRACT BETWEEN THE DEBTOR AND SUMCO. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN OR IN THE PLAN, THE DEBTOR INTENDS TO PRESERVE ANY AND ALL CLAIMS AGAINST SUMCO AND TO TRANSFER SUCH CLAIMS TO THE LIQUIDATING TRUST FOR THE BENEFIT OF CREDITORS.

e. Proceeds of Litigation

Proceeds, if any, of litigation conducted by the Liquidating Trust will be added to the assets of the Liquidating Trust and administered pursuant to the Liquidating Trust Agreement and distributed pursuant to Article III and Article IV of the Plan.

f. Avoidance Actions

On and after the Effective Date, the Debtor will not be responsible for any review of Avoidance Actions. The Liquidating Trustee will have full and sole responsibility for reviewing, analyzing and prosecuting Avoidance Actions under the Plan and the Liquidating Trust Agreement. The Liquidating Trustee will have the sole authority to prosecute the Avoidance Actions, which include preferences and fraudulent transfers, as defined by the Bankruptcy Code and as discussed in more detail herein. **ALL CREDITORS AND RECIPIENTS OF PAYMENTS OR TRANSFERS WITHIN 90 DAYS OF THE PETITION DATE (OR WITHIN ONE YEAR FOR INSIDERS) OR WHO RECEIVED PAYMENTS OR TRANSFERS FOR LESS THAN REASONABLY EQUIVALENT VALUE WITHIN FOUR YEARS OF THE PETITION DATE, WITH ACTUAL OR CONSTRUCTIVE NOTICE OF THIS BANKRUPTCY CASE, ARE HEREBY PUT ON NOTICE THAT SUCH TRANSACTIONS WILL BE REVIEWED FOR POTENTIAL RECOVERY. THE PLAN IS NOT INTENDED AND DOES NOT WAIVE ANY OF THE DEBTOR'S CHAPTER 5 CAUSES OF ACTION, AS ALL SUCH ACTIONS ARE EXPRESSLY PRESERVED FOR THE BENEFIT OF THE LIQUIDATING TRUST, EXCEPT AS OTHERWISE PROVIDED BY THE PLAN. IN PARTICULAR, THE DEBTOR POSSESSES A POTENTIAL AVOIDANCE ACTION CLAIM AGAINST SUMCO BASED ON A DEPOSIT THAT THE DEBTOR MADE TO SUMCO IN THE AMOUNT OF $4,509,200 TO SECURE PAYMENT UNDER A PRE-PETITION SUPPLY CONTRACT. THE DEBTOR ALSO POSSESSES THE "INCENTIVE CLAIMS," WHICH ARE POTENTIAL CLAIMS, INCLUDING AVOIDANCE ACTION CLAIMS, ARISING FROM THE GRANTS, INCENTIVES AND REFUNDS BY THE STATE OF NEW YORK (INCLUDING ANY SUBDIVISION OR AGENCY THEREOF) OR ANY ENTITY FORMED TO ENCOURAGE ECONOMIC DEVELOPMENT IN NEW YORK. THE INCENTIVE CLAIMS INCLUDE ALL CLAIMS AND RIGHTS OF THE DEBTOR UNDER THE "NYSERDA GRANT," THE "EMPIRE STATE 2010 GRANT," AND ANY "EMPIRE ZONE" GRANT, ALL AS DESCRIBED IN THE DEBTOR'S SCHEDULE B.**

g. Compensation of the Liquidating Trustee and Professionals

The Liquidating Trustee shall have the authority to employ, retain, and replace such persons, including attorneys, accountants, consultants, and other professionals, as necessary to discharge the duties of the Liquidating Trustee under the Plan and the Liquidating Trustee and any and all professionals retained after the Effective Date will be paid for their services and reimbursed for their expenses subject to the following terms:

On or before the twenty-fifth (25th) day of each month following the month for which compensation is sought, the Liquidating Trustee and all professionals retained after the Effective Date will file with the Bankruptcy Court a monthly statement describing with reasonable particularity the time expended and the nature, extent and value of the services provided during the period covered by such request. Any party in interest shall have until the fifteenth (15th) calendar day after the submission of the statement to review it. If no objections are filed, the Liquidating Trustee shall promptly pay 100% of the fees and 100% of the disbursements identified in each statement. In the event that any party in interest determines that the compensation or reimbursement sought in a particular statement is inappropriate or unreasonable, or that any number or calculation is incorrect, that party shall, on or before the fifteenth (15th) calendar day after the submission of the statement, serve upon the Professional whose statement is objected to, a "Notice of Objection to the Monthly Statement" setting forth the precise nature of the objection and the amount in issue. Thereafter, the objecting party and the Professional whose statement is objected to shall meet or confer to attempt to reach an agreement regarding the correct payment to be made, and if no agreement is reached with regard to such objection, the Liquidating Trustee shall not pay the disputed amount until further order of the Bankruptcy Court. The Liquidating Trustee will promptly pay any portion of the fees and disbursements requested that are not the subject of a Notice of Objection, as well as any adjusted fees and disbursements that have been agreed to by the objecting party and the Professional.

h. Costs and Expenses of the Liquidating Trustee

All costs and expenses related to the initiation, prosecution, pursuit and settlement of any Causes of Action, including but not limited to Avoidance Actions, shall be borne by and as a charge against the Trust Assets. All costs and expenses related to winding down the Estate, including Claims objections, Claims processing, the resolution of the Bankruptcy Case and the dissolution of the Debtor entities, shall first be a charge against the Wind-Down Reserve. If the Wind-Down Reserve is insufficient to satisfy all such costs and expenses, then the remainder of such costs and expenses shall be a charge against the Trust Assets. If an action of the Liquidating Trustee involves both the pursuit of a Cause of Action and an objection to claim, all costs and expenses related to such action shall be charged against the Trust Assets.

i. Reliance by the Liquidating Trustee

The Liquidating Trustee may rely, and shall be fully protected in acting or omitting to act upon any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other document which the Liquidating Trustee reasonably believes to be genuine and to have been signed or presented by the proper party or parties, and the Liquidating Trustee may conclusively rely on the correctness of the statements and opinions expressed therein. The

Liquidating Trustee may rely upon this Court's claim register in determining who holds Allowed Unsecured Trade Claims.

j. Valuation of Trust Assets

As reasonably determined from time to time by the Liquidating Trustee in its good faith and reasonable judgment, valuation of the Trust Assets transferred to the Liquidating Trust shall be used consistently by the Liquidating Trustee and the Beneficiaries for all federal income tax purposes. The Liquidating Trustee, Debtor and Beneficiaries agree that (i) the value of the Causes of Action on the date of their transfer to the Liquidating Trust shall be zero dollars; and (ii) the transfer of the Causes of Action to the Liquidating Trust shall "close" the transaction for tax purposes as to the Debtor with respect to any subsequent receipt of proceeds by the Liquidating Trust in connection with the Causes of Action or investment earnings thereon.

k. Reporting Duties

No later than the twentieth (20^{th}) day of each month until entry of a final decree closing the case, the Liquidating Trustee shall file with the Bankruptcy Court a Post-Confirmation Monthly Operating Report in the form and substance established by the United States Trustee.

l. Liquidating Trustee Security

Liquidating Trustee shall be required to post a bond, or in the alternative, shall be required to provide security acceptable to the Court and the U.S. Trustee to ensure the faithful performance of the Liquidating Trustee's official duties.

3. Cancellation of Debt and Ownership Interests

On the Effective Date, except as otherwise provided for the Plan, (a) the Series A-1 Notes and any other notes, bonds (with the exception of surety bonds outstanding), letters of credit, indentures, or other instruments or documents evidencing or creating any indebtedness or obligations of the Debtor that are Impaired under the Plan shall be cancelled, and (b) all Interests in the Debtor shall be deemed cancelled and extinguished without any further action of any party.

4. Termination of Liquidating Trust

The Liquidating Trust will terminate, subject to this Court's approval, but no later than at the end of three years from the Effective Date. Upon the completion of the Liquidating Trustee's duties the Liquidating Trustee may terminate the Liquidating Trust. On the termination date of the Liquidating Trust, the Liquidating Trustee will execute and deliver any and all documents and instruments reasonably requested to evidence such transfer. Upon termination and complete satisfaction of its duties under the Liquidating Trust Agreement, the Liquidating Trustee will be forever discharged and released from all powers, duties, responsibilities, and liabilities pursuant to the Liquidating Trust Agreement other than those attributable to the gross negligence or willful misconduct of the Liquidating Trustee.

E. Provisions Regarding Distributions

1. Liquidating Trustee of the Liquidating Trust

Except as otherwise agreed to by the holder of an Allowed Claim and the Liquidating Trustee, the Liquidating Trustee shall make Distributions to such Claimants as provided in the Plan at the address reflected in the books and records of Debtor or as otherwise reflected on any Proof of Claim, proof of Interest, or notice of address or change of address filed in this Bankruptcy Case.

2. Distributions of Cash

Notwithstanding anything to the contrary in the Plan, the Liquidating Trustee shall make cash distributions and shall not be required to make aggregate distributions of less than $50 to any holder of an Allowed Claim, unless the Liquidating Trustee elects to do so.

3. Sources of Cash for Plan Distributions

Except as otherwise provided in the Plan or the Confirmation Order, all Cash necessary for the Liquidating Trust to make Distributions pursuant to the Plan shall be obtained from the Trust Assets, including the Sale Proceeds. The Carve-Out shall not be used to make Distributions to Classes of Creditors, as described in Article III, but shall be used only as provided under the terms of the Final Cash Collateral Order.

4. No Interest or Penalties on Claims

Unless otherwise specifically provided for in the Plan, the Confirmation Order or other order of the Bankruptcy Court, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on any unsecured Claims, and no holder of an unsecured Claim shall be entitled to interest accruing on or after the Petition Date on any Claim. Additionally, and without limiting the foregoing, interest shall not accrue or be paid on any Disputed Claim in respect of the period from the Effective Date to the Final Distribution Date when and if such Disputed Claim becomes an Allowed Claim.

5. Delivery of Distributions

Except as otherwise agreed to by the holder of an Allowed Claim and the Liquidating Trustee, the Liquidating Trustee shall make Distributions to such Claimants as provided in the Plan at the address reflected in the books and records of Debtor or as otherwise reflected on any Proof of Claim, proof of Interest, or notice of address or change of address filed in this Bankruptcy Case.

6. Withholding and Reporting Requirements

In connection with the Plan and all Distributions hereunder, the Liquidating Trustee shall, to the extent applicable, comply with all tax withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all Distributions hereunder shall be subject to those requirements. The Liquidating Trustee shall be authorized to take all actions

necessary or appropriate to comply with those withholding and reporting requirements. Notwithstanding any other provision of the Plan, the holders of Claims or Interests of the Debtor shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Authority, including income, withholding and other tax obligations, on account of the provisions of the Plan. Neither the Debtor nor the Liquidating Trustee shall have any liability to either the holder of a Claim or Interest or any Governmental Authority with respect to any such tax or similar obligation owed by such holder.

7. Duty to File Tax Returns

The Liquidating Trustee shall be obligated to file all applicable state and federal tax returns on behalf of the Estate.

8. Setoffs

The Liquidating Trustee may, pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy laws, but shall not be required to, set off against any Claim, the payments or other Distributions to be made pursuant to the Plan in respect of such Claim, or claims of any nature whatsoever that the Liquidating Trust or the Debtor may have against the holder of such Claim; provided, however, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor or the Liquidating Trust of any such Claim that the Debtor or the Liquidating Trustee may have against such holder.

F. Procedures for Treating and Resolving Disputed Claims

1. Objections to Claims

The Debtor and the Liquidating Trustee shall have the exclusive authority to object to Claims or Interests provided for under the Plan. Subject to the preceding sentence, all objections may be litigated to Final Order; provided, however, that the Liquidating Trustee shall have the authority to compromise, settle or otherwise resolve all objections to any Claim without approval of the Bankruptcy Court or further notice. Unless otherwise ordered by the Bankruptcy Court, all objections to Claims shall be filed and served on the later of (i) 120 days after the later of the Effective Date and (ii) 60 days after the date on which a proof of claim is filed with the Bankruptcy Court; provided, however, this deadline may be extended by the Bankruptcy Court upon motion of the Liquidating Trustee, with or without notice or hearing.

2. Amendments to Claims; Claims filed after the Confirmation Date

All Proofs of Claim, and the assertion of any Claim, must be filed and occur by the applicable Bar Date or such Claim shall otherwise be barred. Moreover, any Proofs of Claim filed after the Bar Date shall be deemed Disallowed in full and expunged without any action by the Debtor or the Liquidating Trustee, unless the Claimant obtains an order of the Bankruptcy Court authorizing a late filing. Nothing herein shall affect, amend or modify any Bar Date in this Bankruptcy Case.

3. No Distributions until Claim is an Allowed Claim

Notwithstanding any other provision of the Plan, no payment or Distribution shall be made with respect to any Claim to the extent it is a Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim. If any Disputed Priority Tax Claim becomes an Allowed Claim, it shall accrue interest at the non-bankruptcy rate in effect during the month in which the Plan is confirmed.

4. Estimation of Unliquidated or Contingent Claims

Pursuant to Bankruptcy Code Section 502(e), before the Effective Date, any Claimant or the Debtor may seek the estimation of any unliquidated Claim or contingent Claim. After the Effective Date, only the Liquidating Trustee may seek the estimation of any unliquidated Claim or contingent Claim. To the extent an unliquidated Claim or a contingent Claim is estimated by Final Order of the Bankruptcy Court, it shall receive the treatment for the particular type of Claim set forth in this Article III of the Plan in the amount estimated by the Bankruptcy Court. If a Claimant fails to seek estimation of its Claim at any time prior to the Effective Date, such Claim shall be treated as a Disallowed Claim without further Order of the Bankruptcy Court at the Final Distribution Date. Any unliquidated Claim or contingent Claim shall be treated as a Disputed Claim until and unless it becomes an Allowed Claim pursuant to a Final Order of the Bankruptcy Court.

5. Voting

Holders of Disputed Claims shall not be entitled to vote with respect to the Plan unless such Claims are estimated, for voting purposes, by order of the Bankruptcy Court. The holder of any Claim that is not a Disputed Claims is entitled to vote on the Plan.

G. Conditions Precedent to the Effective Date

The Plan shall not become effective unless and until the Confirmation Order confirming the Plan shall have been entered and shall have become a Final Order.

The Effective Date must occur, absent the entry of a stay pending appeal, within 60 days after entry of the Confirmation Order. If the Effective Date does not occur by the deadline stated herein, the Debtor shall promptly provide a notice of the non-occurrence of the Effective Date.

H. Preservation of Causes of Action

Except as otherwise provided in the Plan or the Confirmation Order, in accordance with Bankruptcy Code section 1123(b)(3), any Retained Causes of Action that the Debtor may hold against any entity shall vest upon the Effective Date in the Liquidating Trust. Except as otherwise provided in the Plan or the Confirmation Order, after the Effective Date, the Liquidating Trustee shall have the exclusive right to institute, prosecute, abandon, settle or compromise any Retained Causes of Action, in its sole discretion and without further order of the Bankruptcy Court, in any court or other tribunal including, without limitation, any adversary proceeding filed in this Bankruptcy Case. Retained Causes of Action and any recoveries therefrom shall remain the sole property of the Liquidating Trust and holders of Claims or

Interests shall have no right to any such recovery. The Liquidating Trust will retain the right to pursue Avoidance Actions (to the extent retained under the Plan).

Unless a Cause of Action against an Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including the Confirmation Order), the Debtor expressly reserves such Cause of Action for later adjudication by the Liquidating Trust and, therefore, no preclusion, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel or laches shall apply to any Cause of Action upon or after the entry of the Confirmation Order, except where such Cause of Action has been expressly released in the Plan or Confirmation Order. In addition, the Debtor expressly reserves the right to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a defendant or an interested party, against any Entity, including, any plaintiffs or co-defendants in such lawsuits. Subject to the foregoing, any Entity to whom the Debtor has incurred an obligation or who has received services from the Debtor or a transfer of money or property of the Debtor, or who has transacted business with the Debtor, or leased equipment or property from the Debtor, should assume that any such obligation, transfer or transaction may be reviewed by the Debtor after the Effective Date and may be the subject of an action after the Effective Date, regardless of whether: (i) such Entity has filed a Proof of Claim against the Debtor in this Bankruptcy Case; (ii) the Debtor has objected to any such Entity's Proof of Claim; (iii) any such Entity's Proof of Claim was included in the Schedules; (iv) the Debtor has objected to any such Entity's scheduled Claim; or (v) any such Entity's scheduled Claim has been identified as disputed, contingent or unliquidated.

V. CERTAIN EFFECTS OF CONFIRMATION

A. Releases, Injunctive Relief and Related Provisions

Compromise and Settlement of Claims, Interests and Controversies. Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Interests, and controversies relating to the contractual and legal rights that a holder of a Claim may have with respect to any allowed Claim or Interest, or any distribution to be made on account of such allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests, and controversies, as well as a finding by the bankruptcy court that such compromise or settlement is in the best interests of the Debtor, its Estate, and holders of Claims and Interests and is fair, equitable, and reasonable.

Releases by the Debtor. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, ON THE EFFECTIVE DATE, FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY EACH PARTY RELEASED HEREIN, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, INCLUDING: (1) THE GOOD AND VALUABLE CONSIDERATION PAID PURSUANT HERETO; AND (2) THE SERVICES OF THE DEBTOR'S PRESENT AND FORMER OFFICERS, DIRECTORS, MANAGERS, AND ADVISORS IN CONNECTION WITH THIS BANKRUPTCY CASE, THE DEBTOR RELEASES: (1) THE DEBTOR RELEASEES; AND (2) THE NOTEHOLDER RELEASEES.

THE RELEASES PROVIDED BY THE DEBTOR IN THIS SECTION SHALL INCLUDE ANY AND ALL CAUSES OF ACTION, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, LIQUIDATED OR UNLIQUIDATED, CONTINGENT OR NON-CONTINGENT, EXISTING AS OF THE EFFECTIVE DATE IN LAW, AT EQUITY, WHETHER FOR TORT, FRAUD, CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS OR OTHERWISE, ARISING FROM OR RELATED IN ANY WAY TO THE DEBTOR; PROVIDED, HOWEVER, THAT THE FOREGOING RELEASES SHALL NOT OPERATE TO WAIVE OR RELEASE ANY CAUSES OF ACTION OF THE DEBTOR EXPRESSLY SET FORTH IN AND PRESERVED BY THE PLAN, THE PLAN SUPPLEMENT, OR RELATED DOCUMENTS; AND PROVIDED FURTHER, THAT THE FOREGOING RELEASES SHALL HAVE NO EFFECT ON THE LIABILITY OF ANY ENTITY THAT RESULTS FROM ANY SUCH ACT OR OMISSION THAT IS DETERMINED IN A FINAL ORDER TO HAVE CONSTITUTED GROSS NEGLIGENCE, WILLFUL MISCONDUCT, WILLFUL VIOLATION OF FEDERAL OR STATE SECURITIES LAWS OR THE INTERNAL REVENUE CODE, PROFESSIONAL MALPRACTICE, CRIMINAL CONDUCT, FRAUD, OR ULTRA VIRES, AND SHOULD NOT LIMIT THE LIABILITY OF ATTORNEYS TO THEIR CLIENTS.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE DEBTOR'S RELEASES AND SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE DEBTOR RELEASE IS: (1) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (2) A GOOD FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED BY THE DEBTOR; (3) IN THE BEST INTERESTS OF THE DEBTOR AND ALL HOLDERS OF CLAIMS AND INTERESTS; (4) FAIR, EQUITABLE AND REASONABLE; AND (5) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING.

Third Party Releases. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, ANY HOLDER OF A CLAIM THAT VOTES IN FAVOR OF THE PLAN, FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, INCLUDING (1) THE DISTRIBUTIONS TO BE MADE UNDER THE PLAN AND (2) THE SERVICES OF THE DEBTOR'S PRESENT AND FORMER OFFICERS, DIRECTORS, MANAGERS, AND ADVISORS IN CONNECTION WITH THIS BANKRUPTCY CASE, ON THE EFFECTIVE DATE, WILL BE DEEMED TO HAVE CONSENTED TO AND PROVIDED A FULL DISCHARGE AND RELEASE TO (1) THE DEBTOR RELEASEES AND (2) THE NOTEHOLDER RELEASEES.

THE RELEASES PROVIDED IN THIS SECTION SHALL INCLUDE ANY AND ALL CAUSES OF ACTION, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, LIQUIDATED OR UNLIQUIDATED, CONTINGENT OR NON-CONTINGENT, EXISTING AS OF THE EFFECTIVE DATE IN LAW, AT EQUITY, WHETHER FOR TORT, FRAUD, CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS OR OTHERWISE, ARISING FROM OR RELATED IN ANY WAY TO THE DEBTOR; PROVIDED HOWEVER, THAT THE FOREGOING RELEASES SHALL HAVE NO EFFECT ON (1) THE LIABILITY OF ANY ENTITY THAT RESULTS FROM ANY SUCH ACT OR OMISSION THAT IS DETERMINED IN A FINAL ORDER TO HAVE

CONSTITUTED GROSS NEGLIGENCE, WILLFUL MISCONDUCT, WILLFUL VIOLATION OF FEDERAL OR STATE SECURITIES LAWS OR THE INTERNAL REVENUE CODE, PROFESSIONAL MALPRACTICE, CRIMINAL CONDUCT, FRAUD, OR ULTRA VIRES, AND SHOULD NOT LIMIT THE LIABILITY OF ATTORNEYS TO THEIR CLIENTS; OR (2) ANY CREDITOR WHO VOTES AGAINST THE PLAN OR WHO PROPERLY DESIGNATES ON A DULY SUBMITTED BALLOT THAT SUCH CREDITOR OPTS-OUT OF THIS RELEASE PROVISION.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE RELEASES IN THIS SECTION AND SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE RELEASES ARE: (1) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (2) A GOOD FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED; (3) IN THE BEST INTERESTS OF THE DEBTOR AND ALL HOLDERS OF CLAIMS AND INTERESTS; (4) FAIR, EQUITABLE AND REASONABLE; AND (5) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING.

Exculpation. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, ON THE EFFECTIVE DATE, FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY EACH PARTY SOLICITING ACCEPTANCE OR REJECTION OF THE PLAN, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, INCLUDING: (1) THE DISTRIBUTIONS TO BE MADE UNDER THE PLAN; AND (2) THE SERVICES OF THE DEBTOR'S PRESENT AND FORMER OFFICERS, DIRECTORS, MANAGERS, AND ADVISORS IN CONNECTION WITH THIS BANKRUPTCY CASE, NONE OF THE EXCULPATED PARTIES SHALL HAVE, NOR INCUR ANY LIABILITY TO ANY ENTITY FOR VIOLATION OF ANY APPLICABLE LAW, RULE, OR REGULATION GOVERNING SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN; PROVIDED, HOWEVER, THAT (1) THE FOREGOING "EXCULPATION" SHALL HAVE NO EFFECT ON THE LIABILITY OF ANY ENTITY THAT RESULTS FROM ANY SUCH ACT OR OMISSION THAT IS DETERMINED IN A FINAL ORDER TO HAVE CONSTITUTED GROSS NEGLIGENCE, WILLFUL MISCONDUCT, WILLFUL VIOLATION OF FEDERAL OR STATE SECURITIES LAWS OR THE INTERNAL REVENUE CODE, PROFESSIONAL MALPRACTICE, CRIMINAL CONDUCT, FRAUD, OR ULTRA VIRES, AND SHOULD NOT LIMIT THE LIABILITY OF ATTORNEYS TO THEIR CLIENTS; AND (2) ANY CREDITOR WHO VOTES AGAINST THE PLAN OR WHO PROPERLY DESIGNATES ON A DULY SUBMITTED BALLOT THAT SUCH CREDITOR OPTS-OUT OF THIS EXCULPATION PROVISION.

Injunction. Except as otherwise provided in the Plan or the Confirmation Order, all Entities who have held, hold or may hold Claims, Equity Interests, Causes of Action or liabilities that: (1) have been released pursuant to Sections 12.2 or 12.3hereof; or (2) are subject to exculpation pursuant to Section 12.4 hereof, are permanently enjoined and precluded, from and after the Effective Date, from: (A) commencing or continuing in any manner any action or other proceeding of any kind against any Entity so released, or exculpated (or the property or estate of any Entity, directly or indirectly, so released or exculpated) on account of or in connection with or with respect to any such released or exculpated Claims, Equity Interests,

causes of action or liabilities; (B) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against any Entity so released or exculpated (or the property or estate of any Entity so released or exculpated) on account of or in connection with or with respect to any such released or exculpated Claims, Equity Interests, causes of action, or liabilities; (C) creating, perfecting or enforcing any lien, claim, or encumbrance of any kind against any Entity so released or exculpated (or the property or estate of any Entity so released or exculpated) on account of or in connection with or with respect to any such released or exculpated Claims, Equity Interests, causes of action, or liabilities; (D) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from any Entity so released or exculpated (or the property or estate of any Entity so released or exculpated) on account of or in connection with or with respect to any such released or exculpated Claims, Equity Interests, causes of action or liabilities unless such Holder has filed a motion requesting the right to perform such setoff on or before the Confirmation Date, and notwithstanding any indication in a Proof of Claim or Interest or otherwise that such Holder asserts, has or intends to preserve any right of setoff pursuant to section 553 of the Bankruptcy Code or otherwise; and (E) commencing or continuing in any manner any action or other proceeding of any kind against any Entity so released or exculpated (or the property or estate of any Entity so released or exculpated) on account of or in connection with or with respect to any such released or exculpated Claims, Equity Interests, causes of action, or liabilities released or settled pursuant to the Plan; provided, however, that nothing contained herein shall preclude an Entity from obtaining benefits directly and expressly provided to such Entity pursuant to the terms of the Plan; provided, further, that nothing contained herein shall be construed to prevent any Entity from defending against Claims objections or collection actions whether by asserting a right of setoff or otherwise to the extent permitted by law.

Term of Injunctions and Stays. Unless otherwise specifically provided in the Plan or the Confirmation Order, all injunctions or stays provided for in this Bankruptcy Case pursuant to Bankruptcy Sections 105, 362 or 524, any order of the Bankruptcy Court, or otherwise, and in effect on the Confirmation Date (excluding any injunctions or stays contained in the Plan or Confirmation Order) shall remain in full force and effect until these cases are closed. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in force and effect in accordance with their terms.

Effect of Plan on Governmental Authority. Nothing in this Plan shall preclude any governmental entity from exercising its regulatory powers or any other authority vested in such entity to oversee any actions of the Debtor or its estate.

B. Basis for Releases, Injunctive Relief and Related Provisions

The foregoing releases, exculpation and injunctions are provided in consideration of the value that has been received by creditors from the prosecution of the Debtor's Chapter 11 case, and the value that will be received under the Plan.

In particular, the Noteholder Releasees have provided substantial value to the Debtor's estate. The Series A-1 Noteholders hold valid liens on substantially all of the Debtor's assets and the deadline to challenge such liens has passed. The Series A-1 Noteholders have funded the Debtor's Chapter 11 case and will allow cash to be used to fund administrative and priority

claims under the Plan. In addition, the Series A-1 Noteholders have agreed to fund the distributions to be made to the holders of Allowed General Unsecured Trade Claims (Class 6). If Class 6 votes to accept the Plan, the Series A-1 Noteholders will provide cash necessary to fund a pari passu distribution to general unsecured trade creditors equivalent to distributions to the Series A-1 Noteholders under the Plan. As a result, the percentage distribution to unsecured creditors is expected to range between 11.4% and 11.8%.

Absent this agreement, Class 6 claimants are estimated to receive no recovery on account of their claims. Further, absent this agreement, the Series A-1 Noteholders, as the Debtor's secured lenders and the holders of the vast majority of the Debtor's unsecured debt (by virtue of deficiency claims) could bypass the plan process and seek conversion to Chapter 7. As discussed herein, conversion to Chapter 7 would result in no distributions to unsecured creditors. Thus, the Noteholder Releasees have provided substantial, tangible value to the Debtor's estates for the benefit of creditors and the foregoing releases are appropriate. Moreover, because the distribution to the Series A-1 Noteholders and unsecured creditors will be the same under the agreement discussed above, the releases would not affect any claims against the lenders because equivalent distribution among the lenders and unsecured creditors would be the remedy for any successful prosecution of such claims.

The Debtor Releasees, who include current and former officers and directors, the Sales Agent, the Debtor's Chief Restructuring Officer and Chief Executive Officer, Brad Walker, and the Debtor's legal counsel, have also provided substantial consideration by initiating and prosecuting this Chapter 11 case for the benefit of creditors, by negotiating the agreement described above that will result in distributions to be made by the Noteholder Releases, by engaging in a robust marketing effort and conducting a successful auction for the sale of substantially all of the Debtor's physical assets, and by proposing and seeking confirmation of the Plan. These efforts have permitted the Debtor to realize value that can be passed on to creditors.

Additionally, the releases are appropriate to further the best interests of all creditors by promptly winding down the affairs of the Debtor's estate and precluding the assertion of indemnity claims which could prolong the wind down and increase costs. The Series A-1 Noteholders have only agreed to fund the Liquidating Trust with $50,000. The directors have never received director fees or other compensation in their capacity as a director, which further justifies the release.

After a review of the books and records by the Debtor and its Chief Restructuring Officer, the Debtor is not aware of any claims against the Debtor Releasees. No unusual transactions have occurred between the Debtor and insiders, with the transactions limited to payments of salary and/or contractual payments that have been made to employees. The amounts of all such transactions have been reasonable.

The United States Trustee's office objects to the release, exculpation and injunctive provisions contained in the Plan and reserves all rights to object to them in connection with confirmation of the Plan.

C. Miscellaneous Plan Provisions

1. Modification of Plan

The Debtor reserves the right to modify the Plan either before or after Confirmation, to the fullest extent permitted under Bankruptcy Code section 1127 and Bankruptcy Rule 3019. The filing of any Plan, or modification to the Plan, shall not be construed to be a waiver of any rights of the Debtor. After the Confirmation Date and prior to the substantial consummation of the Plan, any party in interest in this Bankruptcy Case may, so long as the treatment of holders of Claims or Interests under the Plan are not materially adversely affected, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, and any other matters as may be necessary to carry out the purposes and effects of the Plan; provided, however, prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Bankruptcy Court.

2. Revocation, Withdrawal or Non-Consummation

The Debtor reserves the right to revoke or withdraw the Plan prior to the Confirmation Date and to file subsequent plans of reorganization. If the Debtor revokes or withdraws the Plan, or if confirmation or consummation does not occur, then, (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan that is not otherwise subject to Bankruptcy Court order (including the fixing or limiting to an amount certain any Claim or Interest or Class of Claims or Interests), rejection of executory contracts or leases affected by the Plan, and any document or agreement executed pursuant to the Plan shall be deemed null and void, and (c) nothing contained in the Plan shall (i) constitute a waiver or release of any Claims by or against, or any Interests in, the Debtor or any other Person, (ii) prejudice in any manner the rights the Debtor or any other Person, or (iii) constitute an admission of any sort by the Debtor or any other Person

3. Retention of Jurisdiction

Pursuant to Bankruptcy Code sections 105(a) and 1142, and notwithstanding the Plan's Confirmation and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of or related to this Chapter 11 Case and the Plan, to the fullest extent permitted by law, including jurisdiction to:

(i) allow, disallow, determine, liquidate, classify, estimate, or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Expense Claim or Priority Claim and the resolution of any objections to the allowance or priority of Claims or Interests;

(ii) grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan for periods ending on or before the Effective Date;

(iii) resolve any matters related to the rejection of any executory contract or unexpired lease to which the Debtor is a party or with respect to which the Debtor may be liable and to hear, determine, and, if necessary, liquidate any Claims arising therefrom;

(iv) ensure that Distributions to holders of Allowed Claims are accomplished by the Liquidating Trustee pursuant to the provisions of the Plan and the Liquidating Trust Agreement;

(v) decide or resolve any motions, adversary proceedings, contested, or litigated matters and any other matters and grant or deny any applications involving the Debtor that may be pending on the Effective Date;

(vi) enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan, the Disclosure Statement, or the Confirmation Order;

(vii) resolve any cases, controversies, suits, or disputes that may arise in connection with the consummation, interpretation, or enforcement of the Plan or any contract, instrument, release, or other agreement or document that is executed or created pursuant to the Plan, or any entity's rights arising from or obligations incurred in connection with the Plan or such documents;

(viii) approve any modification of the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code or approve any modification of the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with the Plan, the Disclosure Statement, or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan;

(ix) hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under sections 330, 331, 503(b), 1103, and 1129(c)(9) of the Bankruptcy Code, which shall be payable by the Liquidating Trust only upon allowance thereof pursuant to the order of the Bankruptcy Court, provided, however, that the fees and expenses of the Liquidating Trust, incurred after the Effective Date, including counsel fees, may be paid by the Liquidating Trust in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court;

(x) issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any

entity with consummation, implementation, or enforcement of the Plan or the Confirmation Order;

(xi) hear and determine Causes of Action by or on behalf of the Debtor or the Liquidating Trust;

(xii) hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

(xiii) enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason or in any respect modified, stayed, reversed, revoked, or vacated, or Distributions pursuant to the Plan are enjoined or stayed;

(xiv) determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement, or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order;

(xv) enforce all orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Bankruptcy Case;

(xvi) hear and determine all matters related to (i) the property of the Liquidating Trust from and after the Confirmation Date and (ii) the activities of the Liquidating Trustee;

(xvii) hear and determine disputes with respect to compensation of the Debtor's professional advisors;

(xviii) hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under the Bankruptcy Code; and

(xix) enter an order closing the Bankruptcy Case.

VI. CONFIRMATION AND CONSUMATION OF THE PLAN

A. General Information

All creditors whose Claims are impaired by the Plan (except those parties holding Interests or who are unimpaired) may cast their votes for or against the Plan. As a condition to confirmation of the Plan, the Bankruptcy Code requires that one Class of Impaired Claims votes to accept the Plan. Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a Class of Impaired Claims as acceptance by holders of at least two thirds of the dollar amount of the class and by more than one half in number of Claims. Holders of Claims who fail to vote are not counted as either accepting or rejecting a plan. Voting is accomplished by completing, dating, signing and returning the Ballot by the Voting Deadline. Ballots will be distributed to all creditors entitled to vote on the Plan and are part of the Solicitation Package accompanying the Disclosure Statement. The Ballot indicates (i) where the Ballot is to be filed and (ii) the deadline

by which creditors must return their Ballots. See Article I of this Disclosure Statement for a more detailed explanation of who will receive Ballots and voting procedures.

B. Additional Information to be Provided by the Debtor

Within fourteen (14) days prior to the Confirmation Hearing, the Debtor shall file the following with the Court: (i) the final executed Liquidating Trust Agreement, along with a disclosure of the compensation arrangements and the curriculum vitae of the Liquidating Trustee with background information relevant to service as the Liquidating Trustee; and (ii) a legal brief and affidavit(s) in support of the releases sought in the Plan and the compensation terms and conditions.

C. Solicitation of Acceptances

[This Disclosure Statement has been approved by the Bankruptcy Court as containing "adequate information" to permit creditors and equity interest holders to make an informed decision whether to accept or reject the Plan.] Under the Bankruptcy Code, your acceptance of the Plan may not be solicited unless you receive a copy of this Disclosure Statement prior to, or concurrently with, such solicitation.

D. Considerations Relevant To Acceptance Of The Plan

The Debtor's recommendation that all Creditors should vote to accept the Plan is premised upon the Debtor's view that the Plan is preferable to other alternatives, such as conversion of the Bankruptcy Case to a Chapter 7 bankruptcy case, which would likely be more time-consuming, more expensive, and likely result in lower Distributions to creditors. It appears unlikely to the Debtor that an alternate plan of reorganization or liquidation can be proposed that would provide for payments in an amount equal to or greater than the amounts proposed under the Plan. If the Plan is not accepted, it is likely that the interests of all creditors will be further diminished.

E. Objection of SUMCO to the Disclosure Statement

On November 30, 2011, SUMCO filed an objection to the Disclosure Statement (the "SUMCO Objection") and the relevant portions of the SUMCO Objection are reproduced below. The Debtor disagrees with the arguments made in the SUMCO Objection and the Debtor has filed an objection to the secured and unsecured claims asserted by SUMCO. In response to the arguments asserted in the SUMCO Objection, the Debtor amended the Plan to provide that any Allowed unsecured Claim of SUMCO will be included in Class 6 of the Plan and will receive the same treatment as every other Allowed Claim in Class 6. Further, the Debtor has expanded its discussion of potential Avoidance Actions in Section III(I) of this Disclosure Statement.

The Debtor disagrees with many of the contentions made by the SUMCO Objection, but notes SUMCO's position below to provide notice to all parties in interest:[15]

A. The Purchase Agreement

[15] Note that footnotes 16 through 18 herein are contained in the SUMCO Objection and are part of the quoted material.

SUMCO is a manufacturer of custom electronic-grade (i.e., highest quality) silicon wafers used in the semiconductor industry, as well as custom high-quality solar silicon wafers used as components of solar cells. Prior to the commencement of this chapter 11 case, the Debtor utilized solar silicon wafers supplied by SUMCO in the production of its solar cells.

To ensure a steady supply of solar silicon wafers, the Debtor, as successor in interest to Intel Corporation, was party to a certain Long-term Purchase Agreement with SUMCO, effective as of April 21, 2008 (as amended, the "Purchase Agreement"),[16] under which SUMCO agreed to sell and the Debtor agreed to purchase a fixed quantity of solar silicon wafers on an annual basis for a period of five and a half years, commencing July 1, 2010.

At the time that the parties entered into the Purchase Agreement, SUMCO needed to make significant upfront capital expenditures to procure and install the equipment necessary to manufacture solar silicon wafers. SUMCO therefore bargained for a payment structure that would protect SUMCO against the risk that it would lose its capital investment if the Debtor breached the Purchase Agreement. Accordingly, the Purchase Agreement required the Debtor to pay to SUMCO certain "lump-sum fees" totaling $4,795,200 (the "Fees") at the outset of its term. (Purchase Agreement § 3.1.) The Fees could then be credited against the purchase prices for future deliveries under the Purchase Agreement pursuant to a prescribed formula. (*Id.* § 3.2.) If SUMCO terminated the Purchase Agreement because of a material breach by the Debtor, though, SUMCO was entitled to retain the full amount of the Fees, including any amounts that had not yet been credited against future deliveries. (*Id.* § 4.7.)

In addition to quantity and pricing terms, the Purchase Agreement included a provision obligating the Debtor to perform a sample-based inspection of all deliveries within twenty business days after receipt, and to report any latent defects within six months. (*Id.* § 7.1.) If any wafers that SUMCO delivered did not conform to the Debtor's specifications, the Debtor had the right to request replacement wafers or a refund of the purchase price for the nonconforming wafers. (*Id.*) The Purchase Agreement made clear, however, that "[i]n no event [would SUMCO's] liability exceed the purchase price of the [p]roducts concerned." (*Id.* § 7.3.)

B. The Parties' Dispute

In mid-2010, the Debtor notified SUMCO of the occurrence of circular cosmetic blemishes (i.e., "spotting") on the surface of certain sample silicon wafers in its possession. SUMCO disputed that such blemishes existed at the time that the sample wafers were shipped to the Debtor and contends that the wafers complied with the Debtor's product specifications. On October 13, 2010, the Debtor sent a letter to SUMCO waiving the issues related to the occurrence of such blemishes on solar silicon wafers purchased from SUMCO in the fourth quarter of 2010, provided that the impact of the blemishes "*remain[ed]* strictly cosmetic with no performance or reliability issues."

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16 The Purchase Agreement contains a confidentiality clause and, as such, is not attached hereto. Further, the Addendum attached to the Purchase Agreement that sets forth the Debtor's product specifications contains confidential commercial information. If the Court wishes to review the Purchase Agreement and the Addendum, SUMCO will work with the Debtor to provide such documents to the Court, subject to appropriate confidentiality protections.

In November and early December of 2010, SUMCO supplied and the Debtor accepted delivery of approximately 500,000 additional solar silicon wafers. At or around this time, the Debtor apparently tried, unsuccessfully, to secure a strategic investor or additional financing to continue funding its operations.[17] On December 3, 2010, and December 18, 2010, the Debtor failed to make payments due to SUMCO. Shortly thereafter, on December 21, 2010, the Debtor announced that it would completely shut down its manufacturing operations by April 2011.[18] Two days later, the Debtor sent a letter to SUMCO notifying it that payments on all outstanding invoices (which totaled $1,620,000) would be delayed indefinitely "*due to the downturn of sales and slower customer payments that ha[d] constrained [its] cash flow.*"

On December 29, 2010, in accordance with the terms of the Purchase Agreement, SUMCO sent a letter to the Debtor (which it confirmed in a follow-up letter on January 6, 2011), advising the Debtor that the failure to satisfy its outstanding payment obligations constituted a material breach of material provisions of the Purchase Agreement, and that SUMCO had the right to terminate the Purchase Agreement after sixty days if such breach remained uncured. Due to the Debtor's insolvency, SUMCO also sent a letter to the Debtor on January 6, 2011 (which it confirmed in follow-up letters on January 19, 2011, and January 28, 2011) demanding reclamation under U.C.C. § 2-702 of all solar silicon wafers for which payment was outstanding. Out of the approximately 500,000 wafers for which payment was outstanding, the Debtor's inventory accounting identified, and SUMCO successfully reclaimed, only 18,369 wafers.

Rather than attempting to cure its breach, the Debtor (through outside litigation counsel) sent a letter to SUMCO on February 15, 2011—less than two weeks before the Debtor's sixty-day cure period expired—alleging for the first time that all of the solar silicon wafers SUMCO delivered had been non-conforming. Critically, the defect that the Debtor alleged—blemishes on the surface of the wafers—was the exact same condition that the Debtor had waived in its October 13, 2010 letter. The Debtor represented that it had first discovered on November 29, 2010 that such blemishes were causing performance issues (even though the same blemishes had been reported since mid-2010), but did not attempt to explain why it had continued to accept shipments after such date in December 2010, or why it had failed to notify SUMCO of the alleged performance issues when it received SUMCO's prior default notice or complied with SUMCO's reclamation demand, and instead waited until its cure period was about to expire (two and half months after the purported discovery). Moreover, the Debtor did not request an exchange of the allegedly non-conforming wafers (all but 18,369 of which already had been utilized) or a refund of their purchase prices—the two remedies available under the Purchase Agreement. Instead, the Debtor alleged that SUMCO had materially breached the Purchase Agreement, purported to immediately terminate the Purchase Agreement (even though it had not provided the requisite notice and sixty-day cure period), demanded the return of all Fees that had not yet been credited against the purchase prices of deliveries, and purported to reserve its right to claim lost profits and other damages if SUMCO did not return the Fees (even though the Purchase Agreement expressly precludes such claims). Tellingly, the Debtor offered to set off against its demand the amounts due to SUMCO for outstanding invoices (even though it purportedly believed that the wafers covered by such invoices were defective).

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17 *See* Disclosure Statement 7 (stating that the Debtor tried to obtain additional financing or a strategic equity partner in "late 2010").

18 *See* WARN Notice filed with New York Department of Labor, *available at* http://www.labor.ny.gov/app/wam/details.asp?id=2966; *see also* Disclosure Statement 8 (stating that the Debtor announced the closure of its facilities in "late December 2010").

On February 28, 2011, the Debtor's sixty-day cure period expired without any further action from the Debtor. In accordance with the terms of the Purchase Agreement, SUMCO sent a letter to the Debtor (which it confirmed in a follow-up letter on March 7, 2011) exercising its contractual rights to immediately terminate the Purchase Agreement. Upon such termination, under the express terms of the Purchase Agreement, SUMCO was entitled to retain the Fees that had not yet been credited against the purchase prices of deliveries, which uncredited Fees totaled $4,514,336.00.

On November 21, 2011, SUMCO timely and properly filed a proof of claim for the $1,560.484.44 still due on account of its outstanding invoices (after crediting the purchase prices of wafers that SUMCO successfully reclaimed).

The Debtor believes that it has "a potential Avoidance Action claim" against SUMCO "based on a deposit that the Debtor made to [SUMCO] in the amount of $4,509,200 to secure payment under a pre-petition wafer supply contract." The Debtor further suggests that defects in the silicon wafers supplied by SUMCO "primarily" caused the Debtor's business to fail. These self-serving, advocacy-oriented statements mischaracterize the nature of the Fees that the Debtor paid to SUMCO and the basis for the parties' dispute.

The Debtor fails to acknowledge that the Purchase Agreement expressly provides that the Fees were "lump-sum fees" that SUMCO was entitled to retain in the event of a breach by the Debtor, not a "deposit." Likewise, the Disclosure Statement omits any mention of the parties' dispute as to the origins of the alleged blemishes on the solar silicon wafers, the Debtor's waiver of issues related to the occurrence of such blemishes, or the Debtor's failure to satisfy its payment obligations.

VII. FEASIBILITY OF THE PLAN AND BEST INTERESTS TEST

A. Feasibility of the Plan

The Bankruptcy Code requires that, for the Plan to be confirmed, the Debtor must demonstrate that consummation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor. The Plan contemplates the winding down of the Debtor's Estate; therefore, no subsequent liquidation or reorganization will ensue after the Effective Date. The Debtor believes that it or the Liquidating Trustee will be able to timely perform all obligations described in the Plan and, therefore, that the Plan is feasible.

HOLDERS OF CLAIMS AND INTERESTS ARE ADVISED TO REVIEW CAREFULLY THE RISK FACTORS INCLUDED IN ARTICLE IX OF THIS DISCLOSURE STATEMENT THAT MAY AFFECT THE FINANCIAL FEASIBILITY OF THE PLAN.

B. The Best Interests of Creditors Test

In certain circumstances, to be confirmed, the Plan must satisfy the "Best Interest Of Creditors Test" incorporated in section 1129(a)(7) of the Bankruptcy Code. The test applies to individual creditors and Interest holders (stockholders) that are both (i) in Impaired Classes under the Plan, and (ii) do not vote to accept the Plan. Section 1129(a)(7) of the Bankruptcy Code requires that such Creditors and Interest holders receive or retain an amount under the Plan not less than the amount that such holders would receive or retain if the Debtor were to be liquidated under chapter 7 of the Bankruptcy Code.

In a typical chapter 7 case, a trustee is elected or appointed to liquidate the debtor's assets for distribution to creditors in accordance with the priorities set forth in the Bankruptcy Code. Secured creditors generally are paid first from the sales proceeds of properties securing their liens. If any assets are remaining in the bankruptcy Estate after the satisfaction of secured creditors' claims from their collateral, Administrative Claims generally are next to receive payment. Unsecured creditors are paid from any remaining sales proceeds, according to their respective priorities. Unsecured creditors with the same priority share in proportion to the amount of their allowed claims in relationship to the total amount of allowed claims held by all unsecured creditors with the same priority. Finally, equity Interest holders receive the balance that remains, if any, after all creditors are paid.

C. Application of the Best Interests Test to the Liquidation Analysis and Valuation of the Debtor

The Debtor has prepared an analysis of projected liquidation recoveries, annexed hereto as Exhibit D (the "Liquidation Analysis"). Based on the Liquidation Analysis, the Debtor believes that the Plan provides for recoveries much greater than those that would be realized in a Chapter 7 liquidation, and that the Plan thus satisfies the "best interests" test of section 1129(a) of the Bankruptcy Code.

In a Chapter 7 liquidation, all of the Debtor's remaining assets would be liquidated and distributed to creditors in order of their priority under the Bankruptcy Code. The Series A-1 Noteholders hold a lien on all of the Debtor's assets, except Avoidance Actions, and would be entitled to a distribution of the liquidated amount of all other assets. Because the Debtor's only asset that is not encumbered by the liens of the Series A-1 Noteholders is Avoidance Actions, Avoidance Action recoveries are the only potential source of distributions to the holders of Claims in other classes and certain unclassified claims. Liquidation of the Avoidance Actions is expected to generate approximately $250,000 in gross recoveries, but after satisfying the administrative claims that would be incurred in administering a Chapter 7 liquidation, the Debtor estimates that only $200,000 in recoveries from Avoidance Actions would be available for distribution to holders of Claims. Further, in a Chapter 7 liquidation, the Debtor estimates that it would not be able to recover approximately $1,200,000 that it would be able to recover through the Plan and the efforts of the Liquidating Trust.

As detailed in the attached Liquidation Analysis, in a chapter 7 liquidation: (a) recoveries by the Series A-1 Noteholders on the secured Class 1 Claims would be approximately $4,400,000 (about 11%), (b) recoveries by Allowed General Unsecured Trade Claims in Class 6 would be $0, and (c) recoveries by holders of the unclassified Allowed Priority Tax Claims would receive approximately $175,000 (about 50%). In contrast, under the Plan: (a) recoveries by the Series A-1 Noteholders on the secured Class 1 Claims would be approximately $4,800,000 (about 12 %); (b) recoveries by Allowed General Unsecured Trade Claims in Class 6 (if Class 6 votes to accept the Plan) would be between $90,000 and $95,000 (about 12%); and (c) recoveries by holders of the unclassified Allowed Priority Tax Claims would receive approximately $347,500 (100%).

The Liquidation Analysis shows that each creditor in Class 1, Class 6 (if Class 6 votes to accept the Plan), and the holders of unclassified Allowed Priority Tax Claims will receive an amount under the Plan that is greater than they would each receive in a Chapter 7 liquidation, and thus, the Plan satisfies the best interests of creditors test with respect to these creditors and claimants.

Holders of Claims in Classes 2-5, Class 6 (if Class 6 votes against the Plan)[19], and Class 7 (if Class 7 is constituted) will receive the same treatment under the Plan as they would receive in a Chapter 7 liquidation, and thus, the best interests test is also satisfied with respect to those classes as well.

Additionally, creditors will receive a better recovery through the Plan because the professionals proposing the Plan have been working in this Bankruptcy Case since its inception and are familiar with the background and progress of this bankruptcy case. On the other hand, conversion of this Bankruptcy Case to a Chapter 7 liquidation proceeding will require the appointment of a trustee, who will need additional time to become familiar with the Bankruptcy Case, and a statutory fee will be paid to the chapter 7 trustee. While gaining familiarity with this case, a Chapter 7 trustee will expend time payable by the remaining cash on hand in the Debtor's Estate, thereby reducing the potential distribution to creditors. Under the Plan, Distributions will

[19] For purposes of clarity, if Class 6 votes in favor of the Plan, holders of Claims in Class 6 will receive a recovery of approximately 12%, which exceeds the 0% recovery that the holders of such Claims would receive in a Chapter 7. If Class 6 votes against the Plan, holders of Claims in Class 6 will receive a recovery of 0%, which is the same as the holders of such Claims would receive in a Chapter 7.

be made as soon as practicable after the later of the Effective Date or the Allowance Date, whereas conversion of this case to a chapter 7 liquidation proceeding will substantially delay distributions and reduce the amount of distributions currently available to creditors. Thus, the Debtor believes that the Plan satisfies the "best interests" test.

Any analysis of recoveries is inherently speculative. The Liquidation Analysis necessarily contains estimates of the net proceeds that would be received from a sale of assets. Claims estimates are based solely upon the Debtor's review of Scheduled Claims and the Debtor's books and records. No order or finding has been entered by the Bankruptcy Court estimating or otherwise fixing the amount of Claims at the projected amounts set forth in the Liquidation Analysis. Accordingly, the estimate of Allowed Claims in the Liquidation Analysis should not be relied on for any other purpose, including, without limitation, any determination of the value of any distribution to be made on account of Allowed Claims under the Plan.

THE LIQUIDATION ANALYSIS IS PROVIDED FOR ILLUSTRATIVE PURPOSES ONLY, AND DOES NOT CONSTITUTE A PROMISE OR GUARANTEE OF AMOUNTS TO BE DISTRIBUTED UNDER THE PLAN. ACTUAL AMOUNTS AVAILABLE FOR DISTRIBUTION AND RECEIPTS ARE LIKELY TO DIFFER, AND MAY DIFFER MATERIALLY, AS A RESULT OF A VARIETY OF FACTORS, MOST OF WHICH ARE BEYOND THE CONTROL OF THE DEBTOR.

VIII. ALTERNATIVES TO CONFIRMATION AND CONSUMATION OF THE PLAN

The Debtor believes that the Plan affords holders of Claims the potential for the greatest return and, therefore, is in the best interests of such holders. If the Plan is not confirmed, however, the theoretical alternatives include: (a) an alternative plan or plans of liquidation; or (b) conversion of this Bankruptcy Case to a Chapter 7 bankruptcy case. The Debtor believes that the Plan provides a substantially greater return to holders of Claims than would an alternative plan of liquidation or conversion of this Bankruptcy Case under Chapter 7 of the Bankruptcy Code.

IX. CERTAIN RISK FACTORS TO CONSIDER

The following disclosures are not intended to be inclusive and should be read in connection with the other disclosures contained in this Disclosure Statement and the exhibits attached hereto. You should carefully consider the risks described below in addition to the other information contained in this document. It is recommended that you consult your legal, financial, and tax advisors regarding the risks associated with the Plan and the Distributions you may receive thereunder.

A. Claims Estimation

There can be no assurance that the estimated Claim amounts assumed for the purposes of preparing the Plan are correct. The actual amount of Allowed Claims likely will differ in some respect from the estimates. The estimated amounts are subject to certain risks, uncertainties, and assumptions. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, the actual amount of Allowed Claims may vary from those estimated for the purpose of preparing the Plan.

B. Certain Risks of Nonconfirmation

There can be no assurance that the requisite acceptances to confirm the Plan will be received. Even if the requisite acceptances are received, there can be no assurance that the Bankruptcy Court will confirm the Plan. The Bankruptcy Court could decline to confirm the Plan if it were to find that any of the statutory requirements for confirmation had not been met. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation and requires, among other things, a finding by the Bankruptcy Court that the confirmation of the Plan is not likely to be followed by a liquidation or a need for further financial reorganization.

X. CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES

A. General

THE DEBTOR HAS NOT SOUGHT OR OBTAINED ANY RULING FROM THE INTERNAL REVENUE SERVICE OR FROM ANY OTHER TAXING AUTHORITY WITH RESPECT TO ANY OF THE TAX CONSEQUENCES OF THE PLAN, NOR HAS THE DEBTOR SOUGHT OR OBTAINED AN OPINION OF COUNSEL WITH RESPECT TO ANY SUCH TAX CONSEQUENCES. NO REPRESENTATIONS OR ASSURANCES ARE MADE WITH RESPECT TO THE FEDERAL INCOME TAX CONSEQUENCES AS SUMMARIZED HEREIN. CERTAIN TYPES OF CREDITORS MAY BE SUBJECT TO SPECIAL RULES NOT ADDRESSED IN THIS SUMMARY OF FEDERAL INCOME TAX CONSEQUENCES. FURTHER, CREDITORS MAY BE SUBJECT TO STATE, LOCAL, OR FOREIGN TAX CONSEQUENCES THAT ARE NOT ADDRESSED HEREIN. BECAUSE THE TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND MAY VARY BASED ON INDIVIDUAL CIRCUMSTANCES, EACH CREDITOR SHOULD CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE SPECIFIC TAX CONSEQUENCES OF ANY ASPECT OF THE PLAN WITH RESPECT TO SUCH CREDITOR.

The following discussion is a summary of certain U.S. federal income tax consequences of the Plan to the Debtor, the Liquidating Trust, and to holders of Claims that are entitled to vote on the Plan. This discussion is based on the Internal Revenue Code of 1986, as amended (the "IRC"), Treasury Regulations promulgated and proposed thereunder, judicial decisions and published administrative rules and pronouncements of the Internal Revenue Service ("IRS") as in effect on the date hereof. Due to the complexity of certain aspects of the Plan, the lack of applicable legal precedent, the possibility of changes in the law, the differences in the nature of the Claims (including Claims within the same class), the holders' status and method of accounting (including holders within the same class) and the potential for disputes as to legal and factual matters with the IRS, the tax consequences described herein are subject to significant uncertainties. No legal opinions have been requested from counsel with respect to any of the tax aspects of the Plan and no rulings have been or will be requested from the IRS with respect to the any of the issues discussed below. Furthermore, legislative, judicial or administrative changes may occur, perhaps with retroactive effect, which could affect the accuracy of the statements and conclusions set forth below as well as the tax consequences to the Debtor and the holders of Claims.

This discussion does not address all aspects of U.S. federal income taxation that may be relevant to a particular holder, in light of its particular facts and circumstances. This summary does not apply to:

(i) holders of Claims that are not United States persons (as defined in the IRC) or that are otherwise subject to special treatment under U.S. federal income tax law (including, for example, banks, governmental authorities or agencies, financial institutions, insurance companies, pass-through entities, tax-exempt organizations, brokers and dealers in securities, mutual funds, small business investment companies, regulated investment companies, investors that hold the instruments as part of a straddle or hedging, constructive sale, integrated or conversion transactions for U.S. federal income tax purposes or investors whose functional currency is not the U.S. dollar), or

(ii) holders of Claims or Interests that are not entitled to vote on the Plan, including holders whose Claims are entitled to reinstatement or payment in full in cash under the Plan or holders whose Claims or Interests are to be extinguished without any distribution.

The following discussion assumes that holders of Claims hold their instruments as "capital assets" within the meaning of IRC Section 1221, and that holders of Claims hold only claims in a single class. Holders of multiples classes of Claims should consult their own tax advisors as to the effect such ownership may have on the U.S. federal income tax consequences described below. Moreover, this summary does not purport to cover all aspects of U.S. federal income taxation that may apply to the Debtor and holders of Claims based upon their particular circumstances. Additionally, this summary does not discuss any tax consequences that may arise under state, local, or foreign tax law.

If a partnership holds Claims, the tax treatment of the partners will generally depend upon the status of the partners and the activities of the partnership. Partners in partnerships that hold Claims should consult their tax advisors.

A substantial amount of time may elapse between the date of this Disclosure Statement and the receipt of a final distribution under the Plan. Events occurring after the date of this Disclosure Statement, such as additional tax legislation, court decisions or administrative changes, could affect the U.S. federal income tax consequences of the Plan and the transactions contemplated thereunder.

B. Consequences to the Debtor

1. Recognition of Gain or Loss

The Debtor will recognize gain or loss equal to the difference between the fair market value of the Assets and the adjusted tax basis of such Assets. The Debtor anticipates that any net gain resulting from the transfer of assets (as well as gain attributable to prior sales of the Debtor's property pursuant to the Plan) will be offset by the tax attributes available to the Debtor, such as net operating losses, capital loss carry-forwards, bad debt deductions, asset basis, or other deductions from, or offsets to, income. The Debtor may, however, recognize some alternative minimum tax as a result of the transfer of the Assets. Any such tax will be paid by the Debtor or the Liquidating Trust to the IRS.

The foregoing conclusions are based on, among other things, the Debtor's assumptions concerning the fair market value of the Assets and the nature and magnitude of their respective tax attributes. Although the Debtor believes such assumptions are correct and appropriate, the IRS may challenge one or more of those assumptions, and if the IRS were to prevail in any such challenge, the Debtor's Estate could be subject to a tax liability that might be allowed as an Administrative Expense Claim. Such an Allowed Administrative Expense Claim would reduce the funds available to administrative and other Creditors.

2. Cancellation of Debt Income

In general, absent an exception, a debtor will realize and recognize cancellation of debt income ("COD Income") upon satisfaction of its outstanding indebtedness for total consideration less than the amount of such indebtedness. The amount of COD Income, in general, is the excess of (a) the adjusted issue price of the indebtedness satisfied, over (b) the sum of (x) the amount of Cash paid, and (y) the fair market value of any new consideration (including stock of the debtor) given in satisfaction of such indebtedness at the time of the exchange.

A debtor will not, however, be required to include any amount of COD Income in gross income if the debtor is under the jurisdiction of a court in a case under chapter 11 of the Bankruptcy Code and the discharge of debt occurs pursuant to that proceeding. Thus, although the Debtor will realize COD Income as a result of the satisfaction of Claims, the Debtor will not be required to recognize any of that COD Income.

C. Federal Income Tax Treatment of the Liquidating Trust

Pursuant to the Plan, the Debtor will transfer its assets to the Liquidating Trust, which will become obligated to make distributions to holders of Claims in accordance with the Plan. The Plan provides, and this discussion assumes, that the Liquidating Trust will be treated for federal income tax purposes as a "liquidating trust," as defined in Treasury Regulation Section 301.7701-4(d), and will therefore be taxed as a grantor trust. The transfer of assets to the Liquidating Trust in accordance with the Plan will be treated for federal income tax purposes as a deemed transfer of assets to the holders of Claims, followed by a deemed transfer of such assets by such holders to the Liquidating Trust. The holders of Claims, as the beneficiaries of the Liquidating Trust, will be treated for federal income tax purposes as the grantors and deemed owners thereof. Accordingly, because a grantor trust is treated as a pass-through entity for federal income tax purposes, no tax should be imposed on the Liquidating Trust itself or on the income earned or gain recognized by the Liquidating Trust. Instead, the beneficiaries will be taxed on their allocable shares of such net income or gain in each taxable year (determined in accordance with the Liquidating Trust Agreement), whether or not they receive any distributions from the Liquidating Trust in such taxable year.

Although the Liquidating Trust has been structured with the intention of complying with guidelines established by the IRS in Rev. Proc. 94-45, 1994-2 C.B. 684, for the formation of liquidating trusts, it is possible that the IRS could require a different characterization of the Liquidating Trust, which could result in different and possibly greater tax liability to the Liquidating Trust and/or the holders of Allowed Claims. No ruling has been or will be requested from the IRS concerning the tax status of the Liquidating Trust and there can be no assurance the

IRS will not assert an alternative characterization of the Liquidating Trust. If the Liquidating Trust were determined by the IRS to be taxable not as a liquidating trust, as described in Treasury Regulation Section 301.7701-4(d), the taxation of the Liquidating Trust and the transfer of assets by the Debtor to the Liquidating Trust could be materially different than is described herein and could have a material adverse effect on the holders of Claims.

The Liquidating Trustee will file tax returns with the IRS for the Liquidating Trust as a grantor trust in accordance with Treasury Regulation Section 1.671-4(a). The Liquidating Trustee will also send to each beneficiary of the Liquidating Trust a separate statement setting forth the beneficiary's allocable share of items of income, gain, loss, deduction or credit and will instruct the beneficiary to report such items on such beneficiary's federal income tax return.

D. Consequences to Holders of Claims

1. Gain or Loss Recognized by Holders of Claims

Generally, a holder of a Claim will recognize gain or loss equal to the difference between the amount realized with respect to such Claim and such holder's adjusted tax basis in the Claim. The amount realized is equal to the sum of the cash and the fair market value of any other consideration received under the Plan in respect of a holder's Claim, including, to the extent such holder is a beneficiary of the Liquidating Trust, the fair market value of each such holder's proportionate share of the Trust Assets transferred to the Liquidating Trust on behalf of and for the benefit of such holder (to the extent that such cash or other property is not allocable to any portion of the Claim representing accrued but unpaid interest (as discussed below)).

The transfer of the Trust Assets to the Liquidating Trust by the Debtor should be treated for federal income tax purposes as a transfer of such Trust Assets directly to the holders of Claims to the extent they are beneficiaries of the Liquidating Trust, followed by a deemed transfer of such Trust Assets by such beneficiaries to the Liquidating Trust. As a result of such treatment, such holders of Claims will be required to take into account the fair market value of their pro rata share, if any, of the proceeds of the Trust Assets transferred on their behalf to the Liquidating Trust in determining the amount of gain realized and required to be recognized upon consummation of the Plan on the Effective Date.

As each holder's share of the Trust Assets may change depending upon the resolution of Disputed Claims, the holders may be prevented from recognizing for tax purposes all of their loss in connection with the consummation of the Plan until all Disputed Claims have been resolved.

The Liquidating Trustee will provide the holders of Claims with valuations of the Assets transferred to the Liquidating Trust on behalf of and for the benefit of such holders and such valuations should be used consistently by the Liquidating Trust and such holders for all federal income tax purposes.

2. Distributions in Discharge of Accrued but Unpaid Interest

Pursuant to the Plan, distributions received in respect of Claims will be allocated first to the principal amount of such Claims, with any excess allocated to any allowed accrued but unpaid interest. However, there can be no assurance that the IRS will respect such allocation for federal income tax purposes. If, contrary to the intended position, such a distribution were treated as allocated first to accrued but unpaid interest, a holder would realize ordinary income with respect to such distribution in an amount equal to the accrued but unpaid interest not already taken into income under the holder's method of accounting, regardless of whether the holder would otherwise realize a loss as a result of the Plan. A holder should also recognize ordinary income on the exchange (but not in excess of the amount of gain recognized, as described above) to the extent a distribution is received in exchange for market discount not previously taken into account under the holder's method of accounting.

3. Character of Creditor's Gain or Loss; Tax Basis; Holding Period

The determination of the capital or ordinary character of any gain or loss recognized by a holder of Claims under the Plan, whether it is long-term or short-term, will be determined by a number of factors, including, but not limited to, the status of the holder, the nature of the Claim in such holder's hands, the purpose and circumstances of its acquisition, the holder's holding period of the Claim, the extent to which the holder previously claimed a deduction for the worthlessness of all or a portion of the Claim, and the extent to which the holder acquired the Claim at a market discount. The holder's aggregate tax basis for any property received under the Plan will generally equal the fair market value of the property received in the exchange, less any amount allocable to interest as described in the preceding paragraph. The holding period for any property received under the Plan will generally begin on the day following the receipt of such property.

4. Prior Bad Debt or Loss Deduction

Under certain circumstances, a holder of a Claim may recognize ordinary income to the extent that such holder is deemed on the Effective Date to have received consideration for such Claim that represents a recovery of a prior bad debt or loss deduction, regardless of whether gain or loss would have otherwise been realized or recognized by such holder on consummation of the Plan. Holders of Claims who have taken a bad debt or loss deduction with respect to their Claims should consult their own tax advisors as to the effect of such deduction in light of their particular circumstances.

E. Information Reporting and Backup Withholding

All distributions under the Plan will be subject to applicable federal income tax reporting and withholding. The IRC imposes "backup withholding" on certain "reportable" payments to certain taxpayers, including payments of interest. Under the backup withholding rules, a holder of Claims may be subject to backup withholding with respect to distributions or payments made pursuant to the Plan unless that holder (a) comes within certain exempt categories (corporations are generally exempt) and, when required, demonstrates that fact or (b) provides a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer

identification number is correct and that the holder is not subject to backup withholding because of a failure to report all dividend and interest income. Backup withholding is not an additional tax, but merely an advance payment that may be refunded to the extent it results in an overpayment of tax.

Debtor intends to withhold all amounts required by law to be withheld from payments of interest and will comply with all applicable reporting requirements of the IRC.

Notwithstanding any other provision of the Plan, (a) each holder of a Claim that is to receive a distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such distribution, and (b) no distribution shall be made to or on behalf of such holder pursuant to the Plan unless and until such holder has made arrangements satisfactory to the Liquidating Trustee for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon the Liquidating Trustee in connection with such distribution.

IRS CIRCULAR 230 NOTICE

TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT CIRCULAR 230, HOLDERS OF CLAIMS OR INTERESTS ARE HEREBY NOTIFIED THAT: (1) ANY DISCUSSION OF FEDERAL INCOME TAX ISSUES IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON, BY ANY HOLDER OF A CLAIM OR INTEREST FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED UNDER THE IRC ON SUCH HOLDERS, (2) SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE CONFIRMATION OF THE PLAN TO WHICH THE TRANSACTIONS DESCRIBED IN THIS DISCLOSURE STATEMENT ARE ANCILLARY, AND (3) HOLDERS OF CLAIMS OR INTERESTS SHOULD SEEK ADVICE BASED UPON THEIR PARTICULAR CIRCUMSTANCES FROM THEIR OWN TAX ADVISOR.

XI. CONCLUSION AND RECOMMENDATION

Based on the foregoing analysis of the Debtor, its assets, and the Plan, the Debtor believes that the best interests of all parties would be served through confirmation of the Plan. **FOR THESE REASONS, THE DEBTOR URGES ALL CREDITORS TO VOTE TO "ACCEPT" THE PLAN.**

Dated: December 9, 2011

SPECTRAWATT, INC.

By: /s/ Brad Walker

Brad Walker, CRO and CEO

EXHIBITS TO DISCLOSURE STATEMENT

[THERE HAVE BEEN NO REVISIONS TO THE EXHIBITS ORIGINALLY FILED WITH THE DISCLOSURE STATEMENT]