

**THIS DISCLOSURE STATEMENT HAS  
NOT YET BEEN APPROVED BY THE COURT**

This proposed Disclosure Statement is not a solicitation of acceptance or rejection of the Debtors' Joint Chapter 11 Plan. Acceptances or rejections may not be solicited until the Bankruptcy Court has approved this Disclosure Statement under Bankruptcy Code § 1125. This proposed Disclosure Statement is being submitted for approval only, and has not yet been approved by the Bankruptcy Court.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: ) Chapter 11  
Solyndra LLC, *et al.*,<sup>1</sup> )  
 ) Case No. 11-12799 (MFW)  
 )  
Debtors. ) (Jointly Administered)

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**DISCLOSURE STATEMENT IN RESPECT OF  
DEBTORS' JOINT CHAPTER 11 PLAN**

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**IMPORTANT DATES**

- Date by which ballots must be received: \_\_\_\_\_, 2012
- Date by which objections to Confirmation of the Plan must be filed and served:  
\_\_\_\_\_, 2012
- Hearing on Confirmation of the Plan: \_\_\_\_\_, 2012 at \_\_:00 .m. (prevailing Eastern time)

Dated: July 27, 2012

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<sup>1</sup> The Debtors in these proceedings and the last four digits of each Debtor's federal taxpayer identification number are as follows: Solyndra LLC (9771) and 360 Degree Solar Holdings, Inc. (5583). The Debtors' address is 47488 Kato Road, Fremont, CA 94538.

## TABLE OF CONTENTS

	Page
I. PREFATORY STATEMENT AND DEFINITIONS.....	1
II. INTRODUCTION AND OVERVIEW.....	1
A. Introduction.....	1
B. Disclaimers .....	2
C. An Overview of the Chapter 11 Process.....	3
D. Plan Overview.....	3
E. Voting on the Plan .....	9
1. Who May Vote.....	9
2. How to Vote.....	9
F. Confirmation of the Plan.....	10
1. Generally.....	10
2. Objections to Confirmation.....	10
3. Hearing on Confirmation .....	10
III. HISTORY, ORGANIZATION AND ACTIVITIES OF THE DEBTORS.....	11
A. General Description of the Debtors' Business and Primary Assets.....	11
B. Circumstances Leading to the Commencement of the Cases .....	13
C. Significant Events Since the Petition Date .....	13
D. First Day Motions and Other Post-Petition Activities .....	14
E. Joint Administration.....	15
F. Noticing and Claims Agent.....	15
G. Employment of Chief Restructuring Officer .....	15
H. Employees.....	15
I. Cash Management.....	16
J. Critical Trade .....	16
K. Prepetition Taxes .....	16

L.	Utilities.....	16
M.	DIP Financing and Cash Collateral.....	17
N.	Retention of Debtors’ Professional Persons .....	17
O.	Appointment of Creditors’ Committee and Employment of Professionals.....	17
P.	Engagement of Imperial Capital as Financial Advisor and Investment Banker...	18
Q.	WARN Act Litigation.....	18
R.	Sales of Estate Assets.....	18
S.	Tax Appeals .....	19
T.	Bar Date for Filing Proofs of Claim and Administrative Expense Requests.....	20
U.	Filing of Schedules and Statements of Financial Affairs.....	20
V.	Reclamation Claims.....	21
W.	Rejection and Abandonment Motions .....	21
X.	Key Employee Incentive Plan.....	21
Y.	VDL Settlement Motion .....	21
IV. DESCRIPTION OF THE PLAN .....		21
V. TREATMENT OF ADMINISTRATIVE EXPENSES AND TAX CLAIMS .....		22
A.	Introduction.....	22
B.	Administrative Expenses .....	22
C.	DIP Credit Facility Claims.....	22
D.	Tax Claims.....	22
VI. CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS		23
A.	Summary .....	23
B.	Classification and Treatment of Claims and Interests .....	23
1.	Class 1 – Priority Non-Tax Claims.....	24
2.	Class 2 – Miscellaneous Secured Claims.....	24
3.	Class 3 – Prepetition Tranche A Claims .....	25
4.	Class 4 – Prepetition Tranche B Claims .....	26

5.	Class 5 – Prepetition Tranche D Claims .....	26
6.	Class 6 – Prepetition Tranche E Claims .....	27
7.	Class 7 – Holdings General Unsecured Claims .....	28
8.	Class 8 – Solyndra General Unsecured Claims .....	28
9.	Class 9 – Interests in Holdings.....	29
10.	Class 10 – Interests in Solyndra.....	30
VII. ACCEPTANCE OR REJECTION OF PLAN .....		30
A.	Identification of Unimpaired Classes.....	30
B.	Identification of Impaired Classes .....	30
C.	Classes Permitted and Not Permitted to Vote.....	31
D.	Effect of Non-Voting .....	31
E.	Nonconsensual Confirmation.....	31
F.	Postpetition Interest .....	31
VIII. MEANS FOR IMPLEMENTATION OF THE PLAN.....		31
A.	Plan Settlement .....	31
B.	No Substantive Consolidation.....	33
C.	Continued Corporate Existence and Vesting of Assets of Holdings .....	33
D.	Holdings Settlement Fund.....	34
E.	Establishment of Solyndra Settlement Trust and Vesting of Solyndra Settlement Trust Assets.....	34
F.	Purpose of Solyndra Settlement Trust .....	35
G.	Solyndra Settlement Fund and Solyndra Settlement Trust Contribution.....	35
H.	Solyndra Settlement Trustee .....	36
1.	Generally.....	36
2.	Responsibilities and Authority of Solyndra Settlement Trustee.....	36
3.	Powers of the Solyndra Settlement Trustee .....	37
4.	Compensation of Solyndra Settlement Trustee and Professionals .....	37
5.	Limitations on Solyndra Settlement Trustee.....	38

I.	Solyndra Settlement Trust Committee.....	39
1.	Generally.....	39
2.	Duties of Solyndra Settlement Trust Committee.....	39
3.	Reimbursement of Expenses of Solyndra Settlement Trust Committee...	39
J.	Establishment of Solyndra Residual Trust and Vesting of Solyndra Residual Trust Assets .....	39
K.	Purpose of Solyndra Residual Trust .....	40
L.	Solyndra Residual Trustee .....	40
1.	Generally.....	40
2.	Responsibilities and Authority of Solyndra Residual Trustee.....	41
3.	Powers of the Solyndra Residual Trustee .....	41
4.	Compensation of Solyndra Residual Trustee and Professionals.....	42
5.	Limitations on Solyndra Residual Trustee.....	43
M.	Solyndra Residual Trust Committee.....	44
1.	Generally.....	44
2.	Duties of Solyndra Residual Trust Committee .....	44
3.	Reimbursement of Expenses of Solyndra Residual Trust Committee.....	45
N.	U.S. Federal Income Tax Treatment of Liquidating Trusts.....	45
O.	Exit Facility for Solyndra Residual Trust .....	46
P.	Retained Rights of Action of the Debtors.....	47
Q.	Corporate Action/Dissolution .....	47
R.	Interests in Affiliates and Subsidiaries .....	48
S.	Payment of Plan Expenses.....	49
T.	Dissolution of Creditors' Committee.....	49
U.	Final Decree .....	49
IX.	TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....	49
A.	Rejection of Executory Contracts and Unexpired Leases.....	49
B.	Bar Date for Rejection Damages .....	50

X. LITIGATION, OBJECTIONS TO CLAIMS, AND DETERMINATION OF TAXES.....	50
A. Litigation; Objections to Claims; Objection Deadline.....	50
B. Temporary or Permanent Resolution of Disputed Claims.....	51
C. Setoffs .....	51
D. Preservation of Retained Rights of Action .....	52
XI. INJUNCTION AND EXCULPATION PROVISIONS .....	52
A. Injunctions.....	52
1. Generally.....	52
2. Injunction Related to Rights of Action and Claims, Administrative Expenses and Interests .....	53
3. Discharge of Holdings .....	53
B. Exculpation .....	54
C. Estate Releases of Prepetition Lenders and Debtors' Employees .....	54
D. Reservation of Rights of United States .....	55
XII. PENSION PLANS, OTHER RETIREE BENEFITS AND LABOR CONTRACTS .....	55
XIII. NO REGULATED RATE CHANGE WITHOUT GOVERNMENT APPROVAL .....	55
XIV. EXEMPTION FROM CERTAIN TRANSFER TAXES .....	55
XV. REQUIREMENTS FOR CONFIRMATION .....	55
A. Acceptances Necessary to Confirm Plan .....	55
B. Best Interest of Creditors Test .....	56
C. Feasibility of Plan .....	57
D. Classification.....	58
E. Confirmation of Plan Without Necessary Acceptances; Cramdown.....	58
XVI. EFFECT OF CONFIRMATION .....	60
A. Binding Effect of Confirmation.....	60
B. Good Faith .....	60
C. No Limitations on Effect of Confirmation.....	60
XVII. RISK FACTORS .....	60

XVIII. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN.....	61
A.    Consequences to the Debtors .....	62
B.    Consequences to Creditors.....	63
1.    Holders of Claims. ....	66
2.    Non-United States Persons. ....	67
C.    Importance of Obtaining Professional Tax Assistance.....	67
XIX. ALTERNATIVES TO PLAN.....	67
A.    Liquidation Under Chapter 7 .....	67
B.    Dismissal.....	68
C.    Alternative Plan .....	68
D.    No <i>Res Judicata</i> Effect .....	68
XX. CONCLUSION.....	69

I.

**PREFATORY STATEMENT AND DEFINITIONS**

Pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), 360 Degree Solar Holdings, Inc. (“Holdings”) and Solyndra LLC (“Solyndra” and together with Holdings, the “Debtors”), hereby submit this disclosure statement (the “Disclosure Statement”) in support of *Debtors’ Joint Chapter 11 Plan* (the “Plan”). The definitions contained in the Bankruptcy Code are incorporated herein by this reference. The definitions set forth in Article II of the Plan shall also apply to capitalized terms used herein that are not otherwise defined.

II.

**INTRODUCTION AND OVERVIEW**

**A. Introduction**

On September 6, 2011 (the “Petition Date”), the Debtors commenced the above-referenced bankruptcy cases (the “Chapter 11 Cases”) by each filing voluntary petitions under chapter 11 of the Bankruptcy Code.

This Disclosure Statement, submitted in accordance with section 1125 of the Bankruptcy Code, contains information regarding the Plan proposed by the Debtors. A copy of the Plan is attached to the Disclosure Statement as Exhibit 1. The Disclosure Statement is being distributed to you for the purpose of enabling you to make an informed judgment about the Plan.

The Disclosure Statement contains information concerning, among other matters: (1) the Debtors’ background; (2) the assets available for distribution under the Plan; and (3) a summary of the Plan. The Debtors strongly urge you to review carefully the contents of this Disclosure Statement and the Plan (including the exhibits to each) before making a decision to accept or reject the Plan. Particular attention should be paid to the provisions affecting or impairing your rights as a Creditor.

Following a hearing on \_\_\_\_\_, 2012, the Bankruptcy Court approved this Disclosure Statement as containing sufficient information to enable a hypothetical reasonable investor to make an informed judgment about the Plan. A copy of the order approving the Disclosure Statement is attached hereto as Exhibit 2 (the “Disclosure Statement Order”). Under section 1125 of the Bankruptcy Code, this approval enabled the Debtors to send you this Disclosure Statement and solicit your acceptance of the Plan. The Bankruptcy Court has not considered for approval the Plan itself or conducted a detailed investigation into the contents of this Disclosure Statement.

Your vote on the Plan is important. Absent acceptance of the Plan, there may be protracted delays or a chapter 7 liquidation. These alternatives may not provide for distribution of as much value to Holders of Allowed Claims as does the Plan. Accordingly, the Debtors urge you to accept the Plan by completing and returning the enclosed ballot(s) no later than \_\_\_\_\_, 2012.



**B. Disclaimers**

THIS DISCLOSURE STATEMENT CONTAINS INFORMATION THAT MAY BEAR UPON YOUR DECISION TO ACCEPT OR REJECT THE DEBTORS' PROPOSED PLAN. PLEASE READ THIS DOCUMENT WITH CARE. THE PURPOSE OF THE DISCLOSURE STATEMENT IS TO PROVIDE "ADEQUATE INFORMATION" OF A KIND, AND IN SUFFICIENT DETAIL, AS FAR AS IS REASONABLY PRACTICABLE IN LIGHT OF THE NATURE AND HISTORY OF THE DEBTORS AND THE CONDITION OF THE DEBTORS' BOOKS AND RECORDS, THAT WOULD ENABLE A HYPOTHETICAL REASONABLE INVESTOR TYPICAL OF HOLDERS OF CLAIMS OR INTERESTS OF THE RELEVANT CLASS TO MAKE AN INFORMED JUDGMENT CONCERNING THE PLAN.

FOR THE CONVENIENCE OF CREDITORS, THIS DISCLOSURE STATEMENT SUMMARIZES THE TERMS OF THE PLAN, BUT THE PLAN ITSELF QUALIFIES ANY SUMMARY. IF ANY INCONSISTENCY EXISTS BETWEEN THE PLAN AND THE DISCLOSURE STATEMENT, THE TERMS OF THE PLAN ARE CONTROLLING.

NO REPRESENTATIONS CONCERNING THE DEBTORS' FINANCIAL CONDITION OR ANY ASPECT OF THE PLAN ARE AUTHORIZED BY THE DEBTORS OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE YOUR ACCEPTANCE OR REJECTION THAT ARE OTHER THAN AS CONTAINED IN OR INCLUDED WITH THIS DISCLOSURE STATEMENT SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISION.

THE FINANCIAL INFORMATION CONTAINED HEREIN, UNLESS OTHERWISE INDICATED, IS UNAUDITED. MOREOVER, BECAUSE OF THE DEBTORS' FINANCIAL DIFFICULTIES, AS WELL AS THE COMPLEXITY OF THE DEBTORS' FINANCIAL MATTERS, THE BOOKS AND RECORDS OF THE DEBTORS, UPON WHICH THIS DISCLOSURE STATEMENT IN PART IS BASED, MAY BE INCOMPLETE OR INACCURATE. HOWEVER, REASONABLE EFFORT HAS BEEN MADE TO ENSURE THAT ALL SUCH INFORMATION IS FAIRLY PRESENTED.

PACHULSKI STANG ZIEHL & JONES LLP ("PSZ&J") IS GENERAL BANKRUPTCY COUNSEL TO THE DEBTORS. PSZ&J HAS RELIED UPON INFORMATION PROVIDED BY THE DEBTORS IN CONNECTION WITH PREPARATION OF THIS DISCLOSURE STATEMENT. ALTHOUGH PSZ&J HAS PERFORMED CERTAIN LIMITED DUE DILIGENCE IN CONNECTION WITH THE PREPARATION OF THIS DISCLOSURE STATEMENT, PSZ&J HAS NOT INDEPENDENTLY VERIFIED ALL OF THE INFORMATION CONTAINED HEREIN.

THE CONTENTS OF THIS DISCLOSURE STATEMENT SHOULD NOT BE CONSTRUED AS LEGAL, BUSINESS OR TAX ADVICE. EACH CREDITOR OR INTEREST HOLDER SHOULD CONSULT HIS OR HER OWN LEGAL COUNSEL AND ACCOUNTANT AS TO LEGAL, TAX AND OTHER MATTERS CONCERNING HIS OR HER CLAIM.

### **C. An Overview of the Chapter 11 Process**

Chapter 11 of the Bankruptcy Code contains numerous provisions, the general effect of which is to provide the debtor with “breathing space” within which to propose a restructuring of its obligations to third parties. The filing of a chapter 11 bankruptcy petition creates a bankruptcy “estate” comprising all of the property interests of the debtor. Unless a trustee is appointed by the Bankruptcy Court for cause (no trustee has been appointed in these Chapter 11 Cases), a debtor remains in possession and control of all its assets as a “debtor in possession.” The debtor may continue to operate its business in the ordinary course on a day-to-day basis without Bankruptcy Court approval. Bankruptcy Court approval is only required for various statutorily enumerated kinds of transactions (such as certain financing transactions) and transactions out of the ordinary course of a debtor’s business. The filing of the bankruptcy petition gives rise to what is known as the “automatic stay” which, generally, enjoins creditors from taking any action to collect or recover obligations owed by a debtor prior to the commencement of a chapter 11 case. The Bankruptcy Court can grant relief from the automatic stay under certain specified conditions or for cause.

The Bankruptcy Code authorizes the creation of one or more official committees to protect the interests of some or all creditors or interest holders. The fees and expenses of counsel and other professionals employed by such official committees and approved by the Bankruptcy Court are generally borne by a bankruptcy estate. One committee -- the Official Committee of Unsecured Creditors (the “Creditors’ Committee”) -- has been appointed in these Chapter 11 Cases, which represents the collective interests of general unsecured creditors.

A chapter 11 debtor emerges from bankruptcy by successfully confirming a plan of reorganization. Alternatively, the assets of a debtor may be sold and the proceeds distributed to creditors through a plan of liquidation. A plan may be either consensual or non-consensual and provide, among other things, for the treatment of the claims of creditors and interests of shareholders and holders of options or warrants. The provisions of the Debtors’ Plan are summarized below.

### **D. Plan Overview**

The following is a brief overview of the material provisions of the Plan and is qualified in its entirety by reference to the full text of the Plan.

The Plan effectuates a reorganization of Holdings and a liquidation of Solyndra that maximizes recovery to Creditors and provides an efficient mechanism for monetizing assets of the Debtors’ Estates. Among other things, the Plan incorporates multiple settlements among the Debtors, certain Prepetition Lenders, the WARN Plaintiffs, certain Creditors, certain Holders of Interests, and the Creditors’ Committee. As a result of these settlements, there will be distributions to the Holders of General Unsecured Claims and Priority Claims. The Plan Sponsors are Argonaut Ventures I, L.L.C. and Madrone Partners, LP.

Under the Plan, Holdings will be reorganized and the Plan Sponsors will provide the Holdings Settlement Fund that will maximize value for the benefit of Holders of Holdings General Unsecured Claims, result in the reduction of Claims against Solyndra, and preserve

certain tax attributes of the Holdings Estate. Holders of Interests in Holdings will retain their Interests, which will be unimpaired by the Plan.

Under the Plan, assets of Solyndra (except Trust Avoidance Claims which will vest in the Solyndra Settlement Trust) will be vested in the Solyndra Residual Trust, subject to existing Liens, and liquidated for the benefit of Creditors under the supervision of the Solyndra Residual Trustee. The Plan Sponsors will provide the Exit Facility. The Plan Sponsors will also provide the Solyndra Settlement Fund Loan, the proceeds of which shall be contributed to the Solyndra Settlement Trust for the benefit of Holders of Solyndra General Unsecured Claims who agree to forego any claims against Holdings.<sup>2</sup> In exchange for funding the Solyndra Settlement Trust, the Creditors' Committee shall release any and all Claims and Rights of Action against the Prepetition Lenders, including, but not limited to, those Claims and Rights of Action preserved under the Final DIP Order.

The Plan provides that all Holders of Allowed Administrative Expenses and Allowed Priority Claims against the Debtors will be paid in full. Holders of Secured Claims against the Debtors generally will retain their Liens or receive the benefit of their collateral under the Plan.<sup>3</sup> Taken together, the Plan proposes to fairly and efficiently restructure the Debtors' liabilities and distribute the Debtors' assets in a manner that will allow these Chapter 11 Cases to be promptly concluded.

The Plan provides for the classification and treatment of Claims against and Interests in the Debtors. The Plan designates eight (8) Classes of Claims and two (2) Classes of Interests. These Classes and Plan treatments take into account the differing nature and priority under the Bankruptcy Code of the various Claims and Interests.

The following chart briefly summarizes the treatment of Creditors and Interest Holders under the Plan.<sup>4</sup> Amounts listed below are estimated. Actual Claims and distributions will vary depending upon, among other things, recoveries on Distributable Assets.

a. Unclassified Claims

Description	Estimated Allowed Claims	Estimated Recovery Percentage	Treatment
Administrative Expenses	\$10,633,000	100%	Paid in full in Cash on the Effective Date or as soon thereafter as the Administrative Expense is Allowed.
Tax Claims	\$1,000,000	100%	A Tax Claim due and payable before the Effective Date will be paid on the Effective Date or as soon thereafter as it is Allowed.

<sup>2</sup> The Prepetition Tranche A Lenders will reduce their Prepetition Tranche A Claims by a corresponding amount.

<sup>3</sup> All Interests in Solyndra will be cancelled.

<sup>4</sup> This chart is only a summary of the classification and treatment of Claims and Interests under the Plan. References should be made to the entire Disclosure Statement and the Plan for a complete description of the classification and treatment of Claims and Interests.

b. Classified Claims

Class No.	Description	Estimated Allowed Claims	Estimated Recovery Percentage	Treatment
1	Priority Non-Tax Claims	\$864,000, plus \$3,500,000 for Allowed WARN Priority Claims	100%	<b>Unimpaired; deemed to accept.</b> Paid in full in Cash on the Effective Date of the Plan or as soon thereafter as Allowed or as otherwise agreed by the Holder of a Priority Non-Tax Claim.
2	Miscellaneous Secured Claims	To be determined	Value of collateral	<b>Unimpaired; deemed to accept.</b> On or as soon as practicable after the Effective Date, each Holder of an Allowed Miscellaneous Secured Claim shall either be paid in full, receive the collateral securing its Claim, or have left unaltered the legal, equitable, and contractual rights to which such Claim entitles the Holder of such Claim. If any Miscellaneous Secured Claim is not paid in full by such distribution, any deficiency against the applicable Debtor will be treated as a General Unsecured Claim.
3	Prepetition Tranche A Claims	\$69,715,800	50%-100%	<b>Impaired; entitled to vote.</b> After payment of the Tranche I Exit Facility and Solyndra Settlement Fund Loan, each Holder of a Prepetition Tranche A Claim shall receive a Pro Rata share of the Solyndra Net Lender Distributable Assets and, after payment of the Tranche II Exit Facility, a Pro Rata share of the Solyndra Residual Trust Interests distributed to the Holders of Prepetition Tranche A Claims, which distribution shall be calculated by multiplying the aggregate of the Solyndra Residual Trust Interests by a fraction equal to (A) the amount of Prepetition Lender Deficiency Claims as the numerator and (B) the sum of Prepetition Lender Deficiency Claims and Allowed Solyndra General Unsecured Claims as the denominator. Notwithstanding the foregoing, the Prepetition Tranche A Lenders shall not receive any distribution from or on account of the Solyndra Settlement Fund, the Solyndra Settlement Trust Contribution, or the Trust Avoidance Claims. Further, the Allowed amount of the Prepetition Tranche A Claims held by the Plan Sponsors shall be reduced by the aggregate of the amount of the Solyndra Settlement Trust Contribution and the amount of the Solyndra Settlement Fund Loan ( <i>i.e.</i> , reduced by \$3,175,000, plus any interest or fees accrued thereon). Notwithstanding anything to the contrary herein, the reasonable fees and expenses of the Prepetition Master Collateral Agent shall be paid in full prior to any distribution to Holders of Prepetition Tranche A Claims.

4	Prepetition Tranche B Claims	\$142,808,500	0%-17%	<p><b>Impaired; entitled to vote.</b> After payment of the Tranche A Claims, each Holder of a Prepetition Tranche B Claim shall receive a Pro Rata share of the Solyndra Net Lender Distributable Assets and, after payment of the Tranche II Exit Facility, a Pro Rata share of the Solyndra Residual Trust Interests that were distributed or made available to the Holders of Prepetition Tranche A Claims. Notwithstanding the foregoing, the Prepetition Tranche B Lenders shall not receive any distribution from or on account of the Solyndra Settlement Fund or the Solyndra Settlement Trust Contribution. In addition, notwithstanding anything to the contrary in the Prepetition Intercreditor Agreement, the Holder of a Prepetition Tranche B Claim shall be entitled, until payment of such Prepetition Tranche B Claim in full, to a Pro Rata share (calculated as a percentage of any deficiency claims of the Prepetition Tranche B Lenders and Prepetition Tranche D Lenders) of the net proceeds of any Trust Avoidance Claims calculated by multiplying the aggregate of such proceeds by a fraction equal to (A) the sum of Prepetition Tranche B Claims and Prepetition Tranche D Claims as the numerator and (b) the sum of Prepetition Tranche B Claims, Prepetition Tranche D Claims, and Allowed Solyndra General Unsecured Claims as the denominator.</p>
5	Prepetition Tranche D Claims	\$385,000,000	0% plus, depending on outcome of liquidation efforts	<p><b>Impaired; entitled to vote.</b> After payment of the Prepetition Tranche A Claims and Prepetition Tranche B Claims, each Holder of a Prepetition Tranche D Claim shall receive a Pro Rata share (calculated as a percentage of Prepetition Tranche D Claims and Prepetition Tranche E Claims) of the Solyndra Net Lender Distributable Assets and, after payment of the Tranche II Exit Facility, a Pro Rata share (calculated as a percentage of Prepetition Tranche D Claims and Prepetition Tranche E Claims) of the Solyndra Residual Trust Interests that were distributed or made available to the Holders of Prepetition Tranche B Claims. Notwithstanding the foregoing, the Prepetition Tranche D Lenders shall not receive any distribution from or on account of the Solyndra Settlement Fund or the Solyndra Settlement Trust Contribution. In addition, notwithstanding anything to the contrary in the Prepetition Intercreditor Agreement, the Holder of a Prepetition Tranche D Claim shall be entitled, until payment of such Prepetition Tranche D Claim in full, to a Pro Rata share (calculated as a percentage of any deficiency claims of the Prepetition Tranche B Lenders and Prepetition Tranche D Lenders) of the net proceeds of any Trust Avoidance Claims calculated by multiplying the aggregate of such proceeds by a fraction equal to (A) the sum of Prepetition Tranche B Claims and Prepetition Tranche D Claims as the numerator and (b) the sum of Prepetition Tranche B Claims, Prepetition Tranche D Claims, and Allowed Solyndra General Unsecured Claims as the denominator.</p>

6	Prepetition Tranche E Claims	\$186,644,300	0% plus, depending on outcome of liquidation efforts	<p><b>Impaired; entitled to vote.</b> After payment of Prepetition Tranche A Claims and Prepetition Tranche B Claims in full, each Holder of a Prepetition Tranche E Claim shall receive a Pro Rata share (calculated as a percentage of Prepetition Tranche D Claims and Prepetition Tranche E Claims) of the Solyndra Net Lender Distributable Assets and, after payment of the Tranche II Exit Facility, a Pro Rata share (calculated as a percentage of Prepetition Tranche D Claims and Prepetition Tranche E Claims) of the Solyndra Residual Trust Interests that were distributed or made available to the Holders of Prepetition Tranche B Claims. Notwithstanding the foregoing, the Prepetition Tranche E Lenders shall not receive any distribution from or on account of the Solyndra Settlement Fund, the Solyndra Settlement Trust Contribution, or the Trust Avoidance Claims.</p>
7	Holdings General Unsecured Claims	\$27,000,000	3%	<p><b>Impaired; entitled to vote.</b> On or as soon as practicable after the Effective Date, each Holder of an Allowed Holdings General Unsecured Claim shall receive a Pro Rata share of the Holdings Settlement Fund and, after payment of the Tranche II Exit Facility, a Pro Rata share of any proceeds of Retained Rights of Action of Reorganized Holdings up to the full Allowed amount of such Holdings General Unsecured Claim.</p>

8	Solyndra General Unsecured Claims	\$50,000,000-\$120,000,000	2.5%-6.0%	<p><b>Impaired; entitled to vote.</b> On or as soon as practicable following the Effective Date, each holder of an Allowed Solyndra General Unsecured Claim (including Holdings Creditors with Allowed Solyndra General Unsecured Claims, except as set forth below) shall receive a Pro Rata share (calculated as a percentage of Solyndra General Unsecured Claims) of the Solyndra Settlement Trust Interests which shall entitle such Holder to: (i) subject to execution of the General Unsecured Creditor Release, a Pro Rata share of the Solyndra Settlement Fund, net of costs; (ii) as soon as practicable after payment in full of the Tranche II Exit Facility, a Pro Rata share (calculated as a percentage of Allowed Solyndra General Unsecured Claims) of the Solyndra Residual Trust Interests that are distributed to the Holders of Solyndra General Unsecured Claims, which distribution shall be calculated by multiplying the aggregate of the Solyndra Residual Trust Interests by a fraction equal to (A) the amount of Allowed Solyndra General Unsecured Claims as the numerator and (B) the sum of Prepetition Lender Deficiency Claims and Allowed Solyndra General Unsecured Claims as the denominator; and (iv) a Pro Rata share (calculated as a percentage of the Allowed Solyndra General Unsecured Claims) of the proceeds from any residual Solyndra Net Lender Distributable Assets after all Prepetition Lender Claims have been paid in full.</p> <p>As to Holdings Creditors, Holders of Allowed Holdings General Unsecured Claims in Class 7 shall receive from the Holdings Settlement Fund ratable distributions under the Plan equal to three percent (3%) of such Holders' Allowed Holdings General Unsecured Claims and shall be deemed to have waived any right to a distribution out of the Solyndra Settlement Fund or Trust Avoidance Claims unless Holders of Solyndra General Unsecured Claims in Class 8 exceed ten percent (10%) of such Allowed Solyndra General Unsecured Claims out of such assets, then any Allowed Solyndra General Unsecured Claim held by a Holdings Creditor shall participate ratably in any distributions from such assets above ten percent (10%) to Holders of Allowed Solyndra General Unsecured Claims. As to any other assets, Holders of Allowed Holdings General Unsecured Claims who are also Holders of Allowed Solyndra General Unsecured Claims shall participate on account of such Solyndra General Unsecured Claims in distributions made available to Holders of Class 8 Claims under the Plan.</p>
9	Interests in Holdings	N/A	Retention of equity	<p><b>Unimpaired; deemed to accept.</b> Holders of Interests in Holdings shall have left unaltered the legal, equitable, and contractual rights to which each such Holder is entitled on account of such Interest.</p>

10	Interests in Solyndra	N/A	None	<b>Impaired; deemed to reject.</b> Holders of Interests in Solyndra shall receive no distributions or recoveries on account of such Interests and such Interests shall be extinguished on the Effective Date.
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**E. Voting on the Plan**

**1. Who May Vote**

The Plan divides Allowed Claims and Interests into multiple Classes. Under the Bankruptcy Code, only Classes that are “impaired” by the Plan are entitled to vote (unless the Class receives no compensation or payment, in which event the Class is conclusively deemed not to have accepted the Plan). A Class is Impaired if legal, equitable or contractual rights attaching to the Claims or Interests in the Class are modified, other than by curing defaults and reinstating maturities. Under the Plan, Administrative Claims and Priority Tax Claims are unclassified and are not entitled to vote. Classes 1, 2 and 9 are Unimpaired and are therefore conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code, and are not entitled to vote on the Plan. Class 10 receives nothing under the Plan and is therefore conclusively presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and is not entitled to vote on the Plan. Classes 3 through 8 are Impaired and entitled to vote to accept or reject the Plan. Only those votes cast by Holders of Allowed Claims shall be counted in determining whether a sufficient number of acceptances have been received to obtain Plan Confirmation. If no Holder of a Claim or Interest eligible to vote in a particular Class timely votes to accept or reject the Plan, the Plan shall be deemed **accepted** by the Holders of such Claims or Interests in such Class for purposes of section 1129(b) of the Bankruptcy Code.

**2. How to Vote**

All votes to accept or to reject the Plan must be cast by using the appropriate form of ballot. No votes other than ones using such ballots will be counted except to the extent ordered otherwise by the Bankruptcy Court. A form of ballot is being provided to Creditors in Classes 3 through 8 by which Creditors in such Classes may vote their acceptance or rejection of the Plan. The ballot for voting on the Plan gives Holders of Claims in Classes 3 through 8 one important choice to make with respect to the Plan – you can vote for or against the Plan. To vote on the Plan, after carefully reviewing the Plan and this Disclosure Statement, please complete the ballot (1) by indicating on the enclosed ballot that (a) you accept the Plan or (b) you reject the Plan and (2) by signing your name and mailing the ballot in the envelope provided for this purpose. AlixPartners LLP, as the Balloting Agent, will count the ballots.

The ballot for Holders of Solyndra General Unsecured Claims in Class 8 contains an optional waiver of claims against Holdings. You must execute the waiver in order to participate in distributions from the Solyndra Settlement Fund.

IN ORDER TO BE COUNTED, BALLOTS MUST BE COMPLETED, SIGNED AND RECEIVED BY THE BALLOTING AGENT, ALIXPARTNERS LLP, NO LATER THAN \_\_\_\_\_, 2012 AT THE FOLLOWING ADDRESS:



Solyndra Claims  
c/o AlixPartners LLP  
2101 Cedar Springs Road, Ste. #1100  
Dallas, TX 75201

IF YOUR BALLOT IS NOT PROPERLY COMPLETED, SIGNED AND RECEIVED AS DESCRIBED, IT WILL NOT BE COUNTED. IF YOUR BALLOT IS DAMAGED OR LOST, YOU MAY REQUEST A REPLACEMENT BY MAKING A WRITTEN REQUEST TO THE ADDRESS SHOWN ABOVE. FACSIMILE OR ELECTRONICALLY TRANSMITTED BALLOTS WILL NOT BE COUNTED.

**F. Confirmation of the Plan**

1. **Generally**

“Confirmation” is the technical term for the Bankruptcy Court’s approval of a plan of reorganization or liquidation. The timing, standards and factors considered by the Bankruptcy Court in deciding whether to confirm a plan of reorganization are discussed in Article XV below.

2. **Objections to Confirmation**

Any objections to Confirmation of the Plan must be in writing and must be filed with the Clerk of the Bankruptcy Court and served on counsel for the Debtors, the Creditors’ Committee, the Prepetition Lenders, and the United States Trustee on or before the date set forth in the notice of the Confirmation Hearing sent to you with this Disclosure Statement and the Plan. Bankruptcy Rule 3007 governs the form of any such objection.

3. **Hearing on Confirmation**

The Bankruptcy Court has set \_\_\_\_\_ at **:00 p.m. (prevailing Eastern time)** for a hearing (the “Confirmation Hearing”) to determine whether the Plan has been accepted by the requisite number of Creditors and whether the other requirements for confirmation of the Plan have been satisfied. The Confirmation Hearing will be held before the Honorable Mary F. Walrath, at the United States Bankruptcy Court for the District of Delaware, located at 824 Market Street, 5<sup>th</sup> Floor, Courtroom No. 4, Wilmington, Delaware 19801. The Confirmation Hearing may be continued from time to time and day to day without further notice. If the Bankruptcy Court confirms the Plan, it will enter the Confirmation Order.

### III.

#### **HISTORY, ORGANIZATION AND ACTIVITIES OF THE DEBTORS**

##### **A. General Description of the Debtors' Business and Primary Assets**

Solyndra, Inc. (now Holdings)<sup>5</sup> was formed in 2005. From 2005 through 2007, the company focused on research and development efforts to refine its proprietary thin-film technology used to apply photovoltaic material on cylindrical glass tubes. In 2007, the company leased its first fabrication facility (“Fab 1”) and began to commercialize its technology by designing and deploying the custom equipment needed to produce its innovative panels on a large scale. In July 2008, the company began its first commercial shipments from Fab 1. To fund the initial research and development phase and the build out and “ramp-up” of Fab 1, the company raised approximately \$709 million in private capital through eight issuances of preferred stock and a line of credit from a commercial bank.

In March 2009, Solyndra, Inc. received a conditional commitment from the U.S. Department of Energy (“DOE”) for a \$535 million guarantee of a loan (the “DOE Loan”) from the U.S. Federal Financing Bank. The purpose of the DOE Loan was to fund a portion of the construction and operation costs of a new state of the art fabrication facility (“Fab 2”). The company applied for the DOE Loan in December 2006 and was the recipient of the first loan guarantee under Title XVII of the Energy Policy Act of 2005 and the 2009 Recovery Act (the “DOE Loan Guarantee Program”), which were enacted to promote the commercial deployment of clean and renewable energy. In order to qualify under the DOE Loan Guarantee Program, the company had to employ new or significantly improved technologies that were not already in general use in the United States.

The DOE Loan closed and construction of Fab 2 began in September 2009, thirty-two months after the initial DOE Loan applications were submitted. The total cost of Fab 2 was projected to be \$733 million, of which \$535 million would be funded by the DOE Loan and the remaining \$198 million by private investors. Fab 2 was constructed over a period of 16 months under the supervision of Solyndra, Inc. and was completed ahead of schedule and below budget. Commercial production at Fab 2 began in January 2011. At the time of the initial draw on the DOE Loan, a project entity was formed, Solyndra Fab 2, LLC (now Solyndra), and the DOE Loan was secured by substantially all assets of such entity. The collateral for the DOE Loan included the property, plant and equipment at Fab 2.

In July 2010, in order to meet additional working capital needs, Solyndra raised an additional \$175 million in convertible debt (the “Notes”). The Notes were secured by substantially all of the assets of Fab 1 and other personal property of Solyndra, Inc., including intellectual property.

By early 2011, a variety of factors, including a dramatic decline in the cost of competing silicon-based photovoltaic products, and a worldwide oversupply of photovoltaic panels,

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<sup>5</sup> Solyndra, Inc. changed its name to 360 Degree Solar Holdings, Inc. on June 28, 2011.

required the company to secure incremental financing, restructure its then outstanding debt, consolidate its operations into Fab 2 and take other cost cutting measures. The company was able to obtain a new loan from some of its existing investors. The company approached both existing and new potential investors and the proposed new loan provided terms that were more favorable than any other financing options that were available at that time. As is customary in cases where distressed companies seek new debt financing, the lenders required, as a condition to providing new capital, that the new financing had priority, in the event of liquidation, over the company's existing debt, including the DOE Loan. However, almost \$1 billion of original equity investment in the company was, and remains, subordinated to the debt owed to the DOE.

Specifically, in February 2011, the company's investors and creditors agreed to a global out-of-court restructuring (the "February 2011 Restructuring") summarized as follows:

- Solyndra received a new \$75 million loan from private investors (the "Tranche A Debt");
- The assets of Holdings (including the Fab 1 assets and the Debtors' intellectual property) were transferred to Solyndra (resulting in the consolidation of Fab 1 and Fab 2) to secure the new Tranche A Debt as well as the DOE Loan which was previously only secured by assets of Fab 2;
- The DOE Loan was split into two tranches: Tranche B and Tranche D;
- The Notes were exchanged for Tranche E debt;
- All preferred stock was converted to common equity; and
- The DOE obtained the right to have an observer attend all board meetings of the Debtors and to receive all board materials.

As a result of the February 2011 Restructuring, all Fab 1 and Fab 2 assets, including the ownership of the intellectual property, were consolidated into Solyndra, with that entity becoming obligated on the following four tranches of secured debt:

Tranche A Secured Debt	\$75 million committed/\$69 million drawn
Tranche B Secured Debt (DOE)	\$150 million committed/\$142 million drawn
Tranche D Secured Debt (DOE)	\$385 million
<u>Tranche E Secured Debt</u>	<u>\$187 million</u>
<b>Total:</b>	\$783 million

In addition to the foregoing secured debt, the Debtors estimate that they have approximately \$50 million to \$120 million in unsecured indebtedness as of the Petition Date.

The Debtors and their existing investors and creditors understood that the Debtors would require further incremental capital beyond the Tranche A funding to fund operations until the Debtors could generate positive cash flow. Thus, there was a provision in the documents for

further Tranche C funding of up to \$75 million. As is set forth below, the Debtors were unable to raise that additional capital.

**B. Circumstances Leading to the Commencement of the Cases**

Notwithstanding the February 2011 Restructuring, a combination of general business conditions, an unprecedented drop in the cost of silicon, and an oversupply of solar panels dramatically reduced solar panel pricing world-wide. The oversupply was due, in part, to the growing capacity of foreign manufacturers that utilized low cost capital provided by their governments to expand operations. In response to foreign government subsidies and cut-rate competition, the Debtors were forced to reduce prices to remain competitive. In addition, the reduction or elimination of governmental subsidies and incentives for the purchase of solar energy, particularly in Europe, negatively impacted the availability of capital for prospective customers, further reducing demand for the Debtors' panels. Finally, the Debtors' ability to timely collect on their accounts receivables was negatively impacted as foreign competitors offered extended payment terms, resulting in the Debtors' customers refusing to honor their previously agreed payment terms.

Although the February 2011 Restructuring provided for an infusion of \$75 million in cash, the Debtors still owed more than \$783 million in senior secured debt and needed to raise further incremental capital to fund operations until the Debtors could generate positive cash flow from operations. During mid-2011, the Debtors reached out to multiple strategic and financial investors in an attempt to attract the necessary incremental capital. However, the Debtors were unable to find any parties willing to fund the Debtors' increased capital requirements in light of the size and structure of their debt.

In early August 2011, the Debtors, certain holders of Tranche A Debt, and representatives of the DOE undertook negotiations regarding a further restructuring that would allow the Debtors to attract the necessary new investment. The negotiations over the terms of the further restructuring continued throughout August 2011. Ultimately, the parties were unable to agree upon terms of incremental financing necessary to accomplish an overall restructuring.

As a result, on August 31, 2011, the Debtors suspended their manufacturing operations and terminated the vast majority of their workforce totaling over 1,000 people. Inasmuch as the Debtors' assets include complex equipment and intellectual property, the Debtors retained certain key employees to maintain their assets with the ability to re-start operations while restructuring options were explored, to assist with sales of assets and, as necessary, to wind-down the business following a sale or liquidation of assets. A week later, on the Petition Date, the Debtors commenced these chapter 11 cases.

**C. Significant Events Since the Petition Date**

As noted above, the "First Day Hearings" in these chapter 11 cases were held on September 8, 2011. The next morning, with no prior notice or warning, agents from the Federal Bureau of Investigation (the "FBI"), working in cooperation with the Office of the Inspector General of the DOE, raided the Debtors' facilities, shutting down operations for the day and seizing computers, documents and electronic files (the "FBI Raid").

Following the FBI Raid, the Debtors or their officers received the following documents: (1) a September 7, 2011 Grand Jury Subpoena served on the Debtors' then Chief Executive Officer, Brian Harrison, in USAO No. 2011R01816; (2) a September 7, 2011 Grand Jury Subpoena served on the Debtors' prior Chief Executive Officer, Christian Gronet, in USAO No. 2011R01816; and (3) a September 6, 2011 Search Warrant served in *In the Matter of the Search of Solyndra, Inc.*, Case No. 4-11-71012.

Also on September 7, 2011, the Debtors received letters from the Committee on Energy and Commerce (the "Congressional Committee") directed to Mr. Harrison and W.G. Stover, Jr. (the Debtors' Chief Financial Officer), inviting them to appear before the Congressional Committee investigating the circumstances of the DOE Loan.

Messrs. Harrison and Stover agreed to appear before the Congressional Committee voluntarily, but on the advice of their counsel invoked the privilege against self-incrimination afforded to them by the Fifth Amendment of the United States Constitution and respectfully declined to answer any questions. The Congressional Committee was informed of this position in writing in advance of the hearing.

On September 30, 2011, the United States Trustee filed with the Bankruptcy Court a *Motion for Entry of an Order Directing Appointment of a Chapter 11 Trustee Under 11 U.S.C. § 1104 or, in the Alternative, Conversion of the Case to Chapter 7 Under 11 U.S.C. § 1112(b)* [Docket No. 176] (the "Trustee / Conversion Motion"). In the Trustee / Conversion Motion, the United States Trustee contended that appointment of a chapter 11 trustee or, in the alternative, conversion of the Chapter 11 Cases to chapter 7 was warranted on the grounds that, based on Mr. Harrison's decision to invoke the privilege against self-incrimination in connection with the Congressional Committee investigation, senior management might not answer the United States Trustee's questions about the Debtors' finances and operations. The UST filed a supplement to the Trustee / Conversion Motion on October 7, 2011 [Docket No. 195], withdrawing the alternative relief requested in the Trustee / Conversion Motion to convert the Chapter 11 Cases to chapter 7. The Debtors, the Creditors' Committee, Argonaut Ventures I, LLC and AE DIP 2011, LLC filed oppositions to the appointment of a chapter 11 trustee. The Bankruptcy Court denied the Trustee / Conversion Motion at the hearing held on October 17, 2011, and entered an order denying the Trustee / Conversion Motion on October 24, 2011 [Docket No. 266].

#### **D. First Day Motions and Other Post-Petition Activities**

On the Petition Date, the Debtors sought approval from the Bankruptcy Court of certain motions and applications (collectively, the "First Day Motions"), which the Debtors filed simultaneously with, or around the same time as, their voluntary petitions. The Debtors sought this relief to minimize disruption of the Debtors' business operations as a result of the filing of the Chapter 11 Cases, to establish procedures in the Chapter 11 Cases regarding the administration of the Chapter 11 Cases and to facilitate the Debtors' reorganization efforts. Specifically, the First Day Motions and other critical motions during the Chapter 11 Cases addressed the following issues, among others:

**E. Joint Administration**

The Debtors are affiliated entities and, therefore, on the Petition Date, filed the *Debtors' Motion for Order Directing Joint Administration of Related Chapter 11 Cases* [Docket No. 2] (the "Joint Administration Motion"). The Joint Administration Motion sought authority to utilize a single general docket for these cases and combine notices to creditors of the Debtors' respective estates and other parties in interest, which would result in significant savings to the Estates. On September 7, 2011, the Bankruptcy Court entered its order directing joint administration of these Chapter 11 Cases [Docket No. 38].

**F. Noticing and Claims Agent**

Because of the size of these Chapter 11 Cases (there are more than 200 creditors and other parties in interest listed on the mailing matrix filed with the chapter 11 petitions), pursuant to rule 2002-1(f) of the Local Rules of Bankruptcy Procedure for the District of Delaware (the "Local Rules"), the Debtors were required to retain a noticing and claims agent. On the Petition Date, the Debtors filed the *Debtors' Application for Order Authorizing and Approving the Employment and Retention of AlixPartners, LLP as Noticing, Claims and Balloting Agent in These Chapter 11 Cases Nunc Pro Tunc to the Petition Date* [Docket No. 66]. AlixPartners' retention was approved by the Bankruptcy Court by order entered on September 27, 2011 [Docket No. 165]. AlixPartners maintains the claims register in these Chapter 11 Cases and will serve as the balloting agent to receive and tabulate the ballots on the Plan.

**G. Employment of Chief Restructuring Officer**

On October 11, 2011, the Debtors filed the *Motion of the Debtors Pursuant to 11 U.S.C. § 363 for Entry of an Order Authorizing the Employment of Berkeley Research Group, LLC and Designating R. Todd Neilson as Chief Restructuring Officer to the Debtors Nunc Pro Tunc to October 6, 2011* (the "CRO Motion") [Docket No. 210] seeking approval of R. Todd Neilson to serve as Chief Restructuring Officer. The Bankruptcy Court approved the CRO Motion by order entered on November 1, 2011 [Docket No. 283].

**H. Employees**

On the Petition Date, the Debtors filed the *Debtors' Motion Pursuant to Bankruptcy Code Sections 105(a), 363, and 507(a) for an Order Authorizing the Debtors to (I) Pay Prepetition Wages, Salaries, Employee Benefits, and Other Compensation; (II) Remit Withholding Obligations; (III) Maintain Employee Compensation and Benefits Programs and Pay Related Administrative Obligations; and (IV) Have Applicable Banks and Other Financial Institutions Receive, Process, Honor, and Pay Certain Checks Presented for Payment and Honor Certain Fund Transfer Requests* [Docket No. 6] (the "Wages Motion").

As of the Petition Date, Solyndra employed approximately 112 employees (the "Employees"). The Employees performed work for all of the Debtors as needed. None of the Employees was subject to a collective bargaining agreement with the Debtors.

On September 7, 2011, the Bankruptcy Court entered its order authorizing the payment of certain prepetition Employee related claims and the continuation of certain Employee benefits postpetition [Docket No. 35].

**I. Cash Management**

On the Petition Date, the Debtors filed the *Motion of Debtors for Order Under 11 U.S.C. §§ 105, 363, 364, 503(b), 1107 and 1108 Authorizing (I) Maintenance of Existing Bank Accounts, (II) Continued Use of Existing Business Forms, (III) Continued Use of Existing Cash Management System, (IV) Continued Access to Corporate Credit Cards, (V) Limited Funding for Wind-Up of Foreign Subsidiaries, and (VI) Waiver of Section 345(B) Deposit and Investment Requirements* (the “Cash Management Motion”) [Docket No. 11]. The prepetition cash management system utilized by the Debtors was a network of integrated bank accounts maintained at Wells Fargo Bank, N.A. that facilitated the timely and efficient collection, management and disbursement of funds used in the Debtors’ business.

The Bankruptcy Court entered its order granting the relief requested by the Debtors in the Cash Management Motion on September 7, 2011 [Docket No. 42].

**J. Critical Trade**

On the Petition Date, the Debtors filed the *Motion of the Debtors for Entry of an Order (A) Authorizing But Not Directing the Debtors to Pay Prepetition Claims of Essential Service Providers, and (B) Authorizing But Not Directing the Debtors to Pay Prepetition Claims of Critical Logistics Suppliers and Warehousemen* [Docket No. 9], which sought authority for the Debtors to pay, in their sole discretion, (i) up to \$389,000 to essential service providers necessary for the Debtors to maintain their manufacturing facilities and (ii) up to \$2,761,000 to warehousemen storing goods and materials used in the Debtors’ business. On September 7, 2011, the Bankruptcy Court entered its order authorizing the payment, up to \$3,150,000, of certain critical vendor claims of service providers and warehousemen in the Debtors’ sole discretion [Docket No. 39].

**K. Prepetition Taxes**

On the Petition Date, the Debtors filed the *Motion of the Debtors for an Order (I) Authorizing the Debtors to Pay Prepetition Sales and Use and Similar Sales Taxes in the Ordinary Course of Business and (II) Authorizing Banks and Financial Institutions to Honor and Process Checks and Transfers Related Thereto* [Docket No. 5]. On September 7, 2011, the Bankruptcy Court entered its order approving the payment of specified taxes [Docket No. 41].

**L. Utilities**

On the Petition Date, the Debtors filed the *Motion of the Debtors for an Order Under Section 366 of the Bankruptcy Code (A) Prohibiting Utility Providers From Altering, Refusing or Discontinuing Service, (B) Deeming Utilities Adequately Assured of Future Performance, and (C) Establishing Procedures for Determining Adequate Assurance of Payment* (the “Utility Motion”) [Docket No. 8]. On September 7, 2011, the Bankruptcy Court entered the interim order approving the procedures requested and setting the Utility Motion for a final hearing

[Docket No. 37]. The Bankruptcy Court, on October 17, 2011, entered the final order [Docket No. 253] implementing the procedures proposed by the Debtors in the Utility Motion to ensure adequate assurance of future payment to utility service providers.

**M. DIP Financing and Cash Collateral**

On the Petition Date, the Debtors sought authority to use cash collateral and approval of postpetition financing (the “DIP Loans”) by filing the *Motion for Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Secured Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Status, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, and (V) Scheduling a Final Hearing* (the “DIP Motion”) [Docket No. 12]. Following the suspension of operations, the Debtors and an affiliate of certain existing Tranche A investors entered into a debtor in possession financing arrangement for \$4 million (the “DIP Financing”) and consensual use of cash collateral subject to the satisfaction of certain conditions. The DIP Financing and use of cash collateral was critical to providing the Debtors with an opportunity to explore restructuring alternatives, including the possibility of a “turnkey” sale of their business. The DOE did not oppose the DIP Financing or use of cash collateral on a final basis. The Bankruptcy Court entered a final order approving the DIP Financing and use of cash collateral on September 27, 2011 [Docket No. 161]. The term of the DIP Financing was subsequently extended by the Bankruptcy Court through June 2, 2012, by order dated February 22, 2012 [Docket No. 663]. The WARN Plaintiffs (as defined below) filed a motion on January 31, 2012 [Docket No. 583, amended by Docket No. 607] to strike the releases in the DIP Financing or, alternatively, extend the challenge deadline and to conduct discovery. The Bankruptcy Court denied these requests. Most recently, the Bankruptcy Court authorized an increase of the DIP Financing to \$7 million and extended the term thereof through September 29, 2012, by order dated June 18, 2012 [Docket No. 869].

**N. Retention of Debtors’ Professional Persons**

On the Petition Date, the Debtors sought to employ PSZ&J as their bankruptcy counsel with regard to the filing and prosecution of their Chapter 11 Cases by filing the *Application of the Debtors Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtors and Debtors in Possession Nunc Pro Tunc to the Petition Date* [Docket No. 45]. An order was entered authorizing that retention, effective as of the Petition Date, on September 27, 2011 [Docket No. 160].

Further, the Debtors sought approval of the employment of two other law firms to serve as special counsel: (i) McDermott Will & Emery to provide legal services in connection with the pending government investigation and any related litigation, and (ii) K & L Gates LLP to provide legal services in connection with the pending federal criminal investigation in Northern California. Orders were entered authorizing these retentions on September 27, 2011 and October 17, 2011, respectively [Docket Nos. 163 & 243].

**O. Appointment of Creditors’ Committee and Employment of Professionals**

On September 15, 2011, the United States Trustee appointed the Creditors’ Committee as the representative of the Debtors’ general unsecured creditor constituency in these Chapter 11



Cases. The Creditors' Committee was originally composed of the following seven members: Schott North America, Inc., MGS Manufacturing Group, Inc., Certified Thermoplastics Co., Inc., West Valley Staffing Group, Plastikon Industries Inc., VDL Enabling Technologies Group and Peter M. Kohlstadt. VDL Enabling Technologies Group is no longer a member of the Creditors' Committee. The Creditors' Committee retained Blank Rome LLP as its counsel and BDO Consulting as its financial advisors in the Chapter 11 Cases.

**P. Engagement of Imperial Capital as Financial Advisor and Investment Banker**

Shortly after the Petition Date, the Debtors engaged Imperial Capital, LLC ("Imperial") as their financial advisors and investment bankers for purposes of providing a broad range of financial advisory and investment banking services. The Court subsequently approved Imperial's engagement [Docket No. 164].

**Q. WARN Act Litigation**

On or about the Petition Date, Peter M. Kohlstadt and Dan Braun, on behalf of themselves and a putative class of similarly-situated former employees of Solyndra (collectively, the "WARN Plaintiffs"), separately commenced two adversary proceedings in the Bankruptcy Court (Adv. No. 11-53155 and Adv. No. 11-53156, respectively) against both of the Debtors. The WARN Plaintiffs allege violations of the Workers Adjustment and Retraining Notification Act ("WARN Act") 29 U.S.C. §§ 2101-2109 and analogous provisions of the California Labor Code. This litigation had been stayed by agreement of the parties and the Debtors have yet to file an answer. The claims asserted by the WARN Plaintiffs (the "WARN Claims") could exceed \$15 million, a portion of which (to the extent allowed) may be entitled to priority status. Although the Debtors contest the entirety of the WARN Claims, among other things, pursuant to the faltering company exception available under applicable non-bankruptcy law, the Plan incorporates the terms of a proposed settlement with the WARN Plaintiffs which has been the subject of ongoing negotiations between the Debtors, the WARN Plaintiffs, and the Plan Sponsors.

Pursuant to the Plan, Solyndra will have access to the WARN Settlement Loan to be funded by the Plan Sponsors in the amount of \$3,500,000, the proceeds of which will be distributed pursuant to the terms of the WARN Settlement Agreement. The WARN Settlement Loan shall be payable solely out of the proceeds, if any, of Retained Rights of Action against third parties relating to the claims asserted by the WARN Plaintiffs. The Debtors are in the process of negotiating a settlement of one of these claims that will allow for a partial repayment of the WARN Settlement Loan. The terms of the proposed settlement are confidential.

**R. Sales of Estate Assets**

On September 28, 2011, the Bankruptcy Court approved procedures for the sale of the Debtors' assets on a turnkey basis, including a proposed bid deadline of October 25, 2011 and an auction on October 28, 2011 [Docket No. 164]. In light of the level of interest in the assets, the Debtors, after consultation with their creditor constituencies, elected to extend the bid deadline and the auction date twice. After initially extending the bid deadline to November 16, 2011 and the auction date to November 18, 2011, the Debtors extended the bid deadline to January 17, 2012 and the auction date to January 19, 2012. The Debtors believed that such additional time

would allow them to fully test the market for their assets. However, no acceptable bids were received. The Debtors subsequently moved forward with dismantling their manufacturing facilities in an effort to maximize orderly liquidation value, as addressed further below.

On October 19, 2011, the Court authorized the Debtors to conduct an auction for the sale of the Debtors' non-core assets [Docket No. 260]. The auction was commenced on November 2, 2011, and generated more than \$6.2 million of cash. In addition, on November 22, 2011, the Court authorized the Debtors to conduct a supplemental auction for additional non-core assets of the Debtors [Docket No. 368]. The supplemental auction was commenced on December 13, 2011, and generated more than \$1.8 million of sales proceeds.

On December 21, 2011, the Court authorized the Debtors to conduct an auction for the sale of the Debtors' core assets (exclusive of real estate and intellectual property), in the event that the turnkey sale did not occur [Docket No. 467]. Because the turnkey sale in fact did not occur, the auction of core assets commenced on February 23, 2012. The auction realized more than \$3.3 million of proceeds for the estates to date. In addition, commencing on June 20, 2012, the Debtors conducted a supplemental auction for additional core assets of the Debtors, which generated more than \$1.7 million of sales proceeds.

The Debtors also have been authorized to sell certain *de minimis* assets [Docket No. 251] with a sale price up to \$1,000,000, subject to certain notice provisions. Pursuant to this authority, the Debtors have sold *de minimis* assets generating more than \$1.1 million in sales proceeds [Docket Nos. 483, 670, 715, 751, 780, 826, 884].

On April 30, 2012, Solyndra sought to employ and retain Red Chalk Group, LLC ("Red Chalk") as its intellectual property broker for the purpose of marketing, selling, and/or licensing Solyndra's intellectual property rights by filing the *Application of the Debtor Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure, and Local Rule 2014-1 for Authorization to Employ and Retain Red Chalk Group, LLC as Intellectual Property Broker to Solyndra LLC* [Docket No. 783]. An order was entered on May 29, 2012 authorizing Solyndra's retention of Red Chalk as its intellectual property broker [Docket No. 827].

On February 3, 2012, Solyndra sought to employ and retain Jones Lang LaSalle Brokerage, Inc. ("JLL") as its real estate broker for the purpose of marketing and selling Solyndra's real property located at 47488 Kato Road, Fremont, California 94538 by filing the *Application of the Debtor Pursuant to Sections 327 and 328 of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure, and Local Rule 2014-1 for Authorization to Employ and Retain Jones Lang LaSalle Brokerage, Inc. as Real Estate Broker to Solyndra LLC* [Docket No. 597]. An order was entered on February 17, 2012 authorizing Solyndra's retention of JLL as its real estate broker [Docket No. 643].

## **S. Tax Appeals**

On April 25, 2012, the Debtors sought approval to employ and retain Duff & Phelps LLC and Versatax Consulting, Inc. (together, the "Tax Consultants") to perform property tax consulting services in connection with the Debtors' real and personal property for all open tax years, including certain existing 2009 appeals, by filing the (i) *Application of the Debtors*

*Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure, and Local Rule 2014-1 for Authorization to Employ and Retain Duff & Phelps, LLC as Tax Consultant Nunc Pro Tunc to the Petition Date [Docket No. 770] and (ii) Application of the Debtors Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure, and Local Rule 2014-1 for Authorization to Employ and Retain Versatax Consulting, Inc. as Tax Consultant Nunc Pro Tunc to the Petition Date [Docket No. 788]. Orders were entered authorizing the retention of the Tax Consultants, effective as of the Petition Date, on June 4, 2012 [Docket Nos. 849 and 850].*

The Tax Consultants, with the assistance of the Debtors, are in the process of appealing both real and personal property tax assessments for all applicable tax years. A reduction in the assessed value of the Debtors' real and/or personal property may entitle the Debtors to a tax refund from the applicable taxing authority.

Specifically, the Tax Consultants will provide, among other things, the following services in exchange for an aggregate 25% percent contingency fee of tax savings: (i) review all real and personal property assessments to determine potential tax savings opportunities; (ii) research personal property classifications; (iii) quantify personal property value and related depreciation; (iv) identify double-assessments of fixtures, real, and personal property; (v) research and review tax bills and relevant property tax law; (vi) prepare valuation and uniformity analyses supporting the Debtors' estimate of fee simple value; (vii) timely file tax appeals if warranted, and, after consultation with the Debtors, negotiate with assessment officials regarding such appeals; and (viii) provide expert testimony in connection with any motion filed by the Debtors under section 505 of the Bankruptcy Code.

**T. Bar Date for Filing Proofs of Claim and Administrative Expense Requests**

On November 22, 2011, the Court entered its order [Docket No. 367] establishing January 23, 2012, as the deadline for filing against the Debtors Claims that arose prior to the Petition Date (the "General Bar Date"), March 5, 2012, as the bar date for governmental units, January 23, 2012, as the deadline for filing requests for allowance of administrative claims and January 23, 2012 as the deadline for requests for allowance of WARN Act claims. A schedule of filed proofs of claim is maintained by AlixPartners, the Debtors' claims agent.

**U. Filing of Schedules and Statements of Financial Affairs**

On September 30, 2011, the Debtors filed a motion seeking an extension of the October 5, 2011 deadline to file Schedules of Assets and Liabilities and Statements of Financial Affairs (collectively, the "Schedules and Statements") to October 31, 2011 [Docket No. 177]. The Bankruptcy Court approved that request by its Order entered on October 17, 2011 [Docket No. 244]. On October 31, 2011, the Debtors filed their Schedules and Statements with the Bankruptcy Court, which set forth, *inter alia*, the assets of the Debtors and the prepetition claims against the Debtors based on their books and records. The Debtors have since amended certain portions of their Schedules and Statements and reserve their right to make further amendments.

**V. Reclamation Claims**

On September 26, 2011, the Debtors' filed the *Debtors' Motion for Order, Pursuant to Sections 105(a), 362 and 546 of the Bankruptcy Code and Bankruptcy Rule 9019, (I) Establishing Procedures for Resolution of Reclamation Claims, (II) Authorizing Debtors to Return Goods, and (III) Prohibiting Interference With Delivery of Debtors' Goods* [Docket No. 149] (the "Reclamation Motion"). The Reclamation Motion sought approval of certain procedures to resolve the reclamation claims of creditors who delivered goods to the Debtors prepetition. On October 17, 2011, the Bankruptcy Court entered an order approving the Reclamation Motion [Docket No. 252].

**W. Rejection and Abandonment Motions**

The Debtors have filed a series of motions to reject executory contracts and unexpired leases, which have been granted by the Bankruptcy Court. The Debtors have also abandoned, pursuant to orders of the Bankruptcy Court, certain assets that were no longer necessary or beneficial to the Debtors' Estates.

**X. Key Employee Incentive Plan**

On January 9, 2012, the Debtors filed the *Debtors' Motion for Order Approving a Key Employee Incentive Plan and Authorizing Payments Thereunder* [Docket No. 517] (the "KEIP Motion"). The KEIP Motion sought approval of a key employee incentive plan (the "Incentive Plan") in order to incentivize certain non-insider employees whose work is critical to achieving effectiveness of the Plan and/or the sale of the Debtors' core assets. The Incentive Plan covers up to 21 key non-insider employees and contemplates up to \$500,000 of payments to be made. On February 23, 2012, the Bankruptcy Court entered an order approving the KEIP Motion [Docket No. 661].

**Y. VDL Settlement Motion**

On January 17, 2012, the Debtors filed their motion [Docket No. 537] to approve a compromise with VDL Enabling Technologies Group Eindhoven BV ("VDL") including the transfer of certain assets free and clear of liens, claims and encumbrances pursuant to sections 105 and 363 of the Bankruptcy Code and Bankruptcy Rule 9019. Under the settlement, the Debtors and VDL agreed to disassemble and allocate amongst themselves certain encapsulation equipment that was utilized in connection with the Debtors' manufacturing process. The parties also agreed to a mutual release of claims. On January 23, 2012, the Bankruptcy Court entered an order approving the settlement with VDL [Docket No. 557].

**IV.**

**DESCRIPTION OF THE PLAN**

A DISCUSSION OF THE PRINCIPAL PROVISIONS OF THE PLAN AS THEY RELATE TO THE TREATMENT OF CLASSES OF ALLOWED CLAIMS AND INTERESTS IS SET FORTH IN ARTICLES V THROUGH VI BELOW. THE DISCUSSION OF THE PLAN THAT FOLLOWS CONSTITUTES A SUMMARY ONLY, AND SHOULD NOT BE

RELIED UPON FOR VOTING PURPOSES. YOU ARE URGED TO READ THE PLAN IN FULL IN EVALUATING WHETHER TO ACCEPT OR REJECT THE DEBTORS' PROPOSED PLAN. IF ANY INCONSISTENCY EXISTS BETWEEN THIS SUMMARY AND THE PLAN, THE TERMS OF THE PLAN CONTROL. ALL CAPITALIZED TERMS NOT OTHERWISE DEFINED HAVE THE MEANINGS ASCRIBED TO THEM IN THE PLAN.

V.

**TREATMENT OF ADMINISTRATIVE EXPENSES AND TAX CLAIMS**

**A. Introduction**

As required by the Bankruptcy Code, Administrative Expenses and Tax Claims are not placed into voting Classes. Instead, they are left unclassified, are not considered Impaired, do not vote on the Plan, and receive treatment specified by statute or agreement of the parties. All postpetition payments by or on behalf of either of the Debtors in respect of an Administrative Expense or Tax Claim shall either reduce the Allowed amount thereof or reduce the amount to be paid under the Plan in respect of any Allowed amount thereof, provided that the method of application that is most beneficial to the Debtors' Estates shall be employed.

**B. Administrative Expenses**

Under the Plan, on or as soon as practicable after the Effective Date, each Holder of an Allowed Administrative Expense against either of the Debtors will receive, in full satisfaction, settlement, release, and extinguishment of such Allowed Administrative Expense, Cash from Reorganized Holdings or the Solyndra Residual Trust, as applicable, equal to the full amount of such Allowed Administrative Expense, unless such Holder and Reorganized Holdings or the Solyndra Residual Trust, as applicable, with the consent of the Plan Sponsors, have mutually agreed in writing to other terms, or an order of the Bankruptcy Court provides for other terms; provided, however, that, unless otherwise agreed to by the Debtors, Reorganized Holdings, or the Solyndra Residual Trust, as applicable (and in either case with the consent of the Plan Sponsors) (a) requests for payment of all Administrative Expenses must be Filed and served as described in Article XIV(B)(3) of the Plan, and (b) certain different and additional requirements shall apply to the Administrative Expenses of Professional Persons as set forth in Article XIV(B)(2) and (3) of the Plan; provided further, however, that no interest or penalties of any nature shall be paid in respect of an Allowed Administrative Expense.

**C. DIP Credit Facility Claims**

On the Effective Date, all Claims and other required payments, including, without limitation, all fees, costs, and expenses due and owing under the DIP Credit Facility shall be indefeasibly paid in Cash in full to the DIP Lender from the proceeds of the Tranche I Exit Facility.

**D. Tax Claims**

Pursuant to section 1123(a)(1) of the Bankruptcy Code, Tax Claims are not to be classified and thus Holders of Tax Claims are not entitled to vote to accept or reject the Plan.

As required by section 1129(a)(9) of the Bankruptcy Code, on or as soon as practicable after the Effective Date, each Holder of an Allowed Tax Claim against either of the Debtors will receive, in full satisfaction, settlement, release, and extinguishment of such Allowed Tax Claim, Cash from Reorganized Holdings or the Solyndra Residual Trust, as applicable, equal to the portion of the Allowed Tax Claim due and payable on or prior to the Effective Date according to applicable non-bankruptcy law. Any Allowed Tax Claim (or portion thereof) against either of the Debtors not yet due and payable as of the Effective Date will be paid by Reorganized Holdings or the Solyndra Residual Trust, as applicable, no later than when due and payable under applicable non-bankruptcy law without regard to the commencement of the Chapter 11 Cases; provided that (1) any default prior to the Effective Date with respect to Tax Claims against either of the Debtors shall be deemed cured and (2) upon request of Reorganized Holdings or the Solyndra Residual Trust, as applicable, the Bankruptcy Court shall determine the amount of any Disputed Claim for, or issues pertaining to, Tax Claims. Any Holder of a Tax Claim may agree to accept different treatment as to which Reorganized Holdings or the Solyndra Residual Trust, as applicable, with the consent of the Plan Sponsors, and such Holder have agreed upon in writing.

## VI.

### **CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS**

#### **A. Summary**

The categories of Claims and Interests listed below classify Claims and Interests for all purposes, including voting, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes only to the extent that any remainder of the Claim or Interest qualifies within the description of such other Classes. A Claim or Interest is also classified in a particular Class only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and has not been paid, released or otherwise satisfied prior to the Effective Date.

In accordance with section 1122 of the Bankruptcy Code, the Plan provides for the classification of Claims and/or Interests as set forth below. Administrative Expenses and Tax Claims have not been classified and are excluded from the following Classes in accordance with section 1123(a)(1) of the Bankruptcy Code. Inasmuch as the Plan does not provide for substantive consolidation, for purposes of establishing whether the requirements of sections 1129(a)(8) and (a)(10) of the Bankruptcy Code have been satisfied, the Debtors will tabulate votes on the Plan on a Debtor-by-Debtor basis, subject to Article V(D) of the Plan.

#### **B. Classification and Treatment of Claims and Interests**

The treatment of each Class of Claims and/or Interests is set forth below. Unless the Bankruptcy Court has specified otherwise prior to Confirmation, Reorganized Holdings or the Solyndra Residual Trust, as applicable, shall determine whether a postpetition payment by or on behalf of either of the Debtors in respect of a Claim either (x) shall reduce the Allowed amount

thereof or (y) shall reduce the amount to be paid under the Plan in respect of any Allowed amount thereof by considering which method is most advantageous to the Debtors' Estates.

1. **Class 1 – Priority Non-Tax Claims**

Classification: Class 1 consists of all Priority Non-Tax Claims against any of the Debtors.

Treatment: At the election of Reorganized Holdings or the Solyndra Residual Trust, as applicable, the Holder of each Priority Non-Tax Claim against either of the Debtors shall receive, in full satisfaction, settlement, release, and extinguishment of such Priority Non-Tax Claim, a Cash payment from Reorganized Holdings or the Solyndra Residual Trust, as applicable, equal to the Allowed amount of such Claim (a) on or as soon as practicable after the later of (i) the Effective Date, or (ii) the date upon which the Bankruptcy Court enters a Final Order determining or allowing such Claim; or (b) as otherwise agreed by the Holders of such Claims and Reorganized Holdings or the Solyndra Residual Trust, as applicable, and in either case with the consent of the Plan Sponsors.

Impairment/Voting: Class 1 is Unimpaired. Class 1 therefore is conclusively presumed to have accepted the Plan and Holders of Claims in Class 1 are not entitled to vote to accept or reject the Plan.

2. **Class 2 – Miscellaneous Secured Claims**

Classification: Class 2 consists of all Miscellaneous Secured Claims (if any such Claims exist) against either of the Debtors.

Treatment: On or as soon as practicable after the Effective Date, each Holder of an Allowed Miscellaneous Secured Claim shall, on account of such Claim, at the election of Reorganized Holdings or the Solyndra Residual Trust, as applicable, and as the sole distribution or dividend by the Debtors or their Estates under the Plan on account of such Miscellaneous Secured Claim, either: (i) be paid by Reorganized Holdings or the Solyndra Residual Trust, as applicable, in Cash in full, (ii) have surrendered to such Holder, without representation or warranty, the collateral securing its Claim, (iii) notwithstanding any contractual provision or applicable law that entitles the Holder of such Miscellaneous Secured Claim to demand or receive accelerated payment of such Claim after the occurrence of a default (A) be paid by Reorganized Holdings or the Solyndra Residual Trust, as applicable, a cure of any such default that occurred prior to the Effective Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code, (B) have reinstated the maturity of such Miscellaneous Secured Claim as such maturity existed before such default, (C) be compensated by Reorganized Holdings or the Solyndra Residual Trust, as applicable, for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law, and (D) otherwise not have altered the legal, equitable, or contractual rights to which such Miscellaneous Secured Claim entitles the Holder of such Claim, or (iv) have left unaltered the legal, equitable, and contractual rights to which such Claim entitles the Holder of such Claim. In the case of option (ii) or (iii), in the event that any such Miscellaneous Secured Claim is not paid in full by such distribution, any deficiency against the applicable Debtor will be treated as a General Unsecured Claim against such Debtor. Any Holder of a Miscellaneous Secured Claim

may agree to accept different treatment as to which Reorganized Holdings or the Solyndra Residual Trust, as applicable, and such Holder have agreed upon in writing, and in either case with the consent of the Plan Sponsors.

Impairment/Voting: Class 2 is Unimpaired. Holders of Claims in Class 2 are conclusively presumed to have accepted the Plan and Holders of Claims in Class 2 are not entitled to vote to accept or reject the Plan.

3. **Class 3 – Prepetition Tranche A Claims**

Classification: Class 3 consists of all Prepetition Tranche A Claims against Solyndra.

Treatment: Subject to the last sentence hereof, on or as soon as practicable after the date when the Tranche I Exit Facility and Solyndra Settlement Fund Loan is paid in full or such later date when any assets of the Solyndra Residual Trust become available for distribution, each Holder of a Prepetition Tranche A Claim shall receive, in full satisfaction, settlement, release, extinguishment, and discharge of such Prepetition Tranche A Claim, subject to the provisions of the Prepetition Tranche A Credit Documents, the Prepetition Common Agreement, and the Prepetition Intercreditor Agreement: (i) a Pro Rata share (calculated as a percentage of Prepetition Tranche A Claims) of the Solyndra Net Lender Distributable Assets up to the full Allowed amount of such Prepetition Tranche A Claim; and (ii) to the extent that any Prepetition Tranche A Claim is not paid in full by the foregoing distribution, the Holder of such Claim shall be entitled, as soon as practicable after payment in full of the Tranche II Exit Facility, to a Pro Rata share (calculated as a percentage of Prepetition Tranche A Claims) of the Solyndra Residual Trust Interests that are distributed to the Holders of Prepetition Tranche A Claims up to the full Allowed amount of such Prepetition Tranche A Claims, which distribution shall be calculated by multiplying the aggregate of the Solyndra Residual Trust Interests by a fraction equal to (A) the amount of Prepetition Lender Deficiency Claims as the numerator and (B) the sum of Prepetition Lender Deficiency Claims and Allowed Solyndra General Unsecured Claims as the denominator. Notwithstanding the foregoing, the Prepetition Tranche A Lenders shall not receive any distribution from or on account of the Solyndra Settlement Fund, the Solyndra Settlement Trust Contribution, or the Trust Avoidance Claims. The existing Liens securing the Prepetition Tranche A Claims will be retained on the Solyndra Net Lender Distributable Assets subject to the terms of the Plan and the distributions contemplated hereby. The Prepetition Tranche A Claims are deemed Allowed in the full amount reflected in the Final DIP Order, the Prepetition Intercreditor Agreement, and the Debtors' books and records as of the Record Date; provided, however, that, pursuant to the Plan Settlement, the Allowed amount of the Prepetition Tranche A Claims held by the Plan Sponsors shall be reduced by the aggregate of the amount of the Solyndra Settlement Fund Loan (*i.e.*, reduced by \$3,175,000, plus any interest or fees accrued thereon). Notwithstanding anything to the contrary herein, the reasonable fees and expenses of the Prepetition Master Collateral Agent permitted under the Prepetition Tranche A Credit Documents, the Prepetition Common Agreement, and the Prepetition Intercreditor Agreement shall be paid in full prior to any distribution to Holders of Prepetition Tranche A Claims.

Impairment/Voting: Class 3 is Impaired. Holders of Claims in Class 3 are therefore entitled to vote to accept or reject the Plan.



4. **Class 4 – Prepetition Tranche B Claims**

Classification: Class 4 consists of all Prepetition Tranche B Claims against Solyndra.

Treatment: From and after the date when each Allowed Prepetition Tranche A Claim is paid in full in accordance with the terms of the Plan, on or as soon as practicable thereafter when any additional assets of the Solyndra Residual Trust become available for distribution, each Holder of a Prepetition Tranche B Claim shall receive, in full satisfaction, settlement, release, extinguishment, and discharge of such Prepetition Tranche B Claim, subject to the provisions of the Prepetition Tranche B/D Credit Documents, the Prepetition Common Agreement, and the Prepetition Intercreditor Agreement: (i) a Pro Rata share (calculated as a percentage of Prepetition Tranche B Claims) of the proceeds of the Solyndra Net Lender Distributable Assets up to the full Allowed amount of such Prepetition Tranche B Claim; and (ii) to the extent that any Prepetition Tranche B Claim is not paid in full by the foregoing distribution, the Holder of such Claim shall be entitled, until payment of such Prepetition Tranche B Claim in full and as soon as practicable after payment in full of the Tranche II Exit Facility, to a Pro Rata share (calculated as a percentage of Prepetition Tranche B Claims) of the Solyndra Residual Trust Interests that were distributed or made available to the Holders of Prepetition Tranche A Claims until such Claims were paid in full. Notwithstanding the foregoing, the Prepetition Tranche B Lenders shall not receive any distribution from or on account of the Solyndra Settlement Fund or the Solyndra Settlement Trust Contribution. In addition, notwithstanding anything to the contrary herein or in the Prepetition Intercreditor Agreement, the Holder of a Prepetition Tranche B Claim shall be entitled, until payment of such Prepetition Tranche B Claim in full, to a Pro Rata share (calculated as a percentage of any deficiency claims of the Prepetition Tranche B Lenders and Prepetition Tranche D Lenders) of the net proceeds of any Trust Avoidance Claims calculated by multiplying the aggregate of such proceeds by a fraction equal to (A) the sum of Prepetition Tranche B Claims and Prepetition Tranche D Claims as the numerator and (B) the sum of Prepetition Tranche B Claims, Prepetition Tranche D Claims, and Allowed Solyndra General Unsecured Claims as the denominator. The existing Liens securing the Prepetition Tranche B Claims will be retained on the Solyndra Net Lender Distributable Assets subject to the terms of the Plan and the distributions contemplated hereby. The Prepetition Tranche B Claims are deemed Allowed in the full amount reflected in the Final DIP Order and the Debtors' books and records as of the Record Date.

Impairment/Voting: Class 4 is Impaired. Holders of Claims in Class 4 are therefore entitled to vote to accept or reject the Plan.

5. **Class 5 – Prepetition Tranche D Claims**

Classification: Class 5 consists of all Prepetition Tranche D Claims against Solyndra.

Treatment: From and after the date when each Allowed Prepetition Tranche A Claim and each Allowed Prepetition Tranche B Claim is paid in full in accordance with the terms of the Plan, on or as soon as practicable thereafter when additional assets of the Solyndra Residual Trust become available for distribution, each Holder of a Prepetition Tranche D Claim

shall receive, in full satisfaction, settlement, release, extinguishment, and discharge of such Prepetition Tranche D Claim, subject to the provisions of the Prepetition Tranche B/D Credit Documents, the Prepetition Tranche E Credit Documents, the Prepetition Common Agreement, and the Prepetition Intercreditor Agreement: (i) a Pro Rata share (calculated as a percentage of Prepetition Tranche D Claims and Prepetition Tranche E Claims) of the proceeds of the Solyndra Net Lender Distributable Assets up to the full Allowed amount of such Prepetition Tranche D Claim; and (ii) to the extent that any Prepetition Tranche D Claim is not paid in full by the foregoing distribution, the Holder of such Claim shall be entitled, until payment of such Prepetition Tranche D Claim in full and as soon as practicable after payment in full of the Tranche II Exit Facility, to a Pro Rata share (calculated as a percentage of Prepetition Tranche D Claims and Prepetition Tranche E Claims) of the Solyndra Residual Trust Interests that were distributed or made available to the Holders of Prepetition Tranche B Claims until such Claims were paid in full. Notwithstanding the foregoing, the Prepetition Tranche D Lenders shall not receive any distribution from or on account of the Solyndra Settlement Fund or the Solyndra Settlement Trust Contribution. In addition, notwithstanding anything to the contrary herein or in the Prepetition Intercreditor Agreement, the Holder of a Prepetition Tranche D Claim shall be entitled, until payment of such Prepetition Tranche D Claim in full, to a Pro Rata share (calculated as a percentage of any deficiency claims of the Prepetition Tranche B Lenders and Prepetition Tranche D Lenders) of the net proceeds of any Trust Avoidance Claims calculated by multiplying the aggregate of such proceeds by a fraction equal to (A) the sum of Prepetition Tranche B Claims and Prepetition Tranche D Claims as the numerator and (b) the sum of Prepetition Tranche B Claims, Prepetition Tranche D Claims, and Allowed Solyndra General Unsecured Claims as the denominator. The existing Liens securing the Prepetition Tranche D Claims will be retained on the Solyndra Net Lender Distributable Assets subject to the terms of the Plan and the distributions contemplated hereby. The Prepetition Tranche D Claims are deemed Allowed in the full amount reflected in the Final DIP Order and the Debtors' books and records as of the Record Date. For the avoidance of doubt, Prepetition Tranche D Claims and Prepetition Tranche E Claims that are Prepetition Lender Deficiency Claims shall be *pari passu* hereunder pursuant to and consistent with the Prepetition Intercreditor Agreement.

Impairment/Voting: Class 5 is Impaired. Holders of Claims in Class 5 are therefore entitled to vote to accept or reject the Plan.

6. **Class 6 – Prepetition Tranche E Claims**

Classification: Class 6 consists of all Prepetition Tranche E Claims against Solyndra.

Treatment: From and after the date when each Allowed Prepetition Tranche A Claim and each Allowed Prepetition Tranche B Claim is paid in full in accordance with the terms of the Plan, on or as soon as practicable thereafter when additional assets of the Solyndra Residual Trust become available for distribution, each Holder of a Prepetition Tranche E Claim shall receive, in full satisfaction, settlement, release, extinguishment, and discharge of such Prepetition Tranche E Claim, subject to the provisions of the Prepetition Tranche B/D Credit Documents, Prepetition Tranche E Credit Documents, the Prepetition Common Agreement, and the Prepetition Intercreditor Agreement: (i) a Pro Rata share (calculated as a percentage of Prepetition Tranche D Claims and Prepetition Tranche E Claims) of the Solyndra Net Lender

Distributable Assets up to the full Allowed amount of such Prepetition Tranche E Claim; and (ii) to the extent that any Prepetition Tranche E Claim is not paid in full by the foregoing distribution, the Holder of such Claim shall be entitled, until payment of such Prepetition Tranche E Claim in full and as soon as practicable after payment in full of the Tranche II Exit Facility, to a Pro Rata share (calculated as a percentage of Prepetition Tranche D Claims and Prepetition Tranche E Claims) of the Solyndra Residual Trust Interests that were distributed or made available to the Holders of Prepetition Tranche B Claims until such Claims were paid in full. Notwithstanding the foregoing, the Prepetition Tranche E Lenders shall not receive any distribution from or on account of the Solyndra Settlement Fund, the Solyndra Settlement Trust Contribution, or the Trust Avoidance Claims. The existing Liens securing the Prepetition Tranche E Claims will be retained on the Solyndra Net Lender Distributable Assets subject to the terms of the Plan and the distributions contemplated hereby. The Prepetition Tranche E Claims are deemed Allowed in the full amount reflected in the Final DIP Order and the Debtors' books and records as of the Record Date. For the avoidance of doubt, Prepetition Tranche D Claims and Prepetition Tranche E Claims that are Prepetition Lender Deficiency Claims shall be *pari passu* hereunder pursuant to and consistent with the Prepetition Intercreditor Agreement.

Impairment/Voting: Class 6 is Impaired. Holders of Claims in Class 6 are therefore entitled to vote to accept or reject the Plan.

7. **Class 7 – Holdings General Unsecured Claims**

Classification: Class 7 consists of all Holdings General Unsecured Claims.

Treatment: On or as soon as practicable after the Effective Date, each Holder of an Allowed Holdings General Unsecured Claim shall receive, as the sole distribution by Holdings or its Estate under the Plan on account of such Holdings General Unsecured Claim: (i) a Pro Rata share (calculated as a percentage of Allowed Holdings General Unsecured Claims) of the Holdings Settlement Fund; and (ii) as soon as practicable after payment in full of the Tranche II Exit Facility, a Pro Rata share (calculated as a percentage of Allowed Holdings General Unsecured Claims) of any proceeds of Retained Rights of Action of Reorganized Holdings up to the full Allowed amount of such Holdings General Unsecured Claim.

Impairment/Voting: Class 7 is Impaired. Holders of Claims in Class 7 are therefore entitled to vote to accept or reject the Plan.

8. **Class 8 – Solyndra General Unsecured Claims**

Classification: Class 8 consists of all Solyndra General Unsecured Claims.

Treatment: On or as soon as practicable following the Effective Date, each holder of an Allowed Solyndra General Unsecured Claim (including Holdings Creditors with Allowed Solyndra General Unsecured Claims only as set forth in subsection (c) below) shall receive, up to the full Allowed amount of such Solyndra General Unsecured Claim, a Pro Rata share (calculated as a percentage of Solyndra General Unsecured Claims) of the Solyndra Settlement Trust Interests which shall entitle such Holder to: (i) subject to execution of the General Unsecured Creditor Release, a Pro Rata share (calculated as a percentage of Allowed Solyndra General Unsecured Claims) of the Solyndra Settlement Fund, net of any costs subtracted from

such fund as permitted by Article VI(G) of the Plan; (ii) a Pro Rata share (calculated as a percentage of Allowed Solyndra General Unsecured Claims) of the net proceeds of any Trust Avoidance Claims calculated by multiplying the aggregate of such proceeds by a fraction equal to (A) the amount of Allowed General Unsecured Claims as the numerator and (b) the sum of Prepetition Tranche B Claims, Prepetition Tranche D Claims, and Allowed Solyndra General Unsecured Claims as the denominator; (iii) as soon as practicable after payment in full of the Tranche II Exit Facility, a Pro Rata share (calculated as a percentage of Allowed Solyndra General Unsecured Claims) of the Solyndra Residual Trust Interests that are distributed to the Holders of Solyndra General Unsecured Claims, which distribution shall be calculated by multiplying the aggregate of the Solyndra Residual Trust Interests by a fraction equal to (A) the amount of Allowed Solyndra General Unsecured Claims as the numerator and (B) the sum of Prepetition Lender Deficiency Claims and Allowed Solyndra General Unsecured Claims as the denominator; and (iv) a Pro Rata share (calculated as a percentage of the Allowed Solyndra General Unsecured Claims) of the proceeds from any residual Solyndra Net Lender Distributable Assets after all Prepetition Lender Claims have been paid in full. Such distribution shall be the sole and exclusive dividend to holders of Allowed Solyndra General Unsecured Claims under the Plan. All distributions to Holders of Class 8 Claims under the Plan shall be made by the Solyndra Settlement Trustee.

Special Provision for Holdings Creditors: Holders of Allowed Holdings General Unsecured Claims in Class 7 shall receive from the Holdings Settlement Fund ratable distributions under the Plan equal to three percent (3%) of such Holders' Allowed Holdings General Unsecured Claims and shall be deemed to have waived any right to a distribution out of the Solyndra Settlement Fund and Trust Avoidance Claims on account of any Allowed Solyndra General Unsecured Claims that such Holdings Creditor may have against Solyndra; *provided, however,* that, in the event distributions out of the Solyndra Settlement Fund and Trust Avoidance Claims, collectively, to Holders of Solyndra General Unsecured Claims in Class 8 exceed ten percent (10%) of such Allowed Solyndra General Unsecured Claims, then any Allowed Solyndra General Unsecured Claim held by a Holdings Creditor shall participate in any distributions from such assets above ten percent (10%) on a Pro Rata basis with the Holders of Allowed Solyndra General Unsecured Claims to the extent of such Holdings Creditor's Allowed Solyndra General Unsecured Claims. Except as set forth above with reference to distributions out of the Solyndra Settlement Fund and Trust Avoidance Claims, Holders of Allowed Holdings General Unsecured Claims who are also Holders of Allowed Solyndra General Unsecured Claims shall participate on account of such Allowed Solyndra General Unsecured Claims in distributions out of any other assets made available to Holders of Class 8 Claims under the Plan.

Impairment/Voting: Class 8 is Impaired. Holders of Claims in Class 8 are therefore entitled to vote to accept or reject the Plan.

9. **Class 9 – Interests in Holdings**

Classification: Class 9 consists of all Interests in Holdings.

Treatment: Holders of Interests in Holdings shall have left unaltered the legal, equitable, and contractual rights to which each such Holder is entitled on account of such Interest.

Impairment/Voting: Class 9 is Unimpaired. Class 9 therefore is conclusively presumed to have accepted the Plan and Holders of Interests in Class 9 are not entitled to vote to accept or reject the Plan.

10. **Class 10 – Interests in Solyndra**

Classification: Class 10 consists of all Interests in Solyndra.

Treatment: Holders of Interests in Solyndra shall receive no distributions or recoveries on account of such Interests and such Interests shall be extinguished on the Effective Date.

Impairment/Voting: Class 10 is Impaired. Because Holders of Interests in Class 10 will receive no recovery on account of such Interests under the Plan, they are conclusively presumed to reject the Plan.

**VII.**

**ACCEPTANCE OR REJECTION OF PLAN**

**A. Identification of Unimpaired Classes**

The following Classes are Unimpaired under the Plan:

1. Class 1 – Priority Non-Tax Claims
2. Class 2 – Miscellaneous Secured Claims
3. Class 9 – Interests in Holdings

**B. Identification of Impaired Classes**

The following Classes of Claims and Interests are Impaired under the Plan.

1. Class 3 – Prepetition Tranche A Claims
2. Class 4 – Prepetition Tranche B Claims
3. Class 5 – Prepetition Tranche D Claims
4. Class 6 – Prepetition Tranche E Claims
5. Class 7 – Holdings General Unsecured Claims
6. Class 8 – Solyndra General Unsecured Claims
7. Class 10 – Interests in Solyndra

**C. Classes Permitted and Not Permitted to Vote**

Classes 1, 2 and 9 are Unimpaired. Holders of Claims or Interests in such Classes are conclusively presumed pursuant to section 1126(f) of the Bankruptcy Code to have accepted the Plan and therefore shall not be entitled to vote to accept or reject the Plan.

Classes 3 through 8 and 10 are Impaired. Holders of Claims and Interests in Classes 3 through 8 are permitted to vote to accept or reject the Plan. Class 10 is not permitted to vote because the Holders in such Class receive no recovery under the Plan and are therefore conclusively presumed to reject the Plan.

An Impaired Class of Claims that votes shall have accepted the Plan if (a) the Holders of at least two-thirds in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan and (b) the Holders of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan.

**D. Effect of Non-Voting**

If no Holder of a Claim or Interest eligible to vote in a particular Class timely votes to accept or reject the Plan, the Plan shall be deemed **accepted** by the Holders of such Claims or Interests in such Class for purposes of section 1129(b) of the Bankruptcy Code.

**E. Nonconsensual Confirmation**

In the event any Class of Claims or Interests votes to reject the Plan, the Debtors intend to request that the Bankruptcy Court confirm the Plan notwithstanding such rejection pursuant to section 1129(b) of the Bankruptcy Code on the basis that the Plan is fair and equitable and does not discriminate unfairly as to the Holders of any Class of Claims or Interests.

**F. Postpetition Interest**

Nothing in the Plan or the Disclosure Statement will be deemed to entitle the Holder of a Claim to receive postpetition interest on account of such Claim, except to the extent that Holder of a Claim has the benefit of a Lien on assets that exceed the value of such Claim.

**VIII.**

**MEANS FOR IMPLEMENTATION OF THE PLAN**

**A. Plan Settlement**

The provisions of the Plan incorporate the terms of a settlement among the Debtors, certain Prepetition Lenders, certain Creditors and Holders of Interests, and the Creditors' Committee that, upon the Effective Date, will be deemed approved and consummated pursuant to section 1123(b)(3)(A) of the Bankruptcy Code and Bankruptcy Rule 9019 (the "Plan Settlement"). The salient terms of the Plan Settlement are as follows:

- (1) The Plan Sponsors shall make the advances under the Exit Facility, the Solyndra Settlement Fund Loan, and the WARN Settlement Loan available to the Solyndra Residual Trust on the Effective Date;
- (2) The Plan Sponsors shall make the Holdings Settlement Fund available to Holdings or Reorganized Holdings, as applicable, on or before the Effective Date;
- (3) The Prepetition Tranche A Claims held by the Plan Sponsors shall be reduced dollar for dollar by the amount of the Solyndra Settlement Fund Loan (*i.e.*, the Allowed amount of the Prepetition Tranche A Claim shall be reduced by \$3,175,000, plus any interest or fees accrued thereon);
- (4) The Solyndra Residual Trust shall transfer (A) \$175,000 in amount of the proceeds of the Solyndra Settlement Fund Loan to the Solyndra Settlement Trust to fund the Solyndra Settlement Trust Contribution and (B) \$3,000,000 in amount of the Solyndra Settlement Fund Loan to the Solyndra Settlement Trust to fund the Solyndra Settlement Fund;
- (5) Reorganized Holdings shall make distributions to Holdings Creditors in accordance with Article IV(B)(7) of the Plan;
- (6) Upon receipt of the distributions contemplated by Article IV(B)(7) of the Plan, the Holdings Creditors shall be deemed to have waived any distributions from the Solyndra Settlement Fund and Trust Avoidance Claims on account of their Solyndra General Unsecured Claims, except as set forth in Article IV(B)(7) of the Plan;
- (7) The Plan Sponsors shall fund the payment of (A) Allowed Administrative Expenses, Allowed Priority Tax Claims and Allowed Non-Priority Tax Claims and (B) the Plan Expenses payable through the Exit Facility;
- (8) The Plan Sponsors will distribute the WARN Settlement Amount to the Solyndra Residual Trust via the WARN Settlement Loan on the Effective Date, and the Solyndra Residual Trust will in turn distribute the Net WARN Settlement Proceeds to the WARN Employees in accordance with the WARN Settlement in full and final satisfaction of all Allowed WARN Priority Claims of the WARN Employees;
- (9) The Plan Sponsors shall be entitled to recourse to and repayment of the WARN Settlement Loan from the Retained Rights of Action against third parties relating to the claims asserted by the WARN Plaintiffs, including a potential settlement of one such claim that is in the process of being

documented and is confidential, which shall be the sole recourse of the WARN Settlement Loan;

- (10) (A) The Solyndra Net Lender Distributable Assets shall be used to repay the Plan Sponsors in respect of the Tranche I Exit Facility and the Solyndra Settlement Fund Loan prior to any other distributions made to any Holders of Prepetition Lender Claims contemplated by Article IV of this Plan and (B) after the payments described in (A) are made, the Solyndra Net Lender Distributable Assets shall be used to repay the Prepetition Lender Claims contemplated by Article IV of this Plan;
- (11) The Prepetition Tranche A Lenders and the Prepetition Tranche E Lenders shall not be entitled to receive any distribution on account of their Prepetition Lender Deficiency Claims out of the Solyndra Settlement Fund, the Solyndra Settlement Trust Contribution, or the Trust Avoidance Claims;
- (12) The Debtors, Reorganized Holdings, the Solyndra Residual Trust and the Solyndra Settlement Trust shall release and agree not to bring any claim or right of action against the Prepetition Lenders as set forth in Article X(C) of the Plan; and
- (13) Upon the Effective Date of the Plan, provided that the Solyndra Settlement Trust receives the Solyndra Settlement Trust Contribution and Solyndra Settlement Fund, the Creditors' Committee Release as set forth in Article X(C) of the Plan shall be deemed effective and, as a result thereof, the Creditors' Committee shall have released and agreed not to bring any challenge, objection, or contest to the Debtors' stipulations in favor of the Prepetition Lenders as set forth in the Final DIP Order or to otherwise bring, or support any other party in bringing, any Claim or Right of Action against the Prepetition Lenders.

**B. No Substantive Consolidation**

Nothing in the Plan is intended to substantively consolidate, nor shall have the effect of substantively consolidating, the Debtors or their Estates, and Holdings shall maintain its separate corporate existence from and after the Effective Date.

**C. Continued Corporate Existence and Vesting of Assets of Holdings**

On and after the Effective Date, Reorganized Holdings will continue to exist as a separate corporation and shall retain all of the powers of corporations under applicable non-bankruptcy law, and without prejudice to any right to amend its charter, dissolve, merge or convert into another form of business entity, or to alter or terminate its existence.



Except as otherwise provided in the Plan, on and after the Effective Date, all Distributable Assets and property of Holdings and its Estate, including any “net operating losses” or similar tax attributes, will vest in Reorganized Holdings free and clear of all Claims, Liens, charges, other encumbrances and Interests.

On and after the Effective Date, Reorganized Holdings shall be permitted to conduct its business without supervision by the Bankruptcy Court and free of any restrictions under the Bankruptcy Code or the Bankruptcy Rules. Except as to the Holdings Settlement Fund, Reorganized Holdings shall be authorized, without limitation, to use and dispose of the Distributable Assets of Holdings and its Estate, to acquire and dispose of other property, and to otherwise administer its affairs.

**D. Holdings Settlement Fund**

On the Effective Date, the Plan Sponsors will distribute the proceeds of the Holdings Settlement Fund to Reorganized Holdings in Cash. The Holdings Settlement Fund shall be held by Reorganized Holdings solely for the benefit of the Holders of Holdings General Unsecured Claims in Class 7 under the Plan and distributed by Reorganized Holdings in accordance with the Plan. For the avoidance of doubt, the entirety of the Holdings Settlement Fund shall be distributed to the Holders of Holdings General Unsecured Claims and not used for any other purposes.

**E. Establishment of Solyndra Settlement Trust and Vesting of Solyndra Settlement Trust Assets**

On the Effective Date, Solyndra shall take any and all actions as may be necessary or appropriate to establish the Solyndra Settlement Trust and to cause the transfer of the Trust Avoidance Claims, Solyndra Settlement Fund, the Solyndra Settlement Trust Contribution, and relevant books and records (the “Relevant Books and Records”) to the Solyndra Settlement Trust.<sup>6</sup> On the Effective Date, the Solyndra Settlement Trust Contribution, the Solyndra Settlement Fund, the Trust Avoidance Claims and the Relevant Books and Records shall constitute the Solyndra Settlement Trust Assets. Upon the Effective Date, the Solyndra Settlement Trust shall be vested with all right, title and interest in the Solyndra Settlement Trust Assets, and such property shall become the property of the Solyndra Settlement Trust free and clear of all Claims, Liens, charges, other encumbrances and interests. It is intended that the Solyndra Settlement Trust qualify as a liquidating trust for federal income tax purposes.

The sole beneficiaries of the Solyndra Settlement Trust shall be the Holders of Allowed Solyndra General Unsecured Claims in Class 8 under the Plan. As to the Solyndra Settlement Fund, the only Holders of Allowed Solyndra General Unsecured Claims who shall share in such assets are those who provide the General Unsecured Creditor Release on their Ballot or

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<sup>6</sup> “Relevant Books and Records” shall include those books and records of Solyndra with information concerning Solyndra General Unsecured Claims and any rights of setoff associated therewith (including without limitation accounts payable information, accounts receivable information, invoices, shipping receipts, *etc.*) and information concerning Trust Avoidance Claims and any defenses thereto (including without limitation accounts payable information, accounts receivable information, invoices, purchase orders, shipping receipts, bank statements, wire transfer records, *etc.*).

otherwise. As to any net proceeds of Trust Avoidance Claims or any other Solyndra Settlement Trust Assets, all Holders of Allowed Solyndra General Unsecured Claims shall share in such assets, provided that, any net proceeds of Trust Avoidance Claims also will be shared with the Prepetition Tranche B Lenders and the Prepetition Tranche D Lenders to the extent of their deficiency claims. In the event that there are any net proceeds of Trust Avoidance Claims payable to the Prepetition Tranche B Lenders and the Prepetition Tranche D Lenders, the Solyndra Settlement Trust shall make such payments directly to the Prepetition Tranche B Lenders and the Prepetition Tranche D Lenders as contractual obligations of the Solyndra Settlement Trust. The Prepetition Tranche B Lenders and the Prepetition Tranche D Lenders shall not be considered beneficiaries of the Solyndra Settlement Trust. For federal income tax purposes, the beneficiaries of the Solyndra Settlement Trust shall be treated as the grantors of the Solyndra Settlement Trust and deemed to be the owners of the assets of the Solyndra Settlement Trust, and the transfer of the Solyndra Settlement Trust Assets to the Solyndra Settlement Trust shall be deemed a transfer to such beneficiaries by Solyndra followed by a deemed transfer by such beneficiaries to the Solyndra Settlement Trust.

**F. Purpose of Solyndra Settlement Trust**

The Solyndra Settlement Trust shall be established for the primary purpose of liquidating and distributing the Solyndra Settlement Trust Assets in accordance with Treasury Regulation section 301.7701-4(d). In particular, this includes: (i) reviewing and reconciling, including where appropriate objecting to, the Claims of Holders of Solyndra General Unsecured Claims, (ii) reviewing, litigating, settling, dismissing or releasing Trust Avoidance Claims; and (iii) distributing the Solyndra Settlement Fund and the proceeds of any Trust Avoidance Claims and any other Solyndra Settlement Trust Assets in accordance with the Plan and the terms of the Solyndra Settlement Trust Agreement. The Solyndra Settlement Trust shall have no objective to continue or engage in the conduct of a trade or business and shall not be deemed a successor-in-interest of Solyndra or its Estate for any purpose other than as specifically set forth in the Plan.

**G. Solyndra Settlement Fund and Solyndra Settlement Trust Contribution**

On the Effective Date, the Plan Sponsors shall remit the proceeds of the Solyndra Settlement Fund Loan to the Solyndra Residual Trust in Cash. The Solyndra Residual Trust shall hold such funds in trust and such funds shall not be considered property of the Solyndra Residual Trust or Solyndra's Estate. The Solyndra Settlement Fund and the Solyndra Settlement Trust Contribution shall be transferred by the Solyndra Residual Trust to the Solyndra Settlement Trust on the Effective Date. The Solyndra Residual Trust shall be obligated to satisfy the Solyndra Settlement Fund Loan with the first dollars available for distribution to the Holders of Prepetition Tranche A Claims from Solyndra Net Lender Distributable Assets until the amounts contributed by the Plan Sponsors to the Solyndra Residual Trust in respect of the Solyndra Settlement Fund are repaid in full. The Solyndra Settlement Trust shall have no liability or obligation whatsoever with respect to the Solyndra Settlement Fund Loan. The Solyndra Settlement Trust Contribution may be used by the Solyndra Settlement Trustee to fund the expenses of the Solyndra Settlement Trust as determined by the Solyndra Settlement Trustee in his or her sole discretion. To the extent any portion of the Solyndra Settlement Trust Contribution is not used to pay the expenses of the Solyndra Settlement Trust, such unused

portion shall be made available for distribution to the Holders of Class 8 Claims pursuant to the Plan. To the extent expenses of the Solyndra Settlement Trustee exceed the Solyndra Settlement Trust Contribution, payments may be made from other Solyndra Settlement Trust Assets with approval from the Solyndra Settlement Trust Committee.

## **H. Solyndra Settlement Trustee**

### **1. Generally**

The initial Solyndra Settlement Trustee shall be designated by the Creditors' Committee prior to the Confirmation Hearing. Any successor Solyndra Settlement Trustee shall be appointed pursuant to the Solyndra Settlement Trust Agreement and subject to the approval of the Bankruptcy Court. On the Effective Date and subject to the oversight of the Solyndra Settlement Trust Committee, the Solyndra Settlement Trustee shall be the sole authorized representative and signatory of the Solyndra Settlement Trust, with authority to render any and all services necessary to effectuate the terms of the Plan as they relate to the Solyndra Settlement Trust. The powers, authority, responsibilities and duties of the Solyndra Settlement Trustee shall be governed by the Plan, the Confirmation Order, and the Solyndra Settlement Trust Agreement. The Solyndra Settlement Trustee may execute, deliver, file or record such documents, instruments, releases and other agreements, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan as they relate to the Solyndra Settlement Trust.

### **2. Responsibilities and Authority of Solyndra Settlement Trustee**

The responsibilities and authority of the Solyndra Settlement Trustee shall include (a) calculating and implementing all distributions from the Solyndra Settlement Trust in accordance with the Plan; (b) filing all required tax returns and paying taxes and all other obligations on behalf of the Solyndra Settlement Trust from funds held by the Solyndra Settlement Trust; (c) periodic reporting to the beneficiaries of the Solyndra Settlement Trust as frequently as the Solyndra Settlement Trustee reasonably believes is appropriate; (d) distributing the assets of the Solyndra Settlement Trust in accordance with the provisions of the Plan, including distributions of the Solyndra Settlement Fund; (e) retaining and paying at normal and customary rates professionals in connection with the Solyndra Settlement Trustee's duties; (f) paying the reasonable expenses of the members of the Solyndra Settlement Trust Committee, in accordance with the provisions of the Plan and the Solyndra Settlement Trust Agreement; (g) reconciling and, if appropriate, objecting to Solyndra General Unsecured Claims with authority to settle any objections; (h) establishing a reserve for Disputed Claims; (i) analyzing Trust Avoidance Claims and deciding whether to abandon, pursue, litigate, or settle such claims; (j) updating the Solyndra Settlement Trust Committee on the progress of the implementation of the Plan as frequently as may be reasonably requested by the Solyndra Settlement Trust Committee; and (k) such other responsibilities as may be vested in the Solyndra Settlement Trustee pursuant to the Plan, the Solyndra Settlement Trust Agreement or the Confirmation Order or as may be necessary and proper to carry out the provisions of the Plan. The Solyndra Settlement Trust, the Solyndra Settlement Trustee and the Solyndra Settlement Trust Committee shall not be required to post a bond in favor of the United States.

### **3. Powers of the Solyndra Settlement Trustee**

Subject to the oversight of the Solyndra Settlement Trust Committee as set forth in the Plan and the Solyndra Settlement Trust Agreement, the powers of the Solyndra Settlement Trustee to administer the Solyndra Settlement Trust shall, without any need for approval of the Bankruptcy Court in each of the following instances, include *inter alia*, (a) the power to invest Solyndra Settlement Trust funds as permitted in the Solyndra Settlement Trust Agreement, withdraw funds, make distributions and pay taxes and other obligations owed by the Solyndra Settlement Trust from funds held by the Solyndra Settlement Trustee in accordance with the Plan and the Solyndra Settlement Trust Agreement, (b) the power to engage and compensate, without prior Bankruptcy Court order or approval, employees and professionals to assist the Solyndra Settlement Trustee with respect to his or her responsibilities, (c) the power to prosecute, compromise and settle Solyndra General Unsecured Claims, (d) the power to abandon, pursue, litigate, or settle any Trust Avoidance Claim, subject to at least five (5) business days' notice and an opportunity to object by the Prepetition Tranche B/D Agent, (e) the power to abandon or destroy any of the Relevant Books and Records when they are no longer necessary to administer the Solyndra Settlement Trust, and (f) such other powers as may be vested in or assumed by the Solyndra Settlement Trustee pursuant to the Plan, the Solyndra Settlement Trust Agreement, order of the Bankruptcy Court, or as may be necessary and proper to carry out the provisions of the Plan. Subject to the oversight of the Solyndra Settlement Trust Committee as set forth in the Plan and the Solyndra Settlement Trust Agreement, the Solyndra Settlement Trustee, on behalf of the Solyndra Settlement Trust, shall have absolute discretion to pursue or not to pursue any and all objections to Solyndra General Unsecured Claims and any and all Trust Avoidance Claims, as he or she determines is in the best interests of the beneficiaries and consistent with the purposes of the Solyndra Settlement Trust, and shall have no liability for the outcome of his/her decision, other than those decisions constituting gross negligence or willful misconduct. Any determination by the Solyndra Settlement Trustee as to what actions are in the best interests of the Solyndra Settlement Trust shall be conclusive.

For the avoidance of doubt, on the Effective Date, the Solyndra Settlement Trustee, on behalf of the Solyndra Settlement Trust, shall have standing to commence and prosecute any Trust Avoidance Action and/or objections to Solyndra General Unsecured Claims on behalf of Solyndra's Estate without need for notice or order of the Bankruptcy Court. The Solyndra Residual Trust shall cooperate with the Solyndra Settlement Trustee as reasonably necessary to enable the Solyndra Settlement Trustee to perform his or her duties under the Plan or the Solyndra Settlement Trust Agreement and a common interest privilege shall exist between the Solyndra Residual Trustee and the Solyndra Settlement Trustee in connection with such matters.

### **4. Compensation of Solyndra Settlement Trustee and Professionals**

The Solyndra Settlement Trustee shall serve on (i) the terms, conditions and rights set forth in the Plan, the Confirmation Order and the Solyndra Settlement Trust Agreement, or (ii) such terms, conditions and rights as otherwise agreed to by the Solyndra Settlement Trustee and the Solyndra Settlement Trust Committee. The compensation for the Solyndra Settlement Trustee shall be set forth in the Solyndra Settlement Trust Agreement or otherwise disclosed in a filing with the Bankruptcy Court. The Solyndra Settlement Trustee shall not be required to file a

Fee Application to receive compensation, but the Solyndra Settlement Trustee's fees shall be subject to the oversight of the Solyndra Settlement Trust Committee. The Solyndra Settlement Trustee shall have the right to retain the services of attorneys, accountants, and other professionals and agents in the discretion of the Solyndra Settlement Trustee to assist and advise the Solyndra Settlement Trustee in the performance of his/her duties and compensate such professionals from the assets of the Solyndra Settlement Trust, subject to the oversight of the Solyndra Settlement Trust Committee. Any professionals retained by the Solyndra Settlement Trustee shall not be required to file a Fee Application to receive compensation.

5. **Limitations on Solyndra Settlement Trustee**

The Solyndra Settlement Trustee, in such capacity, shall not at any time: (a) enter into or engage in any trade or business (other than the management and disposition of the Solyndra Settlement Trust Assets), and no part of the Solyndra Settlement Trust Assets or the proceeds, revenue or income therefrom shall be used or disposed of by the Solyndra Settlement Trust in furtherance of any trade or business, or (b) except as provided below, reinvest any Solyndra Settlement Trust Assets.

With regard to any sale, disposition, release, modification or waiver of existing rights as to an asset of the Solyndra Settlement Trust or compromise or settlement of a controverted matter such as an objection to a Solyndra General Unsecured Claim or a Trust Avoidance Claim, if the asset or matter at issue exceeds \$500,000 in value (after accounting for any applicable defenses in the case of a Trust Avoidance Claim) or amount asserted, the Solyndra Settlement Trustee must consult with, and obtain approval from, the Solyndra Settlement Trust Committee, and the Prepetition Tranche B/D Agent with respect to any such transaction or, in the absence of such approval, an order of the Bankruptcy Court approving such transaction (*provided that* the Solyndra Settlement Trust Committee and the Prepetition Tranche B/D Agent shall be deemed to have approved such transaction if such parties fail to object thereto in a writing received by the Solyndra Settlement Trustee within five (5) business days following written notification by the Solyndra Settlement Trustee of the intended transaction).

Other than as provided in the Plan and the Solyndra Settlement Trust Agreement, the Solyndra Settlement Trustee is not empowered to incur indebtedness.

The Solyndra Settlement Trustee may only invest funds held in the Solyndra Settlement Trust consistent with the requirements of the Solyndra Settlement Trust Agreement, the Bankruptcy Code or any order of the Bankruptcy Court modifying such requirements and, provided that the Solyndra Settlement Trustee does so, he or she shall have no liability in the event of insolvency of any institution in which he or she has invested any funds of the Solyndra Settlement Trust. Notwithstanding the above, the Solyndra Settlement Trustee may only invest funds in the Solyndra Settlement Trust in investments permitted to be made by a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings, or other controlling authorities.

The Solyndra Settlement Trustee shall hold, collect, conserve, protect and administer the Solyndra Settlement Trust in accordance with the provisions of the Plan and the Solyndra Settlement Trust Agreement, and pay and distribute amounts as set forth in the Plan and the

Solyndra Settlement Trust Agreement. Any determination by the Solyndra Settlement Trustee as to what actions are in the best interests of the Solyndra Settlement Trust shall be conclusive.

**I. Solyndra Settlement Trust Committee**

**1. Generally**

The Solyndra Settlement Trust Committee shall be created on the Effective Date consistent with the terms of the Solyndra Settlement Trust Agreement. The Solyndra Settlement Trust Committee shall consist of no more than three (3) Persons initially selected by the Creditors' Committee and may consist of members of the Creditors' Committee.

**2. Duties of Solyndra Settlement Trust Committee**

The Solyndra Settlement Trust Committee shall generally monitor the status and progress of the Solyndra Settlement Trust and approve certain material transactions in accordance with Article VI(H)(5) of the Plan. The Solyndra Settlement Trust Committee may meet and/or consult periodically with the Solyndra Settlement Trustee and keep itself apprised of the affairs of the Solyndra Settlement Trust.

**3. Reimbursement of Expenses of Solyndra Settlement Trust Committee**

Members of the Solyndra Settlement Trust Committee shall be entitled to reimbursement of reasonable and necessary expenses incurred in carrying out their duties as members of the Solyndra Settlement Trust Committee, all of which shall be paid from the Solyndra Settlement Trust. Members of the Solyndra Settlement Trust Committee shall not be entitled to compensation for time spent on the Solyndra Settlement Trust Committee, nor shall they be reimbursed for any fees or expenses of any professional retained by an individual member of the Solyndra Settlement Trust Committee. The Solyndra Settlement Trust shall provide an indemnity to members of the Solyndra Settlement Trust Committee for all suits, demands, actions, claims, losses and liabilities such members may suffer or incur other than to the extent arising from such member's willful misconduct or gross negligence.

**J. Establishment of Solyndra Residual Trust and Vesting of Solyndra Residual Trust Assets**

On the Effective Date, Solyndra shall take any and all actions as may be necessary or appropriate to establish the Solyndra Residual Trust and to cause the transfer of the Solyndra Net Lender Distributable Assets and Solyndra Unencumbered Assets, including all Retained Rights of Action of Solyndra (excluding Trust Avoidance Claims), to the Solyndra Residual Trust. On the Effective Date, the Solyndra Net Lender Distributable Assets and Solyndra Unencumbered Assets shall constitute the Solyndra Residual Trust Assets. Upon the Effective Date, the Solyndra Residual Trust shall be vested with all right, title and interest in the Solyndra Residual Trust Assets, and such property shall become the property of the Solyndra Residual Trust free and clear of all Claims, Liens, charges, other encumbrances and interests, except as to any Liens that are expressly preserved and survive under the Plan, including the Liens securing the Exit Facility, the WARN Settlement Loan, and the Prepetition Lender Claims. Proceeds of the Residual Trust Assets subject to such liens shall be distributed to the Plan Sponsors and the

Holders of such Prepetition Lender Claims in accordance with the Plan. It is intended that the Solyndra Residual Trust qualify as a liquidating trust for federal income tax purposes.

The sole beneficiaries of the Solyndra Residual Trust shall be the Solyndra Settlement Trust and the Holders of Prepetition Lender Deficiency Claims to the extent set forth in the Plan. For federal income tax purposes, the beneficiaries of the Solyndra Residual Trust shall be treated as the grantors of the Solyndra Residual Trust and deemed to be the owners of the assets of the Solyndra Residual Trust, and the transfer of the Solyndra Residual Trust Assets to the Solyndra Residual Trust shall be deemed a transfer to such beneficiaries by Solyndra followed by a deemed transfer by such beneficiaries to the Solyndra Residual Trust.

**K. Purpose of Solyndra Residual Trust**

The Solyndra Residual Trust shall be established for the primary purpose of liquidating and distributing the Solyndra Residual Trust Assets in accordance with Treasury Regulation section 301.7701-4(d). In particular, this includes: (i) reviewing and reconciling, including where appropriate objecting to, the Claims of Holders of Administrative Expenses, Priority Tax Claims, Priority Non-Tax Claims and Miscellaneous Secured Claims; (ii) reviewing, litigating, settling, dismissing or releasing Retained Rights of Action of Solyndra (excluding Trust Avoidance Claims); and (iii) distributing the Solyndra Lender Net Distributable Assets, the Solyndra Settlement Fund (to the Solyndra Settlement Trust), the Net WARN Settlement Proceeds, and the proceeds of any Solyndra Unencumbered Assets in accordance with the Plan and the terms of the Solyndra Residual Trust Agreement. The Solyndra Residual Trust shall have no objective to continue or engage in the conduct of a trade or business and shall not be deemed a successor-in-interest of Solyndra or its Estate for any purpose other than as specifically set forth in the Plan.

Notwithstanding anything to the contrary in the Plan, the Solyndra Residual Trust shall at all times make distributions to the Prepetition Lenders and the Prepetition Master Collateral Agent consistent with, and subject to, the terms of the Prepetition Intercreditor Agreement. To the extent that the proceeds of any Solyndra Unencumbered Assets, or any residual Solyndra Net Lender Distributable Assets after payment of Prepetition Lender Claims in full, are to be distributed to Holders of Solyndra General Unsecured Claims under the Plan, such proceeds shall be transferred by the Solyndra Residual Trust to the Solyndra Settlement Trust for the benefit of Holders of Solyndra General Unsecured Claims.

**L. Solyndra Residual Trustee**

**1. Generally**

The initial Solyndra Residual Trustee shall be R. Todd Neilson. Any successor Solyndra Residual Trustee shall be appointed pursuant to the Solyndra Residual Trust Agreement and subject to the approval of the Bankruptcy Court. On the Effective Date and subject to the oversight of the Solyndra Residual Trust Committee, the Solyndra Residual Trustee shall be the sole authorized representative and signatory of the Solyndra Residual Trust, with authority to render any and all services necessary to effectuate the terms of the Plan as they relate to the Solyndra Residual Trust. The powers, authority, responsibilities and duties of the Solyndra Residual Trustee shall be governed by the Plan, the Confirmation Order, and the Solyndra

Residual Trust Agreement. The Solyndra Residual Trustee may execute, deliver, file or record such documents, instruments, releases and other agreements, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan as they relate to the Solyndra Residual Trust.

2. **Responsibilities and Authority of Solyndra Residual Trustee**

The responsibilities and authority of the Solyndra Residual Trustee shall include (a) calculating and implementing all distributions from the Solyndra Residual Trust in accordance with the Plan; (b) filing all required tax returns and paying taxes and all other obligations on behalf of the Solyndra Residual Trust from funds held by the Solyndra Residual Trust; (c) periodic reporting to the beneficiaries of the Solyndra Residual Trust as frequently as the Solyndra Residual Trustee reasonably believes is appropriate; (d) liquidating and distributing the assets of the Solyndra Residual Trust in accordance with the provisions of the Plan, including distributions of the Solyndra Net Lender Distributable Assets and the proceeds of Solyndra Unencumbered Assets; (e) retaining and paying at normal and customary rates professionals in connection with the Solyndra Residual Trustee's duties; (f) paying the reasonable expenses of the members of the Solyndra Residual Trust Committee, in accordance with the provisions of the Plan and the Solyndra Residual Trust Agreement; (g) reconciling and, if appropriate, objecting to Allowed Administrative Expenses, Allowed Tax Claims, Allowed Priority Non-Tax Claims, and Allowed Miscellaneous Secured Claims with authority to settle any objections; (h) establishing a reserve for Disputed Claims; (i) analyzing Retained Rights of Action of Solyndra (excluding Trust Avoidance Claims) and deciding whether to abandon, pursue, litigate, or settle such claims; (j) updating the Solyndra Residual Trust Committee on the progress of the implementation of the Plan as frequently as may be reasonably requested by the Solyndra Residual Trust Committee; (k) providing commercially reasonable cooperation with the Solyndra Settlement Trust to reconcile Solyndra General Unsecured Claims and to support Trust Avoidance Claims; (l) winding-up the affairs of Solyndra and its subsidiaries and affiliates to the extent necessary (other than the Solyndra Settlement Trust); (m) determining Tax issues or liabilities in accordance with section 505 of the Bankruptcy Code (other than Tax issues specifically relating to the Solyndra Settlement Trust); (n) incurring and pay all of Solyndra's Plan Expenses and any reasonable costs and expenses incident to the performance of the duties of the Solyndra Residual Trustee under the Plan, including without limitation, reasonable rent for office space and storage, office supplies, travel and expense reimbursement, insurance, and other obligations; and (o) such other responsibilities as may be vested in the Solyndra Residual Trustee pursuant to the Plan, the Solyndra Residual Trust Agreement or the Confirmation Order or as may be necessary and proper to carry out the provisions of the Plan. The Solyndra Residual Trust, the Solyndra Residual Trustee and the Solyndra Residual Trust Committee shall not be required to post a bond in favor of the United States.

3. **Powers of the Solyndra Residual Trustee**

Subject to the oversight of the Solyndra Residual Trust Committee as set forth in the Plan and the Solyndra Residual Trust Agreement, the powers of the Solyndra Residual Trustee to administer the Solyndra Residual Trust shall, without any need for approval of the Bankruptcy Court in each of the following instances, include *inter alia*, (a) the power to invest Solyndra Residual Trust funds as permitted in the Solyndra Residual Trust Agreement, withdraw funds,



make distributions and pay taxes and other obligations owed by the Solyndra Residual Trust from funds held by the Solyndra Residual Trustee in accordance with the Plan and the Solyndra Residual Trust Agreement, (b) the power to engage and compensate, without prior Bankruptcy Court order or approval, employees and professionals to assist the Solyndra Residual Trustee with respect to his or her responsibilities, (c) the power to prosecute, compromise and settle Allowed Administrative Expenses, Allowed Tax Claims, Allowed Priority Non-Tax Claims, and Allowed Miscellaneous Secured Claims, (d) the power to abandon, pursue, litigate, or settle any Retained Right of Action of Solyndra (excluding Trust Avoidance Claims), (e) the power to abandon or destroy any of books and records of Solyndra (excluding the Relevant Books and Records) when they are no longer necessary to administer the Solyndra Residual Trust, and (f) such other powers as may be vested in or assumed by the Solyndra Residual Trustee pursuant to the Plan, the Solyndra Residual Trust Agreement, order of the Bankruptcy Court, or as may be necessary and proper to carry out the provisions of the Plan. Subject to the oversight of the Solyndra Residual Trust Committee as set forth in the Plan and the Solyndra Residual Trust Agreement, the Solyndra Residual Trustee, on behalf of the Solyndra Residual Trust, shall have absolute discretion to pursue or not to pursue any and all Retained Rights of Actions (excluding Trust Avoidance Claims) or objections to Allowed Administrative Expenses, Allowed Tax Claims, Allowed Priority Non-Tax Claims, and Allowed Miscellaneous Secured Claims, as he or she determines is in the best interests of the beneficiaries and consistent with the purposes of the Solyndra Residual Trust, and shall have no liability for the outcome of his/her decision, other than those decisions constituting gross negligence or willful misconduct. Any determination by the Solyndra Residual Trustee as to what actions are in the best interests of the Solyndra Residual Trust shall be conclusive.

For the avoidance of doubt, on the Effective Date, the Solyndra Residual Trustee, on behalf of the Solyndra Residual Trust, shall have standing to commence and prosecute any Retained Right of Action (excluding Trust Avoidance Claims) and/or objections to Allowed Tax Claims, Allowed Priority Non-Tax Claims, and Allowed Miscellaneous Secured Claims on behalf of Solyndra's Estate without need for notice or order of the Bankruptcy Court.

#### 4. **Compensation of Solyndra Residual Trustee and Professionals**

The Solyndra Residual Trustee shall serve on (i) the terms, conditions and rights set forth in the Plan, the Confirmation Order and the Solyndra Residual Trust Agreement, or (ii) such terms, conditions and rights as otherwise agreed to by the Solyndra Residual Trustee and the Solyndra Residual Trust Committee. The compensation for the Solyndra Residual Trustee shall be set forth in the Solyndra Residual Trust Agreement or otherwise disclosed in a filing with the Bankruptcy Court. The Solyndra Residual Trustee shall not be required to file a Fee Application to receive compensation, but the Solyndra Residual Trustee's fees shall be subject to the oversight of the Solyndra Residual Trust Committee. The Solyndra Residual Trustee shall have the right to retain the services of attorneys, accountants, and other professionals and agents in the discretion of the Solyndra Residual Trustee to assist and advise the Solyndra Residual Trustee in the performance of his/her duties and compensate such professionals from the assets of the Solyndra Residual Trust, subject to the oversight of the Solyndra Residual Trust Committee. Any professionals retained by the Solyndra Residual Trustee shall not be required to file a Fee Application to receive compensation.

## 5. Limitations on Solyndra Residual Trustee

The Solyndra Residual Trustee, in such capacity, shall not at any time: (a) enter into or engage in any trade or business (other than the management and disposition of the Solyndra Residual Trust Assets), and no part of the Solyndra Residual Trust Assets or the proceeds, revenue or income therefrom shall be used or disposed of by the Solyndra Residual Trust in furtherance of any trade or business, or (b) except as provided below, reinvest any Solyndra Residual Trust Assets.

With regard to any sale, disposition, release, modification or waiver of existing rights as to an asset of the Solyndra Residual Trust or compromise or settlement of litigation or controverted matter that constitutes a Retained Right of Action of the Solyndra Residual Trust, if the asset or matter at issue exceeds \$500,000 in value or amount asserted, the Solyndra Residual Trustee must consult with, and obtain approval of, the Solyndra Residual Trust Committee with respect to any such transaction or, in the absence of such approval, an order of the Bankruptcy Court approving such transaction (*provided that* the Solyndra Residual Trust Committee shall be deemed to have approved such transaction if it fails to object thereto in a writing received by the Solyndra Residual Trustee within ten (10) business days following written notification by the Solyndra Residual Trustee of the intended transaction).

With regard to any sale, disposition, release, modification or waiver of existing rights as to an asset of the Solyndra Residual Trust, or compromise or settlement of litigation or controverted matter that constitutes a Retained Right of Action of the Solyndra Residual Trust, that is the subject of a Lien securing the Allowed Prepetition Lender Claims, the Solyndra Residual Trustee must: (a) consult with the Prepetition Tranche A Representative, the Prepetition Tranche B/D Agent and the Prepetition Tranche E Agent with respect to any such transaction, in each case so long as any debt in each such tranche remains outstanding; (b) obtain approval of the Prepetition Tranche A Representative with respect to any such transaction, so long as any Prepetition Tranche A Claims remain outstanding, or, in the absence of such approval, an order of the Bankruptcy Court approving such transaction; (c) from and after the date when each of the Prepetition Tranche A Claims has been paid in full, obtain approval of the Prepetition Tranche B/D Agent with respect to any such transaction, so long as any Prepetition Tranche B Claims remain outstanding or, in the absence of such approval, an order of the Bankruptcy Court approving such transaction; and (d) from and after the date when each of the Prepetition Tranche A Claims and Prepetition Tranche B Claims has been paid in full, obtain approval of the Prepetition Tranche B/D Agent and the Prepetition Tranche E Agent with respect to any such transaction, so long as any Prepetition Tranche D Claims or Prepetition Tranche E Claims remain outstanding or, in the absence of such approval, an order of the Bankruptcy Court approving such transaction (*provided that* each of the foregoing parties, as applicable, shall be deemed to have approved such transaction if it fails to object thereto in a writing received by the Solyndra Residual Trustee within ten (10) business days following written notification by the Solyndra Residual Trustee of the intended transaction).

Other than as provided in the Plan and the Solyndra Residual Trust Agreement, the Solyndra Residual Trustee is not empowered to incur indebtedness.

The Solyndra Residual Trustee may only invest funds held in the Solyndra Residual Trust consistent with the requirements of the Solyndra Residual Trust Agreement, the Bankruptcy Code or any order of the Bankruptcy Court modifying such requirements and, provided that the Solyndra Residual Trustee does so, he or she shall have no liability in the event of insolvency of any institution in which he or she has invested any funds of the Solyndra Residual Trust. Notwithstanding the above, the Solyndra Residual Trustee may only invest funds in the Solyndra Residual Trust in investments permitted to be made by a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings, or other controlling authorities.

The Solyndra Residual Trustee shall hold, collect, conserve, protect and administer the Solyndra Residual Trust in accordance with the provisions of the Plan and the Solyndra Residual Trust Agreement, and pay and distribute amounts as set forth herein for the purposes set forth in the Plan and the Solyndra Residual Trust Agreement. Any determination by the Solyndra Residual Trustee, after consultation with the Solyndra Residual Trust Committee, as to what actions are in the best interests of the Solyndra Residual Trust shall be conclusive.

**M. Solyndra Residual Trust Committee**

1. **Generally**

The Solyndra Residual Trust Committee shall be created on the Effective Date consistent with the terms of the Solyndra Residual Trust Agreement. The Solyndra Residual Trust Committee shall consist of consist of three (3) representatives selected as follows: one member selected by the Prepetition Tranche A Representative, one member selected by the Prepetition Tranche B/D Agent, and one member selected by the Prepetition Tranche E Agent. In the event that a member of the Solyndra Residual Trust Committee can no longer carry out his or her duties as a director (by reason of death, resignation or disability), the party that selected such member of the Solyndra Residual Trust Committee may appoint a successor, or in the event no such successor is appointed within ninety (90) days, the Solyndra Residual Trustee may petition the Bankruptcy Court to appoint a successor. The members of the Solyndra Residual Trust Committee shall not be compensated for their service, aside from reimbursement of reasonable expenses. The Solyndra Residual Trust shall provide an indemnity to members of the Solyndra Residual Trust Committee for all suits, demands, actions, claims, losses and liabilities such members may suffer or incur other than to the extent arising from such member's willful misconduct or gross negligence.

2. **Duties of Solyndra Residual Trust Committee**

The Solyndra Residual Trust Committee shall generally monitor the status and progress of the Solyndra Residual Trust and approve certain material transactions in accordance with Article VI(L)(5) of the Plan. The Solyndra Residual Trust Committee may meet and/or consult periodically with the Solyndra Residual Trustee and keep itself apprised of the affairs of the Solyndra Residual Trust.

### **3. Reimbursement of Expenses of Solyndra Residual Trust Committee**

Members of the Solyndra Residual Trust Committee shall be entitled to reimbursement of reasonable and necessary expenses incurred in carrying out their duties as members of the Solyndra Residual Trust Committee, all of which shall be paid from the Solyndra Residual Trust. Members of the Solyndra Residual Trust Committee shall not be entitled to compensation for time spent on the Solyndra Residual Trust Committee, nor shall they be reimbursed for any fees or expenses of any professional retained by an individual member of the Solyndra Residual Trust Committee.

### **N. U.S. Federal Income Tax Treatment of Liquidating Trusts**

Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the receipt by the Solyndra Residual Trustee or Solyndra Settlement Trustee, as applicable, of an IRS private letter ruling if the Solyndra Residual Trustee or Solyndra Settlement Trustee, as applicable, so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Solyndra Residual Trustee or Solyndra Settlement Trustee, as applicable), the Solyndra Residual Trustee or Solyndra Settlement Trustee, as applicable, will (a) elect to treat any the Solyndra Residual Trust or Solyndra Settlement Trust assets, as applicable, allocable to, or retained on account of, Disputed Claims (the “Trust Claims Reserve”) as a “disputed ownership fund” governed by Treasury Regulation Section 1.468B-9, and (b) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. Accordingly, the Trust Claims Reserve will be subject to tax annually on a separate entity basis on any net income earned with respect to the Solyndra Residual Trust or Solyndra Settlement Trust assets, as applicable, in such reserves, and all distributions from such reserves will be treated as received by Holders in respect of their Claims as if distributed by the Debtors. All parties (including, without limitation, the Solyndra Residual Trustee or Solyndra Settlement Trustee, as applicable, and the Holders of beneficial interests in the Solyndra Residual Trustee or Solyndra Settlement Trustee, as applicable) will be required to report for tax purposes consistently with the foregoing.

The Solyndra Residual Trust and Solyndra Settlement Trust are intended to qualify as liquidating trusts for federal income tax purposes, treated for federal income tax purposes as “grantor” trusts. The Solyndra Residual Trust and Solyndra Settlement Trust have been structured with the intention of complying with such general criteria. Pursuant to the Plan, and in conformity with Revenue Procedure 94-45, supra, all parties (including the Solyndra Residual Trustee or Solyndra Settlement Trustee, as applicable, and the holders of beneficial interests in the Solyndra Residual Trust and Solyndra Settlement Trust, as applicable) are required to treat for federal income tax purposes, the Solyndra Residual Trust and Solyndra Settlement Trust as grantor trusts of which the holders of Allowed Claims are the owners and grantors.

After the Effective Date, any amount a Holder receives as a distribution from the Solyndra Residual Trust or Solyndra Settlement Trust, as applicable, in respect of its beneficial interest in such trusts should not be included, for federal income tax purposes, in the Holder’s amount realized in respect of its Allowed Claim but should be separately treated as a distribution received in respect of such Holder’s beneficial interest in the Solyndra Residual Trust or Solyndra Settlement Trust, as applicable.

For all federal income tax purposes, all parties (including the Solyndra Residual Trustee, Solyndra Settlement Trustee and the Holders of beneficial interests in such trusts) shall treat the transfer of assets to the Solyndra Residual Trust or Solyndra Settlement Trust, as applicable, in accordance with the terms of the Plan, as a transfer of those assets directly to the Holders of Allowed Claims followed by the transfer of such assets by such Holders to the Solyndra Residual Trust or Solyndra Settlement Trust, as applicable. Consistent therewith, all parties shall treat the Solyndra Residual Trustee and Solyndra Settlement Trustee as grantor trusts of which such Holders are to be owners and grantors. Thus, such Holders (and any subsequent Holders of interests in the Solyndra Residual Trust and Solyndra Settlement Trust) shall be treated as the direct owners of an undivided beneficial interest in the assets of such trusts for all federal income tax purposes. Accordingly, each Holder of a beneficial interest in the Solyndra Residual Trust or Solyndra Settlement Trust, as applicable, will be required to report on its federal income tax return(s) the Holder's allocable share of all income, gain, loss, deduction or credit recognized or incurred by such trust.

The Solyndra Residual Trust or Solyndra Settlement Trust taxable income, as applicable, will be allocated to the Holders of beneficial interests in such trusts in accordance with each such Holder's Pro Rata share of such trusts. The Solyndra Residual Trustee and Solyndra Settlement Trustee will file with the IRS returns for their respective trusts each as a grantor trust pursuant to Treasury Regulations section 1.671-4(a). The Solyndra Residual Trustee and Solyndra Settlement Trustee, as applicable, will also send to each Holder of a beneficial interest in such trust a separate statement setting forth the Holder's share of items of income, gain, loss, deduction or credit and will instruct the Holder to report such items on its federal income tax return.

**O. Exit Facility for Solyndra Residual Trust**

On the Effective Date, the Plan Sponsors shall make available the Exit Facility to the Solyndra Residual Trust. Funding from the Exit Facility shall be utilized by the Solyndra Residual Trust: (a) with respect to the Tranche I Exit Facility, to satisfy Allowed Administrative Expenses, Priority Tax Claims (except any Secured Claims), Priority Non-Tax Claims (other than WARN Priority Claims) and Plan Expenses of the Solyndra Residual Trust, in each case not funded and paid through the Tranche II Exit Facility; and (b) with respect to the Tranche II Exit Facility, to satisfy certain Claims and expenses, including, without limitation, Priority Claims of current or former employees of Solyndra (other than the WARN Priority Claims), Claims under section 503(b)(9) of the Bankruptcy Code, and Priority Tax Claims (except any Secured Claims). The Solyndra Residual Trust shall satisfy the Tranche I Exit Facility from the Solyndra Net Lender Distributable Assets prior to making any distributions to Holders of Claims other than Allowed Administrative Expenses, Allowed Priority Tax Claims, or Allowed Priority Non-Tax Claims. The Tranche I Exit Facility shall be secured by a Lien on the same assets and shall have the same priority as the DIP Credit Facility. The Tranche II Exit Facility shall be secured by a first priority Lien (subject to the Liens of the WARN Settlement Loan in specific Retained Rights of Action) on, and shall have recourse solely to, any and all Solyndra Unencumbered Assets. The specific terms of the Exit Facility shall be disclosed prior to the Confirmation Hearing in the Plan Supplement. The Solyndra Residual Trust shall satisfy all obligations under the Tranche I Exit Facility from the Solyndra Net Lender Distributable Assets prior to distributions to Holders of Prepetition Lender Claims contemplated by Article IV of the Plan.

**P. Retained Rights of Action of the Debtors**

Unless a Right of Action of the Debtors (including the right to object to any Claim asserted against the Estates) is, in writing, expressly waived, relinquished, released, assigned, compromised, or settled in the Plan, or in a Final Order, all rights of the Estates with respect to such Right of Action are expressly preserved for the benefit of, and fully vested in, Reorganized Holdings, the Solyndra Residual Trust, and/or the Solyndra Settlement Trust (solely as to Trust Avoidance Claims and objections to Solyndra General Unsecured Claims), as applicable.

Reorganized Holdings, the Solyndra Residual Trust, and the Solyndra Settlement Trust (solely as to Trust Avoidance Claims and objections to Solyndra General Unsecured Claims), as applicable, may pursue, or decline to pursue, the Retained Rights of Action and objections to Claims, as appropriate, in the business judgment of Reorganized Holdings, the Solyndra Residual Trust, and/or the Solyndra Settlement Trust, as applicable. The Solyndra Residual Trust and the Solyndra Settlement Trust, subject to the limitations set forth in Articles VI(H)(5) and VI(L)(5) of the Plan, as applicable, may settle, release, sell, assign, otherwise transfer, or compromise, Retained Rights of Action, Avoidance Claims, and/or objections to Claims without need for notice or order of the Bankruptcy Court.

To the extent that the Solyndra Residual Trustee seeks to allow a Solyndra General Unsecured Claim in the context of settling a Retained Right of Action (excluding Trust Avoidance Claims), written consent of the Solyndra Settlement Trustee shall be required of such settlement where the allowance of such Solyndra General Unsecured Claim exceeds the unsecured claim amount of such creditor as had been reflected by Solyndra's books and records.

For purposes of this Disclosure Statement, no value has been ascribed to potential claims against third parties. However, unless specifically released in the Plan, any and all rights of the Debtors to pursue claims against third parties are expressly preserved under the Plan, including without limitation, (1) avoidance claims against any parties disclosed in the Schedules and Statements, (2) any claims against third parties relating to the claims asserted by the WARN Plaintiffs, and (3) any claims for anticompetitive conduct against solar panel manufacturers under applicable non-bankruptcy law.

**Q. Corporate Action/Dissolution**

On the Effective Date, the matters under the Plan involving or requiring corporate or limited liability company action of the Debtors, including but not limited to actions requiring a vote or other approval of the board of directors, shareholders, managers or members of the Debtors or the execution of any documentation incident to or in furtherance of the Plan, shall be deemed to have been authorized by the Confirmation Order and to have occurred and be in effect from and after the Effective Date without any further action by the Bankruptcy Court or the officers, directors, managers or members of the Debtors.

From and after the Effective Date, the Holders of Interests in Reorganized Holdings may take any and all necessary or appropriate actions to appoint directors, officers, and managers of Reorganized Holdings consistent with the charter, articles of incorporation, and/or by-laws of Reorganized Holdings, subject to any limitations in applicable non-bankruptcy law.

On the Effective Date, all then-incumbent officers and directors of Solyndra shall be deemed to have been removed as of such date and replaced with the Solyndra Residual Trustee as sole officer and representative of Solyndra for the purpose of winding-up Solyndra consistent with the Plan.

On the Effective Date, the Debtors' charters shall be amended to include a provision prohibiting the issuance of nonvoting equity securities and such other provisions as may be required pursuant to section 1123(a)(6) of the Bankruptcy Code. The Debtors may prepare, execute and/or file with the Delaware Secretary of State and other state governmental authorities having jurisdiction over the Debtors such amendments of their respective charters as may be necessary or appropriate under applicable non-bankruptcy law to fully effectuate such amendments.

Neither the occurrence of the Effective Date, nor the effectiveness of the Plan, nor any provision of applicable non-bankruptcy law requiring the dissolution of any business entity upon the cancellation or extinguishment of all equity interests or the termination of the sole remaining equity interest holder, shall cause a dissolution of Holdings, which shall be continued as a corporation immediately following the Effective Date.

The respective articles or certificate of incorporation and bylaws (or other applicable formation documents) in effect prior to the Effective Date for each Debtor shall continue to be in effect after the Effective Date, except as amended pursuant to the Plan or, as to Holdings, as otherwise amended as permitted by Holdings' charter, articles of incorporation, and/or by-laws, subject to any limitations in applicable non-bankruptcy law.

On the Effective Date, Solyndra shall be dissolved without need for further action by any board of directors, shareholders, managers or members. In connection with the Effective Date, the Solyndra Residual Trustee is authorized to (a) execute, acknowledge and/or file with the Delaware Secretary of State, or any other state governmental authority having jurisdiction over Solyndra, any certificate of dissolution for Solyndra as may be necessary or appropriate under applicable non-bankruptcy law to cause the dissolution of Solyndra to occur and (b) execute any election to dissolve or other instrument as may be necessary or appropriate under applicable non-bankruptcy law to cause the dissolution of Solyndra to occur. Notwithstanding anything to the contrary in the Plan, the Solyndra Residual Trustee shall not be liable as a result of any action taken in accordance with the provisions of the Plan, and after the entry of the final decree in Solyndra's Chapter 11 Case, and the Solyndra Residual Trustee shall not have any responsibility for Solyndra following the Effective Date, including any further responsibility for the management, supervision, administration, liquidation, winding up, or cancellation of the charter of Solyndra.

#### **R. Interests in Affiliates and Subsidiaries**

As of the Effective Date, except as expressly provided in the Plan or by separate order of the Bankruptcy Court, the Solyndra Residual Trust shall retain any stock or interests that it may hold in its affiliates or subsidiaries and retain any rights to which such stock or interests may be entitled under applicable law with respect to such shares or other interests. After the Effective

Date, the Solyndra Residual Trustee may sell, transfer, assign or otherwise dispose of such shares or interests as permitted by applicable law.

**S. Payment of Plan Expenses**

The Solyndra Residual Trustee may pay all reasonable Plan Expenses of the Solyndra Residual Trust consistent with the Budget without further notice to Creditors or Holders of Interests or approval of the Bankruptcy Court; provided, however, that an accounting of the Plan Expenses, including the fees and expenses of professionals, shall be provided to the Solyndra Residual Trust Committee for review. The payment of Plan Expenses that are not contemplated by the Budget shall require the consent of the Plan Sponsors. The Plan Expenses of the Solyndra Residual Trust may also be paid out of the Solyndra Unencumbered Assets. To the extent that Holdings incurs any Plan Expenses, such amounts shall be payable by Reorganized Holdings subject to the consent of the Plan Sponsors.

**T. Dissolution of Creditors' Committee**

As of the Effective Date, the Creditors' Committee shall be dissolved. Notwithstanding such dissolution, the Creditors' Committee's professionals may seek payment of any unpaid Administrative Expenses pursuant to the Plan.

**U. Final Decree**

At any time following the Effective Date, the Solyndra Residual Trustee shall be authorized to file a motion for the entry of a final decree closing either or both of the Chapter 11 Cases pursuant to section 350 of the Bankruptcy Code, subject to the consent of the Solyndra Settlement Trust prior to closing Solyndra's Chapter 11 case.

**IX.**

**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Rejection of Executory Contracts and Unexpired Leases**

Except for any executory contracts or unexpired leases: (i) that previously were assumed or rejected by an order of the Bankruptcy Court, pursuant to section 365 of the Bankruptcy Code; (ii) as to which a motion for approval of the assumption or rejection of such contract or lease has been Filed and served prior to the Effective Date; (iii) that constitute contracts of insurance in favor of, or that benefit, the Debtors or the Estates; or (iv) that were previously sold, conveyed or otherwise assigned pursuant to Final Order, each executory contract and unexpired lease entered into by the Debtors prior to the Petition Date that has not previously expired or terminated pursuant to its own terms shall be deemed rejected pursuant to section 365 of the Bankruptcy Code as of the Effective Date. The Confirmation Order shall constitute an order of the Bankruptcy Court approving such rejections, pursuant to section 365 of the Bankruptcy Code, as of the Effective Date.



**B. Bar Date for Rejection Damages**

If the rejection of an executory contract or unexpired lease pursuant to the Plan or otherwise gives rise to a Claim by the other party or parties to such contract or lease, such Claim shall be forever barred and shall not be enforceable against the Debtors or their Estates, Reorganized Holdings, the Solyndra Residual Trust or the Solyndra Settlement Trust unless a proof of Claim is Filed and served on the Debtors, Reorganized Holdings, the Solyndra Residual Trust and the Solyndra Settlement Trust, and their counsel, within thirty (30) days after the earlier of (a) Effective Date or (b) service of a notice that the executory contract or unexpired lease has been rejected. All such Claims for which proofs of Claim are required to be Filed, if Allowed, will be, and will be treated as, General Unsecured Claims, subject to the provisions of the Plan.

**X.**

**LITIGATION, OBJECTIONS TO CLAIMS, AND DETERMINATION OF TAXES**

**A. Litigation; Objections to Claims; Objection Deadline**

Except as may be expressly provided otherwise in the Plan, Reorganized Holdings, the Solyndra Residual Trust, or the Solyndra Settlement Trust (solely as to Trust Avoidance Claims and objections to Solyndra General Unsecured Claims), as applicable, shall be responsible for pursuing Retained Rights of Action, any objection to the allowance of any Claim, and the determination of Tax issues and liabilities.

As of the Effective Date, Reorganized Holdings, the Solyndra Residual Trust, or the Solyndra Settlement Trust (solely as to objections to Solyndra General Unsecured Claims), as applicable, shall have exclusive authority to file objections, settle, compromise, withdraw or litigate to judgment objections to Claims. Unless another date is established by the Bankruptcy Court *sua sponte* (which may so act without notice or hearing) or is established by other provisions of the Plan, any objection to a Claim shall be filed with the Bankruptcy Court and served on the Person holding such Claim within one hundred twenty (120) days after the Effective Date (the "Objection Deadline"), provided that Reorganized Holdings, the Solyndra Residual Trust, or the Solyndra Settlement Trust (solely as to objections to Solyndra General Unsecured Claims), as applicable, may seek extension(s) thereof subject to Bankruptcy Court approval and with notice only to parties that have requested such notice pursuant to Bankruptcy Rule 2002.

In addition to any other available remedies or procedures with respect to Tax issues or liabilities or rights to Tax refunds, Reorganized Holdings, the Solyndra Residual Trust, or the Solyndra Settlement Trust (solely as to objections to Solyndra General Unsecured Claims), as applicable, at any time, may utilize (and receive the benefits of) section 505 of the Bankruptcy Code with respect to: (1) any Tax issue or liability or right to a Tax refund relating to an act or event occurring prior to the Effective Date; or (2) any Tax liability or right to a Tax refund arising prior to the Effective Date. If Reorganized Holdings, the Solyndra Residual Trust, or the Solyndra Settlement Trust (solely as to objections to Solyndra General Unsecured Claims), as

applicable, utilize section 505(b) of the Bankruptcy Code: (1) the Bankruptcy Court shall determine the amount of the subject Tax liability or right to a Tax refund in the event that the appropriate governmental entity timely determines a Tax to be due in excess of the amount indicated on the subject return; and (2) if the prerequisites are met for obtaining a discharge of Tax liability in accordance with section 505(b) of the Bankruptcy Code, Reorganized Holdings, the Solyndra Residual Trust, or the Solyndra Settlement Trust (solely as to objections to Solyndra General Unsecured Claims), as applicable, shall be entitled to such discharge which shall apply to any and all Taxes relating to the period covered by such return.

**B. Temporary or Permanent Resolution of Disputed Claims**

Reorganized Holdings, the Solyndra Residual Trust, or the Solyndra Settlement Trust (solely as to objections to Solyndra General Unsecured Claims), as applicable, may request, at any time prior to the Effective Date or on and after the Effective Date, that the Bankruptcy Court estimate any contingent or unliquidated Disputed Claim pursuant to section 502(c) of the Bankruptcy Code, irrespective of whether any party has previously objected to such Disputed Claim. The Bankruptcy Court will retain jurisdiction to estimate any contingent or unliquidated Disputed Claim at any time during litigation concerning any objection to the Disputed Claim. If the Bankruptcy Court estimates any contingent or unliquidated Disputed Claim, that estimated amount would constitute either the Allowed amount of such Disputed Claim or a maximum limitation on such Disputed Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Disputed Claim, Reorganized Holdings, the Solyndra Residual Trust, or the Solyndra Settlement Trust (solely as to objections to Solyndra General Unsecured Claims), as applicable, may elect from and after the Effective Date to pursue any supplemental proceedings to object to any ultimate payment on account of such Disputed Claim. In addition, Reorganized Holdings, the Solyndra Residual Trust, or the Solyndra Settlement Trust (solely as to objections to Solyndra General Unsecured Claims), as applicable, may resolve or adjudicate any Disputed Claim from and after the Effective Date in the manner in which the amount of such Claim, Interest or Administrative Expense and the rights of the Holder of such Claim, Interest or Administrative Expense would have been resolved or adjudicated if the Chapter 11 Cases had not been commenced. All of the aforementioned objection, estimation and resolution procedures are cumulative and not necessarily exclusive of one another.

**C. Setoffs**

Reorganized Holdings, the Solyndra Residual Trust, or the Solyndra Settlement Trustee may,<sup>7</sup> but shall not be required to, setoff against any Claim, and the payments or other distributions to be made pursuant to the Plan in respect of such Claim, claims of any nature whatsoever that any Debtor, the Solyndra Residual Trust, or the Solyndra Settlement Trust may have against the Holder of such Claim; provided, however, neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by Reorganized Holdings, the Solyndra Residual Trust, or the Solyndra Settlement Trust, as applicable, of any such claim that the Debtors, the Solyndra Residual Trust, or the Solyndra Settlement Trustee may have against such Holder, unless otherwise agreed to in writing by such Holder and the Solyndra Residual Trustee or the Solyndra Settlement Trustee, as applicable.

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<sup>7</sup> For avoidance of doubt, no setoffs may be applied to any Allowed WARN Priority Claims of WARN Employees.

**D. Preservation of Retained Rights of Action**

In accordance with section 1123(b) of the Bankruptcy Code, Reorganized Holdings, the Solyndra Residual Trust, and the Solyndra Settlement Trust, as applicable, and their successors, any assigns hereunder and future assigns will retain and may exclusively enforce any Retained Rights of Action and the Confirmation Order shall be deemed a *res judicata* determination of such rights to retain and exclusively enforce such Retained Rights of Action. Absent such express waiver or release, Reorganized Holdings, the Solyndra Residual Trust, and the Solyndra Settlement Trust, as applicable, or their successors or assigns may pursue Retained Rights of Action, as appropriate, in accordance with the best interests of Reorganized Holdings, the Solyndra Residual Trust, and the Solyndra Settlement Trust, as applicable (or their successors or future assigns). The Retained Rights of Action may be asserted or prosecuted before or after solicitation of votes on the Plan or before or after the Effective Date.

Absent an express waiver or release set forth in the Plan, nothing in the Plan shall (or is intended to) prevent, estop or be deemed to preclude Reorganized Holdings, the Solyndra Residual Trust, and the Solyndra Settlement Trust, as applicable, from utilizing, pursuing, prosecuting or otherwise acting upon all or any of their Retained Rights of Action and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches shall apply to such Retained Rights of Action upon or after Confirmation or Consummation.

**XI.**

**INJUNCTION AND EXCULPATION PROVISIONS**

**A. Injunctions**

**1. Generally**

Unless otherwise provided in the Plan or the Confirmation Order and subject to Article X(D) below, all injunctions and stays provided for in the Chapter 11 Cases pursuant to sections 105 and 362 of the Bankruptcy Code or otherwise in effect on the Confirmation Date, shall remain in full force and effect until the Effective Date. From and after the Effective Date, subject to Article X(D) below, all Persons are permanently enjoined from, and restrained against, commencing or continuing in any court any suit, action or other proceeding, or otherwise asserting any claim or interest, (a) seeking to hold (i) the Debtors, their Estates, Reorganized Holdings, the Solyndra Residual Trust, the Solyndra Residual Trustee, the Solyndra Residual Trust Committee, the Creditors' Committee, the Solyndra Settlement Trust, the Solyndra Settlement Trustee, or the Solyndra Settlement Trust Committee, (ii) the property of the Debtors, their Estates, Reorganized Holdings, the Solyndra Residual Trust, or the Solyndra Settlement Trust, liable for any Claim, obligation, right, interest, debt or liability that has been released pursuant to the Plan.

2. **Injunction Related to Rights of Action and Claims, Administrative Expenses and Interests**

*Except as provided in the Plan or in the Confirmation Order and subject to Article X(D) below, as of the Confirmation Date, all Entities that have held, currently hold or may hold a Claim, Administrative Expense, Interest or other debt or liability that is stayed, Impaired or terminated pursuant to the terms of the Plan are permanently enjoined from taking any of the following actions against property of the Debtors, their Estates, the Solyndra Residual Trust, the Solyndra Residual Trustee, the Solyndra Residual Trust Committee, the Solyndra Settlement Trust, the Solyndra Settlement Trustee, or the Solyndra Settlement Trust Committee on account of all or such portion of any such Claims, Administrative Expenses, Interests, debts or liabilities that are stayed, Impaired or terminated: (a) commencing or continuing, in any manner or in any place, any action or other proceeding; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order, (c) creating, perfecting or enforcing any lien or encumbrance; and (d) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan. To avoid any doubt, (i) except as otherwise expressly noted in the Plan, nothing in the Plan shall be construed or is intended to discharge Solyndra from any debt for purposes of section 1141(d) of the Bankruptcy Code, (ii) nothing in the Plan shall affect, enjoin, modify, release or waive any claims, rights, and actions that a third party may have against a person other than the Debtors, their Estates, the Solyndra Residual Trust, the Solyndra Residual Trustee, the Solyndra Residual Trust Committee, the Solyndra Settlement Trust, the Solyndra Settlement Trustee, or the Solyndra Settlement Trust Committee; and (iii) nothing in the Plan shall affect or diminish any defense to a Retained Right of Action or to any action brought by a third party against a Person other than the Debtors, or the right of any person to assert a right of setoff, right of subrogation or recoupment of any kind.*

3. **Discharge of Holdings**

Except as otherwise provided in the Plan or in the Confirmation Order, rights afforded in, and all consideration distributed under, the Plan shall be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims of any nature whatsoever against Holdings or any of its assets or properties, except as to the Holdings Settlement Fund. Upon the Effective Date, Holdings shall be deemed discharged and released under section 1141(d)(1)(A) of the Bankruptcy Code from any and all Claims, including, without limitation, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not (a) a Claim based upon such debt is Allowed under Section 501 of the Bankruptcy Code, or (b) a Claim based upon such debt is Allowed under Section 502 of the Bankruptcy Code, or (c) the Holder of a Claim based upon such debt accepted the Plan, *provided, however*, that as to the United States, its agencies, departments or agents, nothing in the Plan or Confirmation Order shall discharge, release, or otherwise preclude: (1) any liability of Holdings arising on or after the Effective Date; (2) any liability that is not a “claim” within the meaning of section 101(5) of the Bankruptcy Code; (3) any valid defense of setoff or recoupment with respect to a Claim; and (4) any liability of Holdings under environmental law arising after the Effective Date as the owner or operator of property that such entity owns or operates after the Effective Date. The injunction and release

provisions set forth in Article X of the Plan and any similar provisions in the Plan or Confirmation Order, are not intended and shall not be construed to bar the United States from, subsequent to the Confirmation Date, pursuing any police or regulatory action.

**B. Exculpation**

As of and subject to the occurrence of the Effective Date and subject to Article X(D) below, for good and valuable consideration, including the consideration provided under the Plan, each of the Debtors and their Representatives, the Plan Sponsors, the lenders under the Exit Facility, the Solyndra Settlement Fund Loan and the WARN Settlement Loan, the Prepetition Tranche A Representative, the Prepetition Tranche B/D Agent, the Prepetition Tranche E Agent and each of their respective Representatives, and the members of the Creditors' Committee (acting in such capacity), and the Creditors' Committee's Representatives shall neither have nor incur any liability to any Person or Entity for any act taken or omitted to be taken, in connection with, or related to, the formulation, preparation, dissemination, implementation, administration, Confirmation or Consummation of the Plan or any contract, instrument, waiver, release or other agreement or document created or entered into, in connection with the Plan, or any other act taken or omitted to be taken in connection with the Chapter 11 Cases up to and including the Effective Date; provided, however, that the foregoing provisions of this subsection shall have no effect on the liability of any Person or Entity that results from any such act or omission that is determined in a Final Order to have constituted gross negligence or willful misconduct.

**C. Estate Releases of Prepetition Lenders and Debtors' Employees**

*As of and subject to the occurrence of the Effective Date and subject to Article X(D) below, for good and valuable consideration, including the consideration provided under the Plan, and as part of the Plan Settlement as described herein and in the Plan, each of the Debtors, for themselves and the Estates, the Plan Sponsors, the lenders under the Exit Facility, the Solyndra Settlement Fund Loan and the WARN Settlement Loan, the Creditors' Committee and its respective members (acting in such capacity), and the Solyndra Settlement Trustee hereby irrevocably, unconditionally and generally releases each of the Prepetition Lenders, the Debtors' Employees, and each of the foregoing parties' Representatives (together, the "Released Parties"), from any and all actions, causes of action, Rights of Action, suits, debts, dues, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, proceedings and demands of whatsoever character, nature and kind, in law, admiralty or equity, including but not limited to claims based on statute, common law, public policy, contract (whether oral or written, express or implied) or tort law, which such Person or Entity ever had, now have or hereafter can, shall or may have against any of the Released Parties from the beginning of the world to the Effective Date that in any way relates to any of the Debtors, the Estates or the Chapter 11 Cases. Further, upon the Effective Date, the Challenge Period Termination Date under the Final DIP Order shall be deemed to have occurred and the releases in favor of the Prepetition Lenders contained in section 10.14(b) of the DIP Credit Facility, as modified by section 26 of the Final DIP Order, shall be in full force and effect*

**D. Reservation of Rights of United States**

Other than as set forth in Articles X(A)(3) and X(D) of the Plan, nothing in the Plan or the Confirmation Order shall be construed as either (1) enjoining, restraining or staying or (2) releasing any claim of the United States, its agencies, departments or agents against any Entity that is not a Debtor in these Chapter 11 Cases.

**XII.**

**PENSION PLANS, OTHER RETIREE BENEFITS AND LABOR CONTRACTS**

The Debtors are not obligated pursuant to section 1129(a)(13) of the Bankruptcy Code to pay any “retiree benefits” (as that term is defined in section 1114(a) of the Bankruptcy Code).

**XIII.**

**NO REGULATED RATE CHANGE WITHOUT GOVERNMENT APPROVAL**

The Debtors do not charge any rates for purposes of section 1129(a)(6) of the Bankruptcy Code that are regulated by any governmental regulatory commission with jurisdiction under applicable non-bankruptcy law.

**XIV.**

**EXEMPTION FROM CERTAIN TRANSFER TAXES**

Pursuant to section 1146(c) of the Bankruptcy Code, any transfers by the Debtors pursuant to the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax or other similar Tax or governmental assessment.

**XV.**

**REQUIREMENTS FOR CONFIRMATION**

**A. Acceptances Necessary to Confirm Plan**

Voting rights are set forth as follows:

<b>Class</b>	<b>Status</b>	<b>Voting Rights</b>
Class 1 – Priority Non-Tax Claims	Unimpaired	Not entitled to Vote
Class 2 – Miscellaneous Secured Claims	Unimpaired	Not entitled to Vote
Class 3 – Prepetition Tranche A Claims	Impaired	Entitled to Vote
Class 4 – Prepetition Tranche B Claims	Impaired	Entitled to Vote
Class 5 – Prepetition Tranche D Claims	Impaired	Entitled to Vote
Class 6 – Prepetition Tranche E Claims	Impaired	Entitled to Vote
Class 7 – Holdings General Unsecured Claims	Impaired	Entitled to Vote

Class 8 – Solyndra General Unsecured Claims	Impaired	Entitled to Vote
Class 9 – Interests in Holdings	Unimpaired	Not entitled to Vote
Class 10 – Interests in Solyndra	Impaired	Not entitled to Vote

If no Holder of a Claim or Interest eligible to vote in a particular Class timely votes to accept or reject the Plan, the Plan shall be deemed **accepted** by the Holders of such Claims or Interests in such Class for purposes of section 1129(b) of the Bankruptcy Code.

**B. Best Interest of Creditors Test**

Confirmation requires, among other things, that each Holder of a Claim in an Impaired Class and each Holder of an Interest either: (a) accepts the Plan; or (b) receives or retains under the Plan property of a value, as of the Effective Date, that is not less than the value such Holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. This requirement is commonly referred to as the “best interests test.”

**a. Chapter 7**

To determine the value that the Holders of Impaired Claims and Interests would receive if the Debtors were liquidated, the Bankruptcy Court must determine the dollar amount that would be generated from the liquidation of the Debtors’ assets and properties in the context of a chapter 7 liquidation case. Section 704 of the Bankruptcy Code requires a chapter 7 trustee to collect and reduce to money the property of the estate as expeditiously as is compatible with the best interests of parties in interest.

Here, the Cash available in chapter 7 cases for satisfaction of Allowed Claims would consist of the proceeds resulting from the liquidation of the Debtors’ Estates, augmented by the Cash, if any, held by the Debtors at the time of the commencement of the chapter 7 case(s). Any such Cash amount would then be reduced by the amount of any Claims secured by such assets such as the Prepetition Lender Claims or other Miscellaneous Secured Claims, the costs and expenses of the liquidation of any remaining assets, including the costs of prosecution of any pending litigation and Avoidance Claims, and such additional Administrative Claims, and other Priority Claims, that may result from the use of chapter 7 for the purposes of liquidation.

The costs of liquidation under chapter 7 would include fees payable to trustee(s) in bankruptcy, as well as those that might be payable to his or her attorneys, and to other professionals that such trustee(s) may engage, plus any unpaid expenses incurred by the Debtors during the Chapter 11 Cases that would be allowed as a priority in the chapter 7 cases, such as compensation for attorneys, accountants or other Professional Persons, and costs and expenses of the Debtors and the Committee. Such Administrative Expenses from the chapter 7 and 11 cases would have to be paid in Cash in full from the liquidation proceeds before the balance of those proceeds could be made available to pay prepetition Claims.

**b. Liquidation Alternative**

Pursuant to Bankruptcy Code section 1129(a)(7), if an Impaired Class does not accept the Plan unanimously, the Debtors must demonstrate, and the Bankruptcy Court must determine that

with respect to such Class, each Holder of a Claim will receive property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on the Effective Date of the Plan.

As reflected on Exhibit 3 annexed hereto and set forth below, the Plan satisfies this standard. The Plan provides greater recovery to the Holders of Allowed Claims than such Holders would receive under a liquidation under chapter 7 primarily because the Plan incorporates various settlements with key creditor constituents, including the Creditors' Committee and certain Prepetition Lenders, that resolves significant claims amongst the Debtors' Estates. Among other things, the Plan creates a mechanism for the funding of a \$3 million Solyndra Settlement Fund to be made available to the Holders of Solyndra General Unsecured Claims through the mechanism of a Solyndra Settlement Trust, plus the satisfaction of the claims asserted by a settlement class of the Debtors' former employees under the WARN Act pursuant to a settlement of \$3.5 million. The Plan also avoids a layer of administrative expense associated with the appointment of a chapter 7 trustee, while increasing the efficiency of administering the Debtors' assets for the benefit of Creditors. The Plan avoids the costs and delay that would be associated with the education of the trustee and his/her Professional Persons regarding the background of the Chapter 11 Cases and the Debtors' business.

Moreover, in a chapter 7 case, the chapter 7 trustee also would be entitled to seek a sliding scale commission based upon the funds distributed by such trustee, even though the Debtors have already accumulated much of the funds and have already incurred many of the expenses associated with generating those funds. Accordingly, the Debtors believe that there is a reasonable likelihood that Creditors would "pay again" for the funds accumulated by the Debtors, since the chapter 7 trustee would be entitled to receive a commission in some amount for all funds distributed, including possibly substantial funds handed over to the chapter 7 trustee by the Debtors. It is also anticipated that a chapter 7 liquidation would result in delay in distributions to Creditors. Among other things, a chapter 7 case would trigger a new bar date for filing Claims that would be more than 90 days following conversion of the case to chapter 7. Fed. R. Bankr. P. 3002(c). Hence, a chapter 7 liquidation would not only delay distributions, but raise the prospect of additional Claims that were not asserted in the Chapter 11 Cases. Based on the foregoing, the Plan provides an opportunity to bring the greatest return to Creditors.

For purposes of this Disclosure Statement, no value has been ascribed to potential claims against third parties. However, unless specifically released in the Plan, any and all rights of the Debtors to pursue claims against third parties are expressly preserved under the Plan, including without limitation, (1) avoidance claims against any parties disclosed in the Schedules and Statements, (2) any claims against third parties relating to the claims asserted by the WARN Plaintiffs, and (3) any claims for anticompetitive conduct against solar panel manufacturers under applicable non-bankruptcy law.

### **C. Feasibility of Plan**

Section 1129(a)(11) of the Bankruptcy Code requires, as a condition to confirmation, that the Bankruptcy Court find that confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors or any successor to the



Debtors under the Plan, unless such liquidation or reorganization is proposed under the Plan. This requirement is called “feasibility.”

The Plan is feasible because the Debtors will have sufficient funds available out of the Exit Facility, together with the Solyndra Settlement Fund Loan, the Holdings Settlement Fund and the WARN Settlement Loan, and the proceeds of the disposition of estate assets, as set forth in Exhibit 3, to satisfy all of the Debtors’ projected obligations under the Plan.

**D. Classification**

In accordance with section 1122 of the Bankruptcy Code, the Plan provides for the classification of Claims. Section 1122(a) permits a plan to place a claim or equity interest in a particular class only if the claim or equity interest is substantially similar to the other claims or interests in that class. The Debtors believe that the classification of Claims and Interests under the Plan is appropriate and consistent with applicable law.

**E. Confirmation of Plan Without Necessary Acceptances; Cramdown**

A COURT MAY CONFIRM A PLAN, EVEN IF IT IS NOT ACCEPTED BY ALL IMPAIRED CLASSES, IF THE PLAN HAS BEEN ACCEPTED BY AT LEAST ONE IMPAIRED CLASS OF CLAIMS, AND THE PLAN MEETS THE “CRAMDOW” REQUIREMENTS SET FORTH IN SECTION 1129(b) OF THE BANKRUPTCY CODE. SECTION 1129(b) OF THE BANKRUPTCY CODE REQUIRES THAT THE BANKRUPTCY COURT FIND THAT A PLAN IS “FAIR AND EQUITABLE,” AND DOES NOT “DISCRIMINATE UNFAIRLY” WITH RESPECT TO EACH NON-ACCEPTING IMPAIRED CLASS OF CLAIMS OR INTERESTS. IN THE EVENT THAT ANY IMPAIRED CLASS REJECTS THE PLAN, IN ACCORDANCE WITH SECTION 1129(a)(8) OF THE BANKRUPTCY CODE, AND AT LEAST ONE IMPAIRED CLASS HAS VOTED TO ACCEPT THE PLAN, THE DEBTORS INTEND TO REQUEST THAT THE BANKRUPTCY COURT CONFIRM THE PLAN IN ACCORDANCE WITH THE “CRAMDOW” PROVISION OF SECTION 1129(b) OF THE BANKRUPTCY CODE, OR MODIFY THE PLAN IN ACCORDANCE WITH THE TERMS THEREOF.

The Plan provides for the possibility of invoking the “cramdown” provisions as defined in section 1129(a) of the Bankruptcy Code. Under this provision, the Bankruptcy Court has the authority to confirm the Plan even though a Class of Claims that is Impaired does not vote to accept the Plan, if another Class of Claims, which is also Impaired, votes to accept the Plan. This provision takes into account the possibility that one large claimant or several claimants may arbitrarily vote not to accept the Plan and that those arbitrary votes could be detrimental to other Creditors. In this instance the Bankruptcy Court, notwithstanding the negative vote of an Impaired Class, in the interest of being “fair and equitable,” may confirm the Plan if another Impaired Class has accepted the Plan. Such determination, if necessary, would be addressed at the Confirmation Hearing.

**a. No Unfair Discrimination**

The Debtors believe that under the Plan: (i) all Impaired Classes of Claims and Interests are treated in a manner that is consistent with the treatment of other Classes of Claims and

Interests with which their legal rights are intertwined, if any; and (ii) no Class of Claims or Interests will receive payments or property with an aggregate value greater than the aggregate value of the Allowed Claims or Allowed Interests in such Class. The Debtors believe that the Plan does not discriminate unfairly as to any Impaired Class.

**b. Fair and Equitable Test**

With respect to a dissenting class of Claims and Interests, the “fair and equitable” standard requires that the Plan provide that either the Claims or Interests in each Class received everything to which they are legally entitled or that Classes junior in priority to the Class receive nothing. The strict requirement of the allocation of full value to dissenting classes before any junior class can receive distribution is known as the “absolute priority rule.”

The Bankruptcy Code establishes different “fair and equitable” tests for holders of secured claims, unsecured claims and interests as follows:

(i) Secured Claims

Either: (i) each holder of a secured claim (x) retains the lien securing its secured claim and receives on account of its allowed secured claim deferred cash payments having a present value equal to the amount of its allowed secured claim, or (y) realizes the “indubitable equivalent” of its allowed secured claim; or (ii) the property securing the claim is sold free and clear of liens, with such liens attaching to the proceeds, and the liens against such proceeds are treated in accordance with clause (i).

(ii) Unsecured Claims

Either: (i) each holder of an unsecured claim receives or retains under the plan property of a value equal to the amount of its allowed claim; or (ii) the holders of claims and interests that are junior to the claims or the non-accepting class do not receive any property under the plan on account of such claims and interests.

(iii) Equity Interests

Either: (i) such holder of an interest receives or retains property of a value equal to the greater of any fixed liquidation preference or fixed redemption price to which such holder is entitled, or the value of the interest; or (ii) the holder of any interests junior to the interests in the impaired class will not receive or retain any property under the plan.

The cramdown provisions of the Bankruptcy Code are complex and this summary is not intended to be a complete statement of the law in this area.

## XVI.

### EFFECT OF CONFIRMATION

#### A. Binding Effect of Confirmation

Confirmation will bind the Debtors, all Holders of Claims, Administrative Expenses, or Interests and other parties in interest to the provisions of the Plan whether or not the Claim, Administrative Expense, or Interest of such Holder is Impaired under the Plan and whether or not the Holder of such Claim, Administrative Expense, or Interest has accepted the Plan.

#### B. Good Faith

Confirmation of the Plan shall constitute a finding that: (i) the Plan has been proposed in good faith and in compliance with applicable provisions of the Bankruptcy Code; and (ii) all Persons' solicitations of acceptances or rejections of the Plan and the offer, issuance, sale, or purchase of a security offered or sold under the Plan have been in good faith and in compliance with applicable provisions of the Bankruptcy Code.

#### C. No Limitations on Effect of Confirmation

Nothing contained in the Plan will limit the effect of Confirmation as described in section 1141 of the Bankruptcy Code.

## XVII.

### RISK FACTORS

There is a risk under the Plan that Allowed Administrative Expenses and Tax Claims will materially exceed the Debtors' present estimates. The process of reconciling all such Claims has not been completed and outstanding disputes remain that will need to be litigated or otherwise resolved. Although the Debtors believe that the funding available under the Exit Facility in the principal amount of up to \$15 million will be sufficient to satisfy Allowed Administrative Expenses, Tax Claims and Priority Non-Tax Claims, there is no assurance that will be the case.

There is a risk that the Debtors will not be able to realize the recoveries projected herein from the various assets presently available to the Estates, which may have an adverse impact on distributions to Creditors under the Plan.

There are also risks that the recoveries by Holders of Solyndra General Unsecured Claims projected hereby will not be realized, primarily as a result of the pool of Allowed Solyndra General Unsecured Claims exceeding current estimates. Such a result could materially and adversely impact distributions on account of Solyndra General Unsecured Claims under the Plan.

Finally, there is a risk that the Plan may not be confirmed by the Bankruptcy Court, either because the requisite votes in favor of the Plan are not received or the Bankruptcy Court decides not to confirm the Plan on some other basis.

## XVIII.

### CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

The following discussion is a summary of certain U.S. federal income tax consequences of the Plan to the Debtors and to Holders of Claims and Interests. This discussion is based on the Internal Revenue Code (the "Tax Code"), Treasury Regulations promulgated and proposed thereunder, judicial decisions and published administrative rules and pronouncements of the Internal Revenue Service ("IRS"), all 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) and Interests, the Holder's 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. Further, 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 Debtors and the Holders of Claims and Interests.

This discussion does not purport to address all aspects of U.S. federal income taxation that may be relevant to the Debtors or the Holders of Claims or Interests in light of their personal circumstances, nor does the discussion deal with tax issues with respect to taxpayers subject to special treatment under the U.S. federal income tax laws (including, for example, banks, governmental authorities or agencies, pass-through entities, brokers and dealers in securities, traders that mark-to-market their securities, mutual funds, insurance companies, other financial institutions, real estate investment trusts, tax-exempt organizations, small business investment companies, regulated investment companies, foreign taxpayers, persons whose functional currency is not the U.S. dollar, persons subject to the alternative minimum tax, and persons holding Claims or Interests as part of a "straddle," "hedge," "constructive sale" or "conversion transaction" with other investments). This discussion does not address the tax consequences to Holders of Claims who did not acquire such Claims at the issue price on original issue. No aspect of foreign, state, local or estate and gift taxation is addressed.

The U.S. federal income tax consequences of the distributions contemplated by the Plan to the Holders of Claims and Interests that are U.S. Persons will depend upon a number of factors. For purposes of the following discussion, a "U.S. Person" is any person or entity (1) who is a citizen or resident of the United States, (2) that is a corporation or partnership created or organized in or under the laws of the United States or any state thereof, (3) that is an estate, the income of which is subject to U.S. federal income taxation regardless of its source or (4) that is a trust (a) the administration over which a United States person can exercise primary supervision and all of the substantial decisions of which one or more U.S. persons have the authority to control; or (b) that has in effect a valid election to continue to be treated as a U.S. Person for U.S. federal income tax purposes. In the case of a partnership, the tax treatment of its partners will depend on the status of the partner and the activities of the partnership. U.S. Persons who are partners in a partnership should consult their tax advisors. A "Non-U.S. Person" is any person or

entity that is not a U.S. Person. For purposes of the following discussion and unless otherwise noted below, the term “Holder” shall mean a Holder of a Claim or Interest that is a U.S. Person.

Except where otherwise indicated, this discussion assumes that the Claims and Interests are held as capital assets within the meaning of section 1221 of the Tax Code.

THE FOLLOWING SUMMARY IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE PERSONAL CIRCUMSTANCES OF EACH HOLDER OF A CLAIM OR INTEREST. EACH HOLDER OF A CLAIM OR INTEREST IS URGED TO CONSULT WITH SUCH HOLDER’S TAX ADVISORS CONCERNING THE U.S. FEDERAL, STATE, LOCAL, FOREIGN AND OTHER TAX CONSEQUENCES APPLICABLE UNDER THE PLAN.

***IRS Circular 230 Notice. To ensure compliance with IRS Circular 230, Holders of Claims and Interests are hereby notified that: (a) any discussion of federal tax issues contained or referred to in this Disclosure Statement is not intended or written to be used, and cannot be used, by Holders of Claims and Interests for the purpose of avoiding penalties that may be imposed on them under the Tax Code; (b) such discussion is written in connection with the promotion or marketing by the Debtors of the transactions or matters addressed herein; and (c) Holders of Claims and Interests should seek advice based on their particular circumstances from an independent tax advisor.***

**A. Consequences to the Debtors**

Pursuant to the Tax Code and subject to certain exceptions, a taxpayer generally must recognize income from the cancellation of indebtedness (“COD Income”) to the extent that such taxpayer’s indebtedness is discharged for an amount less than the indebtedness’ adjusted issue price determined in the manner described below. Generally, the amount of COD Income, subject to certain statutory and judicial exceptions, is the excess of (i) the adjusted issue price of the discharged indebtedness less (ii) the sum of the fair market value (determined at the date of the exchange) of the consideration, if any, given in exchange for such discharged indebtedness including cash, property and the issue price of any new indebtedness.

Section 108(a)(1)(A) of the Tax Code provides an exception to the recognition of COD Income where a taxpayer discharging indebtedness is under the jurisdiction of a court in a case under title 11 of the Bankruptcy Code and where the discharge is granted, or is effected pursuant to a plan approved, by a U.S. Bankruptcy Court (the “Bankruptcy Exception”). Under the Bankruptcy Exception, instead of recognizing COD Income, the taxpayer is required, pursuant to Section 108(b) of the Tax Code, to reduce certain of that taxpayer’s tax attributes to the extent thereof by the amount of COD Income. The attributes of the taxpayer are generally reduced in the following order: net operating losses, general business and minimum tax credit carryforwards, capital loss carryforwards, the basis of the taxpayer’s assets, and finally, foreign tax credit carryforwards (collectively, “Tax Attributes”). To the extent the amount of COD Income exceeds the amount of Tax Attributes available to be reduced, such excess is still excluded from income. Pursuant to Section 108(b)(4)(A) of the Tax Code, the reduction of Tax Attributes does not occur until the end of the taxable year after such Tax Attributes have been applied to determine the tax in the year of discharge or, in the case of asset basis reduction, the

first day of the taxable year following the taxable year in which the COD Income is realized. Section 108(e)(2) of the Tax Code provides a further exception to the recognition of COD Income upon the discharge of debt, providing that a taxpayer will not recognize COD Income to the extent that the taxpayer's satisfaction of the debt would have given rise to a deduction for United States federal income tax purposes. Unlike Section 108(b) of the Tax Code, Section 108(e)(2) does not require a reduction in the taxpayer's Tax Attributes as a result of the non-recognition of COD Income. Thus, the effect of Section 108(e)(2) of the Tax Code, where applicable, is to allow a taxpayer to discharge indebtedness without recognizing income and without reducing its Tax Attributes.

Pursuant to Section 301.7701-2(a) of the Treasury Regulations, an entity that is treated as a disregarded entity for U.S. federal income tax purposes is treated in the same manner as a sole proprietorship, branch or division of such entity's owner. Thus, assets and liabilities owned, or owed, by a disregarded entity should generally be treated as owned by, or liabilities of, the disregarded entity's owner. Pursuant to Section 301.7701-1 of the Treasury Regulations, a classification as a disregarded entity applies for all U.S. federal tax purposes. A discharge of a disregarded entity's indebtedness should, therefore, be treated as the discharge of debt owed by such disregarded entity's owner.

Accordingly, it is expected that COD Income that is recognized by Solyndra will be attributed for federal income tax purposes to Holdings. As a result of the Bankruptcy Exception, it is expected that any COD Income attributed to Holdings will be excluded from income.

Under Section 108(e)(2) of the Tax Code, no COD Income should result from the discharge of any accrued but unpaid interest of Holdings or Solyndra pursuant to the Plan to the extent payment of such interest would have given rise to a deduction.

Under the terms of the Plan, Holdings and Solyndra will transfer certain assets to the Solyndra Residual Trust, the Solyndra Settlement Trust, or to applicable lienholders in a potentially taxable disposition. It is anticipated that existing tax attributes, including tax basis and net operating losses, will be sufficient to avoid Holdings incurring any material federal or State income taxes upon disposition.

## **B. Consequences to Creditors**

As of the Effective Date, the Solyndra Residual Trust shall be established for the benefit of the Solyndra Settlement Trust and the Holders of Prepetition Lender Deficiency Claims, and the Solyndra Settlement Trust shall be established for the benefit of all holders of Allowed Solyndra General Unsecured Claims. For purposes of this section, the Solyndra Residual Trust and the Solyndra Settlement Trust are referred to as the "Plan Trusts" and the respective trustee thereof are referenced as the "Plan Trustees." The Plan Trustees will make a good faith valuation of the Plan Trusts' respective assets. All parties (including, without limitation, the Plan Trustees and the holders of Claims) must consistently use such valuation for all federal income tax purposes. The tax consequences of the Plan are subject to uncertainties due to the complexity of the Plan and the lack of interpretative authority regarding certain changes in the tax law.

Allocations of taxable income of the Plan Trusts (other than taxable income allocable to the Plan Trusts' respective claims reserves) among holders of Claims shall be determined by reference to the manner in which an amount of cash equal to such taxable income would be distributed (were such cash permitted to be distributed at such time) if, immediately prior to such deemed distribution, the Plan Trusts had distributed all of their respective assets (valued at their tax book value, and other than assets allocable to the Plan Trusts' respective claims reserves) to the holders of the beneficial interests in the Plan Trusts, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Plan Trusts. Similarly, taxable loss of the Plan Trusts shall be allocated by reference to the manner in which an economic loss would be borne immediately after a liquidating distribution of the remaining Plan Trust assets.

The tax book value of the Plan Trust assets for this purpose shall equal their fair market value on the Effective Date, adjusted in accordance with tax accounting principles prescribed by the Tax Code, applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements. Uncertainties with regard to federal income tax consequences of the Plan may arise due to the inherent nature of estimates of value that will impact tax liability determinations.

Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the receipt by the Plan Trustees of an IRS private letter ruling if the Plan Trustees so request one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Plan Trustees), the Plan Trustees will (a) elect to treat any Plan Trust assets allocable to, or retained on account of, Disputed Claims (the "Plan Trust Claims Reserve") as a "disputed ownership fund" governed by Treasury Regulation Section 1.468B-9, and (b) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. Accordingly, the Plan Trust Claims Reserve will be subject to tax annually on a separate entity basis on any net income earned with respect to the Plan Trust assets in such reserves, and all distributions from such reserves will be treated as received by holders in respect of their Claims as if distributed by the Debtors. All parties (including, without limitation, the Plan Trustees and the holders of beneficial interests in the Plan Trusts) will be required to report for tax purposes consistently with the foregoing.

The Plan Trusts are intended to qualify as liquidating trusts for federal income tax purposes. In general, a liquidating trust is not a separate taxable entity but rather is treated for federal income tax purposes as a "grantor" trust (i.e., a pass-through entity). The IRS, in Revenue Procedure 94-45, 1994.28 I.R.B. 124, set forth the general criteria for obtaining an IRS ruling as to the grantor trust status of a liquidating trust under a chapter 11 plan. The Plan Trusts have been structured with the intention of complying with such general criteria. Pursuant to the Plan, and in conformity with Revenue Procedure 94-45, supra, all parties (including the Plan Trustees and the holders of beneficial interests in the Plan Trusts) are required to treat for federal income tax purposes, the Plan Trusts as grantor trusts of which the holders of Allowed Claims are the owners and grantors. While the following discussion assumes that the Plan Trusts would be so treated for federal income tax purposes, no ruling has been requested from the IRS concerning the tax status of the Plan Trusts as grantor trusts. Accordingly, there can be no assurance that the IRS would not take a contrary position to the classification of the Plan Trusts as grantor trusts. If the IRS were to challenge successfully

such classification, the federal income tax consequences to the Plan Trusts and the holders of Claims could vary from those discussed herein.

In general, each Holder of an Allowed Claim will recognize gain or loss in an amount equal to the difference between (i) the “amount realized” by such Holder in satisfaction of its Claim, and (ii) such Holder’s adjusted tax basis in such Claim. The “amount realized” by a Holder will equal the sum of cash and the aggregate fair market value of the property received by such Holder pursuant to the Plan (such as a Holder’s undivided beneficial interest in the assets transferred to the Plan Trusts). Where gain or loss is recognized by a Holder in respect of its Allowed Claim, the character of such gain or loss (i.e., long-term or short-term capital, or ordinary income) will be determined by a number of factors including the tax status of the Holder, whether the Claim constituted a capital asset in the hands of the Holder and how long it had been held, whether the Claim was originally issued at a discount or acquired at a market discount and whether and to what extent the Holder had previously claimed a bad debt deduction in respect of the Claim.

After the Effective Date, any amount a Holder receives as a distribution from the Plan Trusts in respect of its beneficial interest in the Plan Trusts should not be included, for federal income tax purposes, in the Holder’s amount realized in respect of its Allowed Claim but should be separately treated as a distribution received in respect of such Holder’s beneficial interest in the Plan Trusts.

In general, a Holder’s aggregate tax basis in its undivided beneficial interest in the assets transferred to the Plan Trusts will equal the fair market value of such undivided beneficial interest as of the Effective Date and the holder’s holding period in such assets will begin the day following the Effective Date. Distributions to any Holder of an Allowed Claim will be allocated first to the original principal portion of such Claim as determined for federal tax purposes, and then, to the extent the consideration exceeds such amount, to the remainder of such Claim. However, there is no assurance that the IRS will respect such allocation for federal income tax purposes.

For all federal income tax purposes, all parties (including the Plan Trustees and the Holders of beneficial interests in the Plan Trusts) shall treat the transfer of assets to the Plan Trusts, in accordance with the terms of the Plan, as a transfer of those assets directly to the Holders of Allowed Claims followed by the transfer of such assets by such holders to the Plan Trusts. Consistent therewith, all parties shall treat the Plan Trusts as grantor trusts of which such holders are to be owners and grantors. Thus, such Holders (and any subsequent Holders of interests in the Plan Trusts) shall be treated as the direct owners of an undivided beneficial interest in the assets of the Plan Trusts for all federal income tax purposes. Accordingly, each Holder of a beneficial interest in the Plan Trusts will be required to report on its federal income tax return(s) the Holder’s allocable share of all income, gain, loss, deduction or credit recognized or incurred by the Plan Trusts.

The Plan Trusts’ taxable income will be allocated to the Holders of beneficial interests in the Plan Trusts in accordance with each such Holder’s Pro Rata share. The character of items of income, deduction and credit to any Holder and the ability of such Holder to benefit from any deductions or losses may depend on the particular situation of such Holder.



The federal income tax reporting obligation of a Holder of a beneficial interest in the Plan Trusts is not dependent upon the Plan Trusts distributing any cash or other proceeds. Therefore, a Holder of a beneficial interest in the Plan Trusts may incur a federal income tax liability regardless of the fact that the Plan Trusts have not made, or will not make, any concurrent or subsequent distributions to the Holder. If a Holder incurs a federal tax liability but does not receive distributions commensurate with the taxable income allocated to it in respect of its beneficial interests in the Plan Trusts it holds, the Holder may be allowed a subsequent or offsetting loss.

The Plan Trustees will each file with the IRS returns for the Plan Trusts as grantor trusts pursuant to Treasury Regulations section 1.671-4(a). The Plan Trustees will also send to each Holder of a beneficial interest in the Plan Trusts a separate statement setting forth the Holder's share of items of income, gain, loss, deduction or credit and will instruct the Holder to report such items on its federal income tax return.

All payments to Creditors and Interest Holders are subject to any applicable withholding (including employment tax withholding). Under the Internal Revenue Code, interest, dividends and other reportable payments may, under certain circumstances, be subject to "backup withholding" then in effect. Backup withholding generally applies if the holder (a) fails to furnish his or her social security number or other taxpayer identification number ("TIN"), (b) furnishes an incorrect TIN, (c) fails properly to report interest or dividends, or (d) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is his correct number and that he is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax if an appropriate refund claim is filed with the IRS. Certain persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions.

Events subsequent to the date of this Disclosure Statement, such as the enactment of additional tax legislation, could also change the federal income tax consequences of the Plan and the transactions contemplated there under.

1.  **Holders of Claims.**

Generally, a holder of a Claim should in most, but not all circumstances, recognize gain or loss equal to the difference between the "amount realized" by such holder in exchange for its 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 a plan of reorganization in respect of a holder's Claim. The tax basis of a holder in a Claim will generally be equal to the holder's cost therefore. To the extent applicable, the character of any recognized gain or loss (e.g., ordinary income, or short-term or long-term capital gain or loss) will depend upon the status of the holder, the nature of the Claim in the holder's hands, the purpose and circumstances of its acquisition, the holder's holding period of the Claim, and the extent to which the holder previously claimed a deduction for the worthlessness of all or a portion of the Claim. Generally, if the Claim is a capital asset in the holder's hands, any gain or loss realized will generally be characterized as capital gain or loss, and will constitute long-term capital gain or loss if the holder has held such Claim for more than one year.

A Holder who received Cash (or potentially other consideration) in satisfaction of its Claims may recognize ordinary income or loss to the extent that any portion of such consideration is characterized as accrued interest. A Holder who did not previously include in income accrued but unpaid interest attributable to its Claim, and who receives a distribution on account of its Claim pursuant to the Plan, will be treated as having received interest income to the extent that any consideration received is characterized for United States federal income tax purposes as interest, regardless of whether such Holder realizes an overall gain or loss as a result of surrendering its Claim. A Holder who previously included in its income accrued but unpaid interest attributable to its Claim should recognize an ordinary loss to the extent that such accrued but unpaid interest is not satisfied, regardless of whether such Holder realizes an overall gain or loss as a result of the distribution it may receive under the Plan on account of its Claim.

2. **Non-United States Persons.**

A Holder of a Claim that is a Non-U.S. Person generally will not be subject to United States federal income tax with respect to property (including money) received in exchange for such Claim pursuant to the Plan, unless (i) such Holder is engaged in a trade or business in the United States to which income, gain or loss from the exchange is “effectively connected” for United States federal income tax purposes, or (ii) if such Holder is an individual, such Holder is present in the United States for 183 days or more during the taxable year of the exchange and certain other requirements are met.

C. **Importance of Obtaining Professional Tax Assistance**

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN INCOME TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A CLAIM HOLDER’S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, CLAIM HOLDERS ARE URGED TO CONSULT THEIR TAX ADVISORS ABOUT THE UNITED STATES FEDERAL, STATE AND LOCAL, AND APPLICABLE FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

**XIX.**

**ALTERNATIVES TO PLAN**

The Debtors believe that if the Plan is not confirmed, or is not confirmable, the alternatives to the Plan include: (a) conversion of the Chapter 11 Cases to chapter 7; (b) dismissal of the Debtors’ cases; or (c) an alternative plan of reorganization.

A. **Liquidation Under Chapter 7**

If no plan can be confirmed, the Debtors’ Chapter 11 Cases may be converted to cases under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be appointed to liquidate the Debtors’ assets for distribution to Creditors in accordance with the priorities established by the Bankruptcy Code. For the reasons previously discussed above, the Debtors

believe that Confirmation of the Plan will provide Creditors with a recovery that is expected to be substantially more than could be achieved in a liquidation under chapter 7 of the Bankruptcy Code.

**B. Dismissal**

Dismissal of the Chapter 11 Cases would result in each individual creditor having to protect its own rights through legal action and would likely result in foreclosure actions by the Prepetition Lenders, leaving little or no assets for anyone else. The Debtors possibly would be left with certain unencumbered assets but would have no direction as to how to use those assets. The Debtors believe that dismissal of the Chapter 11 Cases would result in a disparate recovery by creditors that would not be beneficial to the whole.

**C. Alternative Plan**

The Debtors believe that any alternative plan would not result in as favorable of treatment of Claims and Interests as proposed under the Debtors' Plan.

**D. No Res Judicata Effect**

Notwithstanding anything to the contrary in the Plan, or in this Disclosure Statement, the provisions of this Disclosure Statement and the Plan which permit the Debtors, Reorganized Holdings, the Solyndra Settlement Trust or the Solyndra Residual Trust to enter into settlements and compromises of any potential litigation, shall not have and are not intended to have any *res judicata* effect with respect to any prepetition Claims and causes of action that are not otherwise treated under the Plan, and shall not be deemed a bar to asserting such Claims and causes of action.

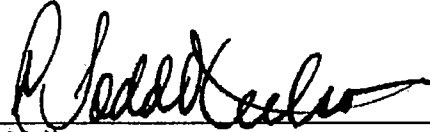
XX.

CONCLUSION

The Debtors believe that the Plan is in the best interest of Creditors and urge Creditors to vote to accept the Plan.

\_\_\_\_\_, 2012

/s/



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R. Todd Neilson  
Chief Restructuring Officer of Solyndra LLC and  
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Counsel to Debtors and Debtors in Possession

**Exhibit 1**

**Plan**

**Filed Separately**

**Exhibit 2**

**Disclosure Statement Order**

**Filed Separately**

**Exhibit 3**

**Chapter 11 Plan Projections & Liquidation Analysis**

## Chapter 11 Recovery Analysis for Solyndra LLC

(\$ in thousands)

**Assumptions:**

Plan effective as of September 30, 2012.

All assets other than those listed below are monetized prior to the Effective Date.

Remaining assets are assumed to be monetized by March 2013 in Low Scenario and December 2012 in High Scenario excluding claims against third parties which may be pursued thereafter.

Payroll and occupancy costs to continue at reduced levels through March 2013 in Low Scenario and December 2012 in High Scenario.

Assets	Book Value <sup>(1)</sup>	Estimated Recovery		Estimated Recovery Value	
		Low	High	Low	High
Cash <sup>(2)</sup>	\$132.1	100.0%	100.0%	\$132.1	\$132.1
Solyndra AR - Foreign	11,019.9	0.0%	0.0%	-	-
Buildings & Land <sup>(3)</sup>	298,756.0	19.5%	38.5%	58,145.0	114,995.0
Intellectual Property <sup>(3)</sup>	-	N/A	N/A	-	1,640.0
Claims Against Third Parties <sup>(4)</sup>	-	N/A	N/A	-	-
Other / Miscellaneous <sup>(5)</sup>	N/A	N/A	N/A	-	-
<b>Total</b>	<b>\$309,908.0</b>			<b>\$58,277.1</b>	<b>\$116,767.1</b>

<b>Gross Estimated Proceeds From Asset Disposition</b>	<b>\$58,277.1</b>	<b>\$116,767.1</b>
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**Post-Effective Date Expenses:**

Payroll & Benefits <sup>(6)</sup>	(734.2)	(489.5)
Manufacturing, Occupancy, Overhead & Logistics <sup>(6)</sup>	(1,149.1)	(849.4)
Attorneys, Accountants and Advisors <sup>(7)</sup>	(500.0)	(300.0)
Other Estate Wind-Down Costs	(1,000.0)	(500.0)
<b>Total Post-Effective Date Expenses</b>	<b>(\$3,383.3)</b>	<b>(\$2,138.8)</b>

<b>Net Estimated Proceeds From Asset Disposition</b>	<b>\$54,893.8</b>	<b>\$114,628.2</b>
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**Additional Proceeds Provided by Plan Sponsors:**

Proceeds for the Benefit of Employee WARN Claimants <sup>(8)</sup>	\$3,500.0	\$3,500.0
Proceeds for the Benefit of Other Administrative and Priority Claimants <sup>(9)</sup>	\$3,497.4	\$3,497.4
Proceeds for the Benefit of General Unsecured Creditors <sup>(10)</sup>	\$3,175.0	\$3,175.0

<b>Net Estimated Proceeds Available for Distribution</b>	<b>\$66,066.2</b>	<b>\$124,800.6</b>
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**Notes:**

(1) Per Solyndra LLC May 2012 Monthly Operating Report filed on 6/19/2012 [Docket No. 871] except where otherwise noted.

(2) Cash balance as of 9/30/2012 per DIP budget attached to Order Further Extending Commitment Termination Date and Increasing DIP Commitment filed on 6/18/2012 [Docket No. 869].

(3) Recovery range reflects guidance provided by agents retained to sell real estate and intellectual property; net of estimated transaction fees and expenses.

(4) For the purposes of the Disclosure Statement, no value has been ascribed to potential claims against third parties. However, unless specifically released in the Plan, any and all rights of the Solyndra Residual Trust to pursue claims against third parties are expressly preserved under the Plan, including without limitation, (1) avoidance claims against any parties disclosed in the Schedules and Statements, (2) any claims against third parties relating to the claims asserted by the WARN Plaintiffs, and (3) any claims for anticompetitive conduct against solar panel manufacturers under applicable non-bankruptcy law.

(5) Solyndra Residual Trust may have various other miscellaneous assets, including net operating loss carry-forwards and / or rights to tax refunds. No value has been ascribed to such other miscellaneous assets for purposes hereof.

(6) Per DIP budget attached to Order Further Extending Commitment Termination Date and Increasing DIP Commitment filed on 6/18/2012 [Docket No. 869].

(7) Estimated professional fees shown net of \$175,000 to be funded by Plan Sponsors for Solyndra Settlement Trust. Estate professional activity assumed to continue through December 2012 in High Scenario and March 2013 in Low Scenario excluding claims against third parties that may be pursued thereafter.

(8) Per Plan, Plan Sponsors have agreed to fund the Solyndra Residual Trust with \$3.5 million for the benefit of WARN employee claimants pursuant to the WARN Settlement Loan which shall be non-recourse as to the Solyndra Residual Trust and payable solely out of the proceeds, if any, of causes of action against third parties relating to the claims asserted by WARN Claimants. Represents gross proceeds. WARN claimants' attorneys fees, employer payroll taxes and noticing costs to be paid from gross proceeds.

(9) Proceeds shall be provided by Tranche II of the Exit Facility, which shall be secured by the Solyndra Residual Trust's unencumbered assets other than those assets that are subject to the liens provided by the WARN Settlement Loan. Plan Expenses will be funded by the Tranche I Exit Facility.

(10) Per Plan, Plan Sponsors have agreed to fund the Solyndra Residual Trust with \$3.0 million for the benefit of general unsecured creditors plus \$175,000 for administration of the Solyndra Settlement Trust per the Solyndra Settlement Fund Loan which will be secured by the same assets and shall have the same priority as the existing DIP credit facility. Tranche A debt, as reflected on page 2, is reduced by \$3.175 million on account of the Solyndra Settlement Fund Loan.



## Chapter 11 Recovery Analysis for Solyndra LLC

(\$ in thousands)

Net Estimated Proceeds Available for Distribution	Claim Amount <sup>(1)</sup>	Estimated Recovery Value			
		Low		High	
		\$65,066.2		\$124,800.6	
		Recovery to Creditors			
		Low		High	
		\$	%	\$	%
<b>Secured, Administrative and Priority Expenses</b>					
Debtor-in-Possession Facility <sup>(2)</sup>	\$7,000.0	\$7,000.0	100.0%	\$7,000.0	100.0%
Unpaid Estate Professional Fees <sup>(3)</sup>	2,000.0	2,000.0	100.0%	2,000.0	100.0%
503(b)(9) Claims <sup>(4)(5)</sup>	1,633.0	1,633.0	100.0%	1,633.0	100.0%
Employee WARN Claims <sup>(6)</sup>	3,500.0	3,500.0	100.0%	3,500.0	100.0%
Employee Priority Claims <sup>(5)</sup>	864.4	864.4	100.0%	864.4	100.0%
Secured Tax Claim <sup>(7)(8)</sup>	1,569.9	1,569.9	100.0%	1,569.9	100.0%
Priority Tax Claim <sup>(5)(7)</sup>	1,000.0	1,000.0	100.0%	1,000.0	100.0%
Solyndra Settlement Fund and Creditor Trust Contribution <sup>(9)</sup>	3,175.0	3,175.0	100.0%	3,175.0	100.0%
<b>Total Secured, Administrative and Priority Expenses</b>	<b>20,742.3</b>	<b>20,742.3</b>	<b>100.0%</b>	<b>20,742.3</b>	<b>100.0%</b>
<b>First Lien Debt</b>					
Tranche A <sup>(10)</sup>	69,540.8	41,148.9	59.2%	69,540.8	100.0%
<b>Second Lien Debt</b>					
Tranche B	142,808.5	-	0.0%	31,342.5	21.9%
<b>Third Lien Debt</b>					
Tranche D	385,000.0	-	0.0%	-	0.0%
Tranche E	186,644.3	-	0.0%	-	0.0%
<b>Total Third Lien Debt</b>	<b>571,644.3</b>	-	0.0%	-	0.0%
Unsecured Claims <sup>(11)</sup>	50,000.0 - 120,000.0	3,175.0	2.6%	3,175.0	6.4%
<b>Total Unsecured Claims</b>	<b>50,000.0 - 120,000.0</b>	<b>3,175.0</b>	<b>2.6%</b>	<b>3,175.0</b>	<b>6.4%</b>
Equity	N/A	-	0.0%	-	0.0%

**Notes:**

(1) All claims subject to further reconciliation.

(2) Reflects estimated DIP Facility at Effective Date. The DIP Facility will be replaced by the Exit Facility which will be used to fund remaining estate wind-down costs. These proceeds will be paid out of the Tranche I Exit Facility.

(3) Reflects excess carve-out of \$2.0 million per Order Further Extending Commitment Termination Date and Increasing DIP Commitment filed on 6/18/2012 [Docket No. 869]. These proceeds will be paid out of the Tranche I Exit Facility.

(4) Certain 503(b)(9) claims are subject to dispute and objection.

(5) 503(b)(9) claims, employee priority claims and priority tax claims will be paid out of the Tranche II Exit Facility.

(6) Reflects gross settlement amount of employee WARN claims. Per Plan, recovery shall be funded by Plan Sponsors and is payable solely out of the proceeds, if any, of causes of action against third parties relating to the claims asserted by WARN Claimants. See footnote 8 on page 1 for further detail.

(7) Estimated and subject to dispute.

(8) Secured tax claim recoveries will be paid out of proceeds received from the sale of Buildings & Land.

(9) Per Plan, the Solyndra Settlement Fund Loan and Solyndra Settlement Trust will be repaid prior to any distribution to the Tranche A loan.

(10) Tranche A claim reflects principal balance and pre-petition accrued interest of \$3.4 million. Per Plan, Tranche A claim is reduced by \$3.175 million on account of the Solyndra Settlement Fund Loan and Solyndra Settlement Trust Contribution for the benefit of General Unsecured Creditors. Recovery on Tranche A claim reflected herein is net of the Solyndra Settlement Fund and Solyndra Settlement Trust Contribution.

(11) Per Plan, general unsecured creditors will obtain a \$3.0 million cash recovery and \$175,000 for professional fees. Range of unsecured claims provided by Creditors' Committee.

### Chapter 7 Liquidation Analysis for Solyndra LLC

(\$ in thousands)

**Assumptions:**

Case conversion to Chapter 7 proceeding occurs at September 30, 2012.

All assets other than those listed below are monetized prior to the Conversion Date.

Remaining assets are assumed to be monetized by March 2013 in Low Scenario and December 2012 in High Scenario excluding avoidance claims that may be pursued thereafter.

Payroll costs to continue at reduced levels through December 2012 in both Low and High Scenario.

Assets	Book Value <sup>(1)</sup>	Estimated Recovery		Estimated Recovery Value	
		Low	High	Low	High
Cash <sup>(2)</sup>	\$132.1	100.0%	100.0%	\$132.1	\$132.1
Solyndra AR - Foreign	11,019.9	0.0%	0.0%	-	-
Buildings & Land <sup>(3)</sup>	298,756.0	14.6%	28.9%	43,608.8	86,246.3
Intellectual Property	-	N/A	N/A	-	-
Claims Against Third Parties <sup>(4)</sup>	-	N/A	N/A	-	-
Other / Miscellaneous <sup>(5)</sup>	N/A	N/A	N/A	-	-
<b>Total</b>	<b>\$309,908.0</b>			<b>\$43,740.8</b>	<b>\$86,378.3</b>
<b>Net Estimated Proceeds Available for Distribution Before Administrative Expenses</b>				<b>\$43,740.8</b>	<b>\$86,378.3</b>
<b>Post-Conversion Date Expenses:</b>					
Payroll & Benefits <sup>(6)</sup>				(734.2)	(489.5)
Manufacturing, Occupancy, Overhead & Logistics <sup>(6)</sup>				(1,149.1)	(849.4)
Trustee Commission on Sale of Assets <sup>(7)</sup>				(1,312.2)	(2,591.3)
Attorneys, Accountants and Advisors <sup>(8)</sup>				(750.0)	(430.0)
Other Estate Wind-Down Costs				(1,000.0)	(500.0)
<b>Total Post-Conversion Date Expenses</b>				<b>(\$4,945.5)</b>	<b>(\$4,860.2)</b>
<b>Net Estimated Proceeds Available for Distribution</b>				<b>\$38,795.3</b>	<b>\$81,518.1</b>

**Notes:**

(1) Per Solyndra LLC May 2012 Monthly Operating Report filed on 6/19/2012 [Docket No. 871] except where otherwise noted.

(2) Cash balance as of 9/30/2012 per DIP budget attached to Order Further Extending Commitment Termination Date and Increasing DIP Commitment filed on 6/18/2012 [Docket No. 869].

(3) Recovery range reflects guidance provided by real estate broker under Chapter 11 scenario discounted by 25%; net of estimated transaction fees and expenses.

(4) No value has been ascribed to potential claims against third parties.

(5) Debtor may have various other miscellaneous assets, including net operating loss carry-forwards and / or rights to tax refunds. No value has been ascribed to such other miscellaneous assets for purposes hereof.

(6) Per DIP budget attached to Order Further Extending Commitment Termination Date and Increasing DIP Commitment filed on 6/18/2012 [Docket No. 869].

(7) Trustee commission is assumed to be 3.0% of net estimated proceeds available for distribution before administrative expenses.

(8) Estate professional activity assumed to continue through December 2012 in High Scenario and March 2013 in Low Scenario excluding claims against third parties that may be pursued thereafter.

### Chapter 7 Liquidation Analysis for Solyndra LLC

(\$ in thousands)

	Claim Amount <sup>(1)</sup>	Estimated Recovery Value			
		Low		High	
		\$	%	\$	%
<b>Net Estimated Proceeds Available for Distribution</b>		<b>\$38,795.3</b>		<b>\$81,518.1</b>	
		Recovery to Creditors			
		Low		High	
		\$	%	\$	%
<b>Secured, Administrative and Priority Expenses</b>					
Debtor-in-Possession Facility <sup>(2)</sup>	\$7,000.0	\$7,000.0	100.0%	\$7,000.0	100.0%
Unpaid Estate Professional Fees <sup>(3)</sup>	2,000.0	2,000.0	100.0%	2,000.0	100.0%
503(b)(9) Claims <sup>(4)</sup>	1,633.0	-	0.0%	-	0.0%
Employee WARN Claims <sup>(5)</sup>	10,000.0	-	0.0%	-	0.0%
Employee Administrative Claims	864.4	-	0.0%	-	0.0%
Secured Tax Claim <sup>(5)(6)</sup>	1,569.9	1,569.9	100.0%	1,569.9	100.0%
Priority Tax Claim <sup>(5)</sup>	1,000.0	-	0.0%	-	0.0%
<b>Total Secured, Administrative and Priority Expenses</b>	<b>24,067.3</b>	<b>10,569.9</b>	<b>43.9%</b>	<b>10,569.9</b>	<b>43.9%</b>
<b>First Lien Debt</b>					
Tranche A <sup>(7)</sup>	72,715.8	28,225.5	38.8%	70,948.3	97.6%
<b>Second Lien Debt</b>					
Tranche B	142,808.5	-	0.0%	-	0.0%
<b>Third Lien Debt</b>					
Tranche D	385,000.0	-	0.0%	-	0.0%
Tranche E	186,644.3	-	0.0%	-	0.0%
<b>Total Third Lien Debt</b>	<b>571,644.3</b>	<b>-</b>	<b>0.0%</b>	<b>-</b>	<b>0.0%</b>
Unsecured Claims <sup>(8)</sup>	50,000.0 - 120,000.0	-	0.0%	-	0.0%
<b>Total Unsecured Claims</b>	<b>50,000.0 - 120,000.0</b>	<b>-</b>	<b>0.0%</b>	<b>-</b>	<b>0.0%</b>
Equity	N/A	-	0.0%	-	0.0%

**Notes:**

(1) All claims subject to further reconciliation.

(2) Reflects estimated DIP Facility at Conversion Date.

(3) Reflects excess carve-out of \$2.0 million per Order Further Extending Commitment Termination Date and Increasing DIP Commitment filed on 6/18/2012 [Docket No. 869].

(4) Certain 503(b)(9) claims are subject to dispute and objection.

(5) Estimated and subject to dispute.

(6) Secured tax claim recoveries will be paid out of proceeds received from the sale of Buildings &amp; Land.

(7) Reflects Tranche A principal balance and pre-petition accrued interest of \$3.4 million.

(8) Range of unsecured claims provided by Creditors' Committee.

**Chapter 11 Recovery Analysis for 360 Degree Solar Holdings, Inc. <sup>(1)</sup>**

(\$ in thousands)

Assets	Book Value <sup>(2)</sup>	Estimated Recovery		Estimated Recovery Value	
		Low	High	Low	High
Cash	\$99.1	100.0%	100.0%	\$99.1	\$99.1
Claims Against Third Parties <sup>(3)</sup>	0.0	100.0%	100.0%	0.0	0.0
Residual Value from Solyndra Residual Trust	0.0	0.0%	0.0%	0.0	0.0
Other / Miscellaneous <sup>(4)</sup>	N/A	N/A	N/A	-	-
<b>Total</b>	<b>\$99.1</b>			<b>\$99.1</b>	<b>\$99.1</b>
<b>Net Estimated Proceeds Available for Distribution Before Administrative Expenses</b>				<b>\$99.1</b>	<b>\$99.1</b>
<b>Proceeds Provided by Plan Sponsors <sup>(5)</sup></b>				<b>\$810.0</b>	<b>\$810.0</b>
Post-Effective Date Expenses <sup>(6)</sup>				0.0	0.0
<b>Net Estimated Proceeds Available for Distribution</b>				<b>\$909.1</b>	<b>\$909.1</b>

**Chapter 11 Recovery Analysis for 360 Degree Solar Holdings, Inc. <sup>(1)</sup>**

(\$ in thousands)

Net Estimated Proceeds Available for Distribution	Estimated Recovery Value				
	Low		High		
	\$909.1		\$909.1		
Claim Amount	Recovery to Creditors				
	Low		High		
	\$	%	\$	%	
<b>Administrative and Priority Expenses</b>					
Priority Tax Claim	0.1	0.1	100.0%	0.1	100.0%
<b>Unsecured Claims</b>					
Unsecured Claims <sup>(5) (7)</sup>	7,000.0	235.6	3.4%	235.6	3.4%
Lease Rejection Claims <sup>(5) (8)</sup>	20,000.0	673.3	3.4%	673.3	3.4%
<b>Total Unsecured Claims</b>	<b>27,000.0</b>	<b>908.9</b>	<b>3.4%</b>	<b>908.9</b>	<b>3.4%</b>

**Notes:**

(1) Per 360 Holdings, Inc. Statement of Financial Affairs filed on 10/31/2011 except where otherwise noted.

(2) Financial information presented per Statement of Financial Affairs filed on 9/6/2011.

(3) For the purposes of the Disclosure Statement, no value has been ascribed to potential claims against third parties. However, unless specifically released in the Plan, any and all rights of the Debtors to pursue claims against third parties are expressly preserved under the Plan, including without limitation, (1) avoidance claims against any parties disclosed in the Schedules and Statements, (2) any claims against third parties relating to the claims asserted by the WARN Plaintiffs, and (3) any claims for anticompetitive conduct against solar panel manufacturers under applicable non-bankruptcy law.

(4) Debtor may have various other miscellaneous assets, including net operating loss carry-forwards and / or rights to tax refunds. No value has been ascribed to such other miscellaneous assets for purposes hereof.

(5) Per Plan, Plan Sponsors have agreed to fund 360 Degree Solar Holdings, Inc. with a \$810,000 capital contribution for the benefit of general unsecured creditors and lease rejection claimants.

(6) All post-effective date expenses are assumed to be incurred at Solyndra Residual Trust.

(7) Includes stipulated claim for Von Ardenne Anlagentechnik GmbH.

(8) Lease rejection claimants have agreed to a stipulated recovery amount equal to a minimum 3% of total general unsecured creditors' recoveries.

**Chapter 7 Liquidation Analysis for 360 Degree Solar Holdings, Inc. <sup>(1)</sup>**

(\$ in thousands)

Assets	Book Value <sup>(2)</sup>	Estimated Recovery		Estimated Recovery Value	
		Low	High	Low	High
Cash	\$99.1	100.0%	100.0%	\$99.1	\$99.1
Claims Against Third Parties <sup>(3)</sup>	0.0	100.0%	100.0%	0.0	0.0
Residual Value from Solyndra LLC	0.0	0.0%	0.0%	0.0	0.0
Other / Miscellaneous <sup>(4)</sup>	N/A	N/A	N/A	-	-
<b>Total</b>	<b>\$99.1</b>			<b>\$99.1</b>	<b>\$99.1</b>
<b>Net Estimated Proceeds Available for Distribution Before Administrative Expenses</b>				<b>\$99.1</b>	<b>\$99.1</b>
Post-Conversion Date Expenses: <sup>(5)</sup>				0.0	0.0
<b>Net Estimated Proceeds Available for Distribution Before Liquidation Costs</b>				<b>\$99.1</b>	<b>\$99.1</b>
Trustee Fees and Expenses:				(99.1)	(99.1)
<b>Net Estimated Proceeds Available for Distribution</b>				<b>\$0.0</b>	<b>\$0.0</b>

**Chapter 7 Liquidation Analysis for 360 Degree Solar Holdings, Inc. <sup>(1)</sup>**

(\$ in thousands)

Net Estimated Proceeds Available for Distribution	Claim Amount	Estimated Recovery Value			
		Low		High	
		\$	%	\$	%
		\$0.0		\$0.0	
		Recovery to Creditors			
		Low		High	
		\$	%	\$	%
<b>Administrative Expenses</b>					
Employee WARN Claims <sup>(6)</sup>	10,000.0	-	0.0%	-	0.0%
Priority Tax Claim	0.1	-	0.0%	-	0.0%
<b>Total Administrative Expenses</b>	<b>10,000.1</b>	-	<b>0.0%</b>	-	<b>0.0%</b>
<b>Unsecured Claims</b>					
Unsecured Claims <sup>(7)</sup>	10,000.0	-	0.0%	-	0.0%
Lease Rejection Claims <sup>(8)</sup>	20,000.0	-	0.0%	-	0.0%
<b>Total Unsecured Claims</b>	<b>30,000.0</b>	-	<b>0.0%</b>	-	<b>0.0%</b>

**Notes:**

(1) Per 360 Holdings, Inc. Statement of Financial Affairs filed on 10/31/2011 except where otherwise noted.

(2) Financial information presented per Statement of Financial Affairs filed on 9/6/2011.

(3) No value has been ascribed to Potential Claims Against Third Parties due to highly speculative nature. No value has been ascribed to any tax attributes.

(4) Debtor may have various other miscellaneous assets, including net operating loss carry-forwards and / or rights to tax refunds. No value has been ascribed to such other miscellaneous assets for purposes hereof.

(5) All post-conversion date expenses are assumed to be incurred at Solyndra, LLC.

(6) Estimated and subject to dispute.

(7) Includes stipulated claim for Von Ardenne Anlagentechnik GmbH.

(8) Represents stipulated claim amount.