

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)  
 )  
 ) (Jointly Administered)  
Debtors. )

Objection Deadline: September 10, 2012 at 4:00 p.m. (EST)  
Hearing Date : September 24, 2012 at 11:30 a.m. (EST)

**MOTION OF SOLYNDRA LLC FOR AN ORDER  
(A) APPROVING PROCEDURES FOR SALE OF REAL PROPERTY  
AND RELATED PROPERTY; (B) SCHEDULING AUCTION AND HEARING  
TO CONSIDER APPROVAL OF SALE AND ASSUMPTION AND ASSIGNMENT OF  
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES;  
(C) APPROVING FORMS OF NOTICE; AND (D) GRANTING RELATED RELIEF**

Solyndra LLC ("Solyndra")<sup>2</sup>, one of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), hereby files this Motion (the "Bid Procedures Motion") with this Court for entry of an order (a) approving bid procedures and certain overbid protections for the sale of Solyndra's real property and building located at 47488 Kato Road, Fremont, California, (the "Real Property") including all other related property interests to be sold to the Buyer (as defined below) (together, with the Real Property, the "Property"), to the extent set forth in that certain *Agreement of Sale and Purchase Between Solyndra LLC and Seagate Technology LLC*, dated as of August 16, 2012 (the "Purchase Agreement"), a copy of which is annexed hereto as **Exhibit A**; (b) scheduling an auction and a hearing to consider approval of the

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<sup>1</sup> The Debtors in these proceedings and the last four digits of each Debtors' 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.

sale of the Property, including the assumption and assignment of certain executory contracts and unexpired leases in connection therewith (the “Sale Hearing”); (c) approving certain break-up fee and expense reimbursement provisions; (d) approving forms of notice; and (e) granting related relief. In support of this Bid Procedures Motion, Solyndra respectfully states as follows:

### **Jurisdiction**

1. The Court has jurisdiction over this Bid Procedures Motion pursuant to 28 U.S.C. §§ 157 and 1334. This proceeding is a core proceeding within the meaning of 28 U.S.C. §§ 157(b)(2)(A), (M), (N) and (O).

2. Venue of these proceedings and this Bid Procedures Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief sought herein are sections 105, 363, 365, 1107 and 1108 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002(a)(2), 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure, and Rules 2002-1(b), 6004-1 and 9006-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

### **Background**

4. On September 6, 2011 (the “Petition Date”), the Debtors commenced the above-captioned cases (the “Cases”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors have continued in the possession of their property and to manage their affairs as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Cases. On

September 15, 2011, the Office of the United States Trustee appointed an Official Committee of Unsecured Creditors (the “Committee”) in the Cases.

### **Business Operations**

5. Prepetition, Solyndra sold three primary types of solar panels: (i) 100 Series; (ii) 150 Series for higher power density; and (iii) 200 Series. In addition, Solyndra developed new mounting solutions that allow some of the Solyndra panels to be used in new situations. These solutions include (a) Elevated Shade Structure (aka “Greenhouse”) mounts, announced in February 2011; (b) mounts for metal roofs, announced in June 2011; and (c) an “Extreme Wind Solution”, allowing for deployment of panels in areas with winds up to 180 miles per hour, announced in August 2011. The 100 Series is Solyndra’s original PV system composed of panels and mounting hardware for low-slope, commercial rooftops. The 200 Series is Solyndra’s second generation PV system, which has an enhanced form factor over the 100 Series thereby increasing its Watt peak performance and requires no tools for installation. The 150 Series is a hybrid product, using the advanced PV modules of the 200 Series, but the existing mounting solution of the 100 Series.

6. From its inception in 2005 through 2007, Solyndra focused on its research and development efforts to refine its proprietary thin-film technology used to apply the copper, indium, gallium and selenium PV material on its cylindrical glass tubes. In 2007, Solyndra leased its first fabrication facility and began to focus its efforts on commercializing its technology and designing and deploying the custom equipment needed to produce its innovative

PV panels on a large scale. In July 2008, Solyndra began its first commercial shipments of PV panels.

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

7. Prior to the Petition Date, the combination of general business conditions 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 their operations. In response, Solyndra was forced to reduce its average selling 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 PV system owners, further reducing demand for Solyndra's panels. Finally, Solyndra's ability to timely collect on its accounts receivables was negatively impacted as foreign competitors offered extended payment terms, resulting in Solyndra's customers refusing to honor their previously agreed payment terms.

8. In February 2011, as the aforementioned competitive pressures were emerging, Solyndra entered into a restructuring of its debts. Although such restructuring provided for an infusion of \$75 million, it left Solyndra with more than \$783 million in senior secured debt and the need to raise further incremental capital to fund operations until Solyndra could generate positive cash flow from operations.

9. Prior to the Petition Date, Solyndra reached out to multiple strategic and financial investors in an attempt to attract the necessary incremental capital. However, Solyndra

was unable to find any parties that would be willing to fund its increased capital requirements in light of the size and structure of Solyndra's debt.

### **The Sale Process of Solyndra's Business on a Turnkey Basis**

10. On September 9, 2011 (shortly after the Petition Date) the Debtors engaged Imperial Capital, LLC ("Imperial") as their financial advisors and investment bankers in order to, among other things, assist with the potential sale of Solyndra's assets on a turnkey basis. Imperial worked diligently to market and effectuate a turn-key sale of the Debtors' business. These activities included preparation of solicitation materials, identifying, contacting and negotiating with potential buyers, assisting prospective buyers in conducting due diligence and providing updates to the Debtors and other stakeholders on the process. Imperial contacted over 150 potential strategic and financial buyers from more than 12 countries in marketing Solyndra's assets on a turnkey basis. Despite these efforts and various extensions of the bid deadlines for potential bidders to submit offers for the purchase of the Solyndra's business, no buyer was able to make an acceptable offer given the time constraints and other circumstances surrounding the Cases, and Solyndra then turned its efforts towards selling its core assets on a piecemeal basis.

### **The Sale of the Real Property**

11. Shortly after the conclusion of Solyndra's efforts to sell its business on a turnkey basis, Solyndra interviewed several potential brokers to market the Real Property. Eventually, Solyndra engaged Jones Lang LaSalle Brokerage, Inc. ("JLL") to market the Real Property in order to obtain the highest and best return for creditors. On February 3, 2012, the

Debtors filed the *Application of the Debtors 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* (the “Broker Employment Application”), which sought to retain and employ JLL to market and sell the Real Property. The Court entered an order approving the Broker Employment Application on February 17, 2012.

12. JLL commenced its preliminary marketing of the Real Property in February 2012 which included establishing a dedicated website, [www.solyndrabuilding.com](http://www.solyndrabuilding.com), creating marketing materials including brochures, site plans and infrastructure inventory lists. The Real Property was formally marketed in early March 2012 and was distributed on JLL’s global property network with specific emphasis the high-tech manufacturing sector. This marketing included providing the marketing information to tens of thousands of commercial real estate brokers throughout the world through LoopNet, CoStar and broker blasts. JLL also translated a version of the marketing brochure into Mandarin in order to optimally expose the site to possible Chinese users/buyers.

13. In addition, JLL issued a global press release announcing the availability of the Real Property and conducted media interviews, some of which included site tours, with radio, TV and national/global media outlets including Reuters, Bloomberg, the Wall Street Journal and the Silicon Valley Business Journal. JLL hung a 50-foot “For Sale” banner on the side of the building facing Interstate 880 (where an estimated 300,000 cars per day pass) which included the website and a dedicated hotline for information. Finally, JLL sponsored and hosted

the Bay Area Chapter of the Council of Supply Chain Professions' April 2012 meeting, bringing approximately 90 supply chain executives into the facility, which also included a 20 minute site tour.

14. The marketing efforts above resulted in direct interest and tours from companies in the US, China and Europe. JLL received dozens of expressions of interest in touring and learning more about the Real Property resulting in multiple building tours with prospective purchasers. These interested parties included clean-tech users, solar companies, high-tech manufacturers, data center operators and medical related uses. After due consultation with Solyndra and its advisors, Solyndra determined that the bid submitted by Seagate Technology, LLC (hereafter, the "Buyer") constituted the highest and best bid submitted.

15. On August 16, 2012, after extensive negotiations, Solyndra entered into the Purchase Agreement with the Buyer. Pursuant to the terms of the Purchase Agreement, the Buyer, subject to a court-approved sale process and subject to the submission of higher and better offers, will purchase the Property, including the assignment of certain contracts and leases, in accordance with the terms of the Purchase Agreement.

16. Pursuant to the terms of the Purchase Agreement, the Buyer (or any successful overbidder) will acquire the Property free and clear of all liens, claims and encumbrances pursuant to section 363 of the Bankruptcy Code, in exchange for a purchase price equal to \$90,275,500 million (the "Sale").

### **Bid Procedures**

17. Solyndra proposes to sell the Property in accordance with the bid procedures (the “Bid Procedures”) attached hereto as **Exhibit B**. The following is a summary of pertinent terms of the Bid Procedures. Bidders and parties in interest are urged to review the Bid Procedures in their entirety and should not rely on this summary. Capitalized terms not defined herein have the meanings ascribed to such terms in the Bid Procedures.

18. Solyndra believes that the consummation of the Sale to the Buyer or to a successful overbidder will provide its creditors and other stakeholders with the best opportunity possible for maximizing value through a sale as a going concern.

### **Relief Requested**

19. Pursuant to this Bid Procedures Motion, Solyndra requests that the Court, among other things:

a. approve the Buyer’s status as the stalking horse purchaser and approve (i) the requested break-up fee in the amount of \$1,805,510 (or 2% of the proposed purchase price (the “Break-Up Fee”)) pursuant to the terms of the Purchase Agreement, and (ii) the requested expense reimbursement of up to \$500,000 (the “Expense Reimbursement” and, together with the Break-Up Fee, the “Bid Protections”) pursuant to the terms of the Purchase Agreement;

b. approve the proposed bid procedures (the “Bid Procedures”), including the overbid provisions, attached hereto as **Exhibit B** and set forth below;

c. approve the procedures set forth herein for the assumption and assignment of certain executory contracts and unexpired leases in connection with the Sale (the “Cure Procedures”);

d. establish a date for holding the auction (the “Auction”) and approve certain procedures in connection therewith;

e. schedule a hearing to approve the sale transaction(s) to the Buyer or to such other party proposing the highest and best offer for the Property (the “Successful Bidder”) and establishing deadlines for objections and responses to the relief requested in the Sale Motion; and

f. approve the form and manner of notice to be served upon certain parties, including: (i) the notice, substantially in the form attached hereto as **Exhibit C**, to be served on the Sale and Bid Procedures Notice Parties (defined below); (ii) the notice, substantially in the form attached hereto as **Exhibit D**, to be served on all known creditors of the Debtors (the “Creditor Notice”); and (iii) the notice to parties holding executory contracts or unexpired leases to be assumed and assigned to the Buyer pursuant to the Purchase Agreement, in substantially the form attached hereto as **Exhibit E** (the “Cure Notice”).

#### **Proposed Bid Procedures**

20. The Bid Procedures are attached hereto as **Exhibit B**. The Bid Procedures are as follows:

1. **Property to be Sold**

Solyndra seeks to sell the Property, and to assume and assign the Assumed Executory Contracts to the Buyer pursuant to the terms of the Purchase

Agreement.<sup>3</sup>

2. Confidentiality Agreements and Access to Data Room

Any person or entity wishing to bid on the Property (each a “Potential Bidder”) must deliver (unless previously delivered) to Solyndra:

- (a) To the extent not already executed, a confidentiality agreement in such form acceptable to Solyndra (such form is available upon request to Solyndra) unless otherwise agreed by Solyndra in its discretion.

Solyndra will afford any Potential Bidder who satisfied the requirement set forth in section 2(a) herein such reasonable due diligence access or additional information as may be reasonably requested by the Potential Bidder that Solyndra, in its business judgment, determines to be reasonable and appropriate. Solyndra will coordinate all reasonable requests for additional information and due diligence access from such Potential Bidders. Solyndra shall not be obligated to furnish any due diligence information after the conclusion of the Auction. Neither Solyndra nor its advisors are responsible for, and will bear no liability with respect to, any information obtained by Potential Bidders in connection with due diligence.

Potential Bidders seeking information about the qualification process should contact the Debtors at: Imperial Capital, LLC, 55 2nd Street, Suite 1950, San Francisco, CA 94105, Attn: Eric Carlson and Monte Green. Solyndra proposes that a “Qualified Bidder” be a Potential Bidder that delivers the documents described in subsection (a) above, whose financial information and credit-quality support or enhancement demonstrate, in Solyndra’s sole discretion, the financial capability of the Potential Bidder to consummate the proposed transaction for the Property, and that Solyndra determines, in its sole discretion, is reasonably likely to submit a bona fide offer for the Property and be able to consummate such transaction if selected as the Successful Bidder (as defined below) within a time frame acceptable to Solyndra, and who submits a Qualified Bid as set forth below. As promptly as practicable after a Potential Bidder delivers the agreement required by subsection (a) above, after consultation with the Committee and with Argonaut Ventures I, L.L.C., as the Prepetition Tranche A Representative and the Prepetition Tranche E Agent and the U.S. Department of Energy, acting by and through the Secretary of Energy, as the Prepetition Tranche B/D Agent (together, the “Secured Lenders”), Solyndra shall determine, and shall notify the Potential Bidder in writing, whether the Potential Bidder is a Qualified Bidder.

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<sup>3</sup> The Property is also summarized in the *Motion for an Order: (I) Approving Asset Purchase Agreement and Authorizing the Sale of Real Property and Related Property to Seagate Technology LLC or a Higher and Better Bidder; (II) Authorizing the Sale of Property Free and Clear of All Liens, Claims, Encumbrances and Interests Pursuant to Sections 363(a), (f) and (m) of the Bankruptcy Code, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (IV) Granting Related Relief* filed concurrently herewith.

Qualified Bidders requesting information in connection with their due diligence should contact Solyndra at Imperial Capital, LLC, 55 2nd Street, Suite 1950, San Francisco, CA 94105, Attn: Eric Carlson and Monte Green, or Solyndra's counsel, Pachulski Stang Ziehl & Jones, LLP, 150 California Street, 15th Floor, San Francisco, CA 94111, Attn: Debra I. Grassgreen and Joshua M. Fried. Notwithstanding the foregoing or anything else in the Bid Procedures, the Buyer is hereby determined to be a Qualified Bidder for all purposes at the Auction.

3. Proposed Bid Protections for the Buyer

Recognizing: 1) the Buyer's expenditure of time, energy and resources in connection with the Purchase Agreement and the negotiation thereof and the transactions contemplated therein; and 2) in the absence of Solyndra's obligation to pay the Break-Up Fee and Expense Reimbursement, Buyer would not have entered into the Purchase Agreement, Solyndra has agreed to provide the Bid Protections to the Buyer, consisting of (i) the Break-Up Fee amount of \$1,805,510, and (ii) the Expense Reimbursement of up to \$500,000 on the terms and conditions as more fully set forth in the Purchase Agreement. In the event that the Property is sold to a Successful Bidder that is not the Buyer, Solyndra shall be obligated to pay the Buyer the amount of the Break-Up Fee and Expense Reimbursement in accordance with the terms of the Purchase Agreement.

4. Proposed Requirements for a Qualified Bid

In order to participate in the Auction, if any, Solyndra proposes that a Qualified Bidder must deliver to Solyndra a written offer (each, a "Written Offer"), which in order to be deemed a "Qualified Bid," must meet each of the requirements listed below:

- (a) State that the Qualified Bidder is prepared to enter into a legally binding purchase and sale agreement for the purchase of the Property on terms and conditions no less favorable to Solyndra than the terms and conditions contained in the Purchase Agreement, as determined by Solyndra in its reasonable business judgment, after consultation with the Committee and Secured Lenders;
- (b) Be accompanied by a clean and duly executed and binding Purchase Agreement or alternate purchase and sale agreement (a "Modified Agreement");
- (c) Be accompanied by a marked Modified Agreement reflecting any variations from the Purchase Agreement;

- (d) Be accompanied by a list of any executory contracts or unexpired leases that are to be assumed and/or assigned under such Modified Agreement.
- (e) Be willing to consummate and fund the proposed transaction on or prior to fifteen (15) days from the date of the order approving the Sale Motion (the "Closing Deadline"), unless otherwise agreed by Solyndra;
- (f) To the extent not previously provided, state that the Qualified Bidder is financially capable of consummating the transactions contemplated by the Purchase Agreement or Modified Agreement, and contain evidence satisfactory to Solyndra, in its discretion, that such Qualified Bidder is reasonably likely to consummate the transactions contemplated by the Purchase Agreement or Modified Agreement;
- (g) To Solyndra's satisfaction, fully disclose (i) the identity of each entity that will be bidding for the Property or otherwise participating in connection with such bid, and (ii) the terms of any such participation, and if an entity has been formed for the purpose of acquiring some, or all, of the Property, the parties that will bear liability for any breach by such entity;
- (h) State that the Written Offer is irrevocable until the closing of the transaction if such Qualified Bidder is designated as a Successful Bidder or a Backup Bidder (each as defined below);
- (i) Not request or entitle the Qualified Bidder to any transaction or break-up fee, expense reimbursement, or similar type of payment;
- (j) Is a higher and better offer than that contained in the Purchase Agreement with the Buyer, in Solyndra's business judgment and after consultation with the Committee and Secured Lenders;
- (k) Not contain any material due diligence or financing contingencies as determined by Solyndra in its reasonable discretion;
- (l) In Solyndra's discretion, provide evidence of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Purchase Agreement or Modified Agreement to Solyndra's satisfaction;

- (m) Include a good faith deposit (the “Good Faith Deposit”) in the form of a certified check, wire transfer or such other form as is acceptable to Solyndra, payable to the order of Solyndra in an amount equal to \$10,000,000; and
- (n) All documentation submitted in support of the Written Offer must be submitted both in hard copy and electronically.

The Purchase Agreement with the Buyer shall constitute a Qualified Bid.

Any Good Faith Deposit accompanying a Written Offer that Solyndra, in its business judgment and after consultation with the Committee and the Secured Lenders, determines not to be a Qualified Bid shall be returned promptly following such determination. Between the Bid Deadline (as defined below) and the Auction, Solyndra may negotiate or seek clarification of any Qualified Bid from a Qualified Bidder. Each Qualified Bidder shall provide to Solyndra any information reasonably required by such parties in connection with the evaluation of a Written Offer or Qualified Bid within one business day after such request is made. Without the consent of Solyndra, a Qualified Bidder may not amend, modify or withdraw its Qualified Bid, except for proposed amendments to increase the amount or otherwise improve the terms of the Qualified Bid, during the period that such Qualified Bid is required to remain irrevocable and binding.

5. Proposed Bid Deadline

Solyndra proposes that all Qualified Bids must be received prior to 5:00 p.m. (Eastern Time) on the proposed bid deadline that is no sooner than 45 days after entry of the Bid Procedures Order (the “Bid Deadline”), by Solyndra: to the attention of Imperial Capital, LLC, 55 2nd Street, Suite 1950, San Francisco, CA 94105, Attn: Eric Carlson and Monte Green; Debtors’ Counsel: Pachulski Stang Ziehl & Jones LLP, 150 California Street, 15<sup>th</sup> Floor, San Francisco, California 94111-4500, Attn: Debra I. Grassgreen, Esquire and Joshua M. Fried, Esquire; Fax: (415) 263-7010; (email: dgrassgreen@pszjlaw.com and jfried@pszjlaw.com); Counsel to AE DIP 2011, LLC, the DIP Lender, and Argonaut Ventures I, L.L.C., as the Prepetition Tranche A Representative and the Prepetition Tranche E Agent: Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, Attn: Michael A. Rosenthal (email: mrosenthal@gibsondunn.com) and Young Conaway Stargatt & Taylor, LLP, 1000 West Street, 17th Floor, Wilmington, DE 19899, Attn: Sean M. Beach, Esq. (email: sbeach@ycst.com); Counsel to the U.S. Department of Energy, acting by and through the Secretary of Energy, as the Prepetition Tranche B/D Agent, U.S. Department of Justice, Civil Division, 1100 L Street NW, Room 10030, Washington, D.C. 20530, Attn: Matthew J. Troy (email: matthew.troy@usdoj.gov); Counsel to the Committee: Blank Rome LLP,

1201 Market Street, Suite 800, Wilmington, DE 19801, Attn: Bonnie Glantz Fatell and David W. Carickhoff (email: fatell@blankrome.com and carickhoff@blankrome.com); and Office of the U.S. Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801, Attn: Jane M. Leamy (email: jane.m.leafy@usdoj.gov).

6. Determination of Qualified Bids

Solyndra proposes to, by no later than one (1) Business Day prior to the Auction, (i) determine, in its business judgment and after consultation with the Committee and the Secured Lenders, whether a Written Offer is a Qualified Bid, and (ii) notify each Qualified Bidder submitting a Written Offer whether that Written Offer is a Qualified Bid.

7. “As Is, Where Is”

Except as otherwise provided in the applicable agreement, the sale of any or all of the Property shall be on an “as is, where is” basis and without representations or warranties of any kind, nature or description by Solyndra, its agents or its estate except to the extent set forth in the applicable agreement of the Successful Bidder(s) as approved by the Bankruptcy Court. Except as otherwise provided in the applicable agreement, all of Solyndra’s right, title and interest in and to the Property subject thereto shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and there-against (collectively, the “Interests”) in accordance with sections 363 and 365 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the sale of the Property. Each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all desired due diligence regarding the Property prior to making its Qualified Bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Qualified Bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Property, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bid Procedures or, as to the Successful Bidder(s), the terms of the transaction(s) as set forth in the applicable agreement.

8. Auction

Solyndra proposes that in the event that two or more Qualified Bids are received, Solyndra will conduct an Auction of the Property. The Auction shall be held at the offices of Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17<sup>th</sup> Floor, Wilmington, DE 19899, at the date and time as set forth in the Bid Procedures Order (defined below), which

Solyndra requests be one day prior to the Sale Hearing, and continue thereafter until completed. Subject to the Purchase Agreement, Solyndra may adjourn the Auction at any time, continue the Auction from time to time and re-open the Auction at any time prior to the commencement of the Sale Hearing, as is appropriate in Solyndra's reasonable business judgment and after consultation with the Committee and the Secured Lenders.

Solyndra proposes that, except as otherwise permitted in Solyndra's discretion, only Solyndra, the Committee, the U.S. Trustee, the Secured Lenders, and Qualified Bidders and their respective professionals shall be entitled to attend the Auction. Only a Qualified Bidder that submitted a Qualified Bid is eligible to participate in the Auction.

The Auction shall be governed by the following proposed procedures:

- (a) Qualified Bidders shall appear in person at the Auction, or through a duly authorized representative.
- (b) Except with respect to subsections (e) and (f) below, Solyndra, in its discretion, may conduct the Auction in the manner that it determines, in its reasonable business judgment, will result in the Successful Bid(s) that will maximize the overall value of Solyndra's estate, and may adopt rules for the Auction at the Auction that, in Solyndra's reasonable business judgment, will better promote the goals of the Auction and that are not inconsistent with any of the provisions of the Bid Procedures Order (defined below) or the Purchase Agreement. All such rules will provide that: (i) the Auction procedures must be fair and open, and not intended to cause any participating Qualified Bidder to be disadvantaged in any material way as compared to any other participating Qualified Bidder, and (ii) the Committee, Secured Lenders and all participating Qualified Bidders shall be entitled to be present for all bidding with the understanding that the true identity of each bidder (i.e., the principals submitting each bid) shall be fully disclosed to all other participating Qualified Bidders and that all material terms of each Qualified Bid will be fully disclosed to all other bidders throughout the entire Auction. Each bid by a Qualified Bidder at the Auction, if not inconsistent with the provisions of the Bid Procedures, shall be deemed to constitute a Qualified Bid. Notwithstanding the foregoing, any overbid by the Buyer will be credited with the amount of the Bid Protections, for purposes of comparison with other bids (it being understood that, as provided in Section 8(e) of these Bid Procedures, if the Buyer is the Successful Bidder at the Auction, it shall not be entitled to payment of the Bid Protections). The Break-Up Fee

and Expense Reimbursement shall be paid to Buyer in accordance with the terms of Purchase Agreement and the Bid Procedures Order notwithstanding whether the Buyer chooses, in its sole and absolute discretion, not to bid at the Auction.

- (c) Solyndra will arrange for the actual bidding at the Auction to be transcribed.
- (d) Each Qualified Bidder participating in the Auction will be expected to confirm at the Auction that it has not engaged in any collusion regarding these Bid Procedures with any other Qualified Bidder, the Auction or any proposed transaction relating to the Property or a portion thereof.
- (e) At the Auction, the first bid for the Property other than the offer of Buyer set forth in the Purchase Agreement shall be considered only if it exceeds the purchase price set forth in the Purchase Agreement by a minimum of (i) the amount that would be owed if Solyndra would be required to pay the Bid Protections to the Buyer plus (ii) cash consideration in an amount not less than \$1,000,000. Subsequently, bidding will continue in minimum increments of at least \$500,000, with the specific increments for each round of bidding to be announced on the record at the Auction.
- (f) All Qualified Bidders shall have the right to, at any time, request that Solyndra announce, subject to any potential new Bids, the then current highest or best bid and, to the extent requested by any Qualified Bidder, use reasonable efforts to clarify any and all questions such Qualified Bidder may have regarding Solyndra's announcement of the then current highest or best bid.
- (g) In Solyndra's discretion, all Qualified Bidders shall have the right to submit additional bids and make additional modifications to the Purchase Agreement or Modified Agreement, as applicable, at the Auction, provided, however, that any such modifications to the Purchase Agreement or Modified Agreement, on an aggregate basis and viewed in whole, shall not be less favorable to Solyndra as determined by Solyndra in its business judgment and after consultation with the Committee and Secured Lenders.
- (h) Upon conclusion of the bidding, the Auction shall be closed, and Solyndra shall, as soon as practicable, identify and determine, in its business judgment, after consultation with the Committee and Secured Lenders, the highest and best Qualified Bid for the Property that would maximize the overall

value to Solyndra's estate, taking into account the Buyer's entitlement to the Bid Protections, if applicable (each a "Successful Bid" and the entity or entities submitting such Successful Bid, each a "Successful Bidder") and advise the Qualified Bidders of such determination, and require the Successful Bidder (other than Buyer) to deliver an executed Modified Agreement prior to commencement of the Sale Hearing and deposit (in addition to the Good Faith Deposit) the sum of 10% of the Successful Bid within two (2) Business Days after conclusion of the Auction (unless the Closing Date occurs prior to such time).

- (i) In addition, Solyndra will determine in its business judgment, after consultation with the Committee and Secured Lenders, which Qualified Bid, if any, is the next highest and best Qualified Bid and designate such Qualified Bid as a "Backup Bid" in the event the Successful Bidder fails to consummate the contemplated transaction. A Qualified Bidder that submitted a Qualified Bid that is designated a Backup Bid is a "Backup Bidder." Each Backup Bid shall remain open and binding until two business days after the closing of the transaction(s) by which all of the Property that was subject to such Backup Bid has been transferred to one or more Qualified Bidders pursuant to these Bid Procedures. Notwithstanding anything to the contrary, Buyer must consent to be designated a Backup Bidder.
- (j) Following the conclusion of the Auction, Solyndra may resume bidding on such procedures determined by Solyndra in its discretion for the sale of discrete assets (if any) not sold to the Successful Bidder.

9. Sole Qualified Bid

If the Purchase Agreement with the Buyer is the only Qualified Bid submitted by the Bid Deadline, Solyndra proposes to not hold any Auction and instead request at the Sale Hearing that the Court approve the Purchase Agreement with the Buyer.

10. Proposed Sale Hearing

Solyndra proposes that the Sale Hearing occur at the time to be scheduled by the Court and in accordance with the terms of the Purchase Agreement and Bid Procedures Order. After consultation with the Committee and Secured Lenders, but subject to the terms of the Purchase Agreement, Solyndra may adjourn or continue the Sale Hearing from time to time without further notice to parties in interest other than by announcement of

the adjournment in open court or on the Court's calendar on the date scheduled for the Sale Hearing or any adjourned date. At the Sale Hearing, Solyndra shall present the results of the Auction to the Bankruptcy Court and seek approval for the Successful Bid and the Backup Bid. Upon (i) entry of an order approving a Successful Bid other than that of Buyer, (ii) consummation of a Sale to a Successful Bidder other than the Buyer, and (iii) to the extent allowed, in accordance with the provisions of the Purchase Agreement, Solyndra shall pay to Buyer a sum equal to the Bid Protections without further court order.

Following the Sale Hearing approving the transaction with respect to the Property to the Successful Bidder, if such Successful Bidder fails to consummate an approved transaction for any reason, the appropriate Backup Bidder(s) shall be designated the Successful Bidder and Solyndra shall be authorized to effect such transaction without further order of the Court. The Successful Bidder and Backup Bidder (if any) should be represented by counsel at the Sale Hearing.

11. Consummation of the Purchase

(a) Closing Deadline

The Successful Bidder shall consummate the sale transaction contemplated by the Successful Bid (the "Purchase") on or before the deadline set forth in the Purchase Agreement or Modified Agreement, as applicable, requested to close the sale of the Property to either the Buyer or the Successful Bidder (the "Closing Deadline"). Subject to the terms of the Purchase Agreement or Modified Agreement, Solyndra may extend the Closing Deadline from time to time in its business judgment. If a Successful Bidder successfully consummates an approved transaction by the Closing Deadline, such Successful Bidder's Good Faith Deposit shall be applied to the purchase price in such transaction.

If the Successful Bidder either fails to consummate the Purchase on or before the Closing Deadline, breaches the Purchase Agreement or Modified Agreement or otherwise fails to perform, Solyndra may, in its business judgment, after consultation with the Committee and Secured Lenders, and without further order of the Bankruptcy Court, deem the Successful Bidder to be a "Defaulting Buyer," at which time the Successful Bid shall be deemed rejected.

Subject to Buyer's rights to the Bid Protections and pursuant to the Purchase Agreement, Solyndra shall be entitled to (i) retain the Good Faith Deposit as part of its damages resulting from the breach or failure to perform by the Defaulting Buyer, and (ii) seek all available damages from such Defaulting Buyer occurring as a result of such Defaulting Buyer's failure to perform.

(b) Back-Up Purchase

Upon a determination by Solyndra, after consultation with the Committee and Secured Lenders, that the Successful Bidder is a Defaulting Buyer, Solyndra will be authorized, but not required, to consummate a sale transaction with the Backup Bidder on the terms and conditions of the Backup Bid (the "Backup Purchase") without further order of the Bankruptcy Court.

If a Backup Bidder consummates a Backup Purchase, the Good Faith Deposit of such Backup Bidder will be applied to the purchase price in such transaction. On an as-needed basis, Solyndra, in the exercise of its business judgment and after consultation with the Committee and Secured Lenders, shall determine an alternative Closing Deadline for the Backup Purchase. In the event that Solyndra seeks to consummate a Backup Purchase with a Backup Bidder and such Backup Bidder fails to consummate the Backup Purchase on or before the alternative Closing Deadline, breaches the Purchase Agreement or Modified Agreement or otherwise fails to perform, Solyndra may, in its business judgment and after consultation with the Secured Lenders and the Committee, and without further order of the Bankruptcy Court, deem such Backup Bidder to be a Defaulting Buyer and pursue the same remedies as under these Bid Procedures.

12. Return of Good Faith Deposits

Good Faith Deposits of all Qualified Bidders shall be held in an interest-bearing escrow account. Except for the Successful Bidder and the Backup Bidder(s), Solyndra shall hold the Good Faith Deposits of all Qualified Bidders that submit Written Offers until three (3) business days after the Auction.

**Notice of Sale Hearing**

21. Solyndra requests that the Court approve the manner of notice of the Sale Motion, the Bid Procedures, the Auction, and the Sale Hearing, substantially in the form attached hereto as **Exhibit C** (the "Sale and Bid Procedures Notice"), which Solyndra will serve on the following parties:

- a. the Office of the United States Trustee;
- b. counsel to the Committee;

c. counsel to the Secured Lenders;

d. all parties known to be asserting a lien on any of the Property;

e. all entities known to have expressed an interest in acquiring any of the Property;

f. counsel to the Buyer; and

g. all other parties that had filed a notice of appearance and demand for service of papers in these bankruptcy cases under Bankruptcy Rule 9010(b) as of the date of entry of the Bid Procedures Order; (collectively, the “Sale and Bid Procedures Notice Parties”).

22. Additionally, Solyndra proposes to serve the Creditor Notice substantially in the form attached hereto as **Exhibit D** to all known creditors of the Debtors.

23. Solyndra proposes to serve the Sale and Bid Procedures Notice and the Creditor Notice within three (3) Business Days from the date of entry of an order granting the Bid Procedures Motion (the “Bid Procedures Order”), by first-class mail, postage prepaid, on the appropriate parties. Both the Sale and Bid Procedures Notice and the Creditor Notice will provide that any party that has not received a copy of the Sale Motion or the Bid Procedures Order that wishes to obtain a copy of such documents may make such a request, in writing, to Pachulski Stang Ziehl & Jones LLP, 150 California Street, 15<sup>th</sup> Floor, San Francisco, California 94111-4500 (Attn: Debra I. Grassgreen and Joshua M. Fried).

24. As to counter-parties to executory contracts and unexpired leases that may be assumed and assigned as part of a sale of the Property, at least fifteen days prior to the Sale Hearing, Solyndra proposes to serve the *Notice to Counterparties to Executory Contracts and*

*Unexpired Leases That May Be Assumed and Assigned* (the “Cure Notice”), substantially in the form attached hereto as **Exhibit E**.

### **Sale Hearing**

25. At the Sale Hearing, Solyndra will seek Bankruptcy Court approval of the Sale of the Property to the Successful Bidder, free and clear of all liens, claims and encumbrances pursuant to Bankruptcy Code section 363(b), with all liens, claims and encumbrances to attach to the proceeds of the Sale with the same validity and in the same order of priority as they attached to the Property prior to the Sale, including the assumption by Solyndra and assignment to the Successful Bidder of the Assumed Executory Contracts (as defined below) pursuant to Bankruptcy Code section 365. Solyndra will present additional evidence, as necessary, at the Sale Hearing and submit that the Sale is fair, reasonable and in the best interest of its estate.

### **Closing**

26. The closing on the Sale (the “Closing”) shall take place in accordance with terms of the Purchase Agreement, or in accordance with the terms of such other agreement approved by the Bankruptcy Court at the Sale Hearing.

### **Procedures for the Assumption and Assignment of Assumed Executory Contracts**

27. As noted above, Solyndra may seek to assume certain specified executory contracts and unexpired leases to be identified on Schedule D to the Purchase Agreement (the

“Assumed Executory Contracts”).<sup>4</sup> The Successful Bidder may remove any executory contracts or unexpired leases from the list of Assumed Executory Contracts up until the Closing.

28. The Cure Notice referenced above shall identify the amounts, if any, that Solyndra believes are owed to each counterparty to an Assumed Executory Contract in order to cure any defaults that exist under such contract (the “Cure Amounts”). If a contract or lease is assumed and assigned pursuant to this Court’s order approving same, then unless the counterparty to such contract or lease properly and timely files and serves an objection to the Cure Amounts contained in the Cure Notice, such counterparty shall receive at the time of the closing of the sale (or as soon as reasonably practicable thereafter), the Cure Amounts as set forth in the Cure Notice, if any, with payment to be made pursuant to the terms of the Purchase Agreement or such other agreement approved by the Bankruptcy Court at the Sale Hearing, as executed and delivered at closing. If an objection is filed by a counterparty to an Assumed Executory Contract, Solyndra proposes that such objection must set forth a specific default in any executory contract or unexpired lease and claim a specific monetary amount that differs from the amount, if any, specified by Solyndra in the Cure Notice.

29. If any counterparty objects for any reason to the assumption and assignment of an Assumed Executory Contract, Solyndra proposes that the counterparty must file the objection by no later than (i) 4:00 p.m. prevailing Eastern time at least five days before the date of the Sale Hearing, or (ii) the date otherwise specified in the Cure Notice (or,

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<sup>4</sup> The inclusion of any agreement in the list of Assumed Executory Contracts does not constitute an admission by Solyndra that such agreement actually constitutes an executory contract or unexpired lease under section 365 of the Bankruptcy Code, and Solyndra expressly reserves the right to challenge the status of any agreement included in the list of Assumed Executory Contracts up until the time of the Sale Hearing.

alternatively, the date set forth in the motion to assume such Assumed Executory Contract if such contract is to be assumed and assigned after the Sale Hearing); *provided, however*, that any counterparty may raise at the Sale Hearing an objection to the assumption and assignment of the Assumed Executory Contract solely with respect to the Successful Bidder's ability to provide adequate assurance of future performance under the Assumed Executory Contract.

30. The Successful Bidder shall be responsible for satisfying any requirements regarding adequate assurance of future performance that may be imposed under section 365(b) of the Bankruptcy Code in connection with the proposed assignment of any Assumed Executory Contract, as provided in the motion requesting Court approval of the Sale. Solyndra proposes that the Court make its determinations concerning adequate assurance of future performance under the Assumed Executory Contracts pursuant to section 365(b) of the Bankruptcy Code at the Sale Hearing. Cure Amounts disputed by any counterparty shall be resolved by the Court at the Sale Hearing.

31. Except to the extent otherwise provided in the Purchase Agreement with the Successful Bidder, the assignee of the Assumed Executory Contracts shall not be subject to any liability to the assigned contract counterparty or lessor that accrued or arose before the closing date of the sale of the Property and Solyndra shall be relieved of all liability accruing or arising thereafter pursuant to section 365(k) of the Bankruptcy Code.

**Approval of the Break-Up Fee, Expense  
Reimbursement and Bid Procedures is Appropriate**

32. The Break-Up Fee, the Expense Reimbursement, and the Bid Procedures described herein are reasonably calculated to encourage a buyer to submit a final bid within the

range of reasonably anticipated values. The Buyer will be the stalking horse bidder for competitive bids, perhaps leading to further competition and the establishment of a baseline against which higher or otherwise better offers can be measured.

33. As indicated above, Solyndra hereby requests that the Court approve the Bid Procedures, as is customary in similar circumstances, including (a) the Break-Up Fee; (b) the Expense Reimbursement; (c) the minimum initial overbid amount of \$1,000,000 plus the purchase price under the Purchase Agreement in respect of an offer for all or substantially all of the Property; (d) bidding increments of \$500,000 for all or substantially all of the Property after the minimum overbid amount; and (e) the other Bid Procedures summarized in this Bid Procedures Motion and annexed hereto as **Exhibit B**. Solyndra submits that cause exists to approve the Bid Protections and Bid Procedures, including the Break-Up Fee and Expense Reimbursement, because they are fair and reasonable under the circumstances and will encourage competitive bidding and the highest and best price for the Property.

34. Solyndra believes that the payment of the Break-Up Fee and the Expense Reimbursement under the terms of the Purchase Agreement and the establishment of the Bid Procedures are reasonable and necessary to induce a purchaser to enter into the transactions encompassed by the Purchase Agreement and thus to enable Solyndra to obtain the highest and best price possible for the Property.

35. To compensate the Buyer for serving as the stalking horse bidder whose bid will be subject to higher or better offers, Solyndra seeks approval of the Break-Up Fee and Expense Reimbursement in accordance with the terms of the Purchase Agreement. Solyndra and

the Buyer believe that the Break-Up Fee and Expense Reimbursement are reasonable, given the benefits to Solyndra's estate of having a "stalking horse" bidder by virtue of the definitive asset purchase agreement with the Buyer and the risk to the Buyer that a third-party offer may ultimately be accepted, and that approval of the Break-Up Fee and Expense Reimbursement under the terms of the Purchase Agreement are necessary to preserve and enhance the value of Solyndra's estate.

36. Bidding incentives encourage a potential purchaser to invest the requisite time, money and effort to negotiate with Solyndra and perform the necessary due diligence attendant to the acquisition of Solyndra's assets, despite the inherent risks and uncertainties of the chapter 11 process. Historically, bankruptcy courts have approved bidding incentives similar to the Break-Up Fee and the Expense Reimbursement, under the "business judgment rule," which proscribes judicial second-guessing of the actions of a corporation's board of directors taken in good faith and in the exercise of honest judgment. *See, e.g., In re 995 Fifth Ave. Assocs., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (bidding incentives may "be legitimately necessary to convince a white knight to enter the bidding by providing some form of compensation for the risks it is undertaking") (internal quotation marks and citation omitted).

37. The Third Circuit has established standards for determining the appropriateness of bidding incentives in the bankruptcy context. In *Calpine Corp. v. O'Brien Envtl. Energy, Inc.*, 181 F.3d 527 (3d Cir. 1999), the court held that even though bidding incentives are measured against a business judgment standard in nonbankruptcy transactions, the administrative expense provisions of Bankruptcy Code § 503(b) govern in the bankruptcy

context. Accordingly, to be approved, bidding incentives must provide some benefit to Solyndra's estate. *See id.* at 533.

38. The *O'Brien* court identified at least two instances in which bidding incentives may provide benefit to the estate. First, benefit may be found if "assurance of a break-up fee promoted more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited." *Id.* at 537. Second, where the availability of bidding incentives induces a bidder to research the value a debtor's assets and submit a bid that serves as a minimum or floor bid on which other bidders can rely, "the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth." *Id.*

39. Whether evaluated under the "business judgment rule" or the Third Circuit's "administrative expense" standard, the Break-Up Fee and Expense Reimbursement pass muster. The Purchase Agreement and Solyndra's agreement to pay the Break-Up Fee and Expense Reimbursement pursuant to the terms thereunder are the product of good faith, arm's-length negotiations between Solyndra and the Buyer. The Break-Up Fee and Expense Reimbursement are fair and reasonable in amount, and are reasonably intended to compensate for the risk to the Buyer of being used as a stalking horse bidder.

40. Further, the Break-Up Fee and Expense Reimbursement already have encouraged competitive bidding, in that the Buyer would not have entered into the Purchase Agreement without these provisions. The Break-Up Fee and Expense Reimbursement thus have "induc[ed] a bid that otherwise would not have been made and without which bidding would [be]

limited.” *O’Brien*, 181 F.3d at 537. Similarly, the Buyer’s offer provides a minimum bid on which other bidders can rely, thereby “increasing the likelihood that the price at which the [Property will be] sold will reflect [its] true worth.” *Id.*

41. Finally, the Bid Procedures are fair and reasonable procedures reasonably intended to encourage competitive bidding, and the Break-Up Fee and the Expense Reimbursement will permit Solyndra to insist that competing bids for the Property, made in accordance with the Bid Procedures, be materially higher or otherwise better than the Purchase Agreement (or competing agreement), which is a clear benefit to Solyndra’s estate.

42. Furthermore, the Break-Up Fee and Expense Reimbursement, which at maximum would total less than 2.6% of the \$90,275,500 cash amount of the Purchase Price under the Purchase Agreement, are within the spectrum of termination fees approved by bankruptcy courts in chapter 11 cases. *See e.g., In re Global Motorsport Group, Inc., et al.*, (Case No. 08-10192 (KJC) (Bankr. D. Del. February 14, 2008) (Court approved a break-up fee of approximately 4%, or \$500,000 in connection with sale); *In re Global Home Products*, Case No. 06-10340 (KG) (Bankr. D. Del. July 14, 2006) (Court approved a break-up fee of 3.3%, or \$700,000, in connection with sale); *In re Ameriserve*, Case No. 00-0358 (PJW) (Bankr. D. Del., September 27, 2000) (Court approved a break-up fee of 3.64%, or \$4,000,000, in connection with \$110,000,000 sale); *In re Montgomery Ward Holding Corp., et al.*, Case No. 97-1409 (PJW) (Bankr. D. Del., June 15, 1998) (Court approved termination fee of 2.7%, or \$3,000,000, in connection with \$110,000,000 sale of real estate assets); *In re Medlab, Inc.*, Case No. 97-1893 (PJW) (Bankr. D. Del. April 28, 1998) (Court approved termination fee of 3.12%, or \$250,000,

in connection with \$8,000,000 sale transaction); *In re Anchor Container Corp. et al.*, Case Nos. 96-1434 and 96-1516 (PJW) (Bankr. D. Del. Dec. 20, 1996) (Court approved termination fee of 2.43%, or \$8,000,000, in connection with \$327,900,000 sale of substantially all of debtors' assets); *In re FoxMeyer Corp. et al.*, Case No. 96-1329 (HSB) through 96-1334 (HSB) (Bankr. D. Del., Oct. 9, 1996) (Court approved termination fee of 7.47%, or \$6,500,000, in connection with \$87,000,000 sale of substantially all of debtors' assets); *In re Edison Bros. Stores. Inc. et al.*, Case No. 95-1354 (PJW) (Bankr. D. Del., Dec. 29, 1995) (Court approved termination fee of 3.5%, or \$600,000, in connection with \$17,000,000 sale of debtors' entertainment division). *In re NetEffect, Inc.*, Case No. 08-12008 (KJC) (Bankr. D. Del., Sept. 11, 2008) (Court approved break-up fee of 3%, or \$240,000.00 in connection with sale of debtor's assets for purchase price of \$8,000,000); *In re Champion Enterprises, et al.*, Case No. 09-14019 (KG) (Bankr. D. Del., Feb. 8, 2010) (Court approved break-up fee of less than credit bid or \$3,000,000.00 in connection with sale of debtor's assets for purchase price of approximately \$80,000,000); *In re Filene's Basement, Inc., et al.*, Case No. 09-11525 (MFW) (Bankr. D. Del., May 15, 2009) (Court approved break-up fee and expense reimbursement of 3.68%, or \$810,000 in connection with sale of debtor's assets for purchase price of \$22,000,000); *In re Western Nonwovens, Inc., et al.*, Case No. 08-11435 (PJW) (Bankr. D. Del., July 28, 2009) (Court approved break-up fee and expense reimbursement or \$250,000 in connection with sale of debtor's assets for purchase price of \$4,000,000 to \$6,500,000 purchase price); and *In re Point Blank Solutions, Inc., et al.*, Case No. 10-11255 (PJW) (Bankr. D. Del, Oct. 5, 2011) (Court approved break-up and expense

reimbursement of 3.75% or \$750,000 in connection with sale of debtor's assets for purchase price of \$20,000,000).

43. For the reasons set forth above, Solyndra respectfully requests approval of: (a) the proposed Bid Protections, including the Break-Up Fee and Expense Reimbursement; (b) the Bid Procedures for the conduct of overbidding, the Auction and selection of the Successful Bidder(s); (c) the Cure Procedures set forth herein for notice to counterparties under executory contracts and leases proposed to be assumed and assigned in connection with the proposed sale, and the determination and payment of Cure Amounts to those counterparties; (d) the scheduling of the Sale Hearing and other matters for which scheduling is requested herein; and (e) the related relief sought hereby.

#### **No Prior Request**

44. No prior request for the relief sought in this Bid Procedures Motion has been made to this or any other court.

#### **Notice**

45. Notice of this Bid Procedures Motion either has been or will be given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee; (b) counsel to the Committee; (c) counsel to the Secured Lenders; and (d) all parties that have filed notices of appearance and requests for notices in the Cases. Solyndra submits that, in light of the nature of the relief requested, no other or further notice need be given.

**WHEREFORE**, Solyndra respectfully requests that the Court enter an order, substantially in the form filed contemporaneously with this Bid Procedures Motion, granting the relief requested herein and such other and further relief as this Court deems appropriate.

Dated: August 22, 2012

PACHULSKI STANG ZIEHL & JONES LLP



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Richard M. Pachulski (CA Bar No. 90073)  
Debra I. Grassgreen (CA Bar No. 169978)  
Bruce Grohsgal (DE Bar No. 3583)  
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Counsel for the Debtors and  
Debtors in Possession

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)  
 )  
 ) (Jointly Administered)  
Debtors. )

Objection Deadline: September 10, 2012 at 4:00 p.m. (prevailing Eastern time)  
Hearing: September 24, 2012 at 11:30 a.m. (prevailing Eastern time)

**NOTICE OF HEARING ON MOTION OF SOLYNDRA LLC FOR AN ORDER  
(A) APPROVING PROCEDURES FOR SALE OF REAL PROPERTY AND  
RELATED PROPERTY; (B) SCHEDULING AUCTION AND HEARING TO  
CONSIDER APPROVAL OF SALE AND ASSUMPTION AND ASSIGNMENT  
OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES;  
(C) APPROVING FORMS OF NOTICE; AND (D) GRANTING RELATED RELIEF**

TO: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the Official Committee of Unsecured Creditors; (c) counsel to the Prepetition Tranche A Term Loan Facility Representative; (d) counsel to the Prepetition Tranche B/D Agent; (e) counsel to the Prepetition Tranche E Agent; (f) the DIP Lender; (g) counsel to U.S. Bank National Association as Collateral Agent; and (h) those persons who have requested notice pursuant to Bankruptcy Rule 2002.

On August 22, 2012, the captioned debtors and debtors in possession (collectively, the “Debtors” or “Solyndra”) filed the attached *Motion of Solyndra for the Entry of an Order (A) Approving Procedures for Sale of Real Property and Related Property; (B) Scheduling Auction and Hearing to Consider Approval of Sale and Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (C) Approving Forms of Notice; and (D) Granting Related Relief* (the “Motion”), with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801 (the “Bankruptcy Court”).

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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.

OBJECTIONS AND RESPONSES TO THE MOTION, IF ANY, MUST BE IN WRITING AND FILED WITH THE BANKRUPTCY COURT NO LATER THAN **4:00 P.M., PREVAILING EASTERN TIME, ON SEPTEMBER 10, 2012.** Objections or other responses to the Motion, if any, must also be served so that they are received not later than **September 10, 2012, 4:00 p.m.** by: (i) counsel to the Debtors, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Courier 19801), Attn: Bruce Grohsgal, Esq.; (ii) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 N. King Street, Suite 2207, Lock Box 35, Wilmington, Delaware 19801, Attn: Jane M. Leamy, Esq.; and (iii) counsel to the Official Committee of Unsecured Creditors, Blank Rome LLP, 1201 N. Market Street, Suite 800, Wilmington, DE 19801, Attn: Bonnie Glantz Fatell, Esq.

**A HEARING ON THE MOTION WILL BE HELD BEFORE THE HONORABLE MARY F. WALRATH AT THE UNITED STATES BANKRUPTCY COURT, 824 MARKET STREET, FIFTH FLOOR, COURTROOM #4, WILMINGTON, DELAWARE 19801 ON SEPTEMBER 24, 2012 AT 11:30 A.M. PREVAILING EASTERN TIME.**

**IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE,  
THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT  
FURTHER NOTICE OR HEARING.**

Dated: August 22, 2012

PACHULSKI STANG ZIEHL & JONES LLP



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Richard M. Pachulski (CA Bar No. 90073)  
Debra I. Grassgreen (CA Bar No. 169978)  
Bruce Grohsgal (DE Bar No. 3583)  
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Counsel for the Debtors and Debtors in Possession

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**EXHIBIT A**

**Purchase Agreement**

**AGREEMENT OF SALE AND PURCHASE**

**BETWEEN**

**SOLYNDRA, LLC,**

**a Delaware limited liability company,**

**as "Seller"**

**and**

**SEAGATE TECHNOLOGY LLC,**

**a Delaware limited liability company,**

**as "Buyer"**

**with Escrow Instructions for**

**First American Title Company**

**as "Escrow Agent"**

**TABLE OF CONTENTS**

	<u>Page</u>
Article I CERTAIN DEFINITIONS.....	1
Section 1.1    Definitions.....	1
Section 1.2    Rules of Construction .....	6
Article II AGREEMENT OF SALE AND PURCHASE; PURCHASE PRICE .....	7
Section 2.1    Agreement of Sale and Purchase .....	7
Section 2.2    Purchase Price.....	7
Section 2.3    Deposit .....	7
Section 2.4    Independent Consideration .....	8
Section 2.5    Indivisible Economic Package.....	8
Section 2.6    Reserved .....	8
Section 2.7    Bankruptcy Procedures .....	8
Article III BUYER'S DUE DILIGENCE/CONDITION OF THE PROPERTY.....	12
Section 3.1    Buyer's Inspections and Due Diligence .....	12
Section 3.2    Delivery Period .....	12
Section 3.3    Site Visits.....	13
Section 3.4    Buyer's Due Diligence Indemnity.....	13
Section 3.5    Reserved.....	14
Section 3.6    Due Diligence Period.....	14
Article IV TITLE AND SURVEY .....	14
Section 4.1    Title to Real Property.....	14
Section 4.2    Certain Exceptions to Title .....	14
Section 4.3    Title Insurance .....	15
Article V TERMINATION, REMEDIES AND DEPOSIT INSTRUCTIONS.....	16
Section 5.1    Permitted Termination; Seller Default.....	16
Section 5.2    BUYER DEFAULT; LIQUIDATED DAMAGES .....	17

**TABLE OF CONTENTS**  
(continued)

	<u>Page</u>
Section 5.3      Deposit Instructions .....	18
Section 5.4      Designation of Reporting Person .....	18
Article VI REPRESENTATIONS AND WARRANTIES OF SELLER .....	19
Section 6.1      Representations and Warranties of Seller .....	19
Section 6.2      Limited Liability .....	21
Section 6.3      Seller's Knowledge .....	21
Section 6.4      Liability of Representations and Warranties.....	21
Article VII REPRESENTATIONS AND WARRANTIES OF BUYER .....	21
Section 7.1      Buyer's Representations and Warranties .....	21
Section 7.2      Brokerage .....	23
Section 7.3      Buyer's Independent Investigation .....	23
Section 7.4      Buyer's Release of Seller .....	26
Section 7.5      Discharge .....	27
Article VIII MAINTENANCE OF PROPERTY.....	27
Section 8.1      Reserved .....	27
Section 8.2      Reserved.....	27
Section 8.3      Reserved.....	27
Section 8.4      Certain Interim Operating Covenants; Building Systems.....	27
Article IX CLOSING AND CONDITIONS .....	28
Section 9.1      Escrow Instructions.....	28
Section 9.2      Closing; Conditions .....	28
Section 9.3      Seller's Closing Documents and Other Items .....	29
Section 9.4      Buyer's Closing Documents and Other Items .....	30
Section 9.5      Prorations and Closing Costs .....	30
Section 9.6      Brokers.....	32

**TABLE OF CONTENTS**  
(continued)

	<u>Page</u>
Article X MISCELLANEOUS .....	32
Section 10.1    Amendment and Modification .....	32
Section 10.2    Risk of Loss and Insurance Proceeds. ....	32
Section 10.3    Notices .....	34
Section 10.4    Assignment .....	35
Section 10.5    Governing Law and Consent to Exclusive Jurisdiction of Bankruptcy Court.....	35
Section 10.6    Counterparts.....	35
Section 10.7    Entire Agreement.....	35
Section 10.8    Severability .....	36
Section 10.9    Attorney Fees.....	36
Section 10.10   Payment of Fees and Expenses.....	36
Section 10.11   Reserved.....	36
Section 10.12   No Joint Venture .....	36
Section 10.13   Reserved.....	36
Section 10.14   Limited Liability .....	36
Section 10.15   Time of Essence .....	36
Section 10.16   No Waiver.....	36
Section 10.17   Not an Offer .....	36
Section 10.18   No Third Party Beneficiaries .....	37

## **EXHIBITS AND SCHEDULES**

<b>Exhibit A</b>	<b>Description of Land</b>
<b>Exhibit B</b>	<b>Form of Sale Procedures Order</b>
<b>Exhibit C</b>	<b>Form of Approval Order</b>
<b>Exhibit D</b>	<b>List of Contracts</b>
<b>Exhibit E</b>	<b>Form of Deed</b>
<b>Exhibit F</b>	<b>Form of Bill of Sale</b>
<b>Exhibit G</b>	<b>[Reserved]</b>
<b>Exhibit H</b>	<b>Form of Assignment and Assumption of Contracts</b>
<b>Exhibit I</b>	<b>[Reserved]</b>
<b>Exhibit J</b>	<b>Description of Existing Surveys</b>
<b>Schedule 1</b>	<b>Certain Fixtures</b>
<b>Schedule 2</b>	<b>Personal Property</b>

## AGREEMENT OF SALE AND PURCHASE

THIS AGREEMENT OF SALE AND PURCHASE (this "Agreement"), dated and effective for all purposes as of August 16, 2012 ("Effective Date"), is between SOLYNDRA, LLC, a Delaware limited liability company, as debtor and debtor-in-possession (referred to herein, collectively, as "Seller"), and SEAGATE TECHNOLOGY LLC, a Delaware limited liability company ("Buyer").

### RECITALS

WHEREAS, Seller is the owner of the Land, the Improvements, and the Fixtures (each as defined below).

WHEREAS, on September 6, 2011, the Seller filed voluntary petitions for relief under chapter 11 of Title 11, United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"); jointly administered under Case No. 11-12779-MFW ("Bankruptcy Case").

WHEREAS, Buyer desires to purchase and Seller is willing to sell the Property (as defined below) on the terms and conditions hereinafter documented.

### ARTICLE I

#### CERTAIN DEFINITIONS

**Section 1.1 Definitions.** The parties hereby agree that the following terms shall have the meanings hereinafter set forth, such definitions to be applicable equally to the singular and plural forms, and to the masculine and feminine forms, of such terms:

"Additional Deposit" shall have the meaning ascribed in Section 2.3.

"Affiliate" shall mean any person or entity that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with Buyer or Seller, as the case may be. For the purposes of this definition, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have the meanings correlative to the foregoing.

"Agreement" shall mean this Agreement of Sale and Purchase, as the same may be amended, modified, or supplemented from time to time in writing by the parties hereto

"Approval Order" shall have the meaning ascribed in Section 2.7(a)

"Assignment and Assumption of Contracts" shall have the meaning ascribed in Section 9.3(d).

"Auction" shall have the meaning ascribed in Section 2.7(d)(iii)

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"Assignment and Assumption of Contracts" shall have the meaning ascribed in Section 9.3(d).

"Auction" shall have the meaning ascribed in Section 2.7(d)(iii).

**“Bankruptcy Case”** shall have the meaning ascribed in the Recitals hereof.

**“Bankruptcy Court”** shall have the meaning ascribed in the Recitals hereof.

**“Bill of Sale”** shall have the meaning ascribed in Section 9.3(b).

**“Break-Up Fee”** shall have the meaning ascribed in Section 2.7(d)(i).

**“Business Day”** shall mean any day other than (a) a Saturday, Sunday or a public holiday in the State of California or (b) a day on which state, federal or municipal offices are closed for the conduct of business. If the time period for the performance of any act called for under this Agreement expires on a day other than a Business Day, said act may be performed on the next succeeding Business Day.

**“Close Associate”** is a person who is widely and publicly known to maintain an unusually close relationship with a Senior Foreign Political Figure, and includes a Person who is in a position to conduct substantial United States and non-United States financial transactions on behalf of the Senior Foreign Political Figure.

**“Closing”** shall have the meaning ascribed in Section 9.2.

**“Closing Date”** shall mean the date on which the Closing shall occur as determined in accordance with Section 2.7 hereof, the Sale Motion and the Approval Order.

**“Closing Statement”** shall have the meaning ascribed in Section 9.5(a).

**“Closure Activities”** shall mean those certain activities undertaken by Seller from time-to-time to address requirements of Environmental Law applicable to Seller’s building closure activities on or about the Property.

**“Competing Bid”** shall have the meaning ascribed in Section 2.7(d)(i).

**“Contracts”** shall mean the contracts and other agreements described in Exhibit D and all other contracts entered into by Seller after the Effective Date with respect to the Property in accordance with Section 8.4.

**“Cure Amounts”** shall have the meaning ascribed in Section 2.7(b)(ii).

**“Deed”** shall have the meaning ascribed in Section 9.3(a).

**“Deposit”** shall have the meaning ascribed in Section 2.3.

**“Due Diligence”** shall mean the review contemplated by Section 3.1 and related provisions of this Agreement.

**“Due Diligence Items”** shall mean those items, documents and deliveries contemplated in Section 3.2(a).

**"Due Diligence Period"** shall mean the time period contemplated by Section 3.1 of this Agreement.

**"Effective Date"** shall have the meaning ascribed in the first paragraph of this Agreement.

**"Environmental Laws"** means all federal, state and local environmental laws, rules, statutes, directives, binding written interpretations, binding written policies, ordinances and regulations issued by any Governmental Entity and in effect as of the date of this Agreement with respect to or which otherwise pertain to or affect the Real Property or the Improvements, or any portion thereof, the use, ownership, occupancy or operation of the Real Property or the Improvements, or any portion thereof, or Buyer, and as the same have been amended, modified or supplemented from time to time prior to the date of this Agreement, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), the Hazardous Substances Transportation Act (49 U.S.C. § 1802 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Solid Waste Disposal Act (42 U.S.C. § 6901 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11001 et seq.), the Radon and Indoor Air Quality Research Act (42 U.S.C. § 7401 note, et seq.), the Superfund Amendment Reauthorization Act of 1986 (42 U.S.C. § 9601 et seq.), comparable state and local laws, and any and all rules and regulations which have become effective prior to the date of this Agreement under any and all of the aforementioned laws.

**"Escrow Agent"** shall mean First American Title Company.

**"Expense Reimbursement"** shall have the meaning ascribed in Section 2.7(d)(i).

**"Fixtures"** shall mean the fixtures which are located at and affixed to any of the Improvements as of the Closing Date, which shall include, without limitation, those certain fixtures set forth on Schedule 1 attached hereto (as the same may be updated from time-to-time in writing during the Due Diligence Period).

**"Governmental Entity"** means the various governmental and quasi- governmental bodies or agencies having jurisdiction over Seller, the Real Property or any portion thereof.

**"Hazardous Materials"** means any pollutants, contaminants, hazardous or toxic substances, materials or wastes (including petroleum, petroleum by-products, radon, asbestos and asbestos containing materials, polychlorinated biphenyls ("PCBs"), PCB-containing equipment, radioactive elements, infectious agents, and urea formaldehyde), as such terms are used in any Environmental Laws (excluding solvents, cleaning fluids and other lawful substances used in the ordinary operation and maintenance of the Real Property in compliance with Environmental Laws, to the extent in closed containers).

**"Immediate Family Member"** includes the parents, siblings, spouse, children and in-laws of a Senior Foreign Political Figure.

**"Improvements"** shall mean the buildings, improvements, and structures located on the Land which consist of a partial two (2) story building and surface parking.

**"Independent Consideration"** shall have the meaning ascribed in Section 2.4.

**"Initial Deposit"** shall have the meaning ascribed in Section 2.3.

**"Land"** shall mean that certain parcel of land and appurtenances thereto commonly known as 47488 Kato Road, in the City of Fremont, County of Alameda, consisting of approximately 30.01 acres (APN 519-1010-104-01) and more particularly described on Exhibit A including Seller's right, title and interest in and to all rights-of-way, open or proposed streets, alleys, easements, strips or gores of land adjacent thereto.

**"Licensee Parties"** shall mean those authorized agents, contractors, consultants and representatives of Buyer who shall inspect, investigate, test or evaluate the Property on behalf of Buyer in accordance with this Agreement.

**"Licenses and Permits"** shall mean, collectively, to the extent assignable, all licenses, permits approvals, certificates of occupancy, dedications, subdivision maps and entitlements now or hereafter issued, approved or granted by any Governmental Entity in connection with the Real Property, together with all renewals and modifications thereof.

**"Liens"** shall have the meaning ascribed in Section 4.2.

**"OFAC"** means the U.S. Department of the Treasury's Office of Foreign Assets Control.

**"OFAC List"** is any list of prohibited countries, individuals, organizations and entities that is administered or maintained by OFAC, including: (i) Section 1(b), (c) or (d) of Executive Order No. 13224 (September 23, 2001) issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), any related enabling legislation or any other similar executive orders, (ii) the List of Specially Designated Nationals and Blocked Persons (the "SDN List") maintained by OFAC, and/or on any other similar list ("Other Lists") maintained by OFAC pursuant to any authorizing statute, executive order or regulation, or (iii) a "Designated National" as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515.

**"Order Entry Date"** shall have the meaning ascribed in Section 2.7 hereof.

**"Other List"** shall have the meaning given to such term in the definition of "OFAC List."

**"Permitted Exceptions"** shall mean and include all of the following: applicable zoning and building ordinances and land use regulations, such state of facts as would be disclosed by a physical inspection of the Property, the lien of taxes and assessments not yet due and payable (it being agreed by Buyer and Seller that if any tax or assessment is levied or assessed with respect to the Property after the date hereof and the owner of the Property has the election to pay such tax or assessment either immediately or under a payment plan with interest, Seller may elect to pay under a payment plan, which election and the terms thereof shall be binding on Buyer, but

only if made and notice thereof is given to Buyer at least five (5) business days prior to the expiration of the Due Diligence Period, and otherwise, only with the consent of Buyer not to be unreasonably withheld), any exclusions from coverage set forth in the jacket of any Owner's Policy of Title Insurance or any standard printed exceptions, any exceptions caused by Buyer, its agents, representatives or employees, such other exceptions as the Title Company shall commit to insure over, without any additional cost to Buyer, whether such insurance is made available in consideration of payment, bonding, indemnity of Seller or otherwise but only if notice of other exceptions to be insured over is given to Buyer at least five (5) business days prior to the expiration of the Due Diligence Period, and otherwise, only with the consent of Buyer not to be unreasonably withheld), and any matters deemed to constitute Permitted Exceptions under Section 4.2 hereof.

**"Person"** means any individual, partnership, corporation, limited liability company, limited liability partnership, trust or other entity.

**"Personal Property"** shall mean all of the right, title, and interest of Seller in and to the tangible personal property located on the Property consisting of all hardwood furniture (i.e., conference room tables and chairs), in-place cubicles or workstations and chairs, all wall-mounted flat-screen monitors, all lobby furnishings and all outdoor patio furniture, which is located at and used solely in connection with any of the Real Property as of the Closing Date, as more specifically set forth on Schedule 2 attached hereto (as the same may be updated from time-to-time in writing during the Due Diligence Period, including without limitation with respect to the assignment of the value of such Personal Property as is contemplated to be established for the purpose of implementation of Section 9.2 hereof, and to the extent no such value is assigned to any particular item of Personal Property prior to the expiration of the Due Diligence Period, such value with respect thereto shall be deemed zero). Personal Property shall not include (i) any appraisals or other economic evaluations of, or projections with respect to, all or any portion of the Property, including, without limitation, 2011 budgets, prepared by or on behalf of Seller or any affiliate of Seller and, (ii) any documents, materials or information which are subject to attorney/client, work product or similar privilege, which constitute attorney communications with respect to the purchase of the Property by Seller, or which are subject to a confidentiality agreement.

**"Post Closure Report"** shall mean that certain report prepared by or on behalf of Seller in connection with the Closure Activities and submitted to the City of Fremont.

**"Property"** shall mean the Real Property, the Personal Property, the Contracts, and to the extent transferable, all of Seller's right, title and interest in and to all tangible and intangible assets of any nature relating solely to the Property, specifically excluding options, warrants, stock, stock purchase rights and agreements, other securities and like items, but including without limitation, (a) all warranties upon the Improvements, the Fixtures (including, without limitation, the Building Systems) or the Personal Property, (b) rights to any plans, specifications, engineering studies, reports, drawings, and prints relating to the construction, reconstruction, modification, and alteration of Improvements, (c) all claims and causes of action arising out of or in connection with the Property from and after the Closing Date, and (d) the Licenses and Permits.

**"Purchase Price"** shall have the meaning ascribed in Section 2.2.

**"Real Property"** shall mean the Land, the Improvements, and the Fixtures.

**"Sale Motion"** shall have the meaning ascribed in Section 2.7(a).

**"Sale Procedures Motion"** shall have the meaning ascribed in Section 2.7(a).

**"Sale Procedures Order"** shall have the meaning ascribed in Section 2.7(a).

**"Senior Foreign Political Figure"** means a senior official of a major non-United States political party or a senior executive of a government-owned corporation not organized within the United States. In addition, a "Senior Foreign Political Figure" includes any corporation, business or other entity that has been formed by or for the benefit of a Senior Foreign Political Figure.

**"SRO"** means a self-regulatory organization.

**"Survey"** or **"Surveys"** shall mean, individually, or collectively, those certain existing ALTA surveys of the Land and Improvements in Seller's possession and more particularly described on Exhibit J attached hereto.

**"Title Policy"** shall have the meaning ascribed in Section 4.3.

**"Title Commitment"** shall have the meaning ascribed in Section 4.1.

**"Title Company"** shall mean First American Title Company, who is also the Escrow Agent.

**"Title Documents"** shall have the meaning ascribed in Section 4.1.

**"Title Objections"** shall have the meaning ascribed in Section 4.2.

**"Title Policy"** shall have the meaning ascribed in Section 4.3.

**Section 1.2 Rules of Construction.** Article and section captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement. All references to "Article" or "Sections" without reference to a document other than this Agreement, are intended to designate articles and sections of this Agreement, and the words "herein," "hereof," "hereunder," and other words of similar import refer to this Agreement as a whole and not to any particular article or section, unless specifically designated otherwise. The use of the term "including" shall mean in all cases "including but not limited to," unless specifically designated otherwise. No rules of construction against the drafter of this Agreement shall apply in any interpretation or enforcement of this Agreement, any documents or certificates executed pursuant hereto, or any provisions of any of the foregoing.

## ARTICLE II

### AGREEMENT OF SALE AND PURCHASE; PURCHASE PRICE

**Section 2.1 Agreement of Sale and Purchase.** Subject to the terms and conditions herein, Seller agrees to sell, transfer, assign and convey to Buyer, and Buyer agrees to purchase, accept and assume, subject to the terms and conditions stated herein, all of Seller's right, title and interest in and to the Property.

**Section 2.2 Purchase Price.** Buyer shall pay Seller the purchase price of NINETY MILLION TWO HUNDRED SEVENTY FIVE THOUSAND and NO/100 Dollars (\$90,275,500.00) ("Purchase Price") in immediately available funds at Closing. The Purchase Price and such other funds as may be necessary to pay Buyer's expenses hereunder, subject to closing adjustments, shall be deposited with the Escrow Agent on or before the Closing Date in accordance with this Agreement and paid to Seller upon satisfaction of all conditions precedent to the Closing as described herein.

**Section 2.3 Deposit.** (a) Within three (3) Business Day after this Agreement is executed and delivered by Buyer and Seller, Buyer shall deposit via wire transfer the sum of FIVE MILLION AND NO/100 Dollars (\$5,000,000.00) in immediately available funds as a deposit (the "Initial Deposit") with Escrow Agent whose address is as indicated in Section 10.3. Buyer shall deposit via wire transfer an additional FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00) (the "Additional Deposit"; the Initial Deposit and the Additional Deposit, collectively, the "Deposit") in immediately available funds with Escrow Agent by 3:00 p.m. Pacific Time on the last day of the Due Diligence Period.

(b) Unless Buyer has timely delivered a Termination Notice to Seller in accordance with Section 3.6, failure of Buyer to deposit the Additional Deposit as and when required by this Agreement shall constitute a default by Buyer, and Seller shall, if Buyer is given notice thereof, and after delivery of such notice, Buyer fails to deposit the Additional Deposit within two (2) business days thereafter as otherwise required hereunder, be entitled to terminate this Agreement and retain the Initial Deposit as liquidated damages.

(c) The Deposit shall serve as liquidated damages for Buyer's default hereunder as set forth in Section 5.2 hereof after the expiration of the Due Diligence Period, and shall be refunded or returned to Buyer as provided in Sections 3.6, 5.1, and 10.2 or as otherwise expressly provided herein, and, if and only if the Approval Order has been fully and finally entered, without opportunity for timely appeal (and if not then so entered, within two (2) business days after the full and final entry of the Approval Order, without opportunity for timely appeal), shall be and shall be held and delivered by Escrow Agent in accordance with the provisions of this Agreement. Interest earned on the Deposit shall be considered part of the Deposit, and shall be deemed to have been earned by and constitute income of, the person entitled to such Deposit. Except as otherwise expressly set forth herein, the Deposit (including all interest accrued thereon in accordance herewith) shall be applied against the Purchase Price on the Closing Date.

**Section 2.4 Independent Consideration.** Contemporaneously with the execution and delivery of this Agreement, Buyer has paid to Seller as further consideration for this Agreement, in cash, the sum of One Hundred Dollars (\$100.00) (the "Independent Consideration"), in addition to the Initial Deposit, the Additional Deposit (if applicable) and the Purchase Price and independent of any other consideration provided hereunder, which Independent Consideration is fully earned by Seller and is non-refundable under any circumstances.

**Section 2.5 Indivisible Economic Package.** Buyer has no right to purchase, and Seller has no obligation to sell, less than all of the Property, it being the express agreement and understanding of Buyer and Seller that, as a material inducement to Seller and Buyer to enter into this Agreement, Buyer has agreed to purchase, and Seller has agreed to sell, all of the Property, subject to and in accordance with the terms and conditions hereof.

**Section 2.6 Reserved.**

**Section 2.7 Bankruptcy Procedures.** Buyer acknowledges the Bankruptcy Case, that Seller is a debtor-in-possession, and that Seller cannot enter into a binding sale contract with respect to the Property without Bankruptcy Court approval. In order to meet the Bankruptcy Court's requirements, Seller will conduct the sale of the Property in accordance with this Section 2.7, the Sale Procedures Order and the Approval Order (each as defined below). All of which shall be subject to the approval of Buyer and Seller. As more particularly provided in this Section 2.7, and the Sale Procedures Order and the Approval Order, Seller shall seek certain "stalking horse" protections for Buyer in consideration of Buyer's participation in the sale process described herein following the expiration of the Due Diligence Period. Notwithstanding anything to the contrary elsewhere in this Agreement, the transactions contemplated in this Agreement are subject in each case to the provisions of this Section 2.7, the Sale Motion and the Approval Order.

(a) Approval Order. As soon as practicable after the Effective Date, and no later than five (5) Business Days thereafter, provided the Deposit has been deposited into Escrow, Seller shall file a motion (the "Sale Motion") with the Bankruptcy Court seeking entry of an order substantially in the form attached hereto as Exhibit C, or as may otherwise be approved by Seller and Buyer in their reasonable discretion (the "Approval Order") and a motion (the "Sale Procedures Motion") seeking approval of the Break-Up Fee, Expense Reimbursement, and sale and bidding procedures with respect to Property, substantially in accordance with the proposed order attached hereto as Exhibit B, or as may otherwise be approved by Seller and Buyer in their reasonable discretion (the "Sale Procedures Order") as set forth below. Subject to the scheduling of the Bankruptcy Court, the Sale Procedures Motion shall be made returnable within 28 days from the date it is filed and objections to the Sale Procedures Motion shall be due no later than 14 days prior to the scheduled return date, provided, however, that if the Due Diligence Period has not expired and Buyer has not approved of the matters described in Article III with respect to the Due Diligence 5 days prior to such return date, then the Sale Procedures Motion shall be adjourned to the next possible date it may be heard by the Bankruptcy Court after the earlier of the expiration of the Due Diligence Period or the approval by Buyer of the matters described in Article III with respect to the Due Diligence. The Debtors shall exercise reasonable efforts to promptly schedule a hearing for approval of the Sale Procedures Motion. The hearing to consider approval of the Sale Motion

shall take place in accordance with the procedures and timetable set forth in the Sale Procedures Order.

The Closing is contingent upon, *inter alia*, entry of the final Approval Order substantially in the form attached hereto as Exhibit C by the Court. Buyer agrees to promptly deliver to Seller or the Court such information regarding Buyer and its financial wherewithal as may be requested or required in connection with the Sale Motion, any sale hearing held in connection therewith and Seller's efforts to obtain the Approval Order. For purposes of this Agreement, the Approval Order will become and be deemed final if and only if it is entered by the Court (with the date of such entry being referred to as the "Order Entry Date") and such Approval Order: (1) is not thereafter timely appealed, or (2) it is thereafter timely appealed but the appellate court with proper jurisdiction affirms the Approval Order and no subsequent timely appeal is taken. In the event the entry of the Approval Order shall be appealed, each party shall use their respective commercially reasonable efforts to defend against such appeal. In the event that an appeal is taken, or a stay pending appeal is requested from the Approval Order, Seller shall promptly notify Buyer of such appeal or stay request. Buyer acknowledges that electronic copies of all such notices of appeal or orders of stay are available in the public record through the PACER service (<http://www.pacer.gov>). Solely as a courtesy to Buyer, Seller shall promptly provide Buyer a copy of each relevant notice of appeal or order of stay and any written notice of any motion or application filed in connection with any appeal thereof; provided, however, that any failure by Seller to deliver such copies, notices, orders, motions, applications or similar documents shall not constitute a default of Seller hereunder

Subject to potential overbids as provided in the Sale Procedures Order and the Approval Order, Seller shall use its commercially reasonable efforts to cause the Court to enter the Approval Order. Seller does not warrant or guaranty that any of the provisions of this Section 2.7, the Sale Motion or the Approval Order will be approved by the Bankruptcy Court or that the Approval Order will be entered at all Buyer agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining entry of the Approval Order, including, without limitation, furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Buyer under this Agreement and demonstrating that Buyer is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code. The terms of the Approval Order shall control over any conflicting terms in the Sale Motion or this Agreement. If for any reason the Sale Motion is denied by the Court or the Approval Order is not entered by the Court or does not otherwise become final for any reason (including an overbid accepted by Seller), either Buyer or Seller may terminate this Agreement and Buyer's sole recourse and remedy is to obtain a return of the Deposit based upon the failure of the relevant condition precedent set forth in Section 9.2 below, in which event, and notwithstanding anything else contained in this Agreement to the contrary, neither party shall have any further liability or obligation to the other except as expressly provided herein to survive the consummation or earlier termination of this Agreement.

(b) Assumption of Contracts

(i) On the terms and subject to the conditions set forth in the Approval Order, on the Closing Date Seller will in accordance with Section 365 of the Bankruptcy Code

undertake commercially reasonable efforts to (ii) assume the Contracts listed on Exhibit D attached hereto and incorporated herein by this reference and (iii) assign them to the Buyer for Buyer to perform (and indemnify and hold Seller harmless against all liabilities and obligations arising thereunder following the Closing); provided, however, that prior to the expiration of the Due Diligence Period, Buyer shall notify Seller in writing of any Contracts that it does not wish to assume, and no such identified contract shall be assumed (or deemed assumed) by Buyer and provided further that Seller's inability to assume and assign any Contract to Seller shall not constitute (nor be deemed to constitute) a failure of a condition precedent for the benefit of Buyer pursuant to Section 9.2 below nor shall it give rise to any termination right in favor of Buyer hereunder. Buyer may request that any third party to an assumed Contract deliver to Buyer an estoppel relating to Seller's performance under such assumed Contract; provided that the failure of any third party to deliver any such estoppel shall not constitute (nor be deemed to constitute) a failure of a condition precedent for the benefit of Buyer pursuant to Section 9.2 below nor shall it give rise to any termination right in favor of Buyer hereunder.

(ii) The cure amounts, if any, as determined by the Bankruptcy Court, necessary to cure all monetary defaults, if any, that have resulted from any defaults on the part of Seller under the Contracts set forth on Exhibit D that are to be assumed by Buyer shall be paid by Seller (or Seller shall have delivered into escrow on terms reasonably acceptable to Seller and Buyer amounts sufficient to pay any claim therefor that remains disputed as of the Closing, as such amount shall have been determined by the Bankruptcy Court). The cure amounts to be paid in accordance with the foregoing provisions of this Section 2.5 are hereinafter sometimes referred to as the "Cure Amounts".

(c) Sale Procedures; Overbids.

(i) Buyer understands that in connection with the Sale Motion, interested parties may receive information about the Property and bid for the Property, and Seller may show the Property to such interested parties and cooperate with such interested parties in their investigation and diligence of the all matters relating to the Property. Buyer acknowledges and agrees that Seller is not offering to sell the Property to Buyer on an exclusive basis. Accordingly, in order to obtain the highest and best offer for the Property in accordance with applicable case law, Seller, as debtor-in-possession, will seek approval of the bidding procedures set forth in the Sale Procedures Order and the Approval Order.

(ii) Buyer is authorized to submit an overbid in accordance with the terms set forth in the Sale Procedures Order, the Approval Order or such other terms as are approved by the Bankruptcy Court.

(iii) Subject to the Approval Order and the Sales Procedures Order, the Closing of the sale of the Property shall occur on the date that is the later to occur of (A) five (5) Business Days after receipt from the City of Fremont of a written letter acknowledging the acceptance by the City of Fremont of the Post Closure Report; or (B) fifteen (15) days after the Order Entry Date, or such other date as may be mutually agreed by the parties in writing.

(d) Buyer Protections

(i) Subject in each case to the Sale Procedures Order and the Approval Order, provided that Buyer has not timely delivered a Termination Notice to Seller in accordance with Section 3.6, and after Buyer has approved or is deemed to have approved all of the matters described in Section 3.1 and 3.2 and has made the Deposit and Buyer is not otherwise in material breach of this Agreement, in the event that the Buyer is outbid and the Property is sold to third party buyer, (the "**Competing Bid**") Buyer, in consideration for Buyer having expended considerable time and expense in connection with this Agreement and the negotiation thereof and the transactions contemplated herein, shall receive in addition to return of its Deposit the following amounts from the sale proceeds of the Competing Bid for the Property at Closing (and no other funds of Seller or any Affiliate thereof unless the sale proceeds of Competing Bid are not sufficient to satisfy the same): (i) a break-up fee in the amount of 2% of the Purchase Price; (the "**Break-Up Fee**") and (ii) reimbursement of Buyer's actual out-of-pocket costs and expenses incurred in connection with the due diligence, negotiation, drafting and efforts to close the sale of the Property under this Agreement, not to exceed \$500,000.00 ("**Expense Reimbursement**"). These obligations shall survive the termination of this Agreement in the event that the Property is sold pursuant to a Competing Bid.

(ii) Seller acknowledges and agrees that (A) the approval of the Break-Up Fee and the Expense Reimbursement is an integral part of the transactions contemplated by this Agreement, (B) in the absence of Seller's obligation to pay the Break-Up Fee and Expense Reimbursement, Buyer would not have entered into this Agreement, (C) the entry of Buyer into this Agreement is necessary for the preservation of the estate of Seller and is beneficial to Seller, and (D) the Break-Up Fee and Expense Reimbursement are reasonable in relation to Buyer's efforts and to the magnitude of the transactions contemplated hereby. Upon entry of a court order approving same, the Break-Up Fee and Expense Reimbursement shall constitute an administrative expense under the Bankruptcy Code and shall be paid exclusively from the proceeds of the Competing Bid at closing thereof.

(iii) The Break-Up Fee and Expense Reimbursement shall be paid to Buyer notwithstanding whether Buyer chooses, in its sole and absolute discretion, not to bid at the auction contemplated by this Agreement (the "**Auction**") to the extent payable pursuant to the terms and conditions of this Agreement.

(iv) If for any reason the Break-Up Fee and Expense Reimbursement are denied by the Court then Buyer may terminate this Agreement by delivery of a written notice thereof (a "**Termination Notice**") and obtain the return of its Deposit, in which event, and notwithstanding anything else contained in this Agreement to the contrary, neither party shall have any further liability or obligation to the other.

(e) Motions, Orders, Etc. Seller shall promptly provide Buyer for its prior review and approval the proposed final drafts of all material documents, motions, orders, or pleadings that Seller proposes to file with the Bankruptcy Court relating to the approval of this Agreement or the consummation of the transactions contemplated hereby, or any provision therein, and shall provide Buyer and its counsel with a reasonable opportunity to review and

comment on such material documents, motions, orders, or pleadings so provided. Notwithstanding the foregoing, Buyer shall have the right to terminate this Agreement if the Sales Procedures Order is not entered substantially in the form attached hereto as Exhibit B or if the Approval Order is not entered substantially in the form attached hereto as Exhibit C, in either case by delivering a Termination Notice.

### ARTICLE III

#### BUYER'S DUE DILIGENCE/CONDITION OF THE PROPERTY

**Section 3.1 Buyer's Inspections and Due Diligence.** Buyer acknowledges that commencing on the Effective Date and continuing for a period which will expire at 3:00 p.m. Pacific Time on the date that is forty-five (45) days following the Effective Date (the "Due Diligence Period"), Buyer shall conduct its examinations, inspections, testing, studies and investigations of the Property, information regarding the Property and such documents applicable to the Property, as Seller delivers or makes available as set forth in Section 3.2 below (collectively, the "Due Diligence"). Except for any limitations as may be imposed by Section 3.3 below, Buyer may conduct such due diligence activities, inspections, and studies of the Property as it deems necessary or appropriate, and examine and investigate to its full satisfaction all facts, circumstances, and matters relating to the Property (including the physical condition and use, availability and adequacy of utilities, access, zoning, compliance with applicable laws (including, without limitation, the American with Disabilities Act and Title 24, Part 6 of the California Code of Regulations), environmental conditions, engineering and structural matters), title and survey matters, and any other matters it deems necessary or appropriate for purposes of consummating this transaction. The Due Diligence shall be at Buyer's sole cost and expense, subject to Buyer's right to the Break-Up Fee and Expense Reimbursement as otherwise provided in Section 2.7 hereof.

#### **Section 3.2 Delivery Period.**

(a) On or before five (5) Business Days after the Effective Date, Seller shall deliver to Buyer, or make available to Buyer for inspection at the applicable Property, the following: copies of any of the following items pertaining to the Property to the extent they exist and are in Seller's possession: (i) the Surveys; (ii) copies of all Contracts; (iii) reserved; (iv) copies of existing engineering studies and existing environmental audits prepared by third parties in connection with the Property; (v) the Licenses and Permits; (vi) any lists of material items of Personal Property owned by Seller and located on the Real Property; and (vii) a copy of Seller's existing policies of title insurance (collectively, the "Due Diligence Items"). Seller shall not be obligated to deliver to Buyer or make available for its review, any internal memoranda, asset management reports or valuation reports related to Seller or the Property.

(b) All documents, materials, and information furnished to or made available to Buyer pursuant to this Section 3.2 are being furnished or made available to Buyer for information purposes only and without any representation or warranty by Seller with respect thereto, express or implied, except as may otherwise be expressly set forth in Section 6 below and as limited by Sections 6.2 and 7.3 below.

**Section 3.3 Site Visits.** In connection with the Due Diligence, Buyer and its Licensee Parties shall have reasonable access to the Real Property at agreed upon times for agreed upon purposes on at least forty-eight (48) hours prior written notice (which may be made by electronic mail) to Seller. Such notice shall describe in reasonable detail the scope of the Due Diligence Buyer intends to conduct during Buyer's access to the Real Property. Seller shall make reasonable efforts to have an agent available to accompany Buyer or any Licensee Parties, and in all events Seller shall have the right to have a representative present during any visits to or inspections of the Real Property by Buyer or any Licensee Parties. Buyer will conduct its Due Diligence in a manner which is not disruptive to Seller or the normal operation of the Real Property, or any of Seller's building closure activities being conducted thereon pursuant to the Closure Activities. Buyer will not enter the Real Property or contact any Governmental Entity without Seller's prior written consent, which consent shall not be unreasonably withheld or delayed. In the event Buyer desires to conduct any physically intrusive Due Diligence, including, without limitation, sampling of soils, groundwater, other media, building materials, or the like, Buyer will identify in writing exactly what procedures Buyer desires to perform and request Seller's express written consent. Seller may withhold or condition consent to any physically intrusive Due Diligence in Seller's sole and absolute discretion. Upon receipt of Seller's written consent, Buyer and all Licensee Parties shall, in performing such Due Diligence, comply with the agreed upon procedures and with any and all laws, ordinances, rules, and regulations applicable to the Property and will not engage in any activities which would violate any permit, license, or environmental law or regulation. In connection with any such access to the Property, Buyer will, or will cause the applicable Licensee Party to: (a) maintain comprehensive general liability (occurrence) insurance in an amount no less than \$5 million and on terms satisfactory to Seller covering any accident arising in connection with the presence of Buyer or the other Licensee Parties on the Real Property or Improvements, and deliver a certificate of insurance, which names the Seller as an additional insured thereunder verifying such coverage to Seller prior to entry upon the Real Property or Improvements; (b) promptly pay when due the costs of all entry and inspections and examinations done with regard to the Property; and (c) promptly restore the Real Property and Improvements to substantially the same the condition in which the same were found before any such entry upon the Real Property and inspection or examination was undertaken.

**Section 3.4 Buyer's Due Diligence Indemnity.** Buyer shall defend, indemnify, and hold harmless Seller, Seller's affiliates, subsidiaries, agents, officers, directors, partners, shareholders or members, as applicable, from and against all losses, costs, damages, claims, and liabilities (whether arising out of injury or death to persons or damage to the Property or otherwise) including, but not limited to, costs of remediation, restoration and other similar activities, mechanic's and materialmen's liens and attorneys' fees, relating to, arising out of or in connection with Buyer's Due Diligence, or Buyer's or any Licensee Parties' entry upon the Real Property, except to the extent that any of the same are caused by the negligence or willful misconduct of Seller, Seller's affiliates, subsidiaries, agents, officers, directors, partners, shareholders or members, as applicable, or with respect to conditions merely discovered by Buyer but not originally caused by Buyer except to the extent such condition was materially exacerbated by the affirmative actions of Buyers or Buyers' Licensee Parties (e.g., the mere discovery of any materials or substances regulated by applicable Environmental Laws). The provisions of this Section 3.4 shall survive the Closing or, if the purchase and sale is not consummated, any termination of this Agreement.

**Section 3.5 Reserved.**

**Section 3.6 Due Diligence Period.** If Buyer determines to proceed with the purchase of the Property based on its Due Diligence prior to the expiration of the Due Diligence Period, then Buyer shall, before the end of the Due Diligence Period, notify Seller and Escrow Agent in writing that Buyer has approved all of the matters described in Section 3.1 and 3.2 (such writing, the "Approval Notice"). Buyer may terminate its obligations hereunder without further liability except as described in this Section 3.6 and in Sections 3.4, and 9.6, by giving Seller and Escrow Agent written a Termination Notice at any time prior to the delivery of an Approval Notice and on or before the end of the Due Diligence Period, in the exercise of its sole and absolute discretion in the evaluation of the condition, suitability or desirability of the Property as contemplated herein. If before the end of the Due Diligence Period, Buyer fails to deliver to Seller either a Termination Notice or an Approval Notice, then Buyer shall be deemed to have elected to waive its rights to terminate this Agreement by reason of its disapproval of any of the matters described in this Article III with respect to the Due Diligence. Buyer shall have no additional time after the expiration of the Due Diligence Period to conduct further physical Due Diligence or other examinations, inspections, testing, studies or investigations regarding the Property but shall have continued access to the Property subject to Section 3.3 hereof to ascertain the condition of the Property prior to Closing, including without limitation, Seller's efforts to deliver the Property in the condition otherwise required hereunder or any material changes to the Property by reason of casualty. If Buyer timely delivers a Termination Notice as described above, Buyer shall provide to Seller originals of all third party reports, studies and appraisals relating to the Property, other than those subject to attorney client privilege or attorney work-product protection, in its possession, without representation or warranty, and at no cost to Seller. The obligations of Buyer with respect to such reports, studies and appraisals shall survive any termination of this Agreement.

**ARTICLE IV**

**TITLE AND SURVEY**

**Section 4.1 Title to Real Property.** Seller shall make available to Buyer not later than five (5) Business Days after the Effective Date (a) a commitment to issue an owner's policy of title insurance with respect to the Property issued by the Title Company (the "Title Commitment"), (b) copies of all recorded documents referred to on Schedule B of the Title Commitment as exceptions to coverage (the "Title Documents"), and (c) the Surveys. If Buyer desires to commission a new or updated survey of the Real Property and Improvements, Buyer shall, at Buyer's sole expense, obtain such new or updated survey prior to the expiration of the Due Diligence Period. For avoidance of doubt, the Due Diligence Period shall not be tolled or extended in connection with any such new or updated survey.

**Section 4.2 Certain Exceptions to Title.** Buyer shall have the right to object in writing to any title matters that are not Permitted Exceptions which are disclosed in the Title Commitment or Survey (herein collectively called "Liens") within fifteen (15) Business Days after the later of the Effective Date or receipt of the Title Commitment and Survey. Unless Buyer shall timely object to the Liens, all such Liens and any other encumbrances which are set forth in the Title Commitment shall be deemed to constitute additional Permitted Exceptions.

Any exceptions which are timely objected to by Buyer in writing shall be herein collectively called the "Title Objections". Seller may elect (but shall not be obligated) to remove or cause to be removed, or insured over, at its expense, any Title Objections, and shall, upon written notice to Buyer, be entitled to a reasonable adjournment of the Closing (not to exceed ninety (90) days) for the purpose of such removal, which removal will be deemed effected by the issuance of title insurance eliminating or insuring against the effect of the Title Objections; provided, however, any such adjournment shall be subject to Buyer's consent, which shall not be unreasonably withheld, and Buyer shall respond to Seller's notice of adjournment no later than three (3) Business Days after Buyer receives written notice of the same. Seller shall notify Buyer in writing within ten (10) days after receipt of Buyer's notice of Title Objections whether Seller elects to remove the same and a failure to advise Buyer shall be deemed Seller's election not to remove any such Title Objections. If Seller is unable to remove or endorse over any Title Objections prior to the Closing, or if Seller elects not to remove one or more Title Objections, Buyer may elect, as its sole and exclusive remedy therefore, to either (a) terminate this Agreement by giving written notice to Seller and Escrow Agent on or before the end of the Due Diligence Period, provided, however, that if Seller has not advised or been deemed to have advised Buyer of its election not to remove the Title Objections within five (5) Business Days of the expiration of the Due Diligence Period, the Due Diligence Period shall, upon written notice from Buyer to Seller, be extended solely with respect to such Title Objections (and no other matters) for a period to expire no later than five (5) business days after notice of Seller's election or deemed election not to remove the subject Title Objections and Buyer expressly and irrevocably waives any right to object to or terminate this Agreement in connection with any other matters of Due Diligence during such extension period, in which event the Deposit shall be returned to Buyer and, thereafter, the parties shall have no further rights or obligations hereunder except for those obligations which expressly survive the termination of this Agreement, or (b) waive such Title Objections, in which event such Title Objections shall be deemed additional Permitted Exceptions and the Closing shall occur as herein provided without any reduction of or credit against the Purchase Price. If before the end of the Due Diligence Period, Buyer fails to give Seller and Escrow Agent such written notice, then Buyer shall be deemed to have elected to waive such Title Objections and its right to terminate this Agreement pursuant to this Section. Notwithstanding the foregoing, Seller shall be obligated at Closing to cause the release of the liens of any financing obtained by Seller which are secured by the Property in accordance with the Approval Order.

**Section 4.3 Title Insurance.** At Closing, the Title Company shall issue to Buyer or be irrevocably committed to issue to Buyer an extended coverage ALTA owner's form title policy (the "Title Policy"), in the amount of the Purchase Price, insuring that fee simple title to the Real Property is vested in Buyer subject only to the Permitted Exceptions. Buyer shall be entitled to request that the Title Company provide such endorsements (or amendments) to the Title Policy as Buyer may reasonably require, provided that (a) such endorsements (or amendments) shall be at no cost to, and shall impose no additional liability on, Seller, (b) Buyer's obligations under this Agreement shall not be conditioned upon Buyer's ability to obtain such endorsements and, if Buyer is unable to obtain such endorsements, subject to Buyer's right to terminate this Agreement by delivery of a Termination Notice prior to the expiration of the Due Diligence Period, or to withhold consent to an adjournment of the Closing as set forth in Section 4.2 in connection with any Title Objection (either prior to the scheduled expiration of the Due Diligence Period or prior to the expiration of any extension of the Due Diligence Period), Buyer

shall nevertheless be obligated to proceed to close the transaction contemplated by this Agreement without reduction of or set off against the Purchase Price, and (c) the Closing shall not be delayed as a result of Buyer's request.

## ARTICLE V

### TERMINATION, REMEDIES AND DEPOSIT INSTRUCTIONS

**Section 5.1 Permitted Termination; Seller Default.** Subject to Buyer's right to the Break-Up Fee and Expense Reimbursement as set forth herein, if the sale of the Property is not consummated due to the permitted termination of this Agreement by Buyer as herein expressly provided, the Deposit shall be returned to Buyer and Buyer will have no liability hereunder except as set forth in Sections 3.4, 3.6, and 9.6. Subject to Buyer's right to the Break-Up Fee and Expense Reimbursement as set forth herein, if the sale of the Property is not consummated due to Seller's default hereunder, Buyer shall be entitled, as its sole remedy, either (a) to receive the return of the Deposit, or (b) to seek specific performance of this Agreement (in each case subject to Section 2.7 hereof). Subject to Buyer's right to the Break-Up Fee and Expense Reimbursement as set forth herein, Buyer shall be deemed to have elected to terminate this Agreement and receive back the Deposit if Buyer fails to file suit for specific performance against Seller in a court prescribed by Section 10.5 hereof, on or before thirty (30) days following the date upon which Closing was to have occurred. Subject to Buyer's right to the Break-Up Fee and Expense Reimbursement as set forth herein, Buyer expressly waives its rights to seek any damages in the event of Seller's default hereunder except with respect to a breach of representation by Seller as more particularly set forth in Article VI; provided, however, that should any of Seller's representations and warranties be found to be incorrect in any material respect prior to Closing and Seller fails to cure the same by Closing after written notice thereof, Buyer's sole remedy shall be to either waive the same and proceed to Closing or terminate this Agreement and receive the return of the Deposit. Notwithstanding anything to the contrary herein, (x) either Buyer or Seller may terminate this Agreement upon the occurrence of any of the following: (i) by mutual written consent of Seller and Buyer; or (ii) upon written notice to the other party if the Closing shall not have occurred by the close of business on February 28, 2013, as may be automatically extended to permit completion of the Closure Activities so long as Seller uses commercially reasonable efforts to diligently pursue the same; and (y) the time periods for termination of this Agreement may be extended upon the written agreement of each Buyer and Seller and without the further consent of the Bankruptcy Court.

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**Section 5.2 BUYER DEFAULT; LIQUIDATED DAMAGES. SUBJECT TO SECTION 2.7** HEREOF, IF THE SALE IS NOT CONSUMMATED DUE TO ANY DEFAULT BY BUYER HEREUNDER, THEN SELLER SHALL RETAIN THE DEPOSIT (OR INITIAL DEPOSIT, AS APPLICABLE) AS LIQUIDATED DAMAGES, WHICH RETENTION SHALL OPERATE TO TERMINATE THIS AGREEMENT AND RELEASE BUYER FROM ANY AND ALL LIABILITY HEREUNDER, EXCEPT AS PROVIDED IN SECTIONS 3.4, 3.6 AND 9.6. THE PARTIES HAVE AGREED THAT SELLER'S ACTUAL DAMAGES, IN THE EVENT OF A FAILURE TO CONSUMMATE THIS SALE DUE TO BUYER'S DEFAULT, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, THE AMOUNT OF THE DEPOSIT IS A REASONABLE ESTIMATE OF THE DAMAGES THAT SELLER WOULD INCUR IN SUCH EVENT. BY PLACING THEIR INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION. THE FOREGOING IS NOT INTENDED TO LIMIT BUYER'S SURVIVING OBLIGATIONS UNDER SECTIONS 3.4, 3.6 AND 9.6.

Initials:

Seller

AM

Buyer

AM

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**Section 5.2 BUYER DEFAULT; LIQUIDATED DAMAGES.** SUBJECT TO SECTION 2.7 HEREOF, IF THE SALE IS NOT CONSUMMATED DUE TO ANY DEFAULT BY BUYER HEREUNDER, THEN SELLER SHALL RETAIN THE DEPOSIT (OR INITIAL DEPOSIT, AS APPLICABLE) AS LIQUIDATED DAMAGES, WHICH RETENTION SHALL OPERATE TO TERMINATE THIS AGREEMENT AND RELEASE BUYER FROM ANY AND ALL LIABILITY HEREUNDER, EXCEPT AS PROVIDED IN SECTIONS 3.4, 3.6, AND 9.6. THE PARTIES HAVE AGREED THAT SELLER'S ACTUAL DAMAGES, IN THE EVENT OF A FAILURE TO CONSUMMATE THIS SALE DUE TO BUYER'S DEFAULT, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, THE AMOUNT OF THE DEPOSIT IS A REASONABLE ESTIMATE OF THE DAMAGES THAT SELLER WOULD INCUR IN SUCH EVENT. BY PLACING THEIR INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION. THE FOREGOING IS NOT INTENDED TO LIMIT BUYER'S SURVIVING OBLIGATIONS UNDER SECTIONS 3.4, 3.6 AND 9.6.

Initials:      Seller \_\_\_\_\_

Buyer 

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**Section 5.3 Deposit Instructions.** The Escrow Agent joins herein below to evidence its agreement to hold such funds in accordance with the terms and conditions of this Agreement. Further, the following provisions shall control with respect to the rights, duties and liabilities of the Escrow Agent.

(a) The Escrow Agent acts hereunder as a depository only and is not responsible or liable in any manner whatsoever for the (i) sufficiency, correctness, genuineness or validity of any written instrument, notice or evidence of a party's receipt of any instruction or notice which is received by the Escrow Agent, or (ii) identity or authority of any person executing such instruction notice or evidence.

(b) The Escrow Agent shall have no responsibility hereunder except for the performance by it in good faith of the acts to be performed by it hereunder, and the Escrow Agent shall have no liability except for its own willful misconduct or gross negligence.

(c) The Escrow Agent shall be reimbursed on an equal basis by Buyer and Seller for any reasonable expenses actually incurred by the Escrow Agent arising from a dispute with respect to the amount held in escrow, including the cost of any legal expenses and court costs incurred by the Escrow Agent, should the Escrow Agent deem it necessary to retain an attorney with respect to the disposition of the amount held in escrow.

(d) In the event of a dispute between the parties hereto with respect to the disposition of the amount held in escrow, the Escrow Agent shall be entitled, at its own discretion, to deliver such amount to the Bankruptcy Court pending resolution of the dispute.

(e) The Escrow Agent shall invest the Deposit (or portion thereof) in accounts which are federally insured or which invest solely in government securities and shall be applied in accordance with the terms of this Agreement. Interest earned thereon shall be added to the Deposit (or portion thereof).

**Section 5.4 Designation of Reporting Person.** In order to assure compliance with the requirements of Section 6045 of the Internal Revenue Code of 1986, as amended (for purposes of this Section 5.4, the "Code"), and any related reporting requirements of the Code, the parties hereto agree as follows:

(a) Provided the Escrow Agent shall execute a statement in writing (in form and substance reasonably acceptable to the parties hereunder) pursuant to which it agrees to assume all responsibilities for information reporting required under Section 6045(e) of the Code, Seller and Buyer shall designate the Escrow Agent as the person to be responsible for all information reporting under Section 6045(e) of the Code (the "Reporting Person"). If the Escrow Agent refuses to execute a statement pursuant to which it agrees to be the Reporting Person, Seller and Buyer shall agree to appoint another third party as the Reporting Person.

(b) Seller and Buyer hereby agree:

(c) to provide to the Reporting Person all information and certifications regarding such party, as reasonably requested by the Reporting Person or otherwise required to be provided by a party to the transaction described herein under Section 6045 of the Code; and

(d) to provide to the Reporting Person such party's taxpayer identification number and a statement (on Internal Revenue Service Form W-9 or an acceptable substitute form, or on any other form the applicable current or future Code sections and regulations might require and/or any form requested by the Reporting Person), signed under penalties of perjury, stating that the taxpayer identification number supplied by such party to the Reporting Person is correct.

Each party hereto agrees to retain this Agreement for not less than four years from the end of the calendar year in which the Closing occurred, and to produce it to the Internal Revenue Service upon a valid request therefor.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES OF SELLER

**Section 6.1 Representations and Warranties of Seller.** Subject to the provisions of Sections 6.2 and 7.5, Seller makes the following representations and warranties with respect to the Property, as of the date of this Agreement:

(a) Status. Seller is a limited liability company, validly existing and in good standing under the laws of the State of Delaware and is qualified to transact business in the State of California.

(b) Authority; Binding Obligation. Subject to entry of the Approval Order, Seller is duly authorized to execute and deliver the Purchase Agreement and this Agreement constitutes the legal, valid and binding obligation of Seller, subject to equitable principles and principles governing creditors' rights generally.

(c) Government Changes. To the actual knowledge of Seller, other than matters addressed or to be addressed through the Closure Activities, there are no proposals for governmental or quasi-governmental changes to the Property or the adjacent real property.

(d) Litigation. To Seller's knowledge, other than the Bankruptcy Case and claims associated in connection therewith, there is no current litigation affecting the Property.

(e) Non-Foreign Entity. Seller is not a "foreign person" or "foreign corporation" as those terms are defined in the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

(f) Compliance. To the actual knowledge of Seller, (i) the Improvements were constructed in material compliance with all then required permits, any then applicable conditions, covenants and restrictions, the plans and specifications relating to such Improvements and all then applicable laws and (ii) there are no material physical defects in the

construction of the Improvements that would materially affect the use and operation of the Property by Buyer following the Closing.

(g) Documents. To the actual knowledge of Seller, all documents delivered by Seller to Buyer pursuant to Section 3.1 hereof are true and correct copies of such documents.

(h) Insurance Notice. To the actual knowledge of Seller, Seller has received no written notices from any insurance carriers requiring repairs or alterations to the Improvements or any other part of the Property.

(i) Soils. To the actual knowledge of Seller, other than matters addressed or to be addressed through the Closure Activities, there are no soils or archaeological conditions on the Property adverse to its present use.

(j) Non-Contravention. Subject to entry of the Approval Order, to Seller's knowledge, the execution and delivery of this Agreement by Seller and the consummation by Seller of the transactions contemplated hereby will not violate any judgment, order, injunction, decree, regulation or ruling of any court or Governmental Entity or conflict with, result in a breach of, or constitute a default under the organizational documents of Seller, any note or other evidence of indebtedness, any mortgage, deed of trust or indenture, or any lease or other material agreement or instrument to which Seller is a party or by which it is bound.

(k) Consents. Subject to entry of the Approval Order, no consent, waiver, approval or authorization is required from any person or entity (that has not already been obtained) in connection with the execution and delivery of this Agreement by Seller or the performance by Seller of the transactions contemplated hereby.

(l) Patriot Act. Seller is in compliance with all applicable anti-money laundering and anti-terrorist laws, regulations, rules, executive orders and government guidance, including the reporting, record keeping and compliance requirements of the Bank Secrecy Act ("BSA"), as amended by The International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001, Title III of the USA PATRIOT Act (the "Patriot Act"), and other authorizing statutes, executive orders and regulations administered by OFAC, and related Securities and Exchange Commission, SRO or other agency rules and regulations, and has policies, procedures, internal controls and systems that are reasonably designed to ensure such compliance.

(m) OFAC. Neither: (i) Seller, any Affiliate of Seller nor any Person controlled by Seller; nor (ii) to the best of knowledge of Seller, after making due inquiry, any Person who owns a controlling interest in or otherwise controls Seller; nor (iii) to the best of knowledge of Seller, after making due inquiry, if Seller is a privately held entity, any Person otherwise having a direct or indirect beneficial interest (other than with respect to an interest in a publicly traded entity) in Seller; nor (iv) any Person for whom Seller is acting as agent or nominee in connection with this investment, is a country, territory, Person, organization, or entity named on an OFAC List, nor is a prohibited country, territory, Person, organization, or entity under any economic sanctions program administered or maintained by OFAC.

(n) **Senior Foreign Political Figure.** Unless disclosed in writing to Buyer on the date hereof, Seller is not a Senior Foreign Political Figure, or an Immediate Family Member or a Close Associate of a Senior Foreign Political Figure, that it is not controlled by a Senior Foreign Political Figure, or an Immediate Family Member or a Close Associate of a Senior Foreign Political Figure, and that, to the best of Seller's knowledge, after making due inquiry, none of the direct or indirect owners of Seller (other than any owner(s) of any interest(s) in a publicly-traded entity) is a Senior Foreign Political Figure, or an Immediate Family Member or a Close Associate of a Senior Foreign Political Figure.

**Section 6.2 Limited Liability.** Notwithstanding anything to the contrary in this Agreement, the representations and warranties of Seller set forth in Section 6.1 shall not be deemed breached unless the such breach has a material adverse effect on the Property following the Closing. The representations and warranties of Seller set forth in Section 6.1 shall not survive the Closing. Seller shall have no liability with respect to any of Seller's representations, warranties and covenants herein if, prior to the Closing, Buyer has actual knowledge of any breach of a representation, warranty or covenant of Seller herein, or Buyer obtains actual knowledge (from whatever source, including, without limitation, as a result of Buyer's Due Diligence or written disclosure by Seller or Seller's agents and employees) that contradicts any of Seller's representations and warranties herein, and Buyer nevertheless consummates the transaction contemplated by this Agreement. The provisions of Sections 3.4, 3.6, and 9.6 will survive Closing without limitation unless a specified period is otherwise provided in this Agreement. All other representations, warranties, covenants and agreements made or undertaken by Seller under this Agreement, unless otherwise specifically provided herein, will not survive the Closing Date.

**Section 6.3 Seller's Knowledge.** For purposes of this Agreement and any document delivered at Closing, whenever the phrase "to Seller's knowledge," or the "knowledge" of any Seller or words of similar import are used, they shall be deemed to refer to facts within the actual knowledge only of W. G Stover, CFO, and no others, at the times indicated only, without duty of inquiry whatsoever.

**Section 6.4 Liability of Representations and Warranties.** Buyer acknowledges that the individuals named above are named solely for the purpose of defining and narrowing the scope of Seller's knowledge and not for the purpose of imposing any liability on or creating any duties running from such individuals to Buyer. Buyer covenants that it will bring no action of any kind against such individuals, any shareholder, partner or member of Seller, as applicable, or related to or arising out of these representations and warranties.

## ARTICLE VII

### REPRESENTATIONS AND WARRANTIES OF BUYER

**Section 7.1 Buyer's Representations and Warranties.** Buyer represents and warrants to Seller the following as of the date of this Agreement:

(a) **Status.** Buyer is a limited liability company validly existing under the laws of the State of Delaware and is qualified to transact business in the State of California

(b) Authority. The execution and delivery of this Agreement and the performance of Buyer's obligations hereunder have been or will be duly authorized by all necessary action on the part of Buyer and this Agreement constitutes the legal, valid and binding obligation of Buyer, subject to equitable principles and principles governing creditors' rights generally.

(c) Non-Contravention. The execution and delivery of this Agreement by Buyer and the consummation by Buyer of the transactions contemplated hereby will not violate any judgment, order, injunction, decree, regulation or ruling of any court or Governmental Entity or conflict with, result in a breach of, or constitute a default under the organizational documents of Buyer, any note or other evidence of indebtedness, any mortgage, deed of trust or indenture, or any lease or other material agreement or instrument to which Buyer is a party or by which it is bound.

(d) Consents. No consent, waiver, approval or authorization is required from any person or entity (that has not already been obtained) in connection with the execution and delivery of this Agreement by Buyer or the performance by Buyer of the transactions contemplated hereby.

(e) Bankruptcy. Buyer has not (i) commenced a voluntary case, or had entered against it a petition, for relief under any federal bankruptcy act or any similar petition, order or decree under any federal or state law or statute relative to bankruptcy, insolvency or other relief for debtors, (ii) caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator or similar official in any federal, state or foreign judicial or non-judicial proceeding, to hold, administer and/or liquidate all or substantially all of its property, or (iii) made an assignment for the benefit of creditors.

(f) Patriot Act. Buyer is in compliance with all applicable anti-money laundering and anti-terrorist laws, regulations, rules, executive orders and government guidance, including the reporting, record keeping and compliance requirements of the BSA, as amended by the , and other authorizing statutes, executive orders and regulations administered by OFAC, and related Securities and Exchange Commission, SRO or other agency rules and regulations, and has policies, procedures, internal controls and systems that are reasonably designed to ensure such compliance.

(g) OFAC. Neither: (i) Buyer, any Affiliate of Buyer nor any Person controlled by Buyer; nor (ii) to the best of knowledge of Buyer, after making due inquiry, any Person who owns a controlling interest in or otherwise controls Buyer; nor (iii) to the best of knowledge of Buyer, after making due inquiry, if Buyer is a privately held entity, any Person otherwise having a direct or indirect beneficial interest (other than with respect to an interest in a publicly traded entity) in Buyer; nor (iv) any Person for whom Buyer is acting as agent or nominee in connection with this investment, is a country, territory, Person, organization, or entity named on an OFAC List, nor is a prohibited country, territory, Person, organization, or entity under any economic sanctions program administered or maintained by OFAC.

(h) Senior Foreign Political Figure. Unless disclosed in writing to Seller on the date hereof, Buyer is not a Senior Foreign Political Figure, or an Immediate Family Member

or a Close Associate of a Senior Foreign Political Figure, that it is not controlled by a Senior Foreign Political Figure, or an Immediate Family Member or a Close Associate of a Senior Foreign Political Figure, and that, to the best of Buyer's knowledge, after making due inquiry, none of the direct or indirect owners of Buyer (other than any owner(s) of any interest(s) in a publicly-traded entity) is a Senior Foreign Political Figure, or an Immediate Family Member or a Close Associate of a Senior Foreign Political Figure.

**Section 7.2 Brokerage.** Buyer represents and warrants that, except as provided in Section 9.6, there are no claims for brokerage commissions, finders' fees, or similar compensation in connection with this Agreement based on any arrangement or agreement entered into by Buyer.

**Section 7.3 Buyer's Independent Investigation.** Buyer has been given, or will be given before the end of the Due Diligence Period, a full opportunity to inspect and investigate each and every aspect of the Property, either independently or through agents of Buyer's choosing, including, without limitation:

(a) All matters relating to title, together with all governmental and other legal requirements such as taxes, assessments, zoning, use permit requirements, and building codes;

(b) The physical condition and aspects of the Property, including, without limitation, the interior, the exterior, the square footage within the Improvements, the Building Systems, the paving, the utilities, and all other physical and functional aspects of the Property, including, without limitation, an examination for the presence or absence of Hazardous Materials, which shall be performed or arranged by Buyer at Buyer's sole expense;

(c) Any easements and/or access rights affecting the Property;

(d) Reserved;

(e) The Contracts, the Licenses and Permits and any other documents or agreements of significance affecting the Property; and

(f) All other matters of material significance affecting the Property or delivered to Buyer by Seller in accordance with Article 3 of this Agreement.

(g) **THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT HAS BEEN NEGOTIATED BETWEEN SELLER AND BUYER, THIS AGREEMENT REFLECTS THE MUTUAL AGREEMENT OF SELLER AND BUYER, AND BUYER HAS CONDUCTED ITS OWN INDEPENDENT EXAMINATION OF THE PROPERTY. OTHER THAN THE MATTERS REPRESENTED IN SECTION 6.1 HEREOF AS SUCH MAY BE LIMITED BY SECTION 6.2 HEREOF, BUYER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER OR ANY OF SELLER'S AGENTS OR REPRESENTATIVES, AND BUYER HEREBY ACKNOWLEDGES THAT NO SUCH REPRESENTATIONS HAVE BEEN MADE. SELLER SPECIFICALLY DISCLAIMS, AND NEITHER IT NOR ANY OTHER PERSON IS MAKING, ANY REPRESENTATION, WARRANTY OR ASSURANCE WHATSOEVER TO BUYER**

**AND NO WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EITHER EXPRESS OR IMPLIED, ARE MADE BY SELLER OR RELIED UPON BY BUYER WITH RESPECT TO THE STATUS OF TITLE TO OR THE MAINTENANCE, REPAIR, CONDITION, DESIGN OR MARKETABILITY OF THE PROPERTY, OR ANY PORTION THEREOF, INCLUDING BUT NOT LIMITED TO (i) ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, (ii) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (iii) ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS, (iv) ANY RIGHTS OF BUYER UNDER APPROPRIATE STATUTES TO CLAIM DIMINUTION OF CONSIDERATION, (v) ANY CLAIM BY BUYER FOR DAMAGES BECAUSE OF DEFECTS, WHETHER KNOWN OR UNKNOWN, WITH RESPECT TO THE IMPROVEMENTS OR THE PERSONAL PROPERTY, (vi) THE FINANCIAL CONDITION OR PROSPECTS OF THE PROPERTY AND (vii) THE COMPLIANCE OR LACK THEREOF OF THE REAL PROPERTY OR THE IMPROVEMENTS WITH GOVERNMENTAL REGULATIONS, IT BEING THE EXPRESS INTENTION OF SELLER AND BUYER THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PROPERTY WILL BE CONVEYED AND TRANSFERRED TO BUYER IN ITS PRESENT CONDITION AND STATE OF REPAIR, "AS IS" AND "WHERE IS", WITH ALL FAULTS (EXCEPT AS MAY BE PROVIDED IN SECTION 8.4 HEREOF).**

(h) Buyer represents that it is a knowledgeable, experienced and sophisticated buyer of real estate, and that it is relying solely on its own expertise and that of Buyer's consultants in purchasing the Property. Buyer acknowledges and agrees that it will have the opportunity to conduct such inspections, investigations and other independent examinations of the Property and related matters, including but not limited to the physical and environmental conditions thereof, during the Due Diligence Period and will rely upon same and not upon any statements of Seller or of any officer, director, employee, agent or attorney of Seller, other than as expressly set forth herein. Buyer acknowledges that all information obtained by Buyer will be obtained from a variety of sources and Seller will not be deemed to have represented or warranted the completeness, truth or accuracy of any of the Due Diligence Items or other such information heretofore or hereafter furnished to Buyer, other than as expressly set forth herein. Upon Closing, Buyer will assume the risk that adverse matters, including, but not limited to, adverse physical and environmental conditions, may not have been revealed by Buyer's inspections and investigations. Buyer acknowledges and agrees that upon Closing, Seller will sell and convey to Buyer, and Buyer will accept the Property, "AS IS, WHERE IS," with all faults (except as may be provided in Section 8.4 hereof). Buyer further acknowledges and agrees that there are no oral agreements, warranties or representations, collateral to or affecting the Property, by Seller, any agent of Seller or any third party. Seller is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property furnished by any real estate broker, agent, employee, servant or other person, unless the same are specifically set forth or referred to herein. Buyer acknowledges that the Purchase Price reflects the "as is, where is" nature of this sale and any faults, liabilities, defects or other adverse matters that may be associated with the Property. BUYER, WITH BUYER'S COUNSEL, HAS FULLY REVIEWED THE DISCLAIMERS AND WAIVERS SET FORTH IN THIS AGREEMENT, AND UNDERSTANDS THE SIGNIFICANCE AND EFFECT THEREOF. BUYER ACKNOWLEDGES AND AGREES THAT THE DISCLAIMERS AND OTHER

AGREEMENTS SET FORTH HEREIN ARE AN INTEGRAL PART OF THIS AGREEMENT, AND THAT SELLER WOULD NOT HAVE AGREED TO SELL THE PROPERTY TO BUYER FOR THE PURCHASE PRICE WITHOUT THE DISCLAIMER AND OTHER AGREEMENTS SET FORTH IN THIS AGREEMENT. THE TERMS AND CONDITIONS OF THIS SUBSECTION 7.3(h) WILL EXPRESSLY SURVIVE THE CLOSING AND WILL NOT MERGE INTO THE DEED UPON ITS RECORDATION.

[NO FURTHER TEXT ON THIS PAGE]



**Section 7.5 Discharge.** Notwithstanding any other provisions contained herein, or in any document or instrument delivered in connection with the transfer contemplated hereby, to the contrary (including, without limitation, any language providing for survival of certain provisions hereof or thereof), Buyer hereby acknowledges and agrees that (a) prior to Closing, Buyer's sole recourse in the event of a breach by Seller shall be as set forth in Section 5.1 hereof, and (b) Seller shall, upon consummation of Closing, be deemed to have satisfied and fulfilled all of Seller's covenants, indemnities, and obligations contained in this Agreement and the documents delivered pursuant hereto, and Seller shall have no further liability to Buyer or otherwise with respect to this Agreement, the transfers contemplated hereby, or any documents delivered pursuant hereto, except to the extent of any obligation or liability Seller may have under Section 6.1 as to which Seller's liability, if any, shall be limited as provided in Section 6.2. Seller acknowledges that the foregoing discharge shall not limit Seller's liability for its active fraud.

## ARTICLE VIII

### MAINTENANCE OF PROPERTY

From the date hereof until the Closing, and except as otherwise consented to or approved by Buyer, Seller covenants and agrees with Buyer as follows:

**Section 8.1 Reserved.**

**Section 8.2 Reserved.**

**Section 8.3 Reserved.**

**Section 8.4 Certain Interim Operating Covenants; Building Systems.**

(a) Subject to availability of sufficient funds from the Bankruptcy Estate for such purpose, and subject to and in accordance with the Closure Activities, Seller covenants to Buyer that it will, from the Effective Date until Closing: (i) continue to operate, manage and maintain the Improvements in the ordinary course of its business and substantially in accordance with present practice, subject to ordinary wear and tear and further subject to Section 10.2; (ii) except as may be required by law, not make any new capital improvements to the Property, subject to complying with the foregoing clause (i); (iii) maintain fire and extended coverage insurance on the Property which is at least equivalent in all material respects to the insurance policies covering the Land and the Improvements as of the Effective Date; (iv) not enter into any new contract for the provision of goods or services to or with respect to the Property other than in the ordinary course of business or in connection with the Closure Activities or an emergency where necessary to protect life and the Property, and (v) except in connection with the Closure Activities or an emergency where necessary to protect life and the Property, renew, extend, modify or replace any of the Contracts unless (A) such contract, renewal, extension, modification or replacement is terminable as of the Closing Date without payment of any fees or penalty or (B) unless Buyer consents thereto in writing, which consent may be withheld in Buyer's sole but good faith discretion.

(b) Seller shall deliver the Property to Buyer at the Closing with all material utility systems including but not limited to, plumbing, electrical (including light bulbs) and mechanical systems (collectively "Building Systems") in good working order and condition. Prior to Closing, Seller shall repair any material defective or malfunctioning component(s) of the heating, ventilation and air-conditioning system (HVAC), the plumbing system or electrical system (including lights, bulbs, and wall plugs) which must be repaired in order to deliver the Property in the above agreed condition. Without limiting the preceding sentence, from the Effective Date until the Closing, subject to availability of sufficient funds from the Seller's bankruptcy estate for such purpose, Seller shall use commercially reasonable efforts to operate the Property in a manner that will enable Seller to deliver the Property at Closing with the Building Systems in the condition required by this Section 8.4(b), and if not so able, Buyer shall be entitled to a credit against the Purchase Price for the actual cost of placing the Property in the condition so required, as shall be reasonably determined by Seller and Buyer.

## ARTICLE IX

### CLOSING AND CONDITIONS

**Section 9.1 Escrow Instructions.** Upon execution of this Agreement, the parties hereto shall deposit an executed counterpart of this Agreement with the Title Company, and this Agreement shall serve as escrow instructions to the Title Company as the escrow holder for consummation of the purchase and sale contemplated hereby. Seller and Buyer agree to execute such reasonable additional and supplementary escrow instructions as may be appropriate to enable the Title Company to comply with the terms of this Agreement; provided, however, that in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall control.

**Section 9.2 Closing; Conditions.** Subject to Section 2.7, the closing hereunder ("Closing") shall be held and delivery of all items to be made at the Closing under the terms of this Agreement shall be made through escrow at Escrow Agent's office (or such other place as each of Seller and Buyer may agree in writing) on the date determined in accordance with Section 2.7 hereof (the "Closing Date"). Such date may not be extended without the prior written approval of both Seller and Buyer. No later than 10:00 a.m. Pacific Time on the Closing Date, Buyer shall deposit in escrow with the Escrow Agent the Purchase Price (less the Deposit and subject to any adjustments described in Section 9.5), together with all other costs and amounts to be paid by Buyer at the Closing pursuant to the terms of this Agreement, by Federal Reserve wire transfer of immediately available funds to an account to be designated by the Escrow Agent. No later than 11:00 a.m. Pacific Time on the Closing Date, (a) Buyer will cause the Escrow Agent to (i) pay to Seller by Federal Reserve wire transfer of immediately available funds to an account designated by Seller, the Purchase Price (less the Deposit and subject to any adjustments described in Section 9.5), less any costs or other amounts to be paid by Seller at Closing pursuant to the terms of this Agreement, and (ii) pay all appropriate payees the other costs and amounts to be paid by Buyer at Closing pursuant to the terms of this Agreement and (b) Seller will direct the Escrow Agent to record the Deed, to deliver to Buyer the Bill of Sale and the Assignment and Assumption of Contracts, and to pay to the appropriate payees out of the proceeds of Closing payable to Seller, all costs and amounts to be paid by Seller at Closing pursuant to the terms of this Agreement. It shall constitute a condition precedent to Seller's

obligations to consummate the Closing hereunder that (X) all of the representations, warranties, covenants, and agreements of Buyer contained herein shall be true and correct and/or shall have been performed, as the case may be, in all material respects; and (Y) the final entry of the Approval Order by the Bankruptcy Court. It shall constitute a condition precedent to Buyer's obligations to consummate the Closing hereunder that (1) all of the representations, warranties, covenants, and agreements of Seller contained herein shall be true and correct and/or shall have been performed, as the case may be, in all material respects; (2) the Title Company shall be irrevocably committed to issue the Title Policy in the form approved by Buyer as provided herein; (3) Seller shall have provided to Buyer a written letter from the City of Fremont acknowledging the acceptance by the City of Fremont of the Post Closure Report; and (4) the final entry of the Approval Order by the Bankruptcy Court. Notwithstanding the foregoing, the failure of Seller to deliver at Closing any item(s) of Personal Property set forth on Schedule 2 shall not constitute a failure of a closing condition for the benefit of Buyer nor shall it give rise (nor be deemed to give rise) to any right of Buyer to terminate this Agreement; in such event, Buyer shall, as its sole remedy for Seller's failure to deliver such Personal Property, be entitled to a credit against the Purchase Price in the amount of the then actual value of such Personal Property not delivered (in each case as set forth on Schedule 2) less \$25,000 (the "Personal Property Deductible"), the total amount of such credit not to exceed \$100,000 (the "Personal Property Cap"); provided that the Personal Property Deductible and Personal Property Cap shall not apply to any Personal Property set forth on Schedule 2 that is intentionally removed from the Property by Seller or at Seller's express direction.

**Section 9.3 Seller's Closing Documents and Other Items.** At or before Closing, Seller shall deposit into escrow the following items:

- (a) A duly executed and acknowledged Deed for the Property in the form attached hereto as Exhibit E (the "Deed");
- (b) Two (2) duly executed counterparts of a Bill of Sale for the Property in the form attached hereto as Exhibit F (the "Bill of Sale");
- (c) Reserved;
- (d) Two (2) duly executed counterparts of an Assignment and Assumption of Contracts, Warranties and Guaranties, and Other Intangible Property for the Property in the form attached hereto as Exhibit H (the "Assignment and Assumption of Contracts");
- (e) An affidavit pursuant to Section 1445(b)(2) of the Code, and on which Buyer is entitled to rely, that each Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Code, and the analogous California Form 590-C;
- (f) Documentation to establish to the Title Company's reasonable satisfaction the due authority of Seller's sale of the Property;
- (g) Seller shall deliver to Buyer a set of keys to the Property on the Closing Date. Location of any of the items referred to in this subsection section at the Property on the Closing Date shall be deemed to be delivery to Buyer;

(h) If applicable, duly completed and signed real estate transfer tax declarations for each the Real Property; and

(i) Such other documents as may be reasonably required by the Title Company or as may be agreed upon by Seller and Buyer to consummate the purchase of the Property as contemplated by this Agreement.

**Section 9.4 Buyer's Closing Documents and Other Items.** At or before Closing, Buyer shall deposit into escrow the following items:

(a) The balance of the Purchase Price and such additional funds as are necessary to close this transaction;

(b) Two (2) duly executed counterparts of the Bill of Sale for each Property;

(c) Reserved;

(d) Two (2) duly executed counterparts of the Assignment and Assumption of Contracts for each Property;

(e) Documentation to establish to Seller's reasonable satisfaction the due authority of Buyer's acquisition of the Property and Buyer's delivery of the documents required to be delivered by Buyer pursuant to this Agreement (including, but not limited to, the organizational documents of Buyer, as they may have been amended from time to time, resolutions of Buyer and incumbency certificates of Buyer;

(f) If applicable, duly completed and signed preliminary change of ownership forms for the Real Property;

(g) Reserved; and

(h) Such other documents as may be reasonably required by the Title Company or as may be agreed upon by Seller and Buyer to consummate the purchase of the Property as contemplated by this Agreement.

**Section 9.5 Prorations and Closing Costs.**

(a) Seller and Buyer agree to adjust, as of 11:59 p.m. on the day immediately preceding the Closing Date, the following (collectively, the "Proration Items"): real estate and personal property taxes and assessments, including without limitation, all supplemental taxes arising in respect of the Property accruing or arising by reason of event occurring prior to the Closing Date (subject to the terms of 9.5(d) below) and utility bills (except as hereinafter provided) payable by the owner of the Property. Seller will be charged and credited for the amounts of all of the Proration Items relating to the period up to and including the day immediately preceding the Closing Date, and Buyer will be charged and credited for all of the Proration Items relating to the period from and after the Closing Date. Such preliminary estimated Closing prorations shall be set forth on a preliminary closing statement to be prepared by Seller and submitted to Buyer for Buyer's approval prior to the Closing Date (the "Closing

Statement"). The Closing Statement, once agreed upon, shall be signed (including by electronic mail) by Buyer and Seller and delivered to the Escrow Agent for purposes of making the preliminary proration adjustment at Closing subject to the final cash settlement provided for below. The preliminary proration shall be paid at Closing by Buyer to Seller (if the preliminary prorations result in a net credit to Seller) or by Seller to Buyer (if the preliminary prorations result in a net credit to Buyer) by increasing or reducing the cash to be delivered by Buyer in payment of the Purchase Price at the Closing. If the actual amounts of the Proration Items are not known as of the Closing Date, the prorations will be made at Closing on the basis of the best evidence then available; thereafter, when actual figures are received (not to exceed one hundred and twenty (120) days after closing), re-prorations will be made on the basis of the actual figures, and a final cash settlement will be made between Seller and Buyer. No prorations will be made in relation to insurance premiums, and Seller's insurance policies will not be assigned to Buyer. Notwithstanding anything to the contrary herein, Seller shall retain all rights to any amounts received by Seller in respect of tax appeals for real estate and personal property taxes and assessments paid prior to the Closing Date, and no such amounts shall be credited to or otherwise accrue for the benefit of Buyer. Final readings and final billings for utilities will be made if possible as of the Closing Date, in which event no proration will be made at Closing with respect to utility bills. Seller will be entitled to all deposits presently in effect with the utility providers, and Buyer will be obligated to make its own arrangements for deposits with the utility providers. The provisions of this Section 9.5(a) will survive the Closing for twelve (12) months.

(b) Reserved.

(c) Reserved.

(d) All ad valorem real estate and personal property taxes, including without limitation, all supplemental taxes arising in respect of the Property accruing or arising by reason of event occurring prior to the Closing Date with respect to the Property shall be prorated as of 11:59 p.m. on the day immediately preceding the Closing Date on a cash basis for the calendar year in which the Closing occurs, regardless of the year for which such taxes are assessed.

(e) Reserved.

(f) Buyer shall receive a credit against the Purchase Price at Closing for all payments due or owing under any Contracts for periods prior to the Closing Date, which amounts shall be prorated as of 11:59 p.m. on the day immediately preceding the Closing Date. If Seller has paid any amounts under any Contracts for periods after 11:59 p.m. on the day immediately preceding the Closing Date, Buyer shall pay such amounts to Seller at Closing in addition to the Purchase Price.

(g) Reserved.

(h) Seller shall pay (a) reserved, (b) the costs of any endorsements to the Title Policy required as a result of Seller's election to cause the Title Company to insure over any Title Objections in accordance with Section 4.2, (c) recording fees in connection with any reconveyance requested hereby, (d) reserved, (e) all transfer taxes and (f) any additional costs and charges customarily charged to sellers in accordance with common escrow practices in the

county in which the Property is located, other than those costs and charges specifically required to be paid by Buyer hereunder. Buyer shall pay (a) the Escrow Agent's escrow fee, (b) the premium for the Title Policy and the costs of any endorsements Buyer may require in accordance with Section 4.3, (c) the recording fees required in connection with the transfer of the Property to Buyer, (d) reserved and (e) any additional costs and charges customarily charged to buyers in accordance with common escrow practices in the county in which the Property is located, other than those costs and charges specifically required to be paid by Seller hereunder. In addition to the foregoing, Buyer shall be responsible for any costs of updating the Surveys of the Property or otherwise conforming the Surveys to the requirements for issuance of such Title Policy (or any endorsements thereto) or for any new survey that may be required for issuance of such Title Policy.

**Section 9.6 Brokers.** Buyer hereby represents and warrants to Seller that, except for Colliers International – Silicon Valley (“Buyer’s Broker”), it did not employ or use any broker or finder to arrange or bring about this transaction, and that there are no claims or rights for brokerage commissions or finder's fees in connection with the transactions contemplated by this Agreement, other than a commission to be paid by Seller out of net sales proceeds to Buyer's Broker in an amount equal to two percent (2%) of the Purchase Price. Seller represents and warrants that, except for Jones Lang LaSalle (“Seller’s Broker”), Seller has not employed any broker with respect to this transaction, other than Seller's Broker, and except as provided in the immediately preceding sentence, Seller shall only pay the Seller's broker's commission pursuant to a separate written agreement between Seller and Seller's Broker. If any person brings a claim for a commission or finder's fee based upon any contact, dealings, or communication with either Seller or Buyer in connection with the transactions contemplated by this Agreement, other than Buyer's Broker or Seller's Broker, then each party hereto shall defend the other party hereto from such claim, and shall indemnify such other party and hold such other party harmless from any and all out-of pocket costs, damages, claims, actual losses, liabilities, or expenses actually incurred (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Seller with respect to the claim. The provisions of this Section 9.6 shall survive the Closing or, if the purchase and sale is not consummated, any termination of this Agreement.

## ARTICLE X

### MISCELLANEOUS

**Section 10.1 Amendment and Modification.** Subject to applicable law, this Agreement may be amended, modified, or supplemented only by a written agreement signed by Buyer and Seller and approved by the Bankruptcy Court (as applicable).

**Section 10.2 Risk of Loss and Insurance Proceeds.**

(a) **Minor Loss.** Buyer shall be bound to purchase the Property for the full Purchase Price as required by the terms hereof, without regard to the occurrence or effect of any damage to the Property or destruction of any improvements thereon or condemnation of any portion of the Property, provided that: (a) the cost to repair any such damage or destruction, or the diminution in the value of the remaining Property as a result of a partial condemnation,

equals Two Million Five Hundred Thousand Dollars (\$2,500,000) or less, and (b) upon the Closing, there shall be a credit against the Purchase Price due hereunder equal to the amount of any insurance proceeds or condemnation awards collected by Seller as a result of any such damage or destruction or condemnation, plus the amount of (i) any insurance deductibles and (ii) any uninsured casualty not to exceed \$1,000,000, less any sums reasonably expended by Seller toward the restoration or repair of the Property, including barricades and other temporary repairs required for safety purposes, or in collecting such insurance proceeds or condemnation awards. If the proceeds or awards have not been collected as of the Closing, then such proceeds or awards shall be assigned to Buyer, except to the extent needed to reimburse Seller for sums reasonably expended prior to the Closing to repair or restore the Property or to collect any such proceeds or awards, and when received by Seller, held in trust for Buyer's benefit and promptly paid over to Buyer (which obligation shall survive the Closing) but the amount of (i) any insurance deductibles and (ii) the cost of any uninsured casualty not to exceed \$1,000,000, shall still be credited against the payment of the Purchase Price at Closing. Notwithstanding anything to the contrary in this Section 10.2(a), in the event of an uninsured casualty in excess of \$1,000,000, either Seller or Buyer may elect to terminate this Agreement within the ten (10) Business Day period set forth above.

(b) **Major Loss.** If the amount of the damage or destruction or condemnation as specified above exceeds Two Million Five Hundred Thousand Dollars (\$2,500,000), then Buyer may at its option, to be exercised by written notice to Seller within ten (10) Business Days of Seller's notice of the occurrence of the damage or destruction or the commencement of condemnation proceedings, which notice sets forth with reasonable accuracy the extent of the damage or taking and costs relating to the diminution in value, repair or restoration, as applicable, terminate this Agreement. Buyer's failure to elect to terminate this Agreement within said ten (10) Business Day period shall be deemed an election by Buyer to consummate this purchase and sale transaction. If Buyer elects to terminate this Agreement within such ten (10) Business Day period, the Deposit shall be returned to Buyer and neither party shall have any further rights or obligations hereunder except as provided in Sections 3.4, 3.6, and 9.6. If Buyer elects or is deemed to have elected to proceed with the purchase, then upon the Closing, there shall be a credit against the Purchase Price due hereunder equal to the amount of any insurance proceeds or condemnation awards collected by Seller as a result of any such damage or destruction or condemnation, plus the amount of (i) any insurance deductibles and (ii) any uninsured casualty not to exceed \$1,000,000, less any sums reasonably expended by Seller toward the restoration or repair of the Property, or in collecting such insurance proceeds or condemnation awards. If the proceeds or awards have not been collected as of the Closing, then such proceeds or awards shall be assigned to Buyer, except to the extent needed to reimburse Seller for sums reasonably expended prior to the Closing to repair or restore the Property, or to collect any such proceeds or awards, and when received by Seller, held in trust for Buyer's benefit and promptly paid over to Buyer (which obligation shall survive the Closing) but the amount of (i) any insurance deductibles and (ii) the cost of any uninsured casualty not to exceed \$1,000,000, shall still be credited against the payment of the Purchase Price at Closing. Notwithstanding anything to the contrary in this Section 10.2(b), in the event of an uninsured casualty in excess of \$1,000,000, either Seller or Buyer may elect to terminate this Agreement within the ten (10) Business Day period set forth above.

**Section 10.3 Notices.** All notices required or permitted hereunder shall be in writing and shall be served on the Parties at the following address:

If to Seller: Solyndra LLC  
47488 Kato Road  
Fremont, CA 94538  
Email: Bill.stover@solyndra.com

with Copies to: Pachulski Stang Ziehl & Jones  
150 California Street, 15<sup>th</sup> Floor  
San Francisco, CA 94111  
Attention: Joshua Fried  
Facsimile: (415) 263-7010  
Email: jfried@pszjlaw.com

and to: Gibson, Dunn & Crutcher, LLP  
555 Mission Street, Suite 3000  
San Francisco, CA 94105  
Attention: Fred L. Pillon, Esq.  
Facsimile: (415) 374-8485  
Email: fpillon@gibsondunn.com

If to Buyer: Seagate Technology, LLC  
10200 S. DeAnza Boulevard, Mailstop CPCA03C9  
Cupertino, California 95015  
Attention: Corporate Real Estate Manager  
Facsimile: (408) 658-1770  
Email: Jeremy.Banks@seagate.com

with Copies to: Dillingham & Murphy LLP  
225 Bush Street, 6<sup>th</sup> Floor  
San Francisco, California 94104  
Attention: Tyrrell M. Prosser  
Facsimile: (415) 397-3300  
Email: tmp@dillinghammurphy.com

If to Escrow Agent: First American Title Company  
100 Spear Street, Suite 1600  
San Francisco, CA 94105  
Attention: Chad Wilson  
  
Facsimile: (415) 398-1750  
Email: cjwilson@firstam.com

Any such notices may be sent by (a) certified mail, return receipt requested, in which case notice shall be deemed delivered five (5) Business Days after deposit, postage prepaid in the U.S. mail, (b) a nationally recognized overnight courier, in which case notice shall be deemed delivered one

(1) Business Day after deposit with such courier, or (c) facsimile transmission, in which case notice shall be deemed delivered upon electronic verification that transmission to recipient was completed. The above addresses and facsimile numbers may be changed by written notice to the other party; provided that no notice of a change of address or facsimile number shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

**Section 10.4 Assignment.** Buyer and Seller shall not have the right to assign this Agreement, without the prior written consent of the other party. Notwithstanding the foregoing, Buyer and Seller may each assign their interests herein to an Affiliate of such assigning party upon written notice to the non-assigning party, provided that any such assignment does not relieve the assigning party of its obligations hereunder. This Agreement will be binding upon and inure to the benefit of Seller and Buyer and their respective successors and permitted assigns, and no other party will be conferred any rights by virtue of this Agreement or be entitled to enforce any of the provisions hereof. Whenever a reference is made in this Agreement to Seller or Buyer, such reference will include the successors and permitted assigns of such party under this Agreement. Notwithstanding anything to the contrary in this Section 10.4, The right of either Buyer or Seller to assign this contract shall be subject to approval of the Bankruptcy Court.

**Section 10.5 Governing Law and Consent to Exclusive Jurisdiction of Bankruptcy Court.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO ANY OTHERWISE APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS, EXCEPT TO THE EXTENT SUPERSEDED BY THE LAWS OF THE UNITED STATES. THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY DISPUTES OR OTHER MATTERS RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, AND ANY SUCH DISPUTES SHALL BE HEARD AND DETERMINED BY THE BANKRUPTCY COURT AND EACH PARTY HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF THE BANKRUPTCY COURT IN ANY SUCH ACTION AND TO THE LAYING OF VENUE IN THE STATE OF DELAWARE. ANY PROCESS IN ANY SUCH ACTION SHALL BE DULY SERVED IF MAILED BY REGISTERED MAIL, POSTAGE PREPAID, TO THE PARTIES AT THEIR RESPECTIVE ADDRESS DESCRIBED IN SECTION 10.3 HEREOF.

**Section 10.6 Counterparts.** This Agreement may be executed in two or more fully or partially executed counterparts, each of which will be deemed an original binding the signer thereof against the other signing parties, but all counterparts together will constitute one and the same instrument.

**Section 10.7 Entire Agreement.** This Agreement and any other document to be furnished pursuant to the provisions hereof embody the entire agreement and understanding of the parties hereto as to the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants, or undertakings other than those expressly set forth or referred to in such documents. This Agreement and such documents supersede all prior agreements and understandings among the parties with respect to the subject matter hereof.

**Section 10.8 Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement, or affecting the validity or enforceability of any of the terms or provisions of this Agreement.

**Section 10.9 Attorney Fees.** If any action is brought by any party to this Agreement to enforce or interpret its terms or provisions, including without limitation, to enforce or defend any of Buyer's or Seller's rights and remedies in connection with a default by the other party hereunder, the prevailing Party will be entitled to reasonable attorney fees and costs incurred in connection with such action prior to and at trial and on any appeal therefrom

**Section 10.10 Payment of Fees and Expenses.** Subject to Buyer's right to the Break-Up Fee and Expense Reimbursement as set forth herein and except as otherwise expressly provided or allocated herein, each party to this Agreement will be responsible for, and will pay, all of its own fees and expenses, including those of its counsel and accountants, incurred in the negotiation, preparation, and consummation of this Agreement and the performance or exercise of any covenants or rights in connection therewith, including, without limitation in the case of Buyer, all third-party engineering and environmental review costs, inspection costs, attorneys fees and all other costs of Due Diligence, and the closing of the transaction contemplated hereunder.

**Section 10.11 Reserved.**

**Section 10.12 No Joint Venture.** Nothing set forth in this Agreement shall be construed to create a joint venture between Buyer and Seller.

**Section 10.13 Reserved.**

**Section 10.14 Limited Liability.** Neither the members, managers, employees or agents of Seller, nor the shareholders, officers, directors, employees or agents of any of them shall be liable under this Agreement and all parties hereto shall look solely to the assets of Seller for the payment of any claim or the performance of any obligation by Seller.

**Section 10.15 Time of Essence.** Time is of the essence with respect to each of the terms of this Agreement.

**Section 10.16 No Waiver.** No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver, nor shall a waiver in any instance constitute a waiver in any subsequent instance. No waiver shall be binding unless executed in writing by the party making the waiver.

**Section 10.17 Not an Offer.** The preparation or distribution of drafts hereof by one party to the other shall not be deemed to constitute an offer and this Agreement shall only become binding and enforceable upon execution hereof by both parties.

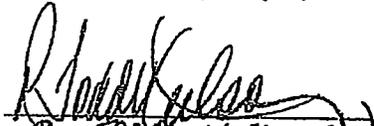
**Section 10.18 No Third Party Beneficiaries.** Nothing in this Agreement is intended to benefit any third party, or create any third party beneficiary.

**[SIGNATURE PAGE(S) FOLLOW]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**SELLER:**

**SOLYNDRA, LLC,**  
a Delaware limited liability company

By:   
Name: R. TODD NELSON  
Title: CHIEF REORGANIZATION OFFICER

[SIGNATURES CONTINUE ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**SELLER:**

**SOLYNDRA, LLC,**  
a Delaware limited liability company

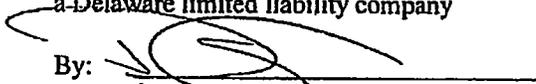
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**[SIGNATURES CONTINUE ON NEXT PAGE]**

**[SIGNATURES, CONTINUED]**

**BUYER:**

**SEAGATE TECHNOLOGY, LLC**  
a Delaware limited liability company

By: 

Name: Dave H. Martin

Title: VP Corporate Finance, Treasurer & CFO

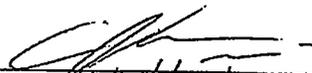
**[SIGNATURES CONTINUE ON NEXT PAGE]**

**[SIGNATURES, CONTINUED]**

**ESCROW AGENT:**

The Escrow Agent is executing this Agreement to evidence its agreement to hold the Deposit and act as escrow agent in accordance with the terms and conditions of this Agreement.

**FIRST AMERICAN TITLE COMPANY**

By:   
Name: Chad Wilson  
Title: Escrow Officer

**[END OF SIGNATURE PAGES]**

**EXHIBIT A**  
**DESCRIPTION OF LAND**

A-1

8

**EXHIBIT 'A'**

File No.: **NCS-529919-SF (cw)**  
Property: **47478 Kato Road, Fremont, CA 94538**

**PARCEL ONE:**

**PARCEL 2, PARCEL MAP NO. 9895, FILED FOR RECORD ON AUGUST 19, 2009 IN BOOK 314 OF MAPS, PAGES 50-52, ALAMEDA COUNTY RECORDS.**

**PARCEL TWO:**

**A NON-EXCLUSIVE EASEMENT OVER THE REAL PROPERTY HEREINAFTER DESCRIBED, APPURTENANT TO PARCEL ONE, AS DESCRIBED IN THE DEED TO SAFEWAY STORES, A MARYLAND CORPORATION, RECORDED MARCH 17, 1972, ON REEL 3085 OR, IMAGE 85, FOR PURPOSES OF A ROADWAY FOR VEHICLES OF ALL KINDS AND ANIMALS, FOR INGRESS AND EGRESS TO AND FROM STATE HIGHWAY 17.**

**A STRIP OF LAND, 20 FEET WIDE, RIGHT ANGLE MEASUREMENT, LYING NORTHWESTERLY OF AND CONTIGUOUS TO THE NORTHWESTERN LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED TO ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, RECORDED AUGUST 27, 1956, IN BOOK 8131, AT PAGE 485, OFFICIAL RECORDS OF SAID COUNTY, AND EXTENDING FROM THE ORIGINAL SOUTHWESTERN LINE OF THE STATE HIGHWAY FROM WARM SPRINGS TO SAN JOSE, BEFORE WIDENING FROM 66 FEET, FORMERLY COUNTY ROAD NO. 397, IN A SOUTHWESTERLY DIRECTION, TO THE NORTHEASTERN RIGHT OF WAY LINE OF THE WESTERN PACIFIC RAILROAD.**

**PARCEL THREE:**

**AN EASEMENT AND RIGHT OF WAY FOR PUBLIC UTILITIES ACROSS THE LANDS DESCRIBED AS FOLLOWS:**

**A STRIP OF LAND, 20 FEET IN WIDTH, MEASURED AT RIGHT ANGLES, LYING EASTERLY OF THE WESTERLY LINE OF THE RIGHT OF WAY OF THE WESTERN PACIFIC RAILROAD COMPANY RIGHT OF WAY, AND WESTERLY OF WARM SPRINGS ROAD, AND LYING ADJACENT TO AND SOUTHERLY OF THE 4-FOOT-STRIP OF LAND GRANTED TO THE ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, RECORDED IN REEL 395 OF OFFICIAL RECORDS, IMAGE 46, ON AUGUST 25, 1961.**

**SAID EASEMENT IS TO BE APPURTENANT TO THE PARCEL OF LAND DESCRIBED IN THE DEED TO SAFEWAY STORES, INCORPORATED, RECORDED APRIL 16, 1969, ON REEL 2384 OR, IMAGE 105.**

**PARCEL FOUR:**

Date: August 09, 2012

**A NON-EXCLUSIVE EASEMENT, APPURTENANT TO PARCEL ONE, OVER, UPON, ACROSS AND UNDER PARCEL 3, PARCEL MAP 9560, FILED FOR RECORD ON MARCH 26, 2008, IN BOOK 306 OF MAPS, PAGES 17-19, ALAMEDA COUNTY RECORDS, FOR STORM DRAINAGE THROUGH FUTURE SURFACE AND SUBSURFACE STORM DRAIN FACILITIES AND IMPROVEMENTS LOCATED THEREON, CREATED BY THAT CERTAIN GRANT OF STORM DRAIN EASEMENT RECORDED APRIL 4, 2008, INSTRUMENT NO. 2008-112616, OFFICIAL RECORDS OF ALAMEDA COUNTY.**

**PARCEL FIVE:**

**A NON-EXCLUSIVE EASEMENT, APPURTENANT TO PARCEL ONE, OVER, UPON, ACROSS AND UNDER THE PORTION OF PARCEL 3, PARCEL MAP 9560, FILED FOR RECORD ON MARCH 26, 2008 IN BOOK 306 OF MAPS, PAGES 17 - 19, ALAMEDA COUNTY RECORDS HEREINAFTER DESCRIBED AS FOLLOWS, FOR STORM DRAINAGE THROUGH EXISTING SURFACE AND SUBSURFACE STORM DRAIN FACILITIES AND IMPROVEMENTS LOCATED THEREON, CREATED BY THAT CERTAIN GRANT OF STORM DRAIN EASEMENT RECORDED APRIL 4, 2008, INSTRUMENT NO. 2008-112616, OFFICIAL RECORDS OF ALAMEDA COUNTY:**

**BEING A PORTION OF PARCEL 3 OF PARCEL MAP 9560, FILED FOR RECORD ON MARCH 26, 2008, IN BOOK 306 OF MAPS AT PAGES 17-19, ALAMEDA COUNTY RECORDS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL 3;  
THENCE NORTH 69° 23' 28" EAST, ALONG THE NORTHERLY LINE OF SAID PARCEL, A DISTANCE OF 1438.01 FEET TO THE NORTHEAST CORNER OF SAID PARCEL;  
THENCE SOUTH 21° 24' 00" EAST, ALONG THE EASTERLY LINE OF SAID PARCEL, A DISTANCE OF 5.00 FEET;  
THENCE LEAVING SAID EASTERLY LINE, SOUTH 69° 23' 28" WEST, AND PARALLEL TO SAID NORTHERLY LINE, A DISTANCE OF 144.02 FEET;  
THENCE SOUTH 20° 36' 32" EAST A DISTANCE OF 10.00 FEET TO A POINT DISTANT THEREON 15.00 FEET FROM MEASURED AT RIGHT ANGLES TO SAID NORTHERLY LINE;  
THENCE SOUTH 69° 23' 28" WEST, AND PARALLEL TO SAID NORTHERLY LINE, A DISTANCE OF 1237.33 FEET; THENCE SOUTH 9° 28' 26" EAST A DISTANCE OF 94.27 FEET;  
THENCE SOUTH 69° 23' 28" WEST A DISTANCE OF 38.52 FEET TO A POINT ON THE WESTERLY LINE OF SAID PARCEL 3; THENCE NORTH 20° 36' 32" WEST, ALONG SAID WESTERLY LINE, A DISTANCE OF 15.00 FEET;  
THENCE LEAVING SAID WESTERLY LINE NORTH 69° 23' 28" EAST A DISTANCE OF 17.50 FEET;  
THENCE NORTH 20° 36' 32" WEST, AND PARALLEL TO SAID WESTERLY LINE, A DISTANCE OF 77.50 FEET; THENCE SOUTH 69° 23' 28" WEST A DISTANCE OF 17.50 FEET TO A POINT ON SAID WESTERLY LINE;  
THENCE NORTH 20° 36' 32" WEST, ALONG SAID WESTERLY LINE, A DISTANCE OF 15.00 FEET TO THE POINT OF BEGINNING.**

**PARCEL SIX:**

Date: **August 09, 2012**

**NON-EXCLUSIVE PRIVATE ACCESS EASEMENT FOR THE BENEFIT OF PARCEL ONE  
ABOVE, AS CREATED BY THAT CERTAIN GRANT OF ACCESS EASEMENT AND AGREEMENT  
CONTAINING COVENANTS RUNNING WITH THE LAND FILED FOR RECORD ON  
SEPTEMBER 3, 2009, INSTRUMENT NO. 2009288210, ALAMEDA COUNTY RECORDS.**

**PARCEL SEVEN:**

**DRAINAGE EASEMENTS FOR THE BENEFIT OF PARCEL ONE ABOVE, AS CREATED BY  
THAT CERTAIN GRANT OF STORM DRAIN EASEMENTS, FILED FOR RECORD ON  
SEPTEMBER 3, 2009 AS INSTRUMENT NO. 2009288211, ALAMEDA COUNTY OFFICIAL  
RECORDS.**

**A.P.N. 519-1742-006**

**EXHIBIT B**

**FORM OF SALE PROCEDURES ORDER**

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)  
 ) Related Docket No. \_\_\_\_

**ORDER (A) APPROVING BID PROCEDURES FOR SALE OF REAL  
PROPERTY AND RELATED PROPERTY, (B) SCHEDULING  
AUCTION AND HEARING TO CONSIDER APPROVAL OF SALE AND  
ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS  
AND UNEXPIRED LEASES; AND (C) APPROVING FORMS OF NOTICE;**

Upon the *Motion of Solyndra LLC for an Order (A) Approving Procedures for Sale of Real Property and Related Property; (B) Scheduling Auction and Hearing to Consider Approval of Sale and Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (C) Approving Forms of Notice; and (D) Granting Related Relief* (the "Bid Procedures Motion") of Solyndra LLC ("Solyndra"), one of the above-captioned debtors, and debtor-in-possession (the "Debtors")<sup>2</sup>; and it appearing that the Court has jurisdiction over the Bid Procedures Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(a); and the Court having considered the Bid Procedures Motion; and it appearing that the relief requested in the Bid Procedures Motion is in

<sup>1</sup> The Debtors in these proceedings and the last four digits of each Debtors' 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

<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning ascribed thereto in the Bid Procedures Motion or the Purchase Agreement (as defined below), as the case may be.

the best interests of Solyndra's bankruptcy estate, its creditors and other parties-in-interest; and after due deliberation and sufficient cause appearing therefor;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS:<sup>3</sup>

A. Notice of the Bid Procedures Motion was adequate and sufficient under the circumstances of these chapter 11 cases, and such notice complied with all applicable requirements of 11 U.S.C. §§ 102 and 363, Rules 2002, 6004, 6006, and 9008 of the Federal Rules of Bankruptcy Procedure, and any other applicable provisions of title 11 of the United States Code (the "Bankruptcy Code"), the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

B. The bid procedures attached hereto as Exhibit A (the "Bid Procedures") are reasonable and appropriate under the circumstances of Solyndra's chapter 11 case. Solyndra is authorized to take any and all actions necessary or appropriate to implement the Bid Procedures.

C. All objections to the relief requested in the Bid Procedures Motion that have not been withdrawn, waived or settled as announced to the Court at the hearing on the Bid Procedures Motion or by stipulation filed with the Court, are overruled except as otherwise set forth herein.

D. The Breakup Fee and Expense Reimbursement (together, the "Bid Protections") to be paid under the circumstances described in the Bid Procedures Motion and in

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<sup>3</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Fed. R. Bankr. P. 7052,

the *Agreement of Sale and Purchase Between Solyndra LLC and Seagate Technology LLC* (the "Purchase Agreement") by and between Solyndra and Seagate Technology LLC (the "Buyer") are (i) an actual and necessary cost and expense of preserving Solyndra's estate within the meaning of sections 503(b) and 507(a)(2) of the Bankruptcy Code, (ii) commensurate to the real and substantial benefit conferred upon Solyndra's estate by the Buyer, (iii) reasonable and appropriate, in light of the size and nature of the proposed sale transaction and comparable transactions, the commitments that have been made and the efforts that have been and will be expended by the Buyer, and (iv) necessary to induce the Buyer to continue to pursue the sale transaction and to continue to be bound by the Purchase Agreement.

E. The Bid Protections also induced the Buyer to submit a bid that will not only serve as a minimum floor bid on which Solyndra, its creditors and other bidders may rely, but will also provide Solyndra with the opportunity to sell the Property for the benefit of Solyndra's estate. The Buyer has provided a material benefit to Solyndra and its estate by increasing the likelihood that the best possible price for the Property will be received. The Bid Protections have already encouraged competitive bidding, in that the Buyer would not have entered into the Purchase Agreement without these provisions. Accordingly, the Bid Procedures and the Bid Protections are reasonable and appropriate and represent the best method for maximizing value for the benefit of Solyndra's estate.

F. The *Notice of Bid Procedures, Auction Date and Sale Hearing*, substantially in the form attached hereto as **Exhibit B** (the "Bid Procedures and Sale Notice"), the *Notice of Auction and Sale Hearing*, substantially in the form attached hereto as **Exhibit C**

(the "Creditor Notice"), and the *Notice to Counterparties to Executory Contracts and Unexpired Leases That May Be Assumed and Assigned* to be served on counterparties to the Assumed Executory Contracts, substantially in the form of **Exhibit D** hereto (the "Assumed Executory Contract Notice"), each provide adequate notice concerning the proposed sale of the Property and the proposed assumption and assignment of the Assumed Executory Contracts, as contemplated in the Purchase Agreement, that are the property of Solyndra, and are intended to, and do, provide due and adequate notice of the relief sought in the Sale Motion.

IT IS, THEREFORE, HEREBY ORDERED THAT:

1. The relief requested in the Bid Procedures Motion is granted as set forth in this Order
2. The Bid Procedures substantially as set forth on the attached **Exhibit A** are approved in their entirety, and are incorporated herein by reference.
3. The proposed sale of the Property, the proposed assumption and assignment of the Assumed Executory Contracts, the Auction (as defined below) and the Sale Hearing shall be conducted solely in accordance with the provisions of this Bid Procedures Order and the Bid Procedures.
4. The Bid Protections as set forth in Section 2.7(d) of the Purchase Agreement are hereby approved, and shall constitute an administrative expense under the Bankruptcy Code, and shall be paid from the proceeds of the Successful Bidder's Bid at Closing. Solyndra is authorized, without further action or order by the Court, to pay the Bid Protections in accordance with the terms and conditions of the Purchase Agreement and this Order. The Break-

Up Fee and Expense Reimbursement shall be paid to the Buyer notwithstanding whether the Buyer chooses, in its sole and absolute discretion, not to bid at the Auction, pursuant to the terms of the Purchase Agreement.

5. Within three (3) Business Days following entry of this Order, Solyndra shall serve by first class mail the Bid Procedures and Sale Notice on (a) the U.S. Trustee; (b) counsel to the official committee of unsecured creditors (the "Committee"); (c) counsel to Argonaut Ventures I, L.L.C., as the Prepetition Tranche A Representative and the Prepetition Tranche E Agent; (d) counsel to the U.S. Department of Energy, acting by and through the Secretary of Energy, as the Prepetition Tranche B/D Agent; (e) all parties known to be asserting a lien on any of the Property; (f) all entities known to have expressed an interest in acquiring any of the Property; (g) the Buyer and its counsel; and (h) all other parties that have filed a notice of appearance and demand for service of papers in the Debtors' chapter 11 cases under Bankruptcy Rule 2002 as of the date of filing of the Bid Procedures Motion (the "Notice Parties").

6. Within three (3) Business Days following entry of this Order, Solyndra shall serve the Creditor Notice on all of its known creditors, who have not already been served with Bid Procedures and Sale Notice.

7. At least fifteen days before the Sale Hearing, Solyndra shall file and serve the Assumed Executory Contract Notice to the counterparties to the Assumed Executory Contracts. Counterparties to the Assumed Executory Contracts<sup>4</sup> (each a "Counterparty", and

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<sup>4</sup> The inclusion of any agreement as an Assumed Executory Contract does not constitute an admission by Solyndra that such agreement actually constitutes an executory contract or unexpired lease under section 365 of the Bankruptcy Code, and Solyndra expressly reserves the right to challenge the status of any agreement included as an Assumed Executory Contract up until the time of the Sale Hearing

together, the "Counterparties") must file and serve any objection to the assumption and assignment of any Assumed Executory Contracts, including objections to any Cure Amount, by \_\_\_\_\_, 2012 at 4:00 p.m. (prevailing Eastern time). The Buyer or the Successful Bidder may remove any executory contracts or unexpired leases from the list of Assumed Executory Contracts at any time until Closing.

8. Any Counterparty failing to timely file an objection to the Cure Amounts set forth in the Cure Notices shall be forever barred from objecting to the Cure Amounts and from asserting any additional cure or other amounts against Solyndra, its estate, and the Buyer with respect to its executory contract(s) or unexpired lease(s) and will be deemed to consent to the Sale and the proposed assumption and assignment of its executory contract(s) or unexpired lease(s). Notwithstanding anything to the contrary, no executory contract or unexpired lease will be assumed unless and until the occurrence of the Closing Date and in accordance with the terms of the Purchase Agreement.

9. Any other objections to the relief requested at the Sale Hearing or to the proposed form of order (the "Sale Order") shall be in writing, shall state the basis of such objection with specificity, and shall be filed with the Court on or before \_\_\_\_\_, 2012 at 4:00 p.m. (prevailing Eastern time), and served in accordance with the Auction and Hearing Notice so as to be received by \_\_\_\_\_, 2012 by (a) counsel for the Debtors; (b) counsel to the Committee; (c) counsel to the Secured Lenders, (d) the United States Trustee; and (e) counsel for the Buyer.

10. Compliance with the foregoing notice provisions shall constitute sufficient notice of Solyndra's proposed sale of the Property, the contemplated assumption and assignment of the Assumed Executory Contracts and proposed Cure Amounts, and no additional notice of such contemplated transactions need be given.

11. If Solyndra receives more than one Qualified Bid, an auction (the "Auction") will be held on \_\_\_\_\_, 2012 at \_\_:\_\_.m. (prevailing Eastern time), at the offices of Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17<sup>th</sup> Floor, Wilmington, DE 19899, or at any such other location as Solyndra may hereafter designate.

12. Solyndra is authorized to hold and conduct the Auction in accordance with the Bid Procedures.

13 The hearing regarding the acceptance of the Successful Bid(s) and Backup Bid(s) shall be held on \_\_\_\_\_, 2012, at \_\_\_\_\_ (prevailing Eastern time) (the "Sale Hearing") and, subject to the terms of the Purchase Agreement, may be adjourned from time to time without further notice other than an announcement in open court at the Sale Hearing.

14. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h) and 7062 or otherwise, the terms and conditions of this Bid Procedures Order shall be immediately effective and enforceable upon its entry, and no automatic stay of execution shall apply to this Bid Procedures Order

15. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Bid Procedures Order.

Dated: \_\_\_\_\_, 2012

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The Honorable Mary F. Walrath,  
United States Bankruptcy Court Judge

**EXHIBIT A**

**Bid Procedures**

**EXHIBIT B**

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)  
 )  
 ) (Jointly Administered)  
Debtors. )  
  
Bid Deadline: TBD  
Auction: TBD  
Deadline to Object to Sale Motion: TBD  
Sale Hearing: TBD

**NOTICE OF BID PROCEDURES, AUCTION DATE, AND SALE HEARING**

PLEASE BE ADVISED that on August \_\_\_\_, 2012, the debtors and debtors in possession herein (the "Debtors") filed the *Motion of Solyndra LLC for an Order (A) Approving Procedures for Sale of Real Property and Related Property, (B) Scheduling Auction and Hearing to Consider Approval of Sale and Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (C) Approving Forms of Notice; and (D) Granting Related Relief* (the "Bid Procedures Motion") and *Motion of Solyndra LLC for an Order (A) Approving Procedures for Sale of Real Property and Related Property; (B) Scheduling Auction and Hearing to Consider Approval of Sale and Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (C) Approving Forms of Notice, and (D) Granting Related Relief* (the "Sale Motion")<sup>2</sup>. By the Sale Motion, Solyndra seeks, to sell its real property and

<sup>1</sup> The Debtors in these proceedings and the last four digits of each Debtors' 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.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings set forth in the Bid Procedures Motion

building located at 47488 Kato Road, Fremont, California, (the "Real Property") including all other related property interests (together, with the Real Property, the "Property") to be sold to either Seagate Technology, LLC (the "Buyer") or to another successful bidder(s) (the "Successful Bidder"), as set forth in that certain *Agreement of Sale and Purchase Between Solyndra LLC and Seagate Technology LLC*, dated as of August \_\_, 2012 (the "Purchase Agreement").

PLEASE BE FURTHER ADVISED that the following procedures (the "Bid Procedures") shall govern the bidding process and the sale at auction (the "Auction") of the Property. Any party in interest that wishes to receive a copy of the Sale Motion or the Bid Procedures Order (as defined below) shall make such request in writing to Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17<sup>th</sup> Floor, P.O. Box 8705, Wilmington, Delaware 19899-8705 (Courier 19801), Attn: Joshua M. Fried, Esq. These Bid Procedures have been approved and authorized by an order signed by the Honorable Mary F. Walrath, United States Bankruptcy Judge, at a hearing on \_\_\_\_\_ 2012 (the "Bid Procedures Order") in the chapter 11 cases of the Debtors, which cases were commenced on September 6, 2011.

PLEASE BE FURTHER ADVISED that this Notice provides a summary of the Bid Procedures approved in the Bid Procedures Order. In the event of any inconsistency or conflict between this Notice and the Bid Procedures Order, the Bid Procedures Order shall control.

## Bid Procedures

1. Property to be Sold

Solyndra seeks to sell the Property, and to assume and assign the Assumed Executory Contracts to the Buyer pursuant to the terms of the Purchase Agreement.<sup>3</sup>

2. Confidentiality Agreements and Access to Data Room

Any person or entity wishing to bid on the Property (each a "Potential Bidder") must deliver (unless previously delivered) to Solyndra:

- (a) To the extent not already executed, a confidentiality agreement in such form acceptable to Solyndra (such form is available upon request to Solyndra) unless otherwise agreed by Solyndra in its discretion.

Solyndra will afford any Potential Bidder who satisfied the requirement set forth in section 2(a) herein such reasonable due diligence access or additional information as may be reasonably requested by the Potential Bidder that Solyndra, in its business judgment, determines to be reasonable and appropriate. Solyndra will coordinate all reasonable requests for additional information and due diligence access from such Potential Bidders. Solyndra shall not be obligated to furnish any due diligence information after the conclusion of the Auction. Neither Solyndra nor its advisors are responsible for, and will bear no liability with respect to, any information obtained by Potential Bidders in connection with due diligence.

Potential Bidders seeking information about the qualification process should contact the Debtors at: Imperial Capital, LLC, 55 2nd Street, Suite 1950, San Francisco, CA 94105, Attn: Eric Carlson and Monte Green. Solyndra proposes that a "Qualified Bidder" be a Potential Bidder that delivers the documents described in subsection (a) above, whose financial information and credit-quality support or enhancement demonstrate, in Solyndra's sole discretion, the financial capability of the Potential Bidder to consummate the proposed transaction for the Property, and that Solyndra determines, in its sole discretion, is reasonably likely to submit a bona fide offer for the Property and be able to consummate such transaction if selected as the Successful Bidder (as defined below) within a time frame acceptable to Solyndra, and who submits a Qualified Bid as set forth below. As promptly as practicable after a Potential Bidder delivers the agreement required by subsection (a) above, after

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<sup>3</sup> The Property is also summarized in the *Motion for an Order (I) Approving Asset Purchase Agreement and Authorizing the Sale of Real Property and Related Property to Seagate Technology LLC or a Higher and Better Bidder, (II) Authorizing the Sale of Property Free and Clear of All Liens, Claims, Encumbrances and Interests Pursuant to Sections 363(a), (f) and (m) of the Bankruptcy Code, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* filed concurrently herewith.

consultation with the Committee and with Argonaut Ventures I, L.L.C., as the Prepetition Tranche A Representative and the Prepetition Tranche E Agent and the U.S. Department of Energy, acting by and through the Secretary of Energy, as the Prepetition Tranche B/D Agent (together, the "Secured Lenders"), Solyndra shall determine, and shall notify the Potential Bidder in writing, whether the Potential Bidder is a Qualified Bidder.

Qualified Bidders requesting information in connection with their due diligence should contact Solyndra at Imperial Capital, LLC, 55 2nd Street, Suite 1950, San Francisco, CA 94105, Attn: Eric Carlson and Monte Green, or Solyndra's counsel, Pachulski Stang Ziehl & Jones, LLP, 150 California Street, 15th Floor, San Francisco, CA 94111, Attn: Debra I. Grassgreen and Joshua M. Fried. Notwithstanding the foregoing or anything else in the Bid Procedures, the Buyer is hereby determined to be a Qualified Bidder for all purposes at the Auction.

3. Proposed Bid Protections for the Buyer

Recognizing: 1) the Buyer's expenditure of time, energy and resources in connection with the Purchase Agreement and the negotiation thereof and the transactions contemplated therein; and 2) in the absence of Solyndra's obligation to pay the Break-Up Fee and Expense Reimbursement, Buyer would not have entered into the Purchase Agreement, Solyndra has agreed to provide the Bid Protections to the Buyer, consisting of (i) the Break-Up Fee amount of \$1,805,510, and (ii) the Expense Reimbursement of up to \$500,000 on the terms and conditions as more fully set forth in the Purchase Agreement. In the event that the Property is sold to a Successful Bidder that is not the Buyer, Solyndra shall be obligated to pay the Buyer the amount of the Break-Up Fee and Expense Reimbursement in accordance with the terms of the Purchase Agreement.

4. Proposed Requirements for a Qualified Bid

In order to participate in the Auction, if any, Solyndra proposes that a Qualified Bidder must deliver to Solyndra a written offer (each, a "Written Offer"), which in order to be deemed a "Qualified Bid," must meet each of the requirements listed below:

- (a) State that the Qualified Bidder is prepared to enter into a legally binding purchase and sale agreement for the purchase of the Property on terms and conditions no less favorable to Solyndra than the terms and conditions contained in the Purchase Agreement, as determined by Solyndra in its reasonable business judgment, after consultation with the Committee and Secured Lenders;

- (b) Be accompanied by a clean and duly executed and binding Purchase Agreement or alternate purchase and sale agreement (a "Modified Agreement");
- (c) Be accompanied by a marked Modified Agreement reflecting any variations from the Purchase Agreement;
- (d) Be accompanied by a list of any executory contracts or unexpired leases that are to be assumed and/or assigned under such Modified Agreement.
- (e) Be willing to consummate and fund the proposed transaction on or prior to fifteen (15) days from the date of the order approving the Sale Motion (the "Closing Deadline"), unless otherwise agreed by Solyndra;
- (f) To the extent not previously provided, state that the Qualified Bidder is financially capable of consummating the transactions contemplated by the Purchase Agreement or Modified Agreement, and contain evidence satisfactory to Solyndra, in its discretion, that such Qualified Bidder is reasonably likely to consummate the transactions contemplated by the Purchase Agreement or Modified Agreement;
- (g) To Solyndra's satisfaction, fully disclose (i) the identity of each entity that will be bidding for the Property or otherwise participating in connection with such bid, and (ii) the terms of any such participation, and if an entity has been formed for the purpose of acquiring some, or all, of the Property, the parties that will bear liability for any breach by such entity;
- (h) State that the Written Offer is irrevocable until the closing of the transaction if such Qualified Bidder is designated as a Successful Bidder or a Backup Bidder (each as defined below);
- (i) Not request or entitle the Qualified Bidder to any transaction or break-up fee, expense reimbursement, or similar type of payment;
- (j) Is a higher and better offer than that contained in the Purchase Agreement with the Buyer, in Solyndra's business judgment and after consultation with the Committee and Secured Lenders;
- (k) Not contain any material due diligence or financing contingencies as determined by Solyndra in its reasonable discretion;

- (l) In Solyndra's discretion, provide evidence of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Purchase Agreement or Modified Agreement to Solyndra's satisfaction;
- (m) Include a good faith deposit (the "Good Faith Deposit") in the form of a certified check, wire transfer or such other form as is acceptable to Solyndra, payable to the order of Solyndra in an amount equal to \$10,000,000; and
- (n) All documentation submitted in support of the Written Offer must be submitted both in hard copy and electronically.

The Purchase Agreement with the Buyer shall constitute a Qualified Bid.

Any Good Faith Deposit accompanying a Written Offer that Solyndra, in its business judgment and after consultation with the Committee and the Secured Lenders, determines not to be a Qualified Bid shall be returned promptly following such determination. Between the Bid Deadline (as defined below) and the Auction, Solyndra may negotiate or seek clarification of any Qualified Bid from a Qualified Bidder. Each Qualified Bidder shall provide to Solyndra any information reasonably required by such parties in connection with the evaluation of a Written Offer or Qualified Bid within one business day after such request is made. Without the consent of Solyndra, a Qualified Bidder may not amend, modify or withdraw its Qualified Bid, except for proposed amendments to increase the amount or otherwise improve the terms of the Qualified Bid, during the period that such Qualified Bid is required to remain irrevocable and binding.

5. Proposed Bid Deadline

Solyndra proposes that all Qualified Bids must be received prior to 5:00 p.m. (Eastern Time) on the proposed bid deadline (the "Bid Deadline"), by Solyndra: to the attention of Imperial Capital, LLC, 55 2nd Street, Suite 1950, San Francisco, CA 94105, Attn: Eric Carlson and Monte Green; Debtors' Counsel: Pachulski Stang Ziehl & Jones LLP, 150 California Street, 15<sup>th</sup> Floor, San Francisco, California 94111-4500, Attn: Debra I. Grassgreen, Esquire and Joshua M. Fried, Esquire; Fax: (415) 263-7010; (email: [dgrassgreen@pszjlaw.com](mailto:dgrassgreen@pszjlaw.com) and [jfried@pszjlaw.com](mailto:jfried@pszjlaw.com)); Counsel to AE DIP 2011, LLC, the DIP Lender, and Argonaut Ventures I, L.L.C., as the Prepetition Tranche A Representative and the Prepetition Tranche E Agent: Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, Attn: Michael A. Rosenthal (email: [mrosenthal@gibsondunn.com](mailto:mrosenthal@gibsondunn.com)) and Young Conaway Stargatt & Taylor, LLP, 1000 West Street, 17th Floor, Wilmington, DE 19899, Attn: Sean M. Beach, Esq. (email:

sbeach@ycst.com); Counsel to the U.S. Department of Energy, acting by and through the Secretary of Energy, as the Prepetition Tranche B/D Agent, U.S. Department of Justice, Civil Division, 1100 L Street NW, Room 10030, Washington, D.C. 20530, Attn: Matthew J. Troy (email: matthew.troy@usdoj.gov); Counsel to the Committee: Blank Rome LLP, 1201 Market Street, Suite 800, Wilmington, DE 19801, Attn: Bonnie Glantz Fatell and David W. Carickhoff (email: fatell@blankrome.com and carickhoff@blankrome.com); and Office of the U.S. Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801, Attn: Jane M. Leamy (email: jane.m.leafy@usdoj.gov).

6. Determination of Qualified Bids

Solyndra proposes to, by no later than one (1) Business Day prior to the Auction, (i) determine, in its business judgment and after consultation with the Committee and the Secured Lenders, whether a Written Offer is a Qualified Bid, and (ii) notify each Qualified Bidder submitting a Written Offer whether that Written Offer is a Qualified Bid.

7. "As Is, Where Is"

Except as otherwise provided in the applicable agreement, the sale of any or all of the Property shall be on an "as is, where is" basis and without representations or warranties of any kind, nature or description by Solyndra, its agents or its estate except to the extent set forth in the applicable agreement of the Successful Bidder(s) as approved by the Bankruptcy Court. Except as otherwise provided in the applicable agreement, all of Solyndra's right, title and interest in and to the Property subject thereto shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and there-against (collectively, the "Interests") in accordance with sections 363 and 365 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the sale of the Property. Each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all desired due diligence regarding the Property prior to making its Qualified Bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Qualified Bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Property, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bid Procedures or, as to the Successful Bidder(s), the terms of the transaction(s) as set forth in the applicable agreement.

8. Auction

Solyndra proposes that in the event that two or more Qualified Bids are received, Solyndra will conduct an Auction of the Property. The Auction shall be held at the offices of Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17<sup>th</sup> Floor, Wilmington, DE 19899, at the date and time as set forth in the Bid Procedures Order (defined below) and continue thereafter until completed. Subject to the Purchase Agreement, Solyndra may adjourn the Auction at any time, continue the Auction from time to time and re-open the Auction at any time prior to the commencement of the Sale Hearing, as is appropriate in Solyndra's reasonable business judgment and after consultation with the Committee and the Secured Lenders.

Solyndra proposes that, except as otherwise permitted in Solyndra's discretion, only Solyndra, the Committee, the U.S. Trustee, the Secured Lenders, and Qualified Bidders and their respective professionals shall be entitled to attend the Auction. Only a Qualified Bidder that submitted a Qualified Bid is eligible to participate in the Auction.

The Auction shall be governed by the following proposed procedures:

- (a) Qualified Bidders shall appear in person at the Auction, or through a duly authorized representative.
- (b) Except with respect to subsections (e) and (f) below, Solyndra, in its discretion, may conduct the Auction in the manner that it determines, in its reasonable business judgment, will result in the Successful Bid(s) that will maximize the overall value of Solyndra's estate, and may adopt rules for the Auction at the Auction that, in Solyndra's reasonable business judgment, will better promote the goals of the Auction and that are not inconsistent with any of the provisions of the Bid Procedures Order (defined below) or the Purchase Agreement. All such rules will provide that: (i) the Auction procedures must be fair and open, and not intended to cause any participating Qualified Bidder to be disadvantaged in any material way as compared to any other participating Qualified Bidder, and (ii) the Committee, Secured Lenders and all participating Qualified Bidders shall be entitled to be present for all bidding with the understanding that the true identity of each bidder (i.e., the principals submitting each bid) shall be fully disclosed to all other participating Qualified Bidders and that all material terms of each Qualified Bid will be fully disclosed to all other bidders throughout the entire Auction. Each bid by a Qualified

Bidder at the Auction, if not inconsistent with the provisions of the Bid Procedures, shall be deemed to constitute a Qualified Bid. Notwithstanding the foregoing, any overbid by the Buyer will be credited with the amount of the Bid Protections, for purposes of comparison with other bids (it being understood that, as provided in [Section 8(e)] of these Bid Procedures, if the Buyer is the Successful Bidder at the Auction, it shall not be entitled to payment of the Bid Protections). The Break-Up Fee and Expense Reimbursement shall be paid to Buyer in accordance with the terms of Purchase Agreement and the Bid Procedures Order notwithstanding whether the Buyer chooses, in its sole and absolute discretion, not to bid at the Auction.

- (c) Solyndra will arrange for the actual bidding at the Auction to be transcribed.
- (d) Each Qualified Bidder participating in the Auction will be expected to confirm at the Auction that it has not engaged in any collusion regarding these Bid Procedures with any other Qualified Bidder, the Auction or any proposed transaction relating to the Property or a portion thereof.
- (e) At the Auction, the first bid for the Property other than the offer of Buyer set forth in the Purchase Agreement shall be considered only if it exceeds the purchase price set forth in the Purchase Agreement by a minimum of (i) the amount that would be owed if Solyndra would be required to pay the Bid Protections to the Buyer plus (ii) cash consideration in an amount not less than \$1,000,000. Subsequently, bidding will continue in minimum increments of at least \$500,000, with the specific increments for each round of bidding to be announced on the record at the Auction.
- (f) All Qualified Bidders shall have the right to, at any time, request that Solyndra announce, subject to any potential new Bids, the then current highest or best bid and, to the extent requested by any Qualified Bidder, use reasonable efforts to clarify any and all questions such Qualified Bidder may have regarding Solyndra's announcement of the then current highest or best bid.
- (g) In Solyndra's discretion, all Qualified Bidders shall have the right to submit additional bids and make additional modifications to the Purchase Agreement or Modified Agreement, as applicable, at the Auction, provided, however, that any such modifications to the Purchase Agreement or Modified Agreement, on an aggregate basis and viewed in

whole, shall not be less favorable to Solyndra as determined by Solyndra in its business judgment and after consultation with the Committee and Secured Lenders.

- (h) Upon conclusion of the bidding, the Auction shall be closed, and Solyndra shall, as soon as practicable, identify and determine, in its business judgment, after consultation with the Committee and Secured Lenders, the highest and best Qualified Bid for the Property that would maximize the overall value to Solyndra's estate, taking into account the Buyer's entitlement to the Bid Protections, if applicable (each a "Successful Bid" and the entity or entities submitting such Successful Bid, each a "Successful Bidder") and advise the Qualified Bidders of such determination, and require the Successful Bidder (other than Buyer) to deliver an executed Modified Agreement prior to commencement of the Sale Hearing and deposit (in addition to the Good Faith Deposit) the sum of 10% of the Successful Bid within two (2) Business Days after conclusion of the Auction (unless the Closing Date occurs prior to such time).
- (i) In addition, Solyndra will determine in its business judgment, after consultation with the Committee and Secured Lenders, which Qualified Bid, if any, is the next highest and best Qualified Bid and designate such Qualified Bid as a "Backup Bid" in the event the Successful Bidder fails to consummate the contemplated transaction. A Qualified Bidder that submitted a Qualified Bid that is designated a Backup Bid is a "Backup Bidder." Each Backup Bid shall remain open and binding until two business days after the closing of the transaction(s) by which all of the Property that was subject to such Backup Bid has been transferred to one or more Qualified Bidders pursuant to these Bid Procedures. Notwithstanding anything to the contrary, Buyer must consent to be designated a Backup Bidder.
- (j) Following the conclusion of the Auction, Solyndra may resume bidding on such procedures determined by Solyndra in its discretion for the sale of discrete assets (if any) not sold to the Successful Bidder.

9. Sole Qualified Bid

If the Purchase Agreement with the Buyer is the only Qualified Bid submitted by the Bid Deadline, Solyndra proposes to not hold any Auction and instead request at the Sale Hearing that the Court approve the Purchase Agreement with the Buyer.

10. Proposed Sale Hearing

Solyndra proposes that the Sale Hearing occur at the time to be scheduled by the Court and in accordance with the terms of the Purchase Agreement and Bid Procedures Order. After consultation with the Committee and Secured Lenders, but subject to the terms of the Purchase Agreement, Solyndra may adjourn or continue the Sale Hearing from time to time without further notice to parties in interest other than by announcement of the adjournment in open court or on the Court's calendar on the date scheduled for the Sale Hearing or any adjourned date. At the Sale Hearing, Solyndra shall present the results of the Auction to the Bankruptcy Court and seek approval for the Successful Bid and the Backup Bid. Upon (i) entry of an order approving a Successful Bid other than that of Buyer, (ii) consummation of a Sale to a Successful Bidder other than the Buyer, and (iii) to the extent allowed, in accordance with the provisions of the Purchase Agreement, Solyndra shall pay to Buyer a sum equal to the Bid Protections without further court order.

Following the Sale Hearing approving the transaction with respect to the Property to the Successful Bidder, if such Successful Bidder fails to consummate an approved transaction for any reason, the appropriate Backup Bidder(s) shall be designated the Successful Bidder and Solyndra shall be authorized to effect such transaction without further order of the Court. The Successful Bidder and Backup Bidder (if any) should be represented by counsel at the Sale Hearing.

11. Consummation of the Purchase

(a) Closing Deadline

The Successful Bidder shall consummate the sale transaction contemplated by the Successful Bid (the "Purchase") on or before the deadline set forth in the Purchase Agreement or Modified Agreement, as applicable, requested to close the sale of the Property to either the Buyer or the Successful Bidder (the "Closing Deadline"). Subject to the terms of the Purchase Agreement or Modified Agreement, Solyndra may extend the Closing Deadline from time to time in its business judgment. If a Successful Bidder successfully consummates an approved transaction by the Closing Deadline, such Successful Bidder's Good Faith Deposit shall be applied to the purchase price in such transaction.

If the Successful Bidder either fails to consummate the Purchase on or before the Closing Deadline, breaches the Purchase Agreement or Modified Agreement or otherwise fails to perform, Solyndra may, in its business judgment, after consultation with the Committee and Secured

Lenders, and without further order of the Bankruptcy Court, deem the Successful Bidder to be a "Defaulting Buyer," at which time the Successful Bid shall be deemed rejected.

Subject to Buyer's rights to the Bid Protections and pursuant to the Purchase Agreement, Solyndra shall be entitled to (i) retain the Good Faith Deposit as part of its damages resulting from the breach or failure to perform by the Defaulting Buyer, and (ii) seek all available damages from such Defaulting Buyer occurring as a result of such Defaulting Buyer's failure to perform.

(b) Back-Up Purchase

Upon a determination by Solyndra, after consultation with the Committee and Secured Lenders, that the Successful Bidder is a Defaulting Buyer, Solyndra will be authorized, but not required, to consummate a sale transaction with the Backup Bidder on the terms and conditions of the Backup Bid (the "Backup Purchase") without further order of the Bankruptcy Court.

If a Backup Bidder consummates a Backup Purchase, the Good Faith Deposit of such Backup Bidder will be applied to the purchase price in such transaction. On an as-needed basis, Solyndra, in the exercise of its business judgment and after consultation with the Committee and Secured Lenders, shall determine an alternative Closing Deadline for the Backup Purchase. In the event that Solyndra seeks to consummate a Backup Purchase with a Backup Bidder and such Backup Bidder fails to consummate the Backup Purchase on or before the alternative Closing Deadline, breaches the Purchase Agreement or Modified Agreement or otherwise fails to perform, Solyndra may, in its business judgment and after consultation with the Secured Lenders and the Committee, and without further order of the Bankruptcy Court, deem such Backup Bidder to be a Defaulting Buyer and pursue the same remedies as under these Bid Procedures.

12. Return of Good Faith Deposits

Good Faith Deposits of all Qualified Bidders shall be held in an interest-bearing escrow account. Except for the Successful Bidder and the Backup Bidder(s), Solyndra shall return the Good Faith Deposits of all Qualified Bidders that submit Written Offers until three (3) business days after the Auction.

### Objections

16. Objections to the relief requested by the Sale Motion shall be set forth in writing and shall specify with particularity the grounds for such objections or other statements of position and shall be filed with the Court by 4:00 p.m. Eastern standard time on \_\_\_\_\_, 2012, and shall be served so as to be received by that same date and time on Solyndra's financial advisors, Imperial Capital, LLC, 55 Second Street, Suite 1950, San Francisco, CA 94105, Attn: Eric Carlson and Monte Green (email: [ecarlson@imperialcapital.com](mailto:ecarlson@imperialcapital.com) and [mgreen@imperialcapital.com](mailto:mgreen@imperialcapital.com)), with copies to: (a) Solyndra's counsel, Pachulski Stang Ziehl & Jones LLP, 150 California Street, 15<sup>th</sup> Floor, San Francisco, CA 94111, Attn: Debra I. Grassgreen and Joshua M. Fried (email: [dgrassgreen@pszjlaw.com](mailto:dgrassgreen@pszjlaw.com) and [jfried@pszjlaw.com](mailto:jfried@pszjlaw.com)); (b) counsel to AE DIP 2011, LLC, as the DIP Lender, and Argonaut Ventures I, L.L.C., as the Prepetition Tranche A Representative and the Prepetition Tranche E Agent, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, Attn: Michael A. Rosenthal (email: [mrosenthal@gibsondunn.com](mailto:mrosenthal@gibsondunn.com)) and Young Conaway Stargatt & Taylor, LLP, 1000 West Street, 17<sup>th</sup> Floor, Wilmington, DE 19899, Attn: Sean M. Beach, Esq. (email: [sbeach@ycst.com](mailto:sbeach@ycst.com)); (c) counsel to the U.S. Department of Energy, acting by and through the Secretary of Energy, as the Prepetition Tranche B/D Credit Facility Agent, U.S. Department of Justice, Civil Division, 1100 L Street NW, Room 10030, Washington, D.C. 20530, Attn: Matthew J. Troy (email: [matthew.troy@usdoj.gov](mailto:matthew.troy@usdoj.gov)); (d) counsel to the Official Committee of Unsecured Creditors, Blank Rome LLP, 1201 Market Street, Suite 800, Wilmington, DE 19801, Attn: Bonnie Glantz Fatell (email: [fatell@blankrome.com](mailto:fatell@blankrome.com)); and (e) Office of the U.S. Trustee for the District of Delaware,

844 King Street, Suite 2207, Wilmington, DE 19801, Attn: Jane M. Leamy (email: jane.m.leafy@usdoj.gov) (collectively, the "Notice Parties").

**Court Approval**

17. An evidentiary hearing on the relief requested in the Sale Motion (among other things, to confirm the results of the Auction and approve the sale to the Successful Bidder) (the "Sale Hearing") will be held before the Honorable Mary Walrath, United States Bankruptcy Judge, on \_\_\_\_\_, 2012 at \_\_\_\_\_.m. (prevailing Eastern time) or as such time thereafter as counsel may be heard. The sale of the Property will be subject to the entry of an order of the Bankruptcy Court approving the sale.

**Closing**

18. The closing on the Sale (the "Closing") shall take place in accordance with the terms of the Purchase Agreement, or in accordance with the terms of such other agreement approved by the Bankruptcy Court at the Sale Hearing.

PLEASE BE FURTHER ADVISED that all requests for information concerning the Property and/or the Bid Procedures, should be directed in writing to Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17<sup>th</sup> Floor, P.O. Box 8705, Wilmington, Delaware 19899-8705 (Courier 19801), Attn: Joshua M. Fried, Esq.

Dated: \_\_\_\_\_, 2012

PACHULSKI STANG ZIEHL & JONES LLP

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Richard M. Pachulski (CA Bar No 90073)  
Debra I. Grassgreen (CA Bar No. 169978)

Bruce Grohsgal (DE Bar No. 3583)  
Joshua M. Fried (CA Bar No. 181541)  
919 North Market Street, 17<sup>th</sup> Floor  
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dgrassgreen@pszjlaw.com  
bgrohsgal@pszjlaw.com  
jfried@pszjlaw.com

Counsel for the Debtors and  
Debtors in Possession

**EXHIBIT C**

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)  
 )  
Deadline for Submitting Bids: \_\_\_\_\_, 2012 at 4:00 p.m. PT  
Auction Date: \_\_\_\_\_, 2012 at \_\_\_\_\_m. PT  
Deadline for Objections to Sale Motion: \_\_\_\_\_, 2012 at 4:00 p.m. ET  
Hearing Date on Sale Motion: \_\_\_\_\_, 2012 at \_\_\_\_\_m. ET

**NOTICE OF AUCTION AND SALE HEARING**

PLEASE BE ADVISED that, on \_\_\_\_\_, 2012, Solyndra LLC ("Solyndra"), one of the above-captioned debtors and debtors in possession herein (the "Debtors"), filed the *Motion of Solyndra LLC for an Order (A) Approving Procedures for Sale of Real Property and Related Property; (B) Scheduling Auction and Hearing to Consider Approval of Sale and Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (C) Approving Forms of Notice, and (D) Granting Related Relief* (the "Bid Procedures Motion").<sup>2</sup>

PLEASE BE FURTHER ADVISED that, on \_\_\_\_\_, 2012, the Court entered an order approving the Bid Procedures Motion (the "Bid Procedures Order"), which approved certain bid procedures for the sale (the "Bid Procedures") As set forth in the Bid

<sup>1</sup> The Debtors in these proceedings and the last four digits of each Debtors' 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.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings set forth in the Bid Procedures Motion.

Procedures, Solyndra seeks to sell its real property located at 47488 Kato Road, Fremont, California and certain related property (the "Property") to Seagate Technology, LLC (the "Buyer") or to such other successful bidder(s) who purchases the Property (the "Successful Bidder"), all to the extent described in the *Agreement of Sale and Purchase Between Solyndra LLC and Seagate Technology LLC* (the "Purchase Agreement").

PLEASE BE FURTHER ADVISED that among other things, the Bid Procedures Order sets \_\_\_\_\_ at 4:00 p.m. (prevailing Eastern time) as the deadline for submitting bids on the Property, and (ii) provides that an auction (the "Auction") of the Property may be conducted on \_\_\_\_\_, commencing at approximately \_\_\_\_\_ m. (prevailing Eastern time), at Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17<sup>th</sup> Floor, Wilmington, DE 19801, or at such other date, time and place as determined and announced by Solyndra.

PLEASE BE FURTHER ADVISED that Solyndra has filed a motion (the "Sale Motion") seeking Court approval of the sale of the Property to the highest and best bidder(s) at the Auction, free and clear of all liens, claims and encumbrances pursuant to section 363 of title 11 of the United States Code, with all liens, claims and encumbrances to attach to the proceeds of the sale with the same validity and in the same order of priority as they attached to the Property prior to the sale, including the assumption by Solyndra and assignment to the buyer of certain executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code, all as more fully set forth in the Bid Procedures Order and Bid Procedures.

PLEASE BE FURTHER ADVISED that any response or objection to the Sale Motion or the conduct of the Auction must be filed with the United States Bankruptcy Court for

the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, on or before October 19, 2011, at 4:00 p.m. (prevailing Eastern time). By the same time, you must also serve a copy of the response or objection upon Solyndra's financial advisors, Imperial Capital, LLC, 55 Second Street, Suite 1950, San Francisco, CA 94105, Attn: Eric Carlson and Monte Green (email: [ecarlson@imperialcapital.com](mailto:ecarlson@imperialcapital.com) and [mgreen@imperialcapital.com](mailto:mgreen@imperialcapital.com)), with copies to: (a) Solyndra's counsel, Pachulski Stang Ziehl & Jones LLP, 150 California Street, 15<sup>th</sup> Floor, San Francisco, CA 94111, Attn: Debra I. Grassgreen and Joshua M. Fried (email: [dgrassgreen@pszjlaw.com](mailto:dgrassgreen@pszjlaw.com) and [jfried@pszjlaw.com](mailto:jfried@pszjlaw.com)); (b) counsel to AE DIP 2011, LLC, as the DIP Lender, and Argonaut Ventures I, L.L.C., as the Prepetition Tranche A Representative and the Prepetition Tranche E Agent, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, Attn: Michael A. Rosenthal (email: [mrosenthal@gibsondunn.com](mailto:mrosenthal@gibsondunn.com)) and Young Conaway Stargatt & Taylor, LLP, 1000 West Street, 17<sup>th</sup> Floor, Wilmington, DE 19899, Attn: Sean M. Beach, Esq. (email: [sbeach@ycst.com](mailto:sbeach@ycst.com)); (c) counsel to the U.S. Department of Energy, acting by and through the Secretary of Energy, as the Prepetition Tranche B/D Credit Facility Agent, U.S. Department of Justice, Civil Division, 1100 L Street NW, Room 10030, Washington, D.C. 20530, Attn: Matthew J. Troy (email: [matthew.troy@usdoj.gov](mailto:matthew.troy@usdoj.gov)); (d) counsel to the Official Committee of Unsecured Creditors, Blank Rome LLP, 1201 Market Street, Suite 800, Wilmington, DE 19801, Attn: Bonnie Glantz Fatell (email: [fatell@blankrome.com](mailto:fatell@blankrome.com)); and (e) Office of the U.S. Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801, Attn: Jane M. Leamy (email: [jane.m.leafy@usdoj.gov](mailto:jane.m.leafy@usdoj.gov)) (collectively, the "Notice Parties").

PLEASE BE FURTHER ADVISED that an evidentiary hearing (the "Sale Hearing") on the relief requested in the Sale Motion (among other things, to confirm the results of any Auction and approve the sale of the Property to the Buyer or the Successful Bidder(s)) will be held on \_\_\_\_\_, 2012 at \_\_\_\_\_m. (prevailing Eastern time) before the Honorable Mary F. Walrath, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Wilmington, Delaware 19801. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing.

PLEASE BE FURTHER ADVISED that all requests for information concerning information on the Bid Procedures, the proposed sale of the Property, or the Sale Motion should be directed in writing to Solyndra's financial advisors, Imperial Capital, LLC, 55 Second Street, Suite 1950, San Francisco, CA 94105, Attn: Eric Carlson (email: [ecarlson@imperialcapital.com](mailto:ecarlson@imperialcapital.com) and [mgreen@imperialcapital.com](mailto:mgreen@imperialcapital.com)) and to Solyndra's counsel, Pachulski Stang Ziehl & Jones LLP, 150 California Street, 15<sup>th</sup> Floor, San Francisco, CA 94111, Attn: Debra I. Grassgreen and Joshua M. Fried (email: [dgrassgreen@pszjlaw.com](mailto:dgrassgreen@pszjlaw.com) and [jfried@pszjlaw.com](mailto:jfried@pszjlaw.com)).

Dated: \_\_\_\_\_, 2012

PACHULSKI STANG ZIEHL & JONES LLP

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Counsel for the Debtors and  
Debtors in Possession



PLEASE BE FURTHER ADVISED that any response or objection to the Sale Motion or the conduct of the Auction must be filed with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, on or before \_\_\_\_\_, 2012, at 4:00 p.m. (prevailing Eastern time). By the same time, you must also serve a copy of the response or objection upon Solyndra's financial advisors, Imperial Capital, LLC, 55 Second Street, Suite 1950, San Francisco, CA 94105, Attn: Eric Carlson and Monte Green (email: [ecarlson@imperialcapital.com](mailto:ecarlson@imperialcapital.com) and [mgreen@imperialcapital.com](mailto:mgreen@imperialcapital.com)), with a copy to: (a) Solyndra's counsel, Pachulski Stang Ziehl & Jones LLP, 150 California Street, 15<sup>th</sup> Floor, San Francisco, CA 94111, Attn: Debra I. Grassgreen and Joshua M. Fried (email: [dgrassgreen@pszjlaw.com](mailto:dgrassgreen@pszjlaw.com) and [jfried@pszjlaw.com](mailto:jfried@pszjlaw.com)); (b) counsel to AE DIP 2011, LLC, as the DIP Lender, and Argonaut Ventures I, L.L.C., as the Prepetition Tranche A Representative and the Prepetition Tranche E Agent, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, Attn: Michael A. Rosenthal (email: [mrosenthal@gibsondunn.com](mailto:mrosenthal@gibsondunn.com)) and Young Conaway Stargatt & Taylor, LLP, 1000 West Street, 17<sup>th</sup> Floor, Wilmington, DE 19899, Attn: Sean M. Beach, Esq. (email: [sbeach@ycst.com](mailto:sbeach@ycst.com)); (c) counsel to the U.S. Department of Energy, acting by and through the Secretary of Energy, as the Prepetition Tranche B/D Credit Facility Agent, U.S. Department of Justice, Civil Division, 1100 L Street NW, Room 10030, Washington, D.C. 20530, Attn: Matthew J. Troy (email: [matthew.troy@usdoj.gov](mailto:matthew.troy@usdoj.gov)); (d) counsel to the Official Committee of Unsecured Creditors, Blank Rome LLP, 1201 Market Street, Suite 800, Wilmington, DE 19801, Attn: Bonnie Glantz Fatell (email: [fatell@blankrome.com](mailto:fatell@blankrome.com)); and (e) Office of the U.S. Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801, Attn: Jane M. Leamy (email: [jane.m.leafy@usdoj.gov](mailto:jane.m.leafy@usdoj.gov)) (collectively, the "Notice Parties").

PLEASE BE FURTHER ADVISED that an evidentiary hearing (the "Sale Hearing") on the relief requested in the Sale Motion (among other things, to confirm the results of any Auction and approve the sale of the Property to the Buyer or the Successful Bidder(s), if any) will be held on \_\_\_\_\_, 2012 at \_\_\_\_\_ m. (prevailing Eastern time) before the Honorable Mary J. Walrath, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Wilmington, Delaware 19801. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing.

**PLEASE TAKE FURTHER NOTICE THAT, PURSUANT TO THE SALE MOTION AND CONSISTENT WITH THE BID PROCEDURES ORDER, SOLYNDRA INTENDS TO ASSUME AN EXECUTORY CONTRACT OR UNEXPIRED LEASE TO WHICH YOU ARE A PARTY (THE "ASSUMED EXECUTORY CONTRACT"). THE ASSUMED EXECUTORY CONTRACT IS DESCRIBED ON EXHIBIT 1 ATTACHED TO THIS NOTICE. THE ASSUMED EXECUTORY CONTRACT WILL BE ASSUMED BY SOLYNDRA AND ASSIGNED TO THE SUCCESSFUL BIDDER. THE AMOUNT SHOWN ON EXHIBIT 1 HERETO AS THE "CURE AMOUNT" IS THE AMOUNT, IF ANY, BASED UPON SOLYNDRA'S BOOKS AND RECORDS, WHICH SOLYNDRA ASSERTS IS OWED TO CURE ANY DEFAULTS EXISTING UNDER THE ASSUMED EXECUTORY CONTRACT AS OF THE DATE SHOWN ON SUCH EXHIBIT.**

PLEASE TAKE FURTHER NOTICE that if you disagree with the Cure Amount shown for the Assumed Executory Contract on Exhibit 1, you must file in writing with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Wilmington, Delaware 19801, an objection on or before 4:00 p.m. prevailing Eastern time on \_\_\_\_\_, 2012, and serve such objection the Notice Parties. If a contract or lease is assumed and assigned pursuant to this Court's order approving same, then unless you properly and timely file and serve an objection to the Cure Amount contained in this Notice, you shall be paid by Solyndra at the time of the closing of the sale (or as soon as reasonably practicable thereafter), the Cure Amount, if any, set forth herein, with payment, if any, made pursuant to the terms of your applicable Assumed Executory Contract or lease. The Buyer or the Successful Bidder may remove any executory contracts or unexpired leases from the list of Assumed Executory Contracts at any time until the closing of the Sale of the Property pursuant to the Purchase Agreement.

PLEASE TAKE FURTHER NOTICE that if you have any other objection to Solyndra's assumption and assignment of the Assumed Executory Contract to which you may be a party or to the Sale Motion, you also must file that objection in the manner and by the date and time stated above; provided, however, that you may raise at the Sale Hearing an objection to the assumption and assignment of the Assumed Executory Contract *solely* with respect to the ability of the Buyer or the Successful Bidder(s) to provide adequate assurance of future performance under the Assumed Executory Contract. In addition, any objection must set forth the specific default or defaults alleged and set forth any cure amount as alleged by you.

PLEASE TAKE FURTHER NOTICE that the Buyer or the Successful Bidder shall be responsible for satisfying any requirements regarding adequate assurance of future performance that may be imposed under section 365(b) of the Bankruptcy Code in connection with the proposed assignment of any Assumed Executory Contract, as will be provided in the Sale Motion. The Court shall make its determinations concerning adequate assurance of future performance under the Assumed Executory Contracts pursuant to section 365(b) of the Bankruptcy Code at the Sale Hearing. Cure Amounts disputed by any counterparty will be resolved by the Court at the Sale Hearing.

**PLEASE TAKE FURTHER NOTICE THAT IF YOU DO NOT TIMELY FILE AND SERVE AN OBJECTION AS STATED ABOVE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE SALE MOTION WITH NO FURTHER NOTICE.**

**ANY NON-DEBTOR PARTY TO ANY ASSUMED EXECUTORY CONTRACT WHO DOES NOT FILE A TIMELY OBJECTION TO THE CURE AMOUNT FOR SUCH ASSUMED EXECUTORY CONTRACT IS DEEMED TO HAVE CONSENTED TO SUCH CURE AMOUNT.**

Dated: \_\_\_\_\_, 2012

PACHULSKI STANG ZIEHL & JONES LLP

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Richard M. Pachulski (CA Bar No. 90073)  
Debra I. Grassgreen (CA Bar No. 169978)  
Bruce Grohsgal (DE Bar No. 3583)  
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Counsel for the Debtors and  
Debtors in Possession

**EXHIBIT 1**

<b>COUNTERPARTY</b>	<b>DEBTORS PARTY</b>	<b>ASSUMED EXECUTORY CONTRACT OR UNEXPIRED LEASE</b>	<b>CURE AMOUNT (AS OF _____, 2012)</b>
	Solyndra LLC		

**EXHIBIT C**  
**FORM OF APPROVAL ORDER**

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)  
 ) Related Docket No. \_\_\_\_

**ORDER UNDER 11 U.S.C. §§ 105(A), 363 AND 365 AND FED. R.  
BANKR. P. 2002, 6004 AND 6006: (I) APPROVING AGREEMENT OF SALE  
AND PURCHASE AND AUTHORIZING THE SALE OF REAL PROPERTY  
AND RELATED PROPERTY TO SEAGATE TECHNOLOGY LLC OR A HIGHER  
AND BETTER BIDDER; (II) AUTHORIZING THE SALE OF PROPERTY FREE  
AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS  
PURSUANT TO SECTIONS 363(A), (F) AND (M) OF THE BANKRUPTCY CODE, (III)  
AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES; AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the "Sale Motion")<sup>2</sup> of Solyndra LLC ("Solyndra") one of the captioned debtors and debtors in possession (together, the "Debtors") for an order, under Bankruptcy Code sections 105(a), 363 and 365 and Bankruptcy Rules 2002, 6004 and 6006, authorizing and approving the proposed sale of Solyndra's real property and building located at 47488 Kato Road, Fremont, California, (the "Real Property") including all other property interests to be sold to Seagate Technology LLC (the "Buyer") (together, with the Real Property, the "Property") by Solyndra, pursuant to that certain *Agreement of Sale and Purchase Between Solyndra LLC and Seagate Technology LLC*, dated as of \_\_\_\_\_, 2012, a copy of which is

<sup>1</sup> The Debtors in these proceedings and the last four digits of each Debtors' 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.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion or the Purchase Agreement, as applicable.

attached hereto as Exhibit A (the "Purchase Agreement"); the Court having considered the Sale Motion and the Purchase Agreement, objections thereto, the statements of counsel and any testimony or offer of proof as to testimony on the record at the hearing on \_\_\_\_\_, 2012 (the "Sale Hearing"), at which time all interested parties were offered an opportunity to be heard with respect to the Sale Motion; and it appearing that the relief requested in the Sale Motion is in the best interests of Solyndra, its bankruptcy estate, its creditors and other parties-in-interest; and after due deliberation and good cause appearing therefor;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS:<sup>3</sup>

A. **Jurisdiction and Venue.** This Court has jurisdiction to consider the Sale Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and the Sale Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

B. **Statutory Predicates.** The statutory predicates for the relief sought in the Sale Motion are Bankruptcy Code sections 105(a), 363 and 365 and Bankruptcy Rules 2002, 6004 and 6006.

C. **Notice.** As evidenced by the affidavits of service filed with this Court and based upon the representations of counsel at the Sale Hearing: (i) due, proper, timely, adequate and sufficient notice of the Sale Motion, the Auction, the Sale Hearing and the transactions set forth in the Purchase Agreement (the "Sale"), including the assumption and assignment of the Assumed Executory Contracts and Cure Amounts with respect thereto, has been provided in

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<sup>3</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed R Bankr P. 7052.

accordance with Bankruptcy Code sections 105(a), 363 and 365 and Bankruptcy Rules 2002, 6004 and 6006; (ii) it appears that no other or further notice need be provided; (iii) such notice was and is good, sufficient and appropriate under the circumstances; and (iv) no other or further notice of the Sale Motion, the Auction, the Sale Hearing or the Sale (including the assumption and assignment of the Assumed Executory Contracts), is or shall be required.

D. **Opportunity to Object.** A reasonable opportunity to object and to be heard with respect to the Sale Motion and the relief requested therein has been given, in light of the circumstances, to all interested persons and entities, including the following: (a) the U.S. Trustee; (b) counsel to the official committee of unsecured creditors (the "Committee"); (c) the Secured Lenders; (d) all parties known to have asserted a lien on the Property; (e) all entities known to have expressed an interest in acquiring any of the Property; (f) the Buyer and its counsel; (g) all other parties that have filed a notice of appearance and demand for service of papers in the Debtors' chapter 11 cases under Bankruptcy Rule 2002 as of the date of filing the Sale Motion; and (h) all known creditors of the Debtors.

E. **Sale in Best Interests.** Good and sufficient reasons for approval of the Purchase Agreement and the Sale have been articulated, and the relief requested in the Sale Motion is in the best interests of Solyndra, its estate, its creditors and other parties in interest.

F. **Business Justification.** Solyndra has demonstrated both (i) good, sufficient and sound business purposes and justifications, and (ii) compelling circumstances for the Sale other than in the ordinary course of business under Bankruptcy Code section 363(b) in that, among other things, the immediate consummation of the Sale with the Buyer is necessary

and appropriate to maximize the value of Solyndra's estate. Entry of an order approving the Purchase Agreement and all the provisions thereof is a necessary condition precedent to the Buyer consummating the transactions set forth in the Purchase Agreement.

G. **Arm's-Length Sale.** The Purchase Agreement was negotiated, proposed and entered into by Solyndra and the Buyer without collusion, in good faith and from arm's-length bargaining positions. The Buyer is not an "insider" of the Debtors, as that term is defined in Bankruptcy Code section 101(31). Neither the Debtors nor the Buyer have engaged in any conduct that would cause or permit the Purchase Agreement to be avoided under Bankruptcy Code section 363(n). Specifically, the Buyer has not acted in a collusive manner with any person and the purchase price was not controlled by any agreement among bidders.

H. **Good Faith Buyer.** The Buyer is a good faith purchaser of the Property within the meaning of Bankruptcy Code section 363(m) and is therefore entitled to all of the protections afforded by Bankruptcy Code section 363(m). The Buyer has proceeded in good faith in all respects in connection with this proceeding in that: (a) the Buyer recognized that Solyndra was free to deal with any other party interested in acquiring the Property; (b) the Buyer complied with the provisions in the Bid Procedures Order; (c) the Buyer agreed to subject its bid to the competitive bidding procedures set forth in the Bid Procedures Order dated \_\_\_\_\_; and (d) all payments to be made by the Buyer and other agreements or arrangements entered into by the Buyer in connection with the Transaction have been disclosed. Neither Solyndra nor the Buyer has engaged in any conduct that would cause or permit the Purchase Agreement to be voided, or for the imposition of costs and damages, under section

363(n) of the Bankruptcy Code.

I. Highest and Best Offer. Solyndra conducted the Auction in accordance with, and has otherwise complied in all respects with, the Bid Procedures Order. The Auction established in the Bid Procedures Order afforded a full, fair and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase the Property. The Auction was duly noticed and conducted in a non-collusive, fair and good faith manner and a reasonable opportunity was given to any interested party to make a higher and better offer for the Property.] The Purchase Agreement constitutes the highest and best offer for the Property, and will provide a greater recovery for Solyndra's estate than would be provided by any other available alternative. Solyndra's determination that the Purchase Agreement constitutes the highest and best offer for the Property constitutes a valid and sound exercise of Solyndra's business judgment.

J. Consideration. The Purchase Price to be paid by the Buyer pursuant to the Purchase Agreement and other consideration provided by the Buyer constitutes reasonably equivalent value or fair consideration, as the case may be (as those terms are defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act and Section 548 of the Bankruptcy Code), and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession or the District of Columbia. The Purchase Agreement represents a fair and reasonable offer to purchase the Property under the circumstances of Solyndra's chapter 11 case. No other person or entity or group of entities, other than the Buyer, has offered to purchase the Property for an amount that would give greater

economic value to Solyndra's estate. Approval of the Sale Motion and the Purchase Agreement and the consummation of the transactions contemplated thereby are in the best interests of Solyndra, its creditors, its estate and all other parties in interest.

K. **Free and Clear.** Solyndra is the sole and lawful owner of the Property. Accordingly, pursuant to, and to the fullest extent permitted by section 363 of the Bankruptcy Code and all other applicable laws, the transfer of the Property to the Buyer under the Purchase Agreement shall be a legal, valid, and effective transfer of the Property, and upon Closing shall vest the Buyer with all right, title, and interest of Solyndra to the Property free and clear of all liens, claims (as defined in Section 101(5) of the Bankruptcy Code), encumbrances, obligations, liabilities, contractual commitments or interests of any kind or nature whatsoever (collectively, the "Interests"), including, but not limited to, (i) those that purport to give to any party a right or option to effect any forfeiture, modification or termination of Solyndra's interests in the Property, or any similar rights, and (ii) those relating to taxes arising under or out of, in connection with, or in any way relating to the operation of Solyndra's business prior to the Closing Date. For avoidance of doubt, all Interests shall attach to the proceeds ultimately attributable to the Property against or in which such Interests are asserted, subject to the terms of such Interests, with the same validity, force and effect, and in the same order of priority, which such Interests now have against the Property or their proceeds, if any, subject to any rights, claims and defenses Solyndra or its estate, as applicable, may possess with respect thereto.

L. The Buyer would not have entered into the Purchase Agreement and would not consummate the transactions contemplated thereby, thus adversely affecting Solyndra,

its estate, and its creditors, if the sale of the Property to the Buyer and the assumption and assignment of the Assumed Executory Contracts to the Buyer was not free and clear of all Interests of any kind or nature whatsoever, or if the Buyer would, or in the future could, be liable for any of the Interests arising on, at, from or related to the Property.

M. Buyer will not consummate the transactions contemplated by the Purchase Agreement unless the Purchase Agreement specifically provides, and the Bankruptcy Court specifically orders, that none of Buyer or its affiliates, officers, directors or shareholders or the Property will have any liability whatsoever with respect to or be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly, any lien or excluded liability.

N. Solyndra may sell the Property free and clear of any Interests of any kind or nature whatsoever because in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Each entity with an Interest in the Property to be transferred on the Closing Date: (i) has, subject to the terms and conditions of this Order, consented to the Sale or is deemed to have consented to the Sale; (ii) could be compelled in a legal or equitable proceeding to accept money satisfaction of such Interest; or (iii) otherwise falls within the provisions of section 363(f) of the Bankruptcy Code. Those holders of Interests who did not object to the Sale Motion are deemed, subject to the terms of this Order, to have consented pursuant to Bankruptcy Code section 363(f)(2). All holders of Interests are adequately protected by having their Interests attach to the proceeds ultimately attributable to the property against or in which such Interests are asserted, subject to the terms of such Interests, with the

same validity, force and effect, and in the same order of priority, which such Interests now have against the Property or their proceeds, if any, subject to any rights, claims and defenses Solyndra or its estate, as applicable, may possess with respect thereto.

O. **No Fraudulent Transfer.** The Purchase Agreement was not entered into for the purpose of hindering, delaying or defrauding creditors under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia. Neither Solyndra nor Buyer is entering into the transactions contemplated by the Purchase Agreement fraudulently.

P. **Not a Successor.** Buyer (a) is not a successor to Solyndra, (b) has not, de facto or otherwise, merged with or into Solyndra, (c) is not a continuation or substantial continuation of Solyndra or any enterprise of Solyndra, (d) does not have a common identity of incorporators, directors or equity holders with Solyndra, and (e) is not holding itself out to the public as a continuation of Solyndra. The (i) transfer of the Property to Buyer, and (ii) assumption and assignment to Buyer of the Assumed Executory Contracts, do not and will not subject Buyer to any liability whatsoever with respect to the operation of Solyndra's business before the Closing Date or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law or equity, including, without limitation, any theory of equitable law, including, without limitation, any theory of antitrust or successor or transferee liability and, except as otherwise contained herein or in the Purchase Agreement, Buyer shall not have any liability to any broker or other professionals retained by Solyndra or to cure any default

of Solyndra related to the Property or Assumed Executory Contracts.

Q. **Cure/Adequate Assurance.** The assumption and assignment of the Assumed Executory Contracts pursuant to the terms of this Order is integral to the Purchase Agreement and is in the best interests of Solyndra and its estate, creditors and all other parties in interest, and represents the reasonable exercise of sound and prudent business judgment by Solyndra. Solyndra has (i) to the extent necessary, cured or provided adequate assurance of cure, of any default existing prior to the date hereof with respect to the Assumed Executory Contracts, within the meaning of 11 U.S.C. §§ 365(b)(1)(A) and 365(f)(2)(A), and (ii) to the extent necessary, provided compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof with respect to the Assumed Executory Contracts, within the meaning of 11 U.S.C. § 365(b)(1)(B) and 365(f)(2)(A). The Buyer's promise to perform the obligations under the Assumed Executory Contracts after the Closing Date shall constitute adequate assurance of future performance within the meaning of 11 U.S.C. §§ 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B).

R. **Prompt Consummation.** The Sale must be approved and consummated promptly in order to preserve the viability of the business subject to the sale as a going concern, to maximize the value of Solyndra's estate. Except as otherwise provided in the Purchase Agreement, time is of the essence in consummating the Sale.

NOW, THEREFORE, IT IS ORDERED THAT:

1. **Sale Motion is Granted.** The Sale Motion and the relief requested therein is GRANTED and APPROVED, as set forth herein.

2     **Objections Overruled.** Any objections to the entry of this Order or the relief granted herein and requested in the Sale Motion that have not been withdrawn, waived, settled, or otherwise resolved pursuant to the terms hereof, if any, are hereby denied and overruled on the merits with prejudice.

3.     **Approval.** The Purchase Agreement and all of the terms and conditions therein are hereby approved. Solyndra is hereby authorized to (1) execute the Purchase Agreement, along with any additional instruments or documents that may be reasonably necessary or appropriate to implement the Purchase Agreement, provided that such additional documents do not materially change its terms; (2) consummate the Sale in accordance with the terms and conditions of the Purchase Agreement and the instruments to the Purchase Agreement contemplated thereby; and (3) take all other and further actions as may be reasonably necessary to implement the transactions contemplated by the Purchase Agreement.

4.     **Free and Clear.** Except as expressly permitted or otherwise specifically provided for in the Purchase Agreement or this Order, pursuant to Bankruptcy Code sections 105(a) and 363(f), Solyndra is authorized to transfer the Property to the Buyer and, as of the Closing Date, pursuant to, and to the fullest extent permitted by section 363 of the Bankruptcy Code and all other applicable laws, the Buyer shall take title to and possession of the Property free and clear of all Interests of any kind or nature whatsoever, including but not limited to the Liens, with all such Interests to attach to the proceeds ultimately attributable to the Property against or in which such Interests are asserted, subject to the terms of such Interests, with the same validity, force and effect, and in the same order of priority, which such Interests now have

against the Property or their proceeds, if any, subject to any rights, claims and defenses Solyndra or its estate, as applicable, may possess with respect thereto.

5. **Valid Transfer.** As of the Closing Date, (a) the transactions contemplated by the Purchase Agreement effect a legal, valid, enforceable and effective sale and transfer of the Property to Buyer, and shall vest Buyer with title to such assets free and clear of all liens, and (b) the Purchase Agreement and the transactions and instruments contemplated thereby shall be enforceable against and binding upon Buyer and Solyndra, and not subject to rejection or avoidance by Solyndra or any chapter 11 or chapter 7 trustee of Solyndra and its estate.

6. **General Assignment.** On the Closing Date, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of Solyndra's interests in the Property.

7. **Injunction.** Except as expressly permitted by the Purchase Agreement or by this Order, all persons and entities, including, but not limited to, Solyndra's employees, former employees, all debt security holders, equity security holders, administrative agencies, governmental, tax and regulatory authorities, secretaries of state, federal, state and local officials, lenders, contract parties, lessors, trade creditors and all other creditors holding Interests of any kind or nature whatsoever against or in Solyndra or in Solyndra's interests in the Property (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, known or unknown, liquidated or unliquidated, senior or subordinated), arising under or out of, in connection with, or in any way relating to, such Property or with respect to

any Interests arising out of or related to the Sale, shall be and hereby are forever barred, estopped and permanently enjoined from commencing, prosecuting or continuing in any manner any action or other proceeding of any kind against Buyer, its property, its successors and assigns, alleged or otherwise, its affiliates, or such Property. Notwithstanding the foregoing, nothing herein shall prevent (i) Solyndra from pursuing an action against the Buyer arising under the Purchase Agreement, or (ii) any administrative agencies, governmental, tax and regulatory authorities, secretaries of state, federal, state and local officials from properly exercising their police and regulatory powers.

8. **Release of Interests.** Except as otherwise provided in this Sale Order, this Order (a) shall be effective as a determination that, on the Closing Date, all Interests of any kind or nature whatsoever existing as to Solyndra or the Property prior to the Closing Date have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected, and (b) shall be binding upon and shall govern the acts of all entities including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Property.

9. **Assumption and Assignment of Assumed Executory Contracts.** Under 11 U.S.C. §§ 105(a) and 365(b), and subject to and conditioned upon the Closing of the Sale,

Solyndra's assumption and assignment of the Assumed Executory Contracts set forth on Schedule D of the Purchase Agreement to the Buyer free and clear of all Interests pursuant to the terms set forth in the Purchase Agreement, as modified by the terms of any amendments reached with the respective counterparty, is hereby approved, and the requirements of 11 U.S.C. §§ 365(b)(1), 365(b)(3) and 365(f)(2) with respect thereto are hereby deemed satisfied. Each counterparty to an Assumed Executory Contract is hereby forever barred, and estopped from raising or asserting against Solyndra, or Buyer, or the property of either, any assignment fee, default, breach, claim, pecuniary loss, liability or obligation (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinate) arising under or related to the Assumed Executory Contracts existing as of the Closing Date or arising by reason of the Closing.

10. There shall be no rent accelerations, assignment fees, increases (including advertising rates) or any other fees charged to the Buyer or Solyndra as a result of the assumption and assignment of the Assumed Executory Contracts.

11. Any provision in any Assumed Executory Contract that prohibits or conditions the assignment of such Assumed Executory Contract or allows the party to such Assumed Executory Contract to terminate, recapture, impose any penalty, or condition on renewal or extension, or to modify any term or condition upon the assignment of such Assumed Executory Contract, is deemed either satisfied or to constitute an unenforceable anti-assignment provision that is void and of no force or effect.

12. The Buyer has provided adequate assurance of its future performance under the Assumed Executory Contracts within the meaning of sections 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B) of the Bankruptcy Code. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by Solyndra, and assignment to the Buyer of the Assumed Executory Contracts have been satisfied.

13. Upon the Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, (i) the Buyer shall be fully and irrevocably vested with all right, title and interest of Solyndra under the Assumed Executory Contracts and will not be subject to any liability to the Assumed Executory Contracts counterparty that accrued or arose before the Closing, and (ii) Solyndra shall be relieved from any liability for any breach of such Assumed Executory Contracts occurring thereafter pursuant to section 365(k) of the Bankruptcy Code.

14. Cure. Pursuant to the Purchase Agreement, Solyndra shall pay all Cure Amounts relative to the Assumed Executory Contracts to be assigned on the Closing Date pursuant to the terms of the Purchase Agreement, and the Buyer shall not have any obligation to pay, or any liability for, any such Cure Amounts. Cure Amounts payable under the Assumed Executory Contracts shall be paid as promptly as possible after closing, but in no event later than twenty (20) Business Days after the Closing Date. The payment of the applicable Cure Amounts (if any) shall (a) effect a cure of all defaults existing thereunder as of the Closing Date, (b) compensate for any actual pecuniary loss to such non-debtor party resulting from such default, and (c) together with the assumption of the Assumed Executory Contracts by Solyndra, constitute adequate assurance of future performance thereof. Except as set forth herein, the non-

Debtor party or parties to each Assumed Executory Contract which is to be assigned on the Closing Date are forever barred from asserting against Solyndra, the Buyer, any of their respective affiliates or any of the Property: (i) any fee, default, breach, claim or pecuniary loss arising under or related to the Assumed Executory Contract existing as of the Closing Date or arising by reason of the Closing, and (ii) any objection to the assumption and assignment of such non-Debtor party's Assumed Executory Contracts.

15. **Binding Effect of Order.** This Order shall be binding upon and shall govern the acts of all entities, including without limitation all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Property.

16. **Binding on Successors.** The terms and provisions of the Purchase Agreement and this Order shall be binding in all respects upon Solyndra, its estate, all creditors of (whether known or unknown) and holders of equity interests in Solyndra, Buyer and their respective affiliates, successors and assigns, and any affected third parties, including, but not limited to, all persons asserting Interests in the Property and all non-debtor counterparties to the Assumed Executory Contracts, notwithstanding any subsequent appointment of any trustee of Solyndra under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and

provisions likewise shall be binding. This Order and the Purchase Agreement shall inure to the benefit of Solyndra, its estate, its creditors, the Buyer, and their respective successors and assigns.

17. **Bankruptcy Code Section 363(n)**. The consideration provided by the Buyer for the Property under the Purchase Agreement is fair and reasonable and may not be avoided under Bankruptcy Code section 363(n).

18. **Good Faith**. The transactions contemplated by the Purchase Agreement are undertaken by Buyer without collusion and in good faith, as that term is used in Bankruptcy Code section 363(m) and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale (including the assumption and assignment of the Assumed Executory Contracts) with Buyer, unless such authorization is duly stayed pending such appeal. Buyer is a good faith purchaser of the Property, and is entitled to all of the benefits and protections afforded by Bankruptcy Code section 363(m).

19. **Fair Consideration**. The Purchase Price to be paid by Buyer pursuant to the Purchase Agreement and other consideration provided by the Buyer to Solyndra pursuant to the Purchase Agreement for its purchase of the Property constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act and under the laws of the United States, any state, territory, possession or the District of Columbia.

20. **Retention of Jurisdiction.** This Court retains jurisdiction, pursuant to its statutory powers under 28 U.S.C. § 157(b)(2), to, among other things, interpret, implement, and enforce the terms and provisions of this Order and the Purchase Agreement, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Purchase Price or performance of other obligations owed to Solyndra; (b) interpret, implement and enforce the provisions of this Order and the Purchase Agreement; (c) adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale; and (d) protect Buyer by enforcing the Injunction and Releases contained herein, including without limitation against any Interests in Solyndra or the Property of any kind or nature whatsoever attaching to the proceeds of the Sale.

21. **Sale Proceeds.** Any and all valid and perfected Interests in Property of Solyndra shall attach to any proceeds of such Property immediately upon receipt of such proceeds by Solyndra (or any party acting on Solyndra's behalf) in the order of priority, and with the same validity, force and effect which they now have against such Property, if any, subject to any rights, claims and defenses Solyndra or its estate, as applicable, may possess with respect thereto, and, in addition to any limitations on the use of such proceeds pursuant to any provision of this Order.

22. **Non-material Modifications.** The Purchase Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by such parties, in accordance with the terms thereof, after

consultation with the Committee and Secured Lenders and without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on Solyndra's estate.

23. **Failure to Specify Provisions.** The failure specifically to include any particular provisions of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Purchase Agreement be authorized and approved in its entirety; *provided, however*, that this Order shall govern if there is any inconsistency between the Purchase Agreement (including all ancillary documents executed in connection therewith) and this Order. Likewise, all of the provisions of this Order are nonseverable and mutually dependent.

24. **No Stay of Order.** Notwithstanding the provisions of Interim Bankruptcy Rule 6004(h) and Bankruptcy Rule 6006(d), this Order shall not be stayed for fourteen days after the entry hereof, but shall be effective and enforceable immediately upon issuance hereof. Time is of the essence in closing the transactions referenced herein, and Solyndra and Buyer intend to close the Sale as soon as practicable. Any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a stay, or risk its appeal being foreclosed as moot.

25. **Confidentiality of Purchase Agreements.** Solyndra is authorized to enforce its rights under any confidentiality agreements it entered into with other potential bidders with respect to the Property for the benefit of the Buyer for the term of each respective confidentiality agreement.

26. **Further Assurances.** From time to time, as and when requested by any

party, each party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as such other party may reasonably deem necessary or desirable to consummate the transactions contemplated by the Purchase Agreement.

Dated: \_\_\_\_\_, 2012

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The Honorable Mary F. Walrath,  
United States Bankruptcy Court Judge

**EXHIBIT D**

**LIST OF CONTRACTS**

1. Intec .

[END OF LIST OF CONTRACTS]

**EXHIBIT E**

**FORM OF DEED**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

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

MAIL TAX STATEMENTS TO:

APN: \_\_\_\_\_

**GRANT DEED**

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, [SOLYNDRA LLC, a Delaware limited liability company]<sup>1</sup>, does hereby GRANT to \_\_\_\_\_, a \_\_\_\_\_, all of that certain real property in the City of Fremont, County of Alameda, State of California, as more particularly described in Exhibit "A" attached hereto and made a part hereof.

Such grant is subject to all encumbrances and other matters or record, and non-delinquent real property taxes.

[SIGNATURE PAGE FOLLOWS]

\_\_\_\_\_  
<sup>1</sup> Caption to be revised as necessary per title company requirements to reflect prior business combination with Fab 2.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

“GRANTOR”

**SOLYNDRA LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

State of California )

County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public,  
personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**EXHIBIT F**

**FORM OF BILL OF SALE**

For good and valuable consideration, the receipt of which is hereby acknowledged, SOLYNDRA, LLC, a Delaware limited liability company ("Seller"), does hereby sell, transfer, and convey to \_\_\_\_\_, a \_\_\_\_\_ ("Buyer") any and all personal property owned by Seller and used exclusively in connection with the operation of that certain real property more particularly described in Exhibit A attached hereto (the "Personal Property"), as such Personal Property is more particularly described in the attached Schedule 1.

Seller has executed this Bill of Sale and **BARGAINED, SOLD, TRANSFERRED, CONVEYED** and **ASSIGNED** the Personal Property and Buyer has accepted this Bill of Sale and purchased the Personal Property **AS IS AND WHEREVER LOCATED, WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF WHATSOEVER NATURE, EXPRESS, IMPLIED, OR STATUTORY, EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT OF SALE AND PURCHASE BETWEEN SELLER, \_\_\_\_\_ AND BUYER \_\_\_\_\_, DATED AS OF \_\_\_\_\_, 2012 (the "PURCHASE AGREEMENT")** AND THE WARRANTIES SET FORTH HEREIN, IT BEING THE INTENTION OF SELLER AND BUYER TO EXPRESSLY NEGATE AND EXCLUDE ALL WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS, ANY RIGHTS OF BUYER UNDER APPROPRIATE STATUTES TO CLAIM DIMINUTION OF CONSIDERATION, ANY CLAIM BY BUYER FOR DAMAGES BECAUSE OF DEFECTS, WHETHER KNOWN OR UNKNOWN WITH RESPECT TO THE PERSONAL PROPERTY, WARRANTIES CREATED BY AFFIRMATION OF FACT OR PROMISE AND ANY OTHER WARRANTIES CONTAINED IN OR CREATED BY THE UNIFORM COMMERCIAL CODE AS NOW OR HEREAFTER IN EFFECT IN THE STATE IN WHICH THE PERSONAL PROPERTY IS LOCATED, OR CONTAINED IN OR CREATED BY ANY OTHER LAW.

Buyer expressly acknowledges and affirms the provisions of Sections 2.7(b), 6.2, 7.3 and 7.4 of the Purchase Agreement.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**SELLER:**

**SOLYNDRA, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BUYER:**

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A TO BILL OF SALE**  
**DESCRIPTION OF REAL PROPERTY**

Exhibit A

**SCHEDULE 1 TO BILL OF SALE**  
**LIST OF PERSONAL PROPERTY**

**Schedule 1**

**EXHIBIT G**

**RESERVED**

EXHIBIT H

**FORM OF ASSIGNMENT AND ASSUMPTION OF CONTRACTS, WARRANTIES AND  
GUARANTIES, AND OTHER INTANGIBLE PROPERTY**

THIS ASSIGNMENT AND ASSUMPTION (this "Assignment") dated as of \_\_\_\_\_ 2012, is between SOLYNDRA, LLC, a Delaware limited liability company ("Assignor"), and \_\_\_\_\_, a \_\_\_\_\_ ("Assignee").

A. Assignor owns certain real property and certain improvements thereon known as \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and more particularly described in Exhibit A attached hereto (the "Property").

B. Assignor has entered into certain contracts which are more particularly described in Schedule I attached hereto (the "Contracts"), which affect the Property.

C. Assignor, \_\_\_\_\_ and Assignee, entered into an Agreement of Purchase and Sale dated as of \_\_\_\_\_, 2012 (the "Purchase Agreement"), pursuant to which Assignee agreed to purchase the Property from Assignor and Assignor agreed to sell the Property to Assignee, on the terms and conditions contained therein.

D. Assignor desires to assign to Assignee its interest, if any, in the Contracts and in certain warranties, guaranties, and intangible personal property with respect to the Property, to the extent the same are assignable, and Assignee desires to accept the assignment thereof, on the terms and conditions below.

ACCORDINGLY, the parties hereby agree as follows:

1. Assignor hereby assigns to Assignee all of Assignor's right, title, and interest, if any, in and to the following, from and after the date hereof, to the extent the same are assignable:

(a) the Contracts; and

(b) any warranties and guaranties ("Warranties and Guaranties") made by or received from any third party with respect to any improvements owned by Assignor on the Property

2. Assignee hereby accepts the foregoing assignment by Assignor and assumes all of the Assignor's obligations under the Contracts from and after the date hereof.

3. Assignee agrees to indemnify Assignor and hold Assignor harmless from and against any and all claims, liens, damages, demands, causes of action, liabilities, lawsuits, judgments, losses, costs and expenses (including but not limited to attorneys' fees and expenses) asserted against or incurred by Assignor by reason of or arising out of any failure by Assignee to perform or observe the obligations, covenants, terms and conditions assumed by Assignee hereunder

4. In the event of any dispute between Assignor and Assignee arising out of the obligations of the parties under this Assignment or concerning the meaning or interpretation of any provision contained herein, the losing party shall pay the sole prevailing party's costs and expenses of such dispute, including, without limitation, reasonable attorneys' fees and costs.

5. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

6. This Assignment shall be governed and construed in accordance with the laws of the State of California.

7. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

8. Assignee hereby expressly acknowledges and affirms the provisions of Sections 2.7(b), 6.2, 7.3 and 7.4 of the Purchase Agreement.

Assignor and Assignee have executed this Agreement the day and year first above written

**ASSIGNOR:**

**SOLYNDRA, LLC**, a Delaware limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ASSIGNEE:**

\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A  
TO  
ASSIGNMENT AND ASSUMPTION OF CONTRACTS, WARRANTIES AND  
GUARANTIES, AND OTHER INTANGIBLE PROPERTY**

**DESCRIPTION OF REAL PROPERTY**

Exhibit A

**SCHEDULE 1  
TO  
ASSIGNMENT AND ASSUMPTION OF CONTRACTS, WARRANTIES AND  
GUARANTIES,  
AND OTHER INTANGIBLE PROPERTY**

**LIST OF CONTRACTS**

Schedule 1

**EXHIBIT I**

**RESERVED**

**EXHIBIT J**

**DESCRIPTION OF EXISTING SURVEYS**

None.

**SCHEDULE 1**  
**CERTAIN FIXTURES**  
**[see attached]**

**SOLYNDRA FAB2 FE (BLDG. 4) FACILITIES SYSTEM CAPACITY**

June 14, 20

SYSTEM	UNIT	DESCRIPTION	FLOW (GPM)	FLOW (GPM)	REMARKS	STATUS
BUILDING MANAGEMENT SYSTEM (BMS)	1	WORKFLOW BASED			WITH SOME STAND ALONE SYSTEMS	Remains in Place
ELECTRICAL BMS	2	EM	71.4V (300A) (71.4V) (Watt)	47 KVA		Remains in Place
GENERATOR POWER	2	GMAN DIESEL GENERATORS	2,000 KW	4,000 KW	WITH AUTOMATED FUEL SYSTEM	Remains in Place
CH WATER DISTRIBUTION PUMPS	2	CHILLED WATER PUMPS	400 GPM @ 100 PSI	471 GPM	TWO PUMPS ON & ONE OFF	Remains in Place
CH WATER HD CAPACITY	2	5.5 MINUTE DIESEL PUMP HD SYSTEM	200 GPM PRODUCT	471 GPM		Remains in Place
CH WATER HOLDING TANKS	2	5.5 PRODUCT HOLDING TANK	22,000 GALS	42,777 GALS		Remains in Place
PROCESS COOLING WATER DISTRIBUTION PUMPS	1	COOLED PUMPS	3,183 GPM	3,591 GPM	2 PUMPS ON 100% (LOADED) & ONE OFF	Remains in Place
PROCESS COOLING WATER HEAT EXCHANGERS	2	ALFA LAVAL HEAT EXCHANGER	3,500 GPM	2,579 GPM	ONE ON & ONE OFF	Remains in Place
PROCESS COOLING WATER TANK	1	5.5 PRODUCT HOLDING TANK	3,743 GAL	3,743 GAL		Remains in Place
PROCESS HOT WATER DISTRIBUTION PUMPS	2	COOLED PUMPS	1,383 GPM	1,383 GPM	ONE PUMP ON & ONE OFF	Remains in Place
PROCESS HOT WATER HOLDING TANKS	1	5.5 PRODUCT HOLDING TANK	1,383 GALS	1,383 GALS		Remains in Place
PRIMARY CHILLERS	2	TRANE CHILLERS	1,750 TON	3,500 TON		Remains in Place
PRIMARY CHILLED WATER DISTRIBUTION PUMPS	2	TRANE CHILLERS	800 TON	1,600 TON		Remains in Place
PRIMARY CHILLED WATER DISTRIBUTION PUMPS	2	BAG PUMPS	1,200 GPM	1,470 GPM		Remains in Place
PRIMARY CHILLED WATER DISTRIBUTION PUMPS	2	BAG PUMPS	2,500 GPM	3,100 GPM		Remains in Place
CONDENSER WATER PUMPS	2	BAG PUMPS	3,600 GPM	1,400 GPM	ONE PUMP ON & ONE OFF	Remains in Place
CONDENSER WATER PUMPS	2	BAG PUMPS	5,000 GPM	4,800 GPM		Remains in Place
CROSSFLOW COOLING TOWERS	6	BALLBOND ACROSS	800 TON	4,800 TON		Remains in Place
HOUSE HOT WATER BOILERS (HTU)	2	CLEANER BOILERS	10,200,000 BTU	23,412,000 BTU	THROD, 115 ON & ONE OFF	Remains in Place
PRIMARY HOUSE WATER (GPM)	2	BAG PUMPS	1,400 GPM	4,800 GPM	ONE PUMP PER BOILER	Remains in Place
SECONDARY HOUSE HOT WATER (GPM)	2	BAG PUMPS	1,600 GPM	3,700 GPM		Remains in Place
AMMONIUM HYDROXIDE DISPENSE (GPM)	4	FINISH THOMPSON PUMPS	15 GPM	10 GPM	TWO PUMP ON & TWO OFF	Decom & Remains in Place - Certified
AMMONIUM HYDROXIDE TANKS (GAL)	2	5.5 TANKS	800 GALS	1710 GALS	USED ONE TANK AT A TIME	Decom & Remains in Place - Certified
HYDROCHLORIC ACID DISPENSE PUMPS	4	FINISH THOMPSON PUMPS	15 GPM	50 GPM	TWO PUMP ON & TWO OFF	Decom & Remains in Place - Certified
HYDROCHLORIC ACID TANKS	2	DEKANEI 413-350	6,000 GALS	12,000 GALS	USED ONE TANK AT A TIME	Decom & Remains in Place - Certified
CADMIUM SULFATE DISPENSE PUMPS	4	FINISH THOMPSON PUMPS	15 GPM	50 GPM	TWO PUMP ON & TWO OFF	Decom & Remains in Place - Certified
CADMIUM SULFATE TANKS	2	DEKANEI 413-350	4,000 GALS	9,000	USED ONE TANK AT A TIME	Decom & Remains in Place - Certified
INDUSTRIA DISPENSE PUMPS	4	FINISH THOMPSON PUMPS	15 GPM	50 GPM	TWO PUMP ON & TWO OFF	Decom & Remains in Place - Certified
INDUSTRIA DISPENSE TANKS	2	DEKANEI 413-350	4,000 GALS	9,000 GALS	USED ONE TANK AT A TIME	Decom & Remains in Place - Certified
OP 143 DISPENSE PUMPS	2	ANDIAPHRAM PUMP	14 G GPM	24 G GPM	ONE PUMP ON & ONE OFF	Decom & Remains in Place - Certified
OP 143 DISPENSE TANKS	2	POLYPRO TANK	60 GALS	123 GALS	USED ONE TANK AT A TIME	Decom & Remains in Place - Certified
OP 172 DISPENSE PUMPS	2	ANDIAPHRAM PUMP	14 G GPM	14 G GPM	ONE PUMP ON & ONE OFF	Decom & Remains in Place - Certified
OP 172 DISPENSE TANKS	2	POLYPRO TANK	60 GALS	123 GALS	USED ONE TANK AT A TIME	Decom & Remains in Place - Certified
BULK SULFURIC ACID PUMPS	2	ANDIAPHRAM PUMPS	10 GPM	10 GPM	ONE PUMP ON & ONE OFF	Remains in Place
BULK SULFURIC ACID TANKS	1	HOPE TANK	10,500 GAL	12,500 GALS		MSDP to be transferred to new owner MSDP to be transferred to new owner
BULK CAUSTIC PUMPS	2	ANDIAPHRAM PUMPS	10 GPM	10 GPM	ONE PUMP ON & ONE OFF	MSDP to be transferred to new owner MSDP to be transferred to new owner
BULK CAUSTIC TANKS	1	HOPE TANK	6,800 GALS	6,800 GALS		MSDP to be transferred to new owner MSDP to be transferred to new owner
ACID WASTE COLLECTION PUMPS	2	AND PUMPS	20 GPM	27 GPM	ONE PUMP ON & ONE OFF	Decom & Remains in Place - Certified
ACID WASTE COLLECTION TANKS	2	HOPE TANKS	500 GALS	1,070 GALS	USED ONE TANK AT A TIME	Decom & Remains in Place - Certified
BASE WASTE COLLECTION PUMPS	2	AND PUMPS	5 GPM	5 GPM	ONE PUMP ON & ONE OFF	Decom & Remains in Place - Certified
BASE WASTE COLLECTION TANKS	2	HOPE TANKS	1,200 GALS	2,750 GALS	USED ONE TANK AT A TIME	Decom & Remains in Place - Certified
INDUSTRIAL WASTE NEUTRALIZATION SYSTEM (NWS)	1	THREE CASCADING TANKS	50 GPM	50 GPM	MULTIPLE TANKS & PUMPS	Decom & Remains in Place - Certified
CADMIUM WASTE TREATMENT SYSTEM	1				MULTIPLE TANKS & PUMPS	Decom & Remains in Place - Certified See Comments Below
RECLAIM WATER PUMPS	2	WILBEN PUMPS	10 GPM	10 GPM	ONE PUMP ON & ONE OFF	Remains in Place
RECLAIM WATER TANK	1	HOPE TANKS	2,300 GALS	2,500 GALS	USED ONE TANK AT A TIME	Remains in Place
EXPERIMENTAL CHEMICAL COLLECTION SYSTEM	2	IMP TANKS	5,100 GALS	7,170 GALS		Decom & Remains in Place - Certified See Comments Below
EXPERIMENTAL CHEMICAL COLLECTION PUMP	2	VEB MAATIC PUMP	10 GPM	17 GPM		Decom & Remains in Place - Certified See Comments Below
CLEAN DRY AIR COMPRESSORS (CDA)	3	ATLAS COPCO COMPRESSORS	2,418 SCFM	4,837	TWO UNITS ON & ONE OFF	Remains in Place
CLEAN DRY AIR DRYERS (CDA)	3	ATLAS COPCO COMPRESSORS	4,978 SCFM	4,978 SCFM	ONE UNIT ON & ONE STAND BY	Remains in Place
HOT CLEAN DRY AIR RECEIVER	1	SILVAN ADVE LS TANK	5,043 GALS	5,043 GALS		Remains in Place
HOT CLEAN DRY AIR HEAT EXCHANGER	2	PAUL HEAT EXCHANGER	5,762 SCFM	5,747 SCFM	ONE UNIT ON & ONE STAND BY	Remains in Place
ADD SCRUBBER SYSTEM	1	ONE FIBERGLASS SCRUBBER	21,835 CFM	21,835 CFM		Decom & Remains in Place - Certified
BASE SCRUBBER SYSTEM	1	ONE FIBERGLASS SCRUBBER	40,960 CFM	40,960 CFM		Decom & Remains in Place - Certified
STROBE EXHAUST SYSTEM	5	STROBE AIR EXHAUSTS	15,000 CFM	142,000	FOUR UNITS ON & ONE OFF	Distribution Ductwork Removed - Filter Hous & Face, Discharge Outwall Cleared & Certified
GENERAL EXHAUST SYSTEM	3	NEW YORK BLOWER FANS	35,000 CFM	45,000 CFM	TWO UNITS ON & ONE OFF	Remains in Place - Certified Clear
GENERAL EXHAUST	2	NEW YORK BLOWER FANS	12,600 CFM	19,100 CFM	ONE UNIT ON & ONE OFF	Distribution Ductwork Removed - Filter Hous & Face, Discharge Duct was Cleared & Certified
AIR HANDLING UNITS (CHILLER/COMPRESSOR) Pass	11	MAAS DRAIN HANDLERS	VARIABLE	168,000		Remains in Place
MASS AIR HANDLING UNITS	9	MAAS DRAIN HANDLERS	VARIABLE	216,000		Remains in Place
PROCESSING CIRCULATION AIR HANDLING UNITS	35	MAAS DRAIN HANDLERS	VARIABLE	994,000		Remains in Place
FAN COIL UNITS (Process Enclosure) Receiv	4	FAN COIL UNITS	10,000 CFM	22,000 CFM	2/FB HIGH FAN, 1/EFF, 1/100%	Remains in Place
AIR HANDLING UNITS (SERVER ROOMS)	1	1.0 A/B UNIT	11,200 CFM	28,000 CFM	TWO UNITS ON & ONE OFF	Remains in Place
BULK GAS ARGON	1	VAPORIZER	10,500 GPM @ 30 PSI	10,500 GPM @ 30 PSI		Removed (Distribution) Piping Remains in P
BULK GAS ARGON TANK	1	INDUST ARGON TANK	1,500 GALS	1,500 GALS		Removed (Distribution) Piping Remains in P
NITROGEN PIPELINE	1		1,600 SCFM @ 110 PSI			N2 Supply, Turned OFF by AP Products

**SCHEDULE 2**

**PERSONAL PROPERTY**

**[see attached]**

**47488 Kato Road - Admin Complex**

**Furniture & Fixtures Outline**

(subject to verification at closing; i.e. as is at that time. Seller does not have resources necessary to ensure all items remain in place)

First Floor	Quantity	Table	Chairs	Other
- Board Size Executive Briefing Center	1	1	18	
- Front Entry Executive Briefing Center	1	1	14	
- Reception Area	1	1	4	plus 4 stools
- Comet Conf Room	1	1	8	
- Saturn Conf Room	1	1	6	
- Closed Door Offices	3	(1)	2	
- Cubicles	50	(1)	1	
- Office size mini-conf room	3	1	2	
- Large Break Room	1	?	?	
Second Floor	Quantity	Table	Chairs	Other
- Board Size Executive Briefing Center	1	1	18	
- Site Executive Office	1	2	6	
- Site Executive Admin Office	1	(1) + 1	4	
- Closed Door Offices	5	(1)	2	
- Cubicles	50	(1)	1	
- Jupiter Conf Room	1	1	4	
- Proxima Centauri Conf Room	1	1	6	
- Waiting Area	1	0	4	plus 8 stools
Operations Support Area				
- Earth Conf Room	1			Configured with 4 cubicles
- Offices	4	(1)	4	
- Mars Conf Room	1	1	18	
- Office	1			Configured with 2 cubicles
- Gowning Room	1			
- Break Room	1	7	20	
- Mercury Conf Room	1	1	16	
- Office	1			Configured with 2 cubicles
Facilities Support Area				
- Cubicles	18	(1)	1	
- Offices	5	(1)	1	

## **EXHIBIT B**

### **Bid Procedures**

1. **Property to be Sold**

Solyndra seeks to sell the Property, and to assume and assign the Assumed Executory Contracts to the Buyer pursuant to the terms of the Purchase Agreement.<sup>1</sup>

2. **Confidentiality Agreements and Access to Data Room**

Any person or entity wishing to bid on the Property (each a "Potential Bidder") must deliver (unless previously delivered) to Solyndra:

- (b) To the extent not already executed, a confidentiality agreement in such form acceptable to Solyndra (such form is available upon request to Solyndra) unless otherwise agreed by Solyndra in its discretion.

Solyndra will afford any Potential Bidder who satisfied the requirement set forth in section 2(a) herein such reasonable due diligence access or additional information as may be reasonably requested by the Potential Bidder that Solyndra, in its business judgment, determines to be reasonable and appropriate. Solyndra will coordinate all reasonable requests for additional information and due diligence access from such Potential Bidders. Solyndra shall not be obligated to furnish any due diligence information after the conclusion of the Auction. Neither Solyndra nor its advisors are responsible for, and will bear no liability with respect to, any information obtained by Potential Bidders in connection with due diligence.

Potential Bidders seeking information about the qualification process should contact the Debtors at: Imperial Capital, LLC, 55 2nd Street, Suite 1950, San Francisco, CA 94105, Attn: Eric Carlson and Monte Green. Solyndra proposes that a "Qualified Bidder" be a Potential Bidder that delivers the documents described in subsection (a) above, whose financial information and credit-quality support or enhancement demonstrate, in Solyndra's sole discretion, the financial capability of the Potential Bidder to consummate the proposed transaction for the Property, and that Solyndra determines, in its sole discretion, is reasonably likely to submit a bona fide offer for the Property and be able to

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<sup>1</sup> The Property is also summarized in the *Motion for an Order: (I) Approving Asset Purchase Agreement and Authorizing the Sale of Real Property and Related Property to Seagate Technology LLC or a Higher and Better Bidder; (II) Authorizing the Sale of Property Free and Clear of All Liens, Claims, Encumbrances and Interests Pursuant to Sections 363(a), (f) and (m) of the Bankruptcy Code, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (IV) Granting Related Relief* filed concurrently herewith.

consummate such transaction if selected as the Successful Bidder (as defined below) within a time frame acceptable to Solyndra, and who submits a Qualified Bid as set forth below. As promptly as practicable after a Potential Bidder delivers the agreement required by subsection (a) above, after consultation with the Committee and with Argonaut Ventures I, L.L.C., as the Prepetition Tranche A Representative and the Prepetition Tranche E Agent and the U.S. Department of Energy, acting by and through the Secretary of Energy, as the Prepetition Tranche B/D Agent (together, the “Secured Lenders”), Solyndra shall determine, and shall notify the Potential Bidder in writing, whether the Potential Bidder is a Qualified Bidder.

Qualified Bidders requesting information in connection with their due diligence should contact Solyndra at Imperial Capital, LLC, 55 2nd Street, Suite 1950, San Francisco, CA 94105, Attn: Eric Carlson and Monte Green, or Solyndra’s counsel, Pachulski Stang Ziehl & Jones, LLP, 150 California Street, 15th Floor, San Francisco, CA 94111, Attn: Debra I. Grassgreen and Joshua M. Fried. Notwithstanding the foregoing or anything else in the Bid Procedures, the Buyer is hereby determined to be a Qualified Bidder for all purposes at the Auction.

3. Proposed Bid Protections for the Buyer

Recognizing: 1) the Buyer’s expenditure of time, energy and resources in connection with the Purchase Agreement and the negotiation thereof and the transactions contemplated therein; and 2) in the absence of Solyndra’s obligation to pay the Break-Up Fee and Expense Reimbursement, Buyer would not have entered into the Purchase Agreement, Solyndra has agreed to provide the Bid Protections to the Buyer, consisting of (i) the Break-Up Fee amount of \$1,805,510, and (ii) the Expense Reimbursement of up to \$500,000 on the terms and conditions as more fully set forth in the Purchase Agreement. In the event that the Property is sold to a Successful Bidder that is not the Buyer, Solyndra shall be obligated to pay the Buyer the amount of the Break-Up Fee and Expense Reimbursement in accordance with the terms of the Purchase Agreement.

4. Proposed Requirements for a Qualified Bid

In order to participate in the Auction, if any, Solyndra proposes that a Qualified Bidder must deliver to Solyndra a written offer (each, a “Written Offer”), which in order to be deemed a “Qualified Bid,” must meet each of the requirements listed below:

- (a) State that the Qualified Bidder is prepared to enter into a legally binding purchase and sale agreement for the purchase of the Property on terms and conditions no less favorable to Solyndra than the terms and conditions contained in the Purchase Agreement, as determined by Solyndra in its

reasonable business judgment, after consultation with the Committee and Secured Lenders;

- (b) Be accompanied by a clean and duly executed and binding Purchase Agreement or alternate purchase and sale agreement (a “Modified Agreement”);
- (c) Be accompanied by a marked Modified Agreement reflecting any variations from the Purchase Agreement;
- (d) Be accompanied by a list of any executory contracts or unexpired leases that are to be assumed and/or assigned under such Modified Agreement.
- (e) Be willing to consummate and fund the proposed transaction on or prior to fifteen (15) days from the date of the order approving the Sale Motion (the “Closing Deadline”), unless otherwise agreed by Solyndra;
- (f) To the extent not previously provided, state that the Qualified Bidder is financially capable of consummating the transactions contemplated by the Purchase Agreement or Modified Agreement, and contain evidence satisfactory to Solyndra, in its discretion, that such Qualified Bidder is reasonably likely to consummate the transactions contemplated by the Purchase Agreement or Modified Agreement;
- (g) To Solyndra’s satisfaction, fully disclose (i) the identity of each entity that will be bidding for the Property or otherwise participating in connection with such bid, and (ii) the terms of any such participation, and if an entity has been formed for the purpose of acquiring some, or all, of the Property, the parties that will bear liability for any breach by such entity;
- (h) State that the Written Offer is irrevocable until the closing of the transaction if such Qualified Bidder is designated as a Successful Bidder or a Backup Bidder (each as defined below);
- (i) Not request or entitle the Qualified Bidder to any transaction or break-up fee, expense reimbursement, or similar type of payment;
- (j) Is a higher and better offer than that contained in the Purchase Agreement with the Buyer, in Solyndra’s business judgment and after consultation with the Committee and Secured Lenders;

- (k) Not contain any material due diligence or financing contingencies as determined by Solyndra in its reasonable discretion;
- (l) In Solyndra's discretion, provide evidence of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Purchase Agreement or Modified Agreement to Solyndra's satisfaction;
- (m) Include a good faith deposit (the "Good Faith Deposit") in the form of a certified check, wire transfer or such other form as is acceptable to Solyndra, payable to the order of Solyndra in an amount equal to \$10,000,000; and
- (n) All documentation submitted in support of the Written Offer must be submitted both in hard copy and electronically.

The Purchase Agreement with the Buyer shall constitute a Qualified Bid.

Any Good Faith Deposit accompanying a Written Offer that Solyndra, in its business judgment and after consultation with the Committee and the Secured Lenders, determines not to be a Qualified Bid shall be returned promptly following such determination. Between the Bid Deadline (as defined below) and the Auction, Solyndra may negotiate or seek clarification of any Qualified Bid from a Qualified Bidder. Each Qualified Bidder shall provide to Solyndra any information reasonably required by such parties in connection with the evaluation of a Written Offer or Qualified Bid within one business day after such request is made. Without the consent of Solyndra, a Qualified Bidder may not amend, modify or withdraw its Qualified Bid, except for proposed amendments to increase the amount or otherwise improve the terms of the Qualified Bid, during the period that such Qualified Bid is required to remain irrevocable and binding.

5. Proposed Bid Deadline

Solyndra proposes that all Qualified Bids must be received prior to 5:00 p.m. (Eastern Time) on the proposed bid deadline that is no sooner than 45 days after entry of the Bid Procedures Order (the "Bid Deadline"), by Solyndra: to the attention of Imperial Capital, LLC, 55 2nd Street, Suite 1950, San Francisco, CA 94105, Attn: Eric Carlson and Monte Green; Debtors' Counsel: Pachulski Stang Ziehl & Jones LLP, 150 California Street, 15<sup>th</sup> Floor, San Francisco, California 94111-4500, Attn: Debra I. Grassgreen, Esquire and Joshua M. Fried, Esquire; Fax: (415) 263-7010; (email: dgrassgreen@pszjlaw.com and jfried@pszjlaw.com); Counsel to AE DIP 2011, LLC, the DIP Lender, and Argonaut Ventures I, L.L.C., as

the Prepetition Tranche A Representative and the Prepetition Tranche E Agent: Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, Attn: Michael A. Rosenthal (email: mrosenthal@gibsondunn.com) and Young Conaway Stargatt & Taylor, LLP, 1000 West Street, 17th Floor, Wilmington, DE 19899, Attn: Sean M. Beach, Esq. (email: sbeach@ycst.com); Counsel to the U.S. Department of Energy, acting by and through the Secretary of Energy, as the Prepetition Tranche B/D Agent, U.S. Department of Justice, Civil Division, 1100 L Street NW, Room 10030, Washington, D.C. 20530, Attn: Matthew J. Troy (email: matthew.troy@usdoj.gov); Counsel to the Committee: Blank Rome LLP, 1201 Market Street, Suite 800, Wilmington, DE 19801, Attn: Bonnie Glantz Fatell and David W. Carickhoff (email: fatell@blankrome.com and carickhoff@blankrome.com); and Office of the U.S. Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801, Attn: Jane M. Leamy (email: jane.m.leafy@usdoj.gov).

6. Determination of Qualified Bids

Solyndra proposes to, by no later than one (1) Business Day prior to the Auction, (i) determine, in its business judgment and after consultation with the Committee and the Secured Lenders, whether a Written Offer is a Qualified Bid, and (ii) notify each Qualified Bidder submitting a Written Offer whether that Written Offer is a Qualified Bid.

7. “As Is, Where Is”

Except as otherwise provided in the applicable agreement, the sale of any or all of the Property shall be on an “as is, where is” basis and without representations or warranties of any kind, nature or description by Solyndra, its agents or its estate except to the extent set forth in the applicable agreement of the Successful Bidder(s) as approved by the Bankruptcy Court. Except as otherwise provided in the applicable agreement, all of Solyndra’s right, title and interest in and to the Property subject thereto shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and there-against (collectively, the “Interests”) in accordance with sections 363 and 365 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the sale of the Property. Each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all desired due diligence regarding the Property prior to making its Qualified Bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Qualified Bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Property, or the completeness of any information

provided in connection therewith or the Auction, except as expressly stated in these Bid Procedures or, as to the Successful Bidder(s), the terms of the transaction(s) as set forth in the applicable agreement.

8. Auction

Solyndra proposes that in the event that two or more Qualified Bids are received, Solyndra will conduct an Auction of the Property. The Auction shall be held at the offices of Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17<sup>th</sup> Floor, Wilmington, DE 19899, at the date and time as set forth in the Bid Procedures Order (defined below), which Solyndra requests be one day prior to the Sale Hearing, and continue thereafter until completed. Subject to the Purchase Agreement, Solyndra may adjourn the Auction at any time, continue the Auction from time to time and re-open the Auction at any time prior to the commencement of the Sale Hearing, as is appropriate in Solyndra's reasonable business judgment and after consultation with the Committee and the Secured Lenders.

Solyndra proposes that, except as otherwise permitted in Solyndra's discretion, only Solyndra, the Committee, the U.S. Trustee, the Secured Lenders, and Qualified Bidders and their respective professionals shall be entitled to attend the Auction. Only a Qualified Bidder that submitted a Qualified Bid is eligible to participate in the Auction.

The Auction shall be governed by the following proposed procedures:

- (a) Qualified Bidders shall appear in person at the Auction, or through a duly authorized representative.
- (b) Except with respect to subsections (e) and (f) below, Solyndra, in its discretion, may conduct the Auction in the manner that it determines, in its reasonable business judgment, will result in the Successful Bid(s) that will maximize the overall value of Solyndra's estate, and may adopt rules for the Auction at the Auction that, in Solyndra's reasonable business judgment, will better promote the goals of the Auction and that are not inconsistent with any of the provisions of the Bid Procedures Order (defined below) or the Purchase Agreement. All such rules will provide that: (i) the Auction procedures must be fair and open, and not intended to cause any participating Qualified Bidder to be disadvantaged in any material way as compared to any other participating Qualified Bidder, and (ii) the Committee, Secured Lenders and all participating Qualified Bidders shall be entitled to be present for all bidding with the understanding that the true identity of each bidder (i.e., the

principals submitting each bid) shall be fully disclosed to all other participating Qualified Bidders and that all material terms of each Qualified Bid will be fully disclosed to all other bidders throughout the entire Auction. Each bid by a Qualified Bidder at the Auction, if not inconsistent with the provisions of the Bid Procedures, shall be deemed to constitute a Qualified Bid. Notwithstanding the foregoing, any overbid by the Buyer will be credited with the amount of the Bid Protections, for purposes of comparison with other bids (it being understood that, as provided in Section 8(e) of these Bid Procedures, if the Buyer is the Successful Bidder at the Auction, it shall not be entitled to payment of the Bid Protections). The Break-Up Fee and Expense Reimbursement shall be paid to Buyer in accordance with the terms of Purchase Agreement and the Bid Procedures Order notwithstanding whether the Buyer chooses, in its sole and absolute discretion, not to bid at the Auction.

- (c) Solyndra will arrange for the actual bidding at the Auction to be transcribed.
- (d) Each Qualified Bidder participating in the Auction will be expected to confirm at the Auction that it has not engaged in any collusion regarding these Bid Procedures with any other Qualified Bidder, the Auction or any proposed transaction relating to the Property or a portion thereof.
- (e) At the Auction, the first bid for the Property other than the offer of Buyer set forth in the Purchase Agreement shall be considered only if it exceeds the purchase price set forth in the Purchase Agreement by a minimum of (i) the amount that would be owed if Solyndra would be required to pay the Bid Protections to the Buyer plus (ii) cash consideration in an amount not less than \$1,000,000. Subsequently, bidding will continue in minimum increments of at least \$500,000, with the specific increments for each round of bidding to be announced on the record at the Auction.
- (f) All Qualified Bidders shall have the right to, at any time, request that Solyndra announce, subject to any potential new Bids, the then current highest or best bid and, to the extent requested by any Qualified Bidder, use reasonable efforts to clarify any and all questions such Qualified Bidder may have regarding Solyndra's announcement of the then current highest or best bid.
- (g) In Solyndra's discretion, all Qualified Bidders shall have the right to submit additional bids and make additional

modifications to the Purchase Agreement or Modified Agreement, as applicable, at the Auction, provided, however, that any such modifications to the Purchase Agreement or Modified Agreement, on an aggregate basis and viewed in whole, shall not be less favorable to Solyndra as determined by Solyndra in its business judgment and after consultation with the Committee and Secured Lenders.

- (h) Upon conclusion of the bidding, the Auction shall be closed, and Solyndra shall, as soon as practicable, identify and determine, in its business judgment, after consultation with the Committee and Secured Lenders, the highest and best Qualified Bid for the Property that would maximize the overall value to Solyndra's estate, taking into account the Buyer's entitlement to the Bid Protections, if applicable (each a "Successful Bid" and the entity or entities submitting such Successful Bid, each a "Successful Bidder") and advise the Qualified Bidders of such determination, and require the Successful Bidder (other than Buyer) to deliver an executed Modified Agreement prior to commencement of the Sale Hearing and deposit (in addition to the Good Faith Deposit) the sum of 10% of the Successful Bid within two (2) Business Days after conclusion of the Auction (unless the Closing Date occurs prior to such time).
- (i) In addition, Solyndra will determine in its business judgment, after consultation with the Committee and Secured Lenders, which Qualified Bid, if any, is the next highest and best Qualified Bid and designate such Qualified Bid as a "Backup Bid" in the event the Successful Bidder fails to consummate the contemplated transaction. A Qualified Bidder that submitted a Qualified Bid that is designated a Backup Bid is a "Backup Bidder." Each Backup Bid shall remain open and binding until two business days after the closing of the transaction(s) by which all of the Property that was subject to such Backup Bid has been transferred to one or more Qualified Bidders pursuant to these Bid Procedures. Notwithstanding anything to the contrary, Buyer must consent to be designated a Backup Bidder.
- (j) Following the conclusion of the Auction, Solyndra may resume bidding on such procedures determined by Solyndra in its discretion for the sale of discrete assets (if any) not sold to the Successful Bidder.

9. Sole Qualified Bid

If the Purchase Agreement with the Buyer is the only Qualified Bid submitted by the Bid Deadline, Solyndra proposes to not hold any Auction and instead request at the Sale Hearing that the Court approve the Purchase Agreement with the Buyer.

10. Proposed Sale Hearing

Solyndra proposes that the Sale Hearing occur at the time to be scheduled by the Court and in accordance with the terms of the Purchase Agreement and Bid Procedures Order. After consultation with the Committee and Secured Lenders, but subject to the terms of the Purchase Agreement, Solyndra may adjourn or continue the Sale Hearing from time to time without further notice to parties in interest other than by announcement of the adjournment in open court or on the Court's calendar on the date scheduled for the Sale Hearing or any adjourned date. At the Sale Hearing, Solyndra shall present the results of the Auction to the Bankruptcy Court and seek approval for the Successful Bid and the Backup Bid. Upon (i) entry of an order approving a Successful Bid other than that of Buyer, (ii) consummation of a Sale to a Successful Bidder other than the Buyer, and (iii) to the extent allowed, in accordance with the provisions of the Purchase Agreement, Solyndra shall pay to Buyer a sum equal to the Bid Protections without further court order.

Following the Sale Hearing approving the transaction with respect to the Property to the Successful Bidder, if such Successful Bidder fails to consummate an approved transaction for any reason, the appropriate Backup Bidder(s) shall be designated the Successful Bidder and Solyndra shall be authorized to effect such transaction without further order of the Court. The Successful Bidder and Backup Bidder (if any) should be represented by counsel at the Sale Hearing.

11. Consummation of the Purchase

(a) Closing Deadline

The Successful Bidder shall consummate the sale transaction contemplated by the Successful Bid (the "Purchase") on or before the deadline set forth in the Purchase Agreement or Modified Agreement, as applicable, requested to close the sale of the Property to either the Buyer or the Successful Bidder (the "Closing Deadline"). Subject to the terms of the Purchase Agreement or Modified Agreement, Solyndra may extend the Closing Deadline from time to time in its business judgment. If a Successful Bidder successfully consummates an approved transaction by the Closing Deadline, such Successful Bidder's Good Faith Deposit shall be applied to the purchase price in such transaction.

If the Successful Bidder either fails to consummate the Purchase on or before the Closing Deadline, breaches the Purchase Agreement or Modified Agreement or otherwise fails to perform, Solyndra may, in its business judgment, after consultation with the Committee and Secured Lenders, and without further order of the Bankruptcy Court, deem the Successful Bidder to be a “Defaulting Buyer,” at which time the Successful Bid shall be deemed rejected.

Subject to Buyer’s rights to the Bid Protections and pursuant to the Purchase Agreement, Solyndra shall be entitled to (i) retain the Good Faith Deposit as part of its damages resulting from the breach or failure to perform by the Defaulting Buyer, and (ii) seek all available damages from such Defaulting Buyer occurring as a result of such Defaulting Buyer’s failure to perform.

(b) Back-Up Purchase

Upon a determination by Solyndra, after consultation with the Committee and Secured Lenders, that the Successful Bidder is a Defaulting Buyer, Solyndra will be authorized, but not required, to consummate a sale transaction with the Backup Bidder on the terms and conditions of the Backup Bid (the “Backup Purchase”) without further order of the Bankruptcy Court.

If a Backup Bidder consummates a Backup Purchase, the Good Faith Deposit of such Backup Bidder will be applied to the purchase price in such transaction. On an as-needed basis, Solyndra, in the exercise of its business judgment and after consultation with the Committee and Secured Lenders, shall determine an alternative Closing Deadline for the Backup Purchase. In the event that Solyndra seeks to consummate a Backup Purchase with a Backup Bidder and such Backup Bidder fails to consummate the Backup Purchase on or before the alternative Closing Deadline, breaches the Purchase Agreement or Modified Agreement or otherwise fails to perform, Solyndra may, in its business judgment and after consultation with the Secured Lenders and the Committee, and without further order of the Bankruptcy Court, deem such Backup Bidder to be a Defaulting Buyer and pursue the same remedies as under these Bid Procedures.

12. Return of Good Faith Deposits

Good Faith Deposits of all Qualified Bidders shall be held in an interest-bearing escrow account. Except for the Successful Bidder and the Backup Bidder(s), Solyndra shall hold the Good Faith Deposits of all Qualified Bidders that submit Written Offers until three (3) business days after the Auction.

**EXHIBIT C**

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)  
 )  
 ) (Jointly Administered)  
Debtors. )

**Bid Deadline: TBD**  
**Auction: TBD**  
**Deadline to Object to Sale Motion: TBD**  
**Sale Hearing: TBD**

**NOTICE OF BID PROCEDURES, AUCTION DATE, AND SALE HEARING**

**PLEASE BE ADVISED** that on August 23, 2012, the debtors and debtors in possession herein (the “Debtors”) filed the *Motion of Solyndra LLC for an Order (A) Approving Procedures for Sale of Real Property and Related Property; (B) Scheduling Auction and Hearing to Consider Approval of Sale and Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (C) Approving Forms of Notice; and (D) Granting Related Relief* (the “Bid Procedures Motion”) and *Motion of Solyndra LLC for an Order (A) Approving Procedures for Sale of Real Property and Related Property; (B) Scheduling Auction and Hearing to Consider Approval of Sale and Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (C) Approving Forms of Notice; and (D) Granting Related Relief* (the “Sale Motion”) <sup>2</sup>. By the Sale Motion, Solyndra seeks, to sell its real property and

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<sup>1</sup> The Debtors in these proceedings and the last four digits of each Debtors’ 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.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings set forth in the Bid Procedures Motion.

building located at 47488 Kato Road, Fremont, California, (the “Real Property”) including all other related property interests (together, with the Real Property, the “Property”) to be sold to either Seagate Technology, LLC (the “Buyer”) or to another successful bidder(s) (the “Successful Bidder”), as set forth in that certain *Agreement of Sale and Purchase Between Solyndra LLC and Seagate Technology LLC*, dated as of August 16, 2012 (the “Purchase Agreement”).

PLEASE BE FURTHER ADVISED that the following procedures (the “Bid Procedures”) shall govern the bidding process and the sale at auction (the “Auction”) of the Property. Any party in interest that wishes to receive a copy of the Sale Motion or the Bid Procedures Order (as defined below) shall make such request in writing to Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17<sup>th</sup> Floor, P.O. Box 8705, Wilmington, Delaware 19899-8705 (Courier 19801), Attn: Joshua M. Fried, Esq. These Sale Procedures have been approved and authorized by an order signed by the Honorable Mary F. Walrath, United States Bankruptcy Judge, at a hearing on September \_\_\_\_, 2012 (the “Sale Procedures Order”) in the chapter 11 cases of the Debtors, which cases were commenced on September 6, 2011.

PLEASE BE FURTHER ADVISED that this Notice provides a summary of the Bid Procedures approved in the Bid Procedures Order. In the event of any inconsistency or conflict between this Notice and the Bid Procedures Order, the Bid Procedures Order shall control.

## Bid Procedures

### Property to be Sold

Solyndra seeks to sell the Property, and to assume and assign the Assumed Executory Contracts to the Buyer pursuant to the terms of the Purchase Agreement.<sup>3</sup>

### 2. Confidentiality Agreements and Access to Data Room

Any person or entity wishing to bid on the Property (each a "Potential Bidder") must deliver (unless previously delivered) to Solyndra:

- (c) To the extent not already executed, a confidentiality agreement in such form acceptable to Solyndra (such form is available upon request to Solyndra) unless otherwise agreed by Solyndra in its discretion.

Solyndra will afford any Potential Bidder who satisfied the requirement set forth in section 2(a) herein such reasonable due diligence access or additional information as may be reasonably requested by the Potential Bidder that Solyndra, in its business judgment, determines to be reasonable and appropriate. Solyndra will coordinate all reasonable requests for additional information and due diligence access from such Potential Bidders. Solyndra shall not be obligated to furnish any due diligence information after the conclusion of the Auction. Neither Solyndra nor its advisors are responsible for, and will bear no liability with respect to, any information obtained by Potential Bidders in connection with due diligence.

Potential Bidders seeking information about the qualification process should contact the Debtors at: Imperial Capital, LLC, 55 2nd Street, Suite 1950, San Francisco, CA 94105, Attn: Eric Carlson and Monte Green. Solyndra proposes that a "Qualified Bidder" be a Potential Bidder that delivers the documents described in subsection (a) above, whose financial information and credit-quality support or enhancement demonstrate, in Solyndra's sole discretion, the financial capability of the Potential Bidder to consummate the proposed transaction for the Property, and that Solyndra determines, in its sole discretion, is reasonably likely to submit a bona fide offer for the Property and be able to consummate such transaction if selected as the Successful Bidder (as defined below) within a time frame acceptable to Solyndra, and who submits a Qualified Bid as set forth below. As promptly as practicable after a Potential Bidder delivers the agreement required by subsection (a) above, after

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<sup>3</sup> The Property is also summarized in the *Motion for an Order: (I) Approving Asset Purchase Agreement and Authorizing the Sale of Real Property and Related Property to Seagate Technology LLC or a Higher and Better Bidder; (II) Authorizing the Sale of Property Free and Clear of All Liens, Claims, Encumbrances and Interests Pursuant to Sections 363(a), (f) and (m) of the Bankruptcy Code, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (IV) Granting Related Relief* filed concurrently herewith.

consultation with the Committee and with Argonaut Ventures I, L.L.C., as the Prepetition Tranche A Representative and the Prepetition Tranche E Agent and the U.S. Department of Energy, acting by and through the Secretary of Energy, as the Prepetition Tranche B/D Agent (together, the “Secured Lenders”), Solyndra shall determine, and shall notify the Potential Bidder in writing, whether the Potential Bidder is a Qualified Bidder.

Qualified Bidders requesting information in connection with their due diligence should contact Solyndra at Imperial Capital, LLC, 55 2nd Street, Suite 1950, San Francisco, CA 94105, Attn: Eric Carlson and Monte Green, or Solyndra’s counsel, Pachulski Stang Ziehl & Jones, LLP, 150 California Street, 15th Floor, San Francisco, CA 94111, Attn: Debra I. Grassgreen and Joshua M. Fried. Notwithstanding the foregoing or anything else in the Bid Procedures, the Buyer is hereby determined to be a Qualified Bidder for all purposes at the Auction.

3. Proposed Bid Protections for the Buyer

Recognizing: 1) the Buyer’s expenditure of time, energy and resources in connection with the Purchase Agreement and the negotiation thereof and the transactions contemplated therein; and 2) in the absence of Solyndra’s obligation to pay the Break-Up Fee and Expense Reimbursement, Buyer would not have entered into the Purchase Agreement, Solyndra has agreed to provide the Bid Protections to the Buyer, consisting of (i) the Break-Up Fee amount of \$1,805,510, and (ii) the Expense Reimbursement of up to \$500,000 on the terms and conditions as more fully set forth in the Purchase Agreement. In the event that the Property is sold to a Successful Bidder that is not the Buyer, Solyndra shall be obligated to pay the Buyer the amount of the Break-Up Fee and Expense Reimbursement in accordance with the terms of the Purchase Agreement.

4. Proposed Requirements for a Qualified Bid

In order to participate in the Auction, if any, Solyndra proposes that a Qualified Bidder must deliver to Solyndra a written offer (each, a “Written Offer”), which in order to be deemed a “Qualified Bid,” must meet each of the requirements listed below:

- (a) State that the Qualified Bidder is prepared to enter into a legally binding purchase and sale agreement for the purchase of the Property on terms and conditions no less favorable to Solyndra than the terms and conditions contained in the Purchase Agreement, as determined by Solyndra in its reasonable business judgment, after consultation with the Committee and Secured Lenders;

- (b) Be accompanied by a clean and duly executed and binding Purchase Agreement or alternate purchase and sale agreement (a "Modified Agreement");
- (c) Be accompanied by a marked Modified Agreement reflecting any variations from the Purchase Agreement;
- (d) Be accompanied by a list of any executory contracts or unexpired leases that are to be assumed and/or assigned under such Modified Agreement.
- (e) Be willing to consummate and fund the proposed transaction on or prior to fifteen (15) days from the date of the order approving the Sale Motion (the "Closing Deadline"), unless otherwise agreed by Solyndra;
- (f) To the extent not previously provided, state that the Qualified Bidder is financially capable of consummating the transactions contemplated by the Purchase Agreement or Modified Agreement, and contain evidence satisfactory to Solyndra, in its discretion, that such Qualified Bidder is reasonably likely to consummate the transactions contemplated by the Purchase Agreement or Modified Agreement;
- (g) To Solyndra's satisfaction, fully disclose (i) the identity of each entity that will be bidding for the Property or otherwise participating in connection with such bid, and (ii) the terms of any such participation, and if an entity has been formed for the purpose of acquiring some, or all, of the Property, the parties that will bear liability for any breach by such entity;
- (h) State that the Written Offer is irrevocable until the closing of the transaction if such Qualified Bidder is designated as a Successful Bidder or a Backup Bidder (each as defined below);
- (i) Not request or entitle the Qualified Bidder to any transaction or break-up fee, expense reimbursement, or similar type of payment;
- (j) Is a higher and better offer than that contained in the Purchase Agreement with the Buyer, in Solyndra's business judgment and after consultation with the Committee and Secured Lenders;
- (k) Not contain any material due diligence or financing contingencies as determined by Solyndra in its reasonable discretion;

- (l) In Solyndra's discretion, provide evidence of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Purchase Agreement or Modified Agreement to Solyndra's satisfaction;
- (m) Include a good faith deposit (the "Good Faith Deposit") in the form of a certified check, wire transfer or such other form as is acceptable to Solyndra, payable to the order of Solyndra in an amount equal to \$10,000,000; and
- (n) All documentation submitted in support of the Written Offer must be submitted both in hard copy and electronically.

The Purchase Agreement with the Buyer shall constitute a Qualified Bid.

Any Good Faith Deposit accompanying a Written Offer that Solyndra, in its business judgment and after consultation with the Committee and the Secured Lenders, determines not to be a Qualified Bid shall be returned promptly following such determination. Between the Bid Deadline (as defined below) and the Auction, Solyndra may negotiate or seek clarification of any Qualified Bid from a Qualified Bidder. Each Qualified Bidder shall provide to Solyndra any information reasonably required by such parties in connection with the evaluation of a Written Offer or Qualified Bid within one business day after such request is made. Without the consent of Solyndra, a Qualified Bidder may not amend, modify or withdraw its Qualified Bid, except for proposed amendments to increase the amount or otherwise improve the terms of the Qualified Bid, during the period that such Qualified Bid is required to remain irrevocable and binding.

5. Proposed Bid Deadline

Solyndra proposes that all Qualified Bids must be received prior to 5:00 p.m. (Eastern Time) on the proposed bid deadline that is no sooner than 45 days after entry of the Bid Procedures Order (the "Bid Deadline"), by Solyndra: to the attention of Imperial Capital, LLC, 55 2nd Street, Suite 1950, San Francisco, CA 94105, Attn: Eric Carlson and Monte Green; Debtors' Counsel: Pachulski Stang Ziehl & Jones LLP, 150 California Street, 15<sup>th</sup> Floor, San Francisco, California 94111-4500, Attn: Debra I. Grassgreen, Esquire and Joshua M. Fried, Esquire; Fax: (415) 263-7010; (email: dgrassgreen@pszjlaw.com and jfried@pszjlaw.com); Counsel to AE DIP 2011, LLC, the DIP Lender, and Argonaut Ventures I, L.L.C., as the Prepetition Tranche A Representative and the Prepetition Tranche E Agent: Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, Attn: Michael A. Rosenthal (email: mrosenthal@gibsondunn.com) and Young Conaway Stargatt & Taylor, LLP, 1000 West Street, 17th

Floor, Wilmington, DE 19899, Attn: Sean M. Beach, Esq. (email: sbeach@ycst.com); Counsel to the U.S. Department of Energy, acting by and through the Secretary of Energy, as the Prepetition Tranche B/D Agent, U.S. Department of Justice, Civil Division, 1100 L Street NW, Room 10030, Washington, D.C. 20530, Attn: Matthew J. Troy (email: matthew.troy@usdoj.gov); Counsel to the Committee: Blank Rome LLP, 1201 Market Street, Suite 800, Wilmington, DE 19801, Attn: Bonnie Glantz Fatell and David W. Carickhoff (email: fatell@blankrome.com and carickhoff@blankrome.com); and Office of the U.S. Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801, Attn: Jane M. Leamy (email: jane.m.leafy@usdoj.gov).

6. Determination of Qualified Bids

Solyndra proposes to, by no later than one (1) Business Day prior to the Auction, (i) determine, in its business judgment and after consultation with the Committee and the Secured Lenders, whether a Written Offer is a Qualified Bid, and (ii) notify each Qualified Bidder submitting a Written Offer whether that Written Offer is a Qualified Bid.

7. “As Is, Where Is”

Except as otherwise provided in the applicable agreement, the sale of any or all of the Property shall be on an “as is, where is” basis and without representations or warranties of any kind, nature or description by Solyndra, its agents or its estate except to the extent set forth in the applicable agreement of the Successful Bidder(s) as approved by the Bankruptcy Court. Except as otherwise provided in the applicable agreement, all of Solyndra’s right, title and interest in and to the Property subject thereto shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and there-against (collectively, the “Interests”) in accordance with sections 363 and 365 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the sale of the Property. Each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all desired due diligence regarding the Property prior to making its Qualified Bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Qualified Bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Property, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bid Procedures or, as to the Successful Bidder(s), the terms of the transaction(s) as set forth in the applicable agreement.

8. Auction

Solyndra proposes that in the event that two or more Qualified Bids are received, Solyndra will conduct an Auction of the Property. The Auction shall be held at the offices of Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17<sup>th</sup> Floor, Wilmington, DE 19899, at the date and time as set forth in the Bid Procedures Order (defined below), which Solyndra requests be one day prior to the Sale Hearing, and continue thereafter until completed. Subject to the Purchase Agreement, Solyndra may adjourn the Auction at any time, continue the Auction from time to time and re-open the Auction at any time prior to the commencement of the Sale Hearing, as is appropriate in Solyndra's reasonable business judgment and after consultation with the Committee and the Secured Lenders.

Solyndra proposes that, except as otherwise permitted in Solyndra's discretion, only Solyndra, the Committee, the U.S. Trustee, the Secured Lenders, and Qualified Bidders and their respective professionals shall be entitled to attend the Auction. Only a Qualified Bidder that submitted a Qualified Bid is eligible to participate in the Auction.

The Auction shall be governed by the following proposed procedures:

- (a) Qualified Bidders shall appear in person at the Auction, or through a duly authorized representative.
- (b) Except with respect to subsections (e) and (f) below, Solyndra, in its discretion, may conduct the Auction in the manner that it determines, in its reasonable business judgment, will result in the Successful Bid(s) that will maximize the overall value of Solyndra's estate, and may adopt rules for the Auction at the Auction that, in Solyndra's reasonable business judgment, will better promote the goals of the Auction and that are not inconsistent with any of the provisions of the Bid Procedures Order (defined below) or the Purchase Agreement. All such rules will provide that: (i) the Auction procedures must be fair and open, and not intended to cause any participating Qualified Bidder to be disadvantaged in any material way as compared to any other participating Qualified Bidder, and (ii) the Committee, Secured Lenders and all participating Qualified Bidders shall be entitled to be present for all bidding with the understanding that the true identity of each bidder (i.e., the principals submitting each bid) shall be fully disclosed to all other participating Qualified Bidders and that all material terms of each Qualified Bid will be fully disclosed to all other

bidders throughout the entire Auction. Each bid by a Qualified Bidder at the Auction, if not inconsistent with the provisions of the Bid Procedures, shall be deemed to constitute a Qualified Bid. Notwithstanding the foregoing, any overbid by the Buyer will be credited with the amount of the Bid Protections, for purposes of comparison with other bids (it being understood that, as provided in Section 8(e) of these Bid Procedures, if the Buyer is the Successful Bidder at the Auction, it shall not be entitled to payment of the Bid Protections). The Break-Up Fee and Expense Reimbursement shall be paid to Buyer in accordance with the terms of Purchase Agreement and the Bid Procedures Order notwithstanding whether the Buyer chooses, in its sole and absolute discretion, not to bid at the Auction.

- (c) Solyndra will arrange for the actual bidding at the Auction to be transcribed.
- (d) Each Qualified Bidder participating in the Auction will be expected to confirm at the Auction that it has not engaged in any collusion regarding these Bid Procedures with any other Qualified Bidder, the Auction or any proposed transaction relating to the Property or a portion thereof.
- (e) At the Auction, the first bid for the Property other than the offer of Buyer set forth in the Purchase Agreement shall be considered only if it exceeds the purchase price set forth in the Purchase Agreement by a minimum of (i) the amount that would be owed if Solyndra would be required to pay the Bid Protections to the Buyer plus (ii) cash consideration in an amount not less than \$1,000,000. Subsequently, bidding will continue in minimum increments of at least \$500,000, with the specific increments for each round of bidding to be announced on the record at the Auction.
- (f) All Qualified Bidders shall have the right to, at any time, request that Solyndra announce, subject to any potential new Bids, the then current highest or best bid and, to the extent requested by any Qualified Bidder, use reasonable efforts to clarify any and all questions such Qualified Bidder may have regarding Solyndra's announcement of the then current highest or best bid.
- (g) In Solyndra's discretion, all Qualified Bidders shall have the right to submit additional bids and make additional modifications to the Purchase Agreement or Modified Agreement, as applicable, at the Auction, provided, however, that any such modifications to the Purchase Agreement or

Modified Agreement, on an aggregate basis and viewed in whole, shall not be less favorable to Solyndra as determined by Solyndra in its business judgment and after consultation with the Committee and Secured Lenders.

- (h) Upon conclusion of the bidding, the Auction shall be closed, and Solyndra shall, as soon as practicable, identify and determine, in its business judgment, after consultation with the Committee and Secured Lenders, the highest and best Qualified Bid for the Property that would maximize the overall value to Solyndra's estate, taking into account the Buyer's entitlement to the Bid Protections, if applicable (each a "Successful Bid" and the entity or entities submitting such Successful Bid, each a "Successful Bidder") and advise the Qualified Bidders of such determination, and require the Successful Bidder (other than Buyer) to deliver an executed Modified Agreement prior to commencement of the Sale Hearing and deposit (in addition to the Good Faith Deposit) the sum of 10% of the Successful Bid within two (2) Business Days after conclusion of the Auction (unless the Closing Date occurs prior to such time).
- (i) In addition, Solyndra will determine in its business judgment, after consultation with the Committee and Secured Lenders, which Qualified Bid, if any, is the next highest and best Qualified Bid and designate such Qualified Bid as a "Backup Bid" in the event the Successful Bidder fails to consummate the contemplated transaction. A Qualified Bidder that submitted a Qualified Bid that is designated a Backup Bid is a "Backup Bidder." Each Backup Bid shall remain open and binding until two business days after the closing of the transaction(s) by which all of the Property that was subject to such Backup Bid has been transferred to one or more Qualified Bidders pursuant to these Bid Procedures. Notwithstanding anything to the contrary, Buyer must consent to be designated a Backup Bidder.
- (j) Following the conclusion of the Auction, Solyndra may resume bidding on such procedures determined by Solyndra in its discretion for the sale of discrete assets (if any) not sold to the Successful Bidder.

9. Sole Qualified Bid

If the Purchase Agreement with the Buyer is the only Qualified Bid submitted by the Bid Deadline, Solyndra proposes to not hold any Auction

and instead request at the Sale Hearing that the Court approve the Purchase Agreement with the Buyer.

10. Proposed Sale Hearing

Solyndra proposes that the Sale Hearing occur at the time to be scheduled by the Court and in accordance with the terms of the Purchase Agreement and Bid Procedures Order. After consultation with the Committee and Secured Lenders, but subject to the terms of the Purchase Agreement, Solyndra may adjourn or continue the Sale Hearing from time to time without further notice to parties in interest other than by announcement of the adjournment in open court or on the Court's calendar on the date scheduled for the Sale Hearing or any adjourned date. At the Sale Hearing, Solyndra shall present the results of the Auction to the Bankruptcy Court and seek approval for the Successful Bid and the Backup Bid. Upon (i) entry of an order approving a Successful Bid other than that of Buyer, (ii) consummation of a Sale to a Successful Bidder other than the Buyer, and (iii) to the extent allowed, in accordance with the provisions of the Purchase Agreement, Solyndra shall pay to Buyer a sum equal to the Bid Protections without further court order.

Following the Sale Hearing approving the transaction with respect to the Property to the Successful Bidder, if such Successful Bidder fails to consummate an approved transaction for any reason, the appropriate Backup Bidder(s) shall be designated the Successful Bidder and Solyndra shall be authorized to effect such transaction without further order of the Court. The Successful Bidder and Backup Bidder (if any) should be represented by counsel at the Sale Hearing.

11. Consummation of the Purchase

(a) Closing Deadline

The Successful Bidder shall consummate the sale transaction contemplated by the Successful Bid (the "Purchase") on or before the deadline set forth in the Purchase Agreement or Modified Agreement, as applicable, requested to close the sale of the Property to either the Buyer or the Successful Bidder (the "Closing Deadline"). Subject to the terms of the Purchase Agreement or Modified Agreement, Solyndra may extend the Closing Deadline from time to time in its business judgment. If a Successful Bidder successfully consummates an approved transaction by the Closing Deadline, such Successful Bidder's Good Faith Deposit shall be applied to the purchase price in such transaction.

If the Successful Bidder either fails to consummate the Purchase on or before the Closing Deadline, breaches the Purchase Agreement or

Modified Agreement or otherwise fails to perform, Solyndra may, in its business judgment, after consultation with the Committee and Secured Lenders, and without further order of the Bankruptcy Court, deem the Successful Bidder to be a “Defaulting Buyer,” at which time the Successful Bid shall be deemed rejected.

Subject to Buyer’s rights to the Bid Protections and pursuant to the Purchase Agreement, Solyndra shall be entitled to (i) retain the Good Faith Deposit as part of its damages resulting from the breach or failure to perform by the Defaulting Buyer, and (ii) seek all available damages from such Defaulting Buyer occurring as a result of such Defaulting Buyer’s failure to perform.

(b) Back-Up Purchase

Upon a determination by Solyndra, after consultation with the Committee and Secured Lenders, that the Successful Bidder is a Defaulting Buyer, Solyndra will be authorized, but not required, to consummate a sale transaction with the Backup Bidder on the terms and conditions of the Backup Bid (the “Backup Purchase”) without further order of the Bankruptcy Court.

If a Backup Bidder consummates a Backup Purchase, the Good Faith Deposit of such Backup Bidder will be applied to the purchase price in such transaction. On an as-needed basis, Solyndra, in the exercise of its business judgment and after consultation with the Committee and Secured Lenders, shall determine an alternative Closing Deadline for the Backup Purchase. In the event that Solyndra seeks to consummate a Backup Purchase with a Backup Bidder and such Backup Bidder fails to consummate the Backup Purchase on or before the alternative Closing Deadline, breaches the Purchase Agreement or Modified Agreement or otherwise fails to perform, Solyndra may, in its business judgment and after consultation with the Secured Lenders and the Committee, and without further order of the Bankruptcy Court, deem such Backup Bidder to be a Defaulting Buyer and pursue the same remedies as under these Bid Procedures.

12. Return of Good Faith Deposits

Good Faith Deposits of all Qualified Bidders shall be held in an interest-bearing escrow account. Except for the Successful Bidder and the Backup Bidder(s), Solyndra shall hold the Good Faith Deposits of all Qualified Bidders that submit Written Offers until three (3) business days after the Auction.

## Objections

46. Objections to the relief requested by the Sale Motion shall be set forth in writing and shall specify with particularity the grounds for such objections or other statements of position and shall be filed with the Court by 4:00 p.m. (prevailing Eastern time) on \_\_\_\_\_, 2012, and shall be served so as to be received by that same date and time on Solyndra's financial advisors, Imperial Capital, LLC, 55 Second Street, Suite 1950, San Francisco, CA 94105, Attn: Eric Carlson and Monte Green (email: [ecarlson@imperialcapital.com](mailto:ecarlson@imperialcapital.com) and [mgreen@imperialcapital.com](mailto:mgreen@imperialcapital.com)), with copies to: (a) Solyndra's counsel, Pachulski Stang Ziehl & Jones LLP, 150 California Street, 15<sup>th</sup> Floor, San Francisco, CA 94111, Attn: Debra I. Grassgreen and Joshua M. Fried (email: [dgrassgreen@pszjlaw.com](mailto:dgrassgreen@pszjlaw.com) and [jfried@pszjlaw.com](mailto:jfried@pszjlaw.com)); (b) counsel to AE DIP 2011, LLC, as the DIP Lender, and Argonaut Ventures I, L.L.C., as the Prepetition Tranche A Representative and the Prepetition Tranche E Agent, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, Attn: Michael A. Rosenthal (email: [mrosenthal@gibsondunn.com](mailto:mrosenthal@gibsondunn.com)) and Young Conaway Stargatt & Taylor, LLP, 1000 West Street, 17<sup>th</sup> Floor, Wilmington, DE 19899, Attn: Sean M. Beach, Esq. (email: [sbeach@ycst.com](mailto:sbeach@ycst.com)); (c) counsel to the U.S. Department of Energy, acting by and through the Secretary of Energy, as the Prepetition Tranche B/D Credit Facility Agent, U.S. Department of Justice, Civil Division, 1100 L Street NW, Room 10030, Washington, D.C. 20530, Attn: Matthew J. Troy (email: [matthew.troy@usdoj.gov](mailto:matthew.troy@usdoj.gov)); (d) counsel to the Official Committee of Unsecured Creditors, Blank Rome LLP, 1201 Market Street, Suite 800, Wilmington, DE 19801, Attn: Bonnie Glantz Fatell (email: [fatell@blankrome.com](mailto:fatell@blankrome.com)); and (e) Office of the U.S. Trustee for the District of Delaware,

844 King Street, Suite 2207, Wilmington, DE 19801, Attn: Jane M. Leamy (email: jane.m.leafy@usdoj.gov) (collectively, the “Notice Parties”).

**Court Approval**

47. An evidentiary hearing on the relief requested in the Sale Motion (among other things, to confirm the results of the Auction and approve the sale to the Successful Bidder) (the “Sale Hearing”) will be held before the Honorable Mary Walrath, United States Bankruptcy Judge, on \_\_\_\_\_, 2012 at \_\_\_\_\_.m. (prevailing Eastern time) or at such time thereafter as counsel may be heard. The sale of the Property will be subject to the entry of an order of the Bankruptcy Court approving the sale.

**Closing**

48. The closing on the Sale (the “Closing”) shall take place in accordance with the terms of the Purchase Agreement, or in accordance with the terms of such other agreement approved by the Bankruptcy Court at the Sale Hearing.

PLEASE BE FURTHER ADVISED that all requests for information concerning the Property and/or the Bid Procedures, should be directed in writing to Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17<sup>th</sup> Floor, P.O. Box 8705, Wilmington, Delaware 19899-8705 (Courier 19801), Attn: Joshua M. Fried, Esq.

Dated: \_\_\_\_\_, 2012

PACHULSKI STANG ZIEHL & JONES LLP

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Richard M. Pachulski (CA Bar No. 90073)  
Debra I. Grassgreen (CA Bar No. 169978)

Bruce Grohsgal (DE Bar No. 3583)  
Joshua M. Fried (CA Bar No. 181541)  
919 North Market Street, 17<sup>th</sup> Floor  
P.O. Box 8705  
Wilmington, DE 19899-8705 (Courier 19801)  
Telephone: (302) 652-4100  
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E-mail:       rpachulski@pszjlaw.com  
              dgrassgreen@pszjlaw.com  
              bgrohsgal@pszjlaw.com  
              jfried@pszjlaw.com

Counsel for the Debtors and  
Debtors in Possession

**EXHIBIT D**

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)  
 )  
 ) (Jointly Administered)  
Debtors. )  
Deadline for Submitting Bids: \_\_\_\_\_, 2012 at 4:00 p.m. ET  
Auction Date: \_\_\_\_\_, 2012 at \_\_\_\_\_.m. ET  
Deadline for Objections to Sale Motion: \_\_\_\_\_, 2012 at 4:00 p.m. ET  
Hearing Date on Sale Motion: \_\_\_\_\_, 2012 at \_\_\_\_\_.m. ET

**NOTICE OF AUCTION AND SALE HEARING**

PLEASE BE ADVISED that on August 23, 2012, Solyndra LLC (“Solyndra”), one of the above-captioned debtors and debtors in possession herein (the “Debtors”), filed the *Motion of Solyndra LLC for an Order (A) Approving Procedures for Sale of Real Property and Related Property; (B) Scheduling Auction and Hearing to Consider Approval of Sale and Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (C) Approving Forms of Notice; and (D) Granting Related Relief* (the “Bid Procedures Motion”).<sup>2</sup>

PLEASE BE FURTHER ADVISED that, on \_\_\_\_\_, 2012, the Court entered an order approving the Bid Procedures Motion (the “Bid Procedures Order”), which approved certain bid procedures for the sale (the “Bid Procedures”). As set forth in the Bid

<sup>1</sup> The Debtors in these proceedings and the last four digits of each Debtors’ 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.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings set forth in the Bid Procedures Motion.

Procedures, Solyndra seeks to sell its real property located at 47488 Kato Road, Fremont, California and certain related property (the “Property”) to Seagate Technology, LLC (the “Buyer”) or to such other successful bidder(s) who purchases the Property (the “Successful Bidder”), all to the extent described in the *Agreement of Sale and Purchase Between Solyndra LLC and Seagate Technology LLC* (the “Purchase Agreement”).

PLEASE BE FURTHER ADVISED that among other things, the Bid Procedures Order sets \_\_\_\_\_ at 4:00 p.m. (prevailing Eastern time) as the deadline for submitting bids on the Property, and (ii) provides that an auction (the “Auction”) of the Property may be conducted on \_\_\_\_\_, commencing at approximately \_\_\_\_\_ .m. (prevailing Eastern time), at Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17<sup>th</sup> Floor, Wilmington, DE 19801, or at such other date, time and place as determined and announced by Solyndra.

PLEASE BE FURTHER ADVISED that Solyndra has filed a motion (the “Sale Motion”) seeking Court approval of the sale of the Property to the highest and best bidder(s) at the Auction, free and clear of all liens, claims and encumbrances pursuant to section 363 of title 11 of the United States Code, with all liens, claims and encumbrances to attach to the proceeds of the sale with the same validity and in the same order of priority as they attached to the Property prior to the sale, including the assumption by Solyndra and assignment to the buyer of certain executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code, all as more fully set forth in the Bid Procedures Order and Bid Procedures.

PLEASE BE FURTHER ADVISED that any response or objection to the Sale Motion or the conduct of the Auction must be filed with the United States Bankruptcy Court for

the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, on or before October 19, 2011, at 4:00 p.m. (prevailing Eastern time). By the same time, you must also serve a copy of the response or objection upon Solyndra's financial advisors, Imperial Capital, LLC, 55 Second Street, Suite 1950, San Francisco, CA 94105, Attn: Eric Carlson and Monte Green (email: [ecarlson@imperialcapital.com](mailto:ecarlson@imperialcapital.com) and [mgreen@imperialcapital.com](mailto:mgreen@imperialcapital.com)), with copies to: (a) Solyndra's counsel, Pachulski Stang Ziehl & Jones LLP, 150 California Street, 15<sup>th</sup> Floor, San Francisco, CA 94111, Attn: Debra I. Grassgreen and Joshua M. Fried (email: [dgrassgreen@pszjlaw.com](mailto:dgrassgreen@pszjlaw.com) and [jfried@pszjlaw.com](mailto:jfried@pszjlaw.com)); (b) counsel to AE DIP 2011, LLC, as the DIP Lender, and Argonaut Ventures I, L.L.C., as the Prepetition Tranche A Representative and the Prepetition Tranche E Agent, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, Attn: Michael A. Rosenthal (email: [mrosenthal@gibsondunn.com](mailto:mrosenthal@gibsondunn.com)) and Young Conaway Stargatt & Taylor, LLP, 1000 West Street, 17<sup>th</sup> Floor, Wilmington, DE 19899, Attn: Sean M. Beach, Esq. (email: [sbeach@ycst.com](mailto:sbeach@ycst.com)); (c) counsel to the U.S. Department of Energy, acting by and through the Secretary of Energy, as the Prepetition Tranche B/D Credit Facility Agent, U.S. Department of Justice, Civil Division, 1100 L Street NW, Room 10030, Washington, D.C. 20530, Attn: Matthew J. Troy (email: [matthew.troy@usdoj.gov](mailto:matthew.troy@usdoj.gov)); (d) counsel to the Official Committee of Unsecured Creditors, Blank Rome LLP, 1201 Market Street, Suite 800, Wilmington, DE 19801, Attn: Bonnie Glantz Fatell (email: [fatell@blankrome.com](mailto:fatell@blankrome.com)); and (e) Office of the U.S. Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801, Attn: Jane M. Leamy (email: [jane.m.leafy@usdoj.gov](mailto:jane.m.leafy@usdoj.gov)).

PLEASE BE FURTHER ADVISED that an evidentiary hearing (the “Sale Hearing”) on the relief requested in the Sale Motion (among other things, to confirm the results of any Auction and approve the sale of the Property to the Buyer or the Successful Bidder(s)) will be held on \_\_\_\_\_, 2012 at \_\_\_\_\_m. (prevailing Eastern time) before the Honorable Mary F. Walrath, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Wilmington, Delaware 19801. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing.

PLEASE BE FURTHER ADVISED that all requests for information concerning information on the Bid Procedures, the proposed sale of the Property, or the Sale Motion should be directed in writing to Solyndra’s financial advisors, Imperial Capital, LLC, 55 Second Street, Suite 1950, San Francisco, CA 94105, Attn: Eric Carlson (email: [ecarlson@imperialcapital.com](mailto:ecarlson@imperialcapital.com) and [mgreen@imperialcapital.com](mailto:mgreen@imperialcapital.com)) and to Solyndra’s counsel, Pachulski Stang Ziehl & Jones LLP, 150 California Street, 15<sup>th</sup> Floor, San Francisco, CA 94111, Attn: Debra I. Grassgreen and Joshua M. Fried (email: [dgrassgreen@pszjlaw.com](mailto:dgrassgreen@pszjlaw.com) and [jfried@pszjlaw.com](mailto:jfried@pszjlaw.com)).

Dated: \_\_\_\_\_, 2012

PACHULSKI STANG ZIEHL & JONES LLP

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Richard M. Pachulski (CA Bar No. 90073)  
Debra I. Grassgreen (CA Bar No. 169978)  
Bruce Grohsgal (DE Bar No. 3583)  
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Counsel for the Debtors and  
Debtors in Possession

**EXHIBIT E**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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

Cure Objection Deadline: \_\_\_\_\_, 2012 at 4:00 p.m. ET  
Sale Hearing: \_\_\_\_\_, 2012 at \_\_\_\_\_.m. ET

**NOTICE TO COUNTERPARTIES TO EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES THAT MAY BE ASSUMED AND ASSIGNED**

PLEASE TAKE NOTICE that, on September 24, 2012, Solyndra LLC ("Solyndra"), one of the above-captioned debtors and debtors in possession herein (the "Debtors"), filed the *Motion of Solyndra LLC for an Order (A) Approving Procedures for Sale of Real Property and Related Property; (B) Scheduling Auction and Hearing to Consider Approval of Sale and Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (C) Approving Forms of Notice; and (D) Granting Related Relief* (the "Bid Procedures Motion").<sup>2</sup>

PLEASE BE FURTHER ADVISED that, on \_\_\_\_\_, 2012, the Court entered an order approving the Bid Procedures Motion (the "Bid Procedures Order"), which approved certain bid procedures for the sale (the "Bid Procedures"). As set forth in the Bid Procedures, Solyndra seeks to sell its real property located at 47488 Kato Road, Fremont, California and certain related property (the "Property") to Seagate Technology, LLC (the "Buyer") or to such other successful bidder(s) who purchases the Property (the "Successful Bidder"), all as set forth in that certain *Agreement of Sale and Purchase Between Solyndra LLC and Seagate Technology, LLC* (the "Purchase Agreement").

PLEASE BE FURTHER ADVISED that among other things, the Bid Procedures Order sets \_\_\_\_\_, 2012 at \_\_\_\_:00 p.m. (prevailing Eastern time) as the deadline for submitting bids on the Property, and (ii) provides that an auction (the "Auction") of the Property may be conducted on \_\_\_\_\_, 2012, commencing at approximately \_\_\_\_\_.m. (prevailing Eastern time), at Pachulski Stang Ziehl & Jones LLP, 150 California Street, 919 N. Market Street, 17<sup>th</sup> Floor, Wilmington, DE 19801, or at such other date, time and place as determined and announced by Solyndra.

PLEASE BE FURTHER ADVISED that Solyndra has filed a motion (the "Sale Motion") seeking Court approval of the sale of the Property to the highest and best bidder (the "Successful Bidder") at the Auction, free and clear of all liens, claims and encumbrances pursuant to section 363 of title 11 of the United States Code (the "Bankruptcy Code"), with all liens, claims and encumbrances to attach to the proceeds of the sale with the same validity and in the same order of priority as they attached to the Property prior to the sale, including the assumption by Solyndra and assignment to the buyer of certain executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code, all as more fully set forth in the Bid Procedures Order and Bid Procedures.

<sup>1</sup> The Debtors in these proceedings and the last four digits of each Debtors' 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.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings set forth in the Bid Procedures Motion to Seagate Technology, LLC (the "Buyer") or to such other successful bidder(s) who purchases the Property (the "Successful Bidder").

PLEASE BE FURTHER ADVISED that any response or objection to the Sale Motion or the conduct of the Auction must be filed with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, on or before \_\_\_\_\_, 2012, at 4:00 p.m. (prevailing Eastern time). By the same time, you must also serve a copy of the response or objection upon Solyndra's financial advisors, Imperial Capital, LLC, 55 Second Street, Suite 1950, San Francisco, CA 94105, Attn: Eric Carlson and Monte Green (email: ecarlson@imperialcapital.com and mgreen@imperialcapital.com), with a copy to: (a) Solyndra's counsel, Pachulski Stang Ziehl & Jones LLP, 150 California Street, 15<sup>th</sup> Floor, San Francisco, CA 94111, Attn: Debra I. Grassgreen and Joshua M. Fried (email: dgrassgreen@pszjlaw.com and jfried@pszjlaw.com); (b) counsel to AE DIP 2011, LLC, as the DIP Lender, and Argonaut Ventures I, L.L.C., as the Prepetition Tranche A Representative and the Prepetition Tranche E Agent, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, Attn: Michael A. Rosenthal (email: mrosenthal@gibsondunn.com) and Young Conaway Stargatt & Taylor, LLP, 1000 West Street, 17<sup>th</sup> Floor, Wilmington, DE 19899, Attn: Sean M. Beach, Esq. (email: sbeach@ycst.com); (c) counsel to the U.S. Department of Energy, acting by and through the Secretary of Energy, as the Prepetition Tranche B/D Credit Facility Agent, U.S. Department of Justice, Civil Division, 1100 L Street NW, Room 10030, Washington, D.C. 20530, Attn: Matthew J. Troy (email: matthew.troy@usdoj.gov); (d) counsel to the Official Committee of Unsecured Creditors, Blank Rome LLP, 1201 Market Street, Suite 800, Wilmington, DE 19801, Attn: Bonnie Glantz Fatell (email: fatell@blankrome.com); and (e) Office of the U.S. Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801, Attn: Jane M. Leamy (email: jane.m.leafy@usdoj.gov) (collectively, the "Notice Parties").

PLEASE BE FURTHER ADVISED that an evidentiary hearing (the "Sale Hearing") on the relief requested in the Sale Motion (among other things, to confirm the results of any Auction and approve the sale of the Property to the Buyer or the Successful Bidder(s), if any) will be held on \_\_\_\_\_, 2012 at \_\_\_\_\_m. (prevailing Eastern time) before the Honorable Mary J. Walrath, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Wilmington, Delaware 19801. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing.

**PLEASE TAKE FURTHER NOTICE THAT, PURSUANT TO THE SALE MOTION AND CONSISTENT WITH THE BID PROCEDURES ORDER, SOLYNDRA INTENDS TO ASSUME AN EXECUTORY CONTRACT OR UNEXPIRED LEASE TO WHICH YOU ARE A PARTY (THE "ASSUMED EXECUTORY CONTRACT"). THE ASSUMED EXECUTORY CONTRACT IS DESCRIBED ON EXHIBIT 1 ATTACHED TO THIS NOTICE. THE ASSUMED EXECUTORY CONTRACT WILL BE ASSUMED BY SOLYNDRA AND ASSIGNED TO THE SUCCESSFUL BIDDER. THE AMOUNT SHOWN ON EXHIBIT 1 HERETO AS THE "CURE AMOUNT" IS THE AMOUNT, IF ANY, BASED UPON SOLYNDRA'S BOOKS AND RECORDS, WHICH SOLYNDRA ASSERTS IS OWED TO CURE ANY DEFAULTS EXISTING UNDER THE ASSUMED EXECUTORY CONTRACT AS OF THE DATE SHOWN ON SUCH EXHIBIT.**

PLEASE TAKE FURTHER NOTICE that if you disagree with the Cure Amount shown for the Assumed Executory Contract on **Exhibit 1**, you must file in writing with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Wilmington, Delaware 19801, an objection on or before 4:00 p.m. prevailing Eastern time on \_\_\_\_\_, 2012, and serve such objection the Notice Parties. If a contract or lease is assumed and assigned pursuant to this Court's order approving same, then unless you properly and timely file and serve an objection to the Cure Amount contained in this Notice, you shall be paid by Solyndra at the time of the closing of the sale (or as soon as reasonably practicable thereafter), the Cure Amount, if any, set forth herein, with payment, if any, made pursuant to the terms of your applicable Assumed Executory Contract or lease. The Buyer or the Successful Bidder may remove any executory contracts or unexpired leases from the list of Assumed Executory Contracts at any time until the closing of the Sale of the Property pursuant to the Purchase Agreement.

PLEASE TAKE FURTHER NOTICE that if you have any other objection to Solyndra's assumption and assignment of the Assumed Executory Contract to which you may be a party or to the Sale Motion, you also must file that objection in the manner and by the date and time stated above; provided, however, that you may raise at the Sale Hearing an objection to the assumption and assignment of the Assumed Executory Contract *solely* with respect to the ability of the Buyer or the Successful Bidder(s) to provide adequate assurance of future performance under the Assumed Executory Contract. In addition, any objection must set forth the specific default or defaults alleged and set forth any cure amount as alleged by you.

PLEASE TAKE FURTHER NOTICE that the Buyer or the Successful Bidder shall be responsible for satisfying any requirements regarding adequate assurance of future performance that may be imposed under section 365(b) of the Bankruptcy Code in connection with the proposed assignment of any Assumed Executory Contract, as will be provided in the Sale Motion. The Court shall make its determinations concerning adequate assurance of future performance under the Assumed Executory Contracts pursuant to section 365(b) of the Bankruptcy Code at the Sale Hearing. Cure Amounts disputed by any counterparty will be resolved by the Court at the Sale Hearing.

**PLEASE TAKE FURTHER NOTICE THAT IF YOU DO NOT TIMELY FILE AND SERVE AN OBJECTION AS STATED ABOVE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE SALE MOTION WITH NO FURTHER NOTICE.**

**ANY NON-DEBTOR PARTY TO ANY ASSUMED EXECUTORY CONTRACT WHO DOES NOT FILE A TIMELY OBJECTION TO THE CURE AMOUNT FOR SUCH ASSUMED EXECUTORY CONTRACT IS DEEMED TO HAVE CONSENTED TO SUCH CURE AMOUNT.**

Dated: \_\_\_\_\_, 2012

PACHULSKI STANG ZIEHL & JONES LLP

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Richard M. Pachulski (CA Bar No. 90073)  
Debra I. Grassgreen (CA Bar No. 169978)  
Bruce Grohsgal (DE Bar No. 3583)  
Joshua M. Fried (CA Bar No. 181541)  
919 North Market Street, 17<sup>th</sup> Floor  
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                      dgrassgreen@pszjlaw.com  
                      bgrohsgal@pszjlaw.com  
                      jfried@pszjlaw.com  
Counsel for the Debtors and  
Debtors in Possession

**EXHIBIT 1**

<b>COUNTERPARTY</b>	<b>DEBTORS PARTY</b>	<b>ASSUMED EXECUTORY CONTRACT OR UNEXPIRED LEASE</b>	<b>CURE AMOUNT (AS OF _____, 2012)</b>
	Solyndra LLC		

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)  
 )  
 ) (Jointly Administered)  
Debtors. )  
 ) **Related Docket No. \_\_\_\_**

**ORDER (A) APPROVING BID PROCEDURES FOR SALE OF REAL  
PROPERTY AND RELATED PROPERTY, (B) SCHEDULING  
AUCTION AND HEARING TO CONSIDER APPROVAL OF SALE AND  
ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS  
AND UNEXPIRED LEASES; AND (C) APPROVING FORMS OF NOTICE;**

Upon the *Motion of Solyndra LLC for an Order (A) Approving Procedures for Sale of Real Property and Related Property; (B) Scheduling Auction and Hearing to Consider Approval of Sale and Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (C) Approving Forms of Notice; and (D) Granting Related Relief* (the “Bid Procedures Motion”) of Solyndra LLC (“Solyndra”), one of the above-captioned debtors, and debtor-in-possession (the “Debtors”)<sup>2</sup>; and it appearing that the Court has jurisdiction over the Bid Procedures Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(a); and the Court having considered the Bid Procedures Motion; and it appearing that the relief requested in the Bid Procedures Motion is in

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<sup>1</sup> The Debtors in these proceedings and the last four digits of each Debtors’ 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.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning ascribed thereto in the Bid Procedures Motion or the Purchase Agreement (as defined below), as the case may be.

the best interests of Solyndra's bankruptcy estate, its creditors and other parties-in-interest; and after due deliberation and sufficient cause appearing therefor;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS:<sup>3</sup>

A. Notice of the Bid Procedures Motion was adequate and sufficient under the circumstances of these chapter 11 cases, and such notice complied with all applicable requirements of 11 U.S.C. §§ 102 and 363, Rules 2002, 6004, 6006, and 9008 of the Federal Rules of Bankruptcy Procedure, and any other applicable provisions of title 11 of the United States Code (the "Bankruptcy Code"), the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

B. The bid procedures attached hereto as **Exhibit A** (the "Bid Procedures") are reasonable and appropriate under the circumstances of Solyndra's chapter 11 case. Solyndra is authorized to take any and all actions necessary or appropriate to implement the Bid Procedures.

C. All objections to the relief requested in the Bid Procedures Motion that have not been withdrawn, waived or settled as announced to the Court at the hearing on the Bid Procedures Motion or by stipulation filed with the Court, are overruled except as otherwise set forth herein.

D. The Breakup Fee and Expense Reimbursement (together, the "Bid Protections") to be paid under the circumstances described in the Bid Procedures Motion and in

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<sup>3</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052,

the *Agreement of Sale and Purchase Between Solyndra LLC and Seagate Technology LLC* (the “Purchase Agreement”) by and between Solyndra and Seagate Technology LLC (the “Buyer”) are (i) an actual and necessary cost and expense of preserving Solyndra’s estate within the meaning of sections 503(b) and 507(a)(2) of the Bankruptcy Code, (ii) commensurate to the real and substantial benefit conferred upon Solyndra’s estate by the Buyer, (iii) reasonable and appropriate, in light of the size and nature of the proposed sale transaction and comparable transactions, the commitments that have been made and the efforts that have been and will be expended by the Buyer, and (iv) necessary to induce the Buyer to continue to pursue the sale transaction and to continue to be bound by the Purchase Agreement.

E. The Bid Protections also induced the Buyer to submit a bid that will not only serve as a minimum floor bid on which Solyndra, its creditors and other bidders may rely, but will also provide Solyndra with the opportunity to sell the Property for the benefit of Solyndra’s estate. The Buyer has provided a material benefit to Solyndra and its estate by increasing the likelihood that the best possible price for the Property will be received. The Bid Protections have already encouraged competitive bidding, in that the Buyer would not have entered into the Purchase Agreement without these provisions. Accordingly, the Bid Procedures and the Bid Protections are reasonable and appropriate and represent the best method for maximizing value for the benefit of Solyndra’s estate.

F. The *Notice of Bid Procedures, Auction Date and Sale Hearing*, substantially in the form attached hereto as **Exhibit B** (the “Bid Procedures and Sale Notice”), the *Notice of Auction and Sale Hearing*, substantially in the form attached hereto as **Exhibit C**

(the “Creditor Notice”), and the *Notice to Counterparties to Executory Contracts and Unexpired Leases That May Be Assumed and Assigned* to be served on counterparties to the Assumed Executory Contracts, substantially in the form of **Exhibit D** hereto (the “Assumed Executory Contract Notice”), each provide adequate notice concerning the proposed sale of the Property and the proposed assumption and assignment of the Assumed Executory Contracts, as contemplated in the Purchase Agreement, that are the property of Solyndra, and are intended to, and do, provide due and adequate notice of the relief sought in the Sale Motion.

IT IS, THEREFORE, HEREBY ORDERED THAT:

1. The relief requested in the Bid Procedures Motion is granted as set forth in this Order.
2. The Bid Procedures substantially as set forth on the attached **Exhibit A** are approved in their entirety, and are incorporated herein by reference.
3. The proposed sale of the Property, the proposed assumption and assignment of the Assumed Executory Contracts, the Auction (as defined below) and the Sale Hearing shall be conducted solely in accordance with the provisions of this Bid Procedures Order and the Bid Procedures.
4. The Bid Protections as set forth in Section 2.7(d) of the Purchase Agreement are hereby approved, and shall constitute an administrative expense under the Bankruptcy Code, and shall be paid from the proceeds of the Successful Bidder’s Bid at Closing. Solyndra is authorized, without further action or order by the Court, to pay the Bid Protections in accordance with the terms and conditions of the Purchase Agreement and this Order. The Break-

Up Fee and Expense Reimbursement shall be paid to the Buyer notwithstanding whether the Buyer chooses, in its sole and absolute discretion, not to bid at the Auction, pursuant to the terms of the Purchase Agreement.

5. Within three (3) Business Days following entry of this Order, Solyndra shall serve by first class mail the Bid Procedures and Sale Notice on (a) the U.S. Trustee; (b) counsel to the official committee of unsecured creditors (the “Committee”); (c) counsel to Argonaut Ventures I, L.L.C., as the Prepetition Tranche A Representative and the Prepetition Tranche E Agent; (d) counsel to the U.S. Department of Energy, acting by and through the Secretary of Energy, as the Prepetition Tranche B/D Agent; (e) all parties known to be asserting a lien on any of the Property; (f) all entities known to have expressed an interest in acquiring any of the Property; (g) the Buyer and its counsel; and (h) all other parties that have filed a notice of appearance and demand for service of papers in the Debtors’ chapter 11 cases under Bankruptcy Rule 2002 as of the date of filing of the Bid Procedures Motion (the “Notice Parties”).

6. Within three (3) Business Days following entry of this Order, Solyndra shall serve the Creditor Notice on all of its known creditors, who have not already been served with Bid Procedures and Sale Notice.

7. At least fifteen days before the Sale Hearing, Solyndra shall file and serve the Assumed Executory Contract Notice to the counterparties to the Assumed Executory Contracts. Counterparties to the Assumed Executory Contracts<sup>4</sup> (each a “Counterparty”, and

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<sup>4</sup> The inclusion of any agreement as an Assumed Executory Contract does not constitute an admission by Solyndra that such agreement actually constitutes an executory contract or unexpired lease under section 365 of the Bankruptcy Code, and Solyndra expressly reserves the right to challenge the status of any agreement included as an Assumed Executory Contract up until the time of the Sale Hearing

together, the “Counterparties”) must file and serve any objection to the assumption and assignment of any Assumed Executory Contracts, including objections to any Cure Amount, by \_\_\_\_\_, 2012 at 4:00 p.m. (prevailing Eastern time). The Buyer or the Successful Bidder may remove any executory contracts or unexpired leases from the list of Assumed Executory Contracts at any time until Closing.

8. Any Counterparty failing to timely file an objection to the Cure Amounts set forth in the Cure Notices shall be forever barred from objecting to the Cure Amounts and from asserting any additional cure or other amounts against Solyndra, its estate, and the Buyer with respect to its executory contract(s) or unexpired lease(s) and will be deemed to consent to the Sale and the proposed assumption and assignment of its executory contract(s) or unexpired lease(s). Notwithstanding anything to the contrary, no executory contract or unexpired lease will be assumed unless and until the occurrence of the Closing Date and in accordance with the terms of the Purchase Agreement.

9. Any other objections to the relief requested at the Sale Hearing or to the proposed form of order (the “Sale Order”) shall be in writing, shall state the basis of such objection with specificity, and shall be filed with the Court on or before \_\_\_\_\_, 2012 at 4:00 p.m. (prevailing Eastern time), and served in accordance with the Auction and Hearing Notice so as to be received by \_\_\_\_\_, 2012 by (a) counsel for the Debtors; (b) counsel to the Committee; (c) counsel to the Secured Lenders, (d) the United States Trustee; and (e) counsel for the Buyer.

10. Compliance with the foregoing notice provisions shall constitute sufficient notice of Solyndra's proposed sale of the Property, the contemplated assumption and assignment of the Assumed Executory Contracts and proposed Cure Amounts, and no additional notice of such contemplated transactions need be given.

11. If Solyndra receives more than one Qualified Bid, an auction (the "Auction") will be held on \_\_\_\_\_, 2012 at \_\_:\_\_.m. (prevailing Eastern time), at the offices of Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17<sup>th</sup> Floor, Wilmington, DE 19899, or at any such other location as Solyndra may hereafter designate.

12. Solyndra is authorized to hold and conduct the Auction in accordance with the Bid Procedures.

13. The hearing regarding the acceptance of the Successful Bid(s) and Backup Bid(s) shall be held on \_\_\_\_\_, 2012, at \_\_\_\_\_ (prevailing Eastern time) (the "Sale Hearing") and, subject to the terms of the Purchase Agreement, may be adjourned from time to time without further notice other than an announcement in open court at the Sale Hearing.

14. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h) and 7062 or otherwise, the terms and conditions of this Bid Procedures Order shall be immediately effective and enforceable upon its entry, and no automatic stay of execution shall apply to this Bid Procedures Order.

15. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Bid Procedures Order.

Dated: \_\_\_\_\_, 2012

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The Honorable Mary F. Walrath,  
United States Bankruptcy Court Judge

## EXHIBIT A

### **Bid Procedures**

1. Property to be Sold

Solyndra seeks to sell the Property, and to assume and assign the Assumed Executory Contracts to the Buyer pursuant to the terms of the Purchase Agreement.<sup>1</sup>

2. Confidentiality Agreements and Access to Data Room

Any person or entity wishing to bid on the Property (each a "Potential Bidder") must deliver (unless previously delivered) to Solyndra:

- (a) To the extent not already executed, a confidentiality agreement in such form acceptable to Solyndra (such form is available upon request to Solyndra) unless otherwise agreed by Solyndra in its discretion.

Solyndra will afford any Potential Bidder who satisfied the requirement set forth in section 2(a) herein such reasonable due diligence access or additional information as may be reasonably requested by the Potential Bidder that Solyndra, in its business judgment, determines to be reasonable and appropriate. Solyndra will coordinate all reasonable requests for additional information and due diligence access from such Potential Bidders. Solyndra shall not be obligated to furnish any due diligence information after the conclusion of the Auction. Neither Solyndra nor its advisors are responsible for, and will bear no liability with respect to, any information obtained by Potential Bidders in connection with due diligence.

Potential Bidders seeking information about the qualification process should contact the Debtors at: Imperial Capital, LLC, 55 2nd Street, Suite 1950, San Francisco, CA 94105, Attn: Eric Carlson and Monte Green. Solyndra proposes that a "Qualified Bidder" be a Potential Bidder that delivers the documents described in subsection (a) above, whose financial information and credit-quality support or enhancement demonstrate, in Solyndra's sole discretion, the financial capability of the Potential Bidder to consummate the proposed transaction for the Property, and that Solyndra determines, in its sole discretion, is reasonably likely to submit a bona fide offer for the Property and be able to consummate such

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<sup>1</sup> The Property is also summarized in the *Motion for an Order: (I) Approving Asset Purchase Agreement and Authorizing the Sale of Real Property and Related Property to Seagate Technology LLC or a Higher and Better Bidder; (II) Authorizing the Sale of Property Free and Clear of All Liens, Claims, Encumbrances and Interests Pursuant to Sections 363(a), (f) and (m) of the Bankruptcy Code, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (IV) Granting Related Relief* filed concurrently herewith.

transaction if selected as the Successful Bidder (as defined below) within a time frame acceptable to Solyndra, and who submits a Qualified Bid as set forth below. As promptly as practicable after a Potential Bidder delivers the agreement required by subsection (a) above, after consultation with the Committee and with Argonaut Ventures I, L.L.C., as the Prepetition Tranche A Representative and the Prepetition Tranche E Agent and the U.S. Department of Energy, acting by and through the Secretary of Energy, as the Prepetition Tranche B/D Agent (together, the "Secured Lenders"), Solyndra shall determine, and shall notify the Potential Bidder in writing, whether the Potential Bidder is a Qualified Bidder.

Qualified Bidders requesting information in connection with their due diligence should contact Solyndra at Imperial Capital, LLC, 55 2nd Street, Suite 1950, San Francisco, CA 94105, Attn: Eric Carlson and Monte Green, or Solyndra's counsel, Pachulski Stang Ziehl & Jones, LLP, 150 California Street, 15th Floor, San Francisco, CA 94111, Attn: Debra I. Grassgreen and Joshua M. Fried. Notwithstanding the foregoing or anything else in the Bid Procedures, the Buyer is hereby determined to be a Qualified Bidder for all purposes at the Auction.

3. Proposed Bid Protections for the Buyer

Recognizing: 1) the Buyer's expenditure of time, energy and resources in connection with the Purchase Agreement and the negotiation thereof and the transactions contemplated therein; and 2) in the absence of Solyndra's obligation to pay the Break-Up Fee and Expense Reimbursement, Buyer would not have entered into the Purchase Agreement, Solyndra has agreed to provide the Bid Protections to the Buyer, consisting of (i) the Break-Up Fee amount of \$1,805,510, and (ii) the Expense Reimbursement of up to \$500,000 on the terms and conditions as more fully set forth in the Purchase Agreement. In the event that the Property is sold to a Successful Bidder that is not the Buyer, Solyndra shall be obligated to pay the Buyer the amount of the Break-Up Fee and Expense Reimbursement in accordance with the terms of the Purchase Agreement.

4. Proposed Requirements for a Qualified Bid

In order to participate in the Auction, if any, Solyndra proposes that a Qualified Bidder must deliver to Solyndra a written offer (each, a "Written Offer"), which in order to be deemed a "Qualified Bid," must meet each of the requirements listed below:

- (a) State that the Qualified Bidder is prepared to enter into a legally binding purchase and sale agreement for the purchase of the Property on terms and conditions no less favorable to Solyndra than the terms and conditions contained in the Purchase Agreement, as determined by

Solyndra in its reasonable business judgment, after consultation with the Committee and Secured Lenders;

- (b) Be accompanied by a clean and duly executed and binding Purchase Agreement or alternate purchase and sale agreement (a “Modified Agreement”);
- (c) Be accompanied by a marked Modified Agreement reflecting any variations from the Purchase Agreement;
- (d) Be accompanied by a list of any executory contracts or unexpired leases that are to be assumed and/or assigned under such Modified Agreement.
- (e) Be willing to consummate and fund the proposed transaction on or prior to fifteen (15) days from the date of the order approving the Sale Motion (the “Closing Deadline”), unless otherwise agreed by Solyndra;
- (f) To the extent not previously provided, state that the Qualified Bidder is financially capable of consummating the transactions contemplated by the Purchase Agreement or Modified Agreement, and contain evidence satisfactory to Solyndra, in its discretion, that such Qualified Bidder is reasonably likely to consummate the transactions contemplated by the Purchase Agreement or Modified Agreement;
- (g) To Solyndra’s satisfaction, fully disclose (i) the identity of each entity that will be bidding for the Property or otherwise participating in connection with such bid, and (ii) the terms of any such participation, and if an entity has been formed for the purpose of acquiring some, or all, of the Property, the parties that will bear liability for any breach by such entity;
- (h) State that the Written Offer is irrevocable until the closing of the transaction if such Qualified Bidder is designated as a Successful Bidder or a Backup Bidder (each as defined below);
- (i) Not request or entitle the Qualified Bidder to any transaction or break-up fee, expense reimbursement, or similar type of payment;
- (j) Is a higher and better offer than that contained in the Purchase Agreement with the Buyer, in Solyndra’s

business judgment and after consultation with the Committee and Secured Lenders;

- (k) Not contain any material due diligence or financing contingencies as determined by Solyndra in its reasonable discretion;
- (l) In Solyndra's discretion, provide evidence of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Purchase Agreement or Modified Agreement to Solyndra's satisfaction;
- (m) Include a good faith deposit (the "Good Faith Deposit") in the form of a certified check, wire transfer or such other form as is acceptable to Solyndra, payable to the order of Solyndra in an amount equal to \$10,000,000; and
- (n) All documentation submitted in support of the Written Offer must be submitted both in hard copy and electronically.

The Purchase Agreement with the Buyer shall constitute a Qualified Bid.

Any Good Faith Deposit accompanying a Written Offer that Solyndra, in its business judgment and after consultation with the Committee and the Secured Lenders, determines not to be a Qualified Bid shall be returned promptly following such determination. Between the Bid Deadline (as defined below) and the Auction, Solyndra may negotiate or seek clarification of any Qualified Bid from a Qualified Bidder. Each Qualified Bidder shall provide to Solyndra any information reasonably required by such parties in connection with the evaluation of a Written Offer or Qualified Bid within one business day after such request is made. Without the consent of Solyndra, a Qualified Bidder may not amend, modify or withdraw its Qualified Bid, except for proposed amendments to increase the amount or otherwise improve the terms of the Qualified Bid, during the period that such Qualified Bid is required to remain irrevocable and binding.

#### 5. Proposed Bid Deadline

Solyndra proposes that all Qualified Bids must be received prior to 5:00 p.m. (Eastern Time) on the proposed bid deadline that is no sooner than 45 days after entry of the Bid Procedures Order (the "Bid

Deadline”), by Solyndra: to the attention of Imperial Capital, LLC, 55 2nd Street, Suite 1950, San Francisco, CA 94105, Attn: Eric Carlson and Monte Green; Debtors’ Counsel: Pachulski Stang Ziehl & Jones LLP, 150 California Street, 15<sup>th</sup> Floor, San Francisco, California 94111-4500, Attn: Debra I. Grassgreen, Esquire and Joshua M. Fried, Esquire; Fax: (415) 263-7010; (email: dgrassgreen@pszjlaw.com and jfried@pszjlaw.com); Counsel to AE DIP 2011, LLC, the DIP Lender, and Argonaut Ventures I, L.L.C., as the Prepetition Tranche A Representative and the Prepetition Tranche E Agent: Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, Attn: Michael A. Rosenthal (email: mrosenthal@gibsondunn.com) and Young Conaway Stargatt & Taylor, LLP, 1000 West Street, 17th Floor, Wilmington, DE 19899, Attn: Sean M. Beach, Esq. (email: sbeach@ycst.com); Counsel to the U.S. Department of Energy, acting by and through the Secretary of Energy, as the Prepetition Tranche B/D Agent, U.S. Department of Justice, Civil Division, 1100 L Street NW, Room 10030, Washington, D.C. 20530, Attn: Matthew J. Troy (email: matthew.troy@usdoj.gov); Counsel to the Committee: Blank Rome LLP, 1201 Market Street, Suite 800, Wilmington, DE 19801, Attn: Bonnie Glantz Fatell and David W. Carickhoff (email: fatell@blankrome.com and carickhoff@blankrome.com); and Office of the U.S. Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801, Attn: Jane M. Leamy (email: jane.m.leafy@usdoj.gov).

6. Determination of Qualified Bids

Solyndra proposes to, by no later than one (1) Business Day prior to the Auction, (i) determine, in its business judgment and after consultation with the Committee and the Secured Lenders, whether a Written Offer is a Qualified Bid, and (ii) notify each Qualified Bidder submitting a Written Offer whether that Written Offer is a Qualified Bid.

7. “As Is, Where Is”

Except as otherwise provided in the applicable agreement, the sale of any or all of the Property shall be on an “as is, where is” basis and without representations or warranties of any kind, nature or description by Solyndra, its agents or its estate except to the extent set forth in the applicable agreement of the Successful Bidder(s) as approved by the Bankruptcy Court. Except as otherwise provided in the applicable agreement, all of Solyndra’s right, title and interest in and to the Property subject thereto shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges,

options and interests thereon and there-against (collectively, the “Interests”) in accordance with sections 363 and 365 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the sale of the Property. Each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all desired due diligence regarding the Property prior to making its Qualified Bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Qualified Bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Property, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bid Procedures or, as to the Successful Bidder(s), the terms of the transaction(s) as set forth in the applicable agreement.

8. Auction

Solyndra proposes that in the event that two or more Qualified Bids are received, Solyndra will conduct an Auction of the Property. The Auction shall be held at the offices of Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17<sup>th</sup> Floor, Wilmington, DE 19899, at the date and time as set forth in the Bid Procedures Order (defined below), which Solyndra requests be one day prior to the Sale Hearing, and continue thereafter until completed. Subject to the Purchase Agreement, Solyndra may adjourn the Auction at any time, continue the Auction from time to time and re-open the Auction at any time prior to the commencement of the Sale Hearing, as is appropriate in Solyndra’s reasonable business judgment and after consultation with the Committee and the Secured Lenders.

Solyndra proposes that, except as otherwise permitted in Solyndra’s discretion, only Solyndra, the Committee, the U.S. Trustee, the Secured Lenders, and Qualified Bidders and their respective professionals shall be entitled to attend the Auction. Only a Qualified Bidder that submitted a Qualified Bid is eligible to participate in the Auction.

The Auction shall be governed by the following proposed procedures:

- (a) Qualified Bidders shall appear in person at the Auction, or through a duly authorized representative.
- (b) Except with respect to subsections (e) and (f) below, Solyndra, in its discretion, may conduct the Auction in the

manner that it determines, in its reasonable business judgment, will result in the Successful Bid(s) that will maximize the overall value of Solyndra's estate, and may adopt rules for the Auction at the Auction that, in Solyndra's reasonable business judgment, will better promote the goals of the Auction and that are not inconsistent with any of the provisions of the Bid Procedures Order (defined below) or the Purchase Agreement. All such rules will provide that: (i) the Auction procedures must be fair and open, and not intended to cause any participating Qualified Bidder to be disadvantaged in any material way as compared to any other participating Qualified Bidder, and (ii) the Committee, Secured Lenders and all participating Qualified Bidders shall be entitled to be present for all bidding with the understanding that the true identity of each bidder (i.e., the principals submitting each bid) shall be fully disclosed to all other participating Qualified Bidders and that all material terms of each Qualified Bid will be fully disclosed to all other bidders throughout the entire Auction. Each bid by a Qualified Bidder at the Auction, if not inconsistent with the provisions of the Bid Procedures, shall be deemed to constitute a Qualified Bid. Notwithstanding the foregoing, any overbid by the Buyer will be credited with the amount of the Bid Protections, for purposes of comparison with other bids (it being understood that, as provided in Section 8(e) of these Bid Procedures, if the Buyer is the Successful Bidder at the Auction, it shall not be entitled to payment of the Bid Protections). The Break-Up Fee and Expense Reimbursement shall be paid to Buyer in accordance with the terms of Purchase Agreement and the Bid Procedures Order notwithstanding whether the Buyer chooses, in its sole and absolute discretion, not to bid at the Auction.

- (c) Solyndra will arrange for the actual bidding at the Auction to be transcribed.
- (d) Each Qualified Bidder participating in the Auction will be expected to confirm at the Auction that it has not engaged in any collusion regarding these Bid Procedures with any other Qualified Bidder, the Auction or any proposed transaction relating to the Property or a portion thereof.
- (e) At the Auction, the first bid for the Property other than the offer of Buyer set forth in the Purchase Agreement shall be considered only if it exceeds the purchase price set

forth in the Purchase Agreement by a minimum of (i) the amount that would be owed if Solyndra would be required to pay the Bid Protections to the Buyer plus (ii) cash consideration in an amount not less than \$1,000,000. Subsequently, bidding will continue in minimum increments of at least \$500,000, with the specific increments for each round of bidding to be announced on the record at the Auction.

- (f) All Qualified Bidders shall have the right to, at any time, request that Solyndra announce, subject to any potential new Bids, the then current highest or best bid and, to the extent requested by any Qualified Bidder, use reasonable efforts to clarify any and all questions such Qualified Bidder may have regarding Solyndra's announcement of the then current highest or best bid.
- (g) In Solyndra's discretion, all Qualified Bidders shall have the right to submit additional bids and make additional modifications to the Purchase Agreement or Modified Agreement, as applicable, at the Auction, provided, however, that any such modifications to the Purchase Agreement or Modified Agreement, on an aggregate basis and viewed in whole, shall not be less favorable to Solyndra as determined by Solyndra in its business judgment and after consultation with the Committee and Secured Lenders.
- (h) Upon conclusion of the bidding, the Auction shall be closed, and Solyndra shall, as soon as practicable, identify and determine, in its business judgment, after consultation with the Committee and Secured Lenders, the highest and best Qualified Bid for the Property that would maximize the overall value to Solyndra's estate, taking into account the Buyer's entitlement to the Bid Protections, if applicable (each a "Successful Bid" and the entity or entities submitting such Successful Bid, each a "Successful Bidder") and advise the Qualified Bidders of such determination, and require the Successful Bidder (other than Buyer) to deliver an executed Modified Agreement prior to commencement of the Sale Hearing and deposit (in addition to the Good Faith Deposit) the sum of 10% of the Successful Bid within two (2) Business Days after conclusion of the Auction (unless the Closing Date occurs prior to such time).

- (i) In addition, Solyndra will determine in its business judgment, after consultation with the Committee and Secured Lenders, which Qualified Bid, if any, is the next highest and best Qualified Bid and designate such Qualified Bid as a “Backup Bid” in the event the Successful Bidder fails to consummate the contemplated transaction. A Qualified Bidder that submitted a Qualified Bid that is designated a Backup Bid is a “Backup Bidder.” Each Backup Bid shall remain open and binding until two business days after the closing of the transaction(s) by which all of the Property that was subject to such Backup Bid has been transferred to one or more Qualified Bidders pursuant to these Bid Procedures. Notwithstanding anything to the contrary, Buyer must consent to be designated a Backup Bidder.
- (j) Following the conclusion of the Auction, Solyndra may resume bidding on such procedures determined by Solyndra in its discretion for the sale of discrete assets (if any) not sold to the Successful Bidder.

9. Sole Qualified Bid

If the Purchase Agreement with the Buyer is the only Qualified Bid submitted by the Bid Deadline, Solyndra proposes to not hold any Auction and instead request at the Sale Hearing that the Court approve the Purchase Agreement with the Buyer.

10. Proposed Sale Hearing

Solyndra proposes that the Sale Hearing occur at the time to be scheduled by the Court and in accordance with the terms of the Purchase Agreement and Bid Procedures Order. After consultation with the Committee and Secured Lenders, but subject to the terms of the Purchase Agreement, Solyndra may adjourn or continue the Sale Hearing from time to time without further notice to parties in interest other than by announcement of the adjournment in open court or on the Court’s calendar on the date scheduled for the Sale Hearing or any adjourned date. At the Sale Hearing, Solyndra shall present the results of the Auction to the Bankruptcy Court and seek approval for the Successful Bid and the Backup Bid. Upon (i) entry of an order approving a Successful Bid other than that of Buyer, (ii) consummation of a Sale to a Successful Bidder other than the Buyer, and (iii) to the extent allowed, in accordance with the provisions of the Purchase Agreement, Solyndra shall pay to Buyer a sum equal to the Bid Protections without further court order.

Following the Sale Hearing approving the transaction with respect to the Property to the Successful Bidder, if such Successful Bidder fails to consummate an approved transaction for any reason, the appropriate Backup Bidder(s) shall be designated the Successful Bidder and Solyndra shall be authorized to effect such transaction without further order of the Court. The Successful Bidder and Backup Bidder (if any) should be represented by counsel at the Sale Hearing.

11. Consummation of the Purchase

(a) Closing Deadline

The Successful Bidder shall consummate the sale transaction contemplated by the Successful Bid (the "Purchase") on or before the deadline set forth in the Purchase Agreement or Modified Agreement, as applicable, requested to close the sale of the Property to either the Buyer or the Successful Bidder (the "Closing Deadline"). Subject to the terms of the Purchase Agreement or Modified Agreement, Solyndra may extend the Closing Deadline from time to time in its business judgment. If a Successful Bidder successfully consummates an approved transaction by the Closing Deadline, such Successful Bidder's Good Faith Deposit shall be applied to the purchase price in such transaction.

If the Successful Bidder either fails to consummate the Purchase on or before the Closing Deadline, breaches the Purchase Agreement or Modified Agreement or otherwise fails to perform, Solyndra may, in its business judgment, after consultation with the Committee and Secured Lenders, and without further order of the Bankruptcy Court, deem the Successful Bidder to be a "Defaulting Buyer," at which time the Successful Bid shall be deemed rejected.

Subject to Buyer's rights to the Bid Protections and pursuant to the Purchase Agreement, Solyndra shall be entitled to (i) retain the Good Faith Deposit as part of its damages resulting from the breach or failure to perform by the Defaulting Buyer, and (ii) seek all available damages from such Defaulting Buyer occurring as a result of such Defaulting Buyer's failure to perform.

(b) Back-Up Purchase

Upon a determination by Solyndra, after consultation with the Committee and Secured Lenders, that the Successful Bidder is a Defaulting Buyer, Solyndra will be authorized, but not required, to consummate a sale transaction with the Backup Bidder on the terms

and conditions of the Backup Bid (the “Backup Purchase”) without further order of the Bankruptcy Court.

If a Backup Bidder consummates a Backup Purchase, the Good Faith Deposit of such Backup Bidder will be applied to the purchase price in such transaction. On an as-needed basis, Solyndra, in the exercise of its business judgment and after consultation with the Committee and Secured Lenders, shall determine an alternative Closing Deadline for the Backup Purchase. In the event that Solyndra seeks to consummate a Backup Purchase with a Backup Bidder and such Backup Bidder fails to consummate the Backup Purchase on or before the alternative Closing Deadline, breaches the Purchase Agreement or Modified Agreement or otherwise fails to perform, Solyndra may, in its business judgment and after consultation with the Secured Lenders and the Committee, and without further order of the Bankruptcy Court, deem such Backup Bidder to be a Defaulting Buyer and pursue the same remedies as under these Bid Procedures.

12. Return of Good Faith Deposits

Good Faith Deposits of all Qualified Bidders shall be held in an interest-bearing escrow account. Except for the Successful Bidder and the Backup Bidder(s), Solyndra shall hold the Good Faith Deposits of all Qualified Bidders that submit Written Offers until three (3) business days after the Auction.

**EXHIBIT B**

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)  
 )  
 ) (Jointly Administered)  
Debtors. )

**Bid Deadline: TBD**  
**Auction: TBD**  
**Deadline to Object to Sale Motion: TBD**  
**Sale Hearing: TBD**

**NOTICE OF BID PROCEDURES, AUCTION DATE, AND SALE HEARING**

**PLEASE BE ADVISED** that on August \_\_, 2012, the debtors and debtors in possession herein (the “Debtors”) filed the *Motion of Solyndra LLC for an Order (A) Approving Procedures for Sale of Real Property and Related Property; (B) Scheduling Auction and Hearing to Consider Approval of Sale and Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (C) Approving Forms of Notice; and (D) Granting Related Relief* (the “Bid Procedures Motion”) and *Motion of Solyndra LLC for an Order (A) Approving Procedures for Sale of Real Property and Related Property; (B) Scheduling Auction and Hearing to Consider Approval of Sale and Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (C) Approving Forms of Notice; and (D) Granting Related Relief* (the “Sale Motion”)<sup>2</sup>. By the Sale Motion, Solyndra seeks, to sell its real property and

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<sup>1</sup> The Debtors in these proceedings and the last four digits of each Debtors’ 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.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings set forth in the Bid Procedures Motion.

building located at 47488 Kato Road, Fremont, California, (the “Real Property”) including all other related property interests (together, with the Real Property, the “Property”) to be sold to either Seagate Technology, LLC (the “Buyer”) or to another successful bidder(s) (the “Successful Bidder”), as set forth in that certain *Agreement of Sale and Purchase Between Solyndra LLC and Seagate Technology LLC*, dated as of August \_\_, 2012 (the “Purchase Agreement”).

PLEASE BE FURTHER ADVISED that the following procedures (the “Bid Procedures”) shall govern the bidding process and the sale at auction (the “Auction”) of the Property. Any party in interest that wishes to receive a copy of the Sale Motion or the Bid Procedures Order (as defined below) shall make such request in writing to Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17<sup>th</sup> Floor, P.O. Box 8705, Wilmington, Delaware 19899-8705 (Courier 19801), Attn: Joshua M. Fried, Esq. These Bid Procedures have been approved and authorized by an order signed by the Honorable Mary F. Walrath, United States Bankruptcy Judge, at a hearing on \_\_\_\_\_ 2012 (the “Bid Procedures Order”) in the chapter 11 cases of the Debtors, which cases were commenced on September 6, 2011.

PLEASE BE FURTHER ADVISED that this Notice provides a summary of the Bid Procedures approved in the Bid Procedures Order. In the event of any inconsistency or conflict between this Notice and the Bid Procedures Order, the Bid Procedures Order shall control.

### **Bid Procedures**

#### 1. Property to be Sold

Solyndra seeks to sell the Property, and to assume and assign the Assumed Executory Contracts to the Buyer pursuant to the terms of the Purchase Agreement.<sup>3</sup>

2. Confidentiality Agreements and Access to Data Room

Any person or entity wishing to bid on the Property (each a "Potential Bidder") must deliver (unless previously delivered) to Solyndra:

- (b) To the extent not already executed, a confidentiality agreement in such form acceptable to Solyndra (such form is available upon request to Solyndra) unless otherwise agreed by Solyndra in its discretion.

Solyndra will afford any Potential Bidder who satisfied the requirement set forth in section 2(a) herein such reasonable due diligence access or additional information as may be reasonably requested by the Potential Bidder that Solyndra, in its business judgment, determines to be reasonable and appropriate. Solyndra will coordinate all reasonable requests for additional information and due diligence access from such Potential Bidders. Solyndra shall not be obligated to furnish any due diligence information after the conclusion of the Auction. Neither Solyndra nor its advisors are responsible for, and will bear no liability with respect to, any information obtained by Potential Bidders in connection with due diligence.

Potential Bidders seeking information about the qualification process should contact the Debtors at: Imperial Capital, LLC, 55 2nd Street, Suite 1950, San Francisco, CA 94105, Attn: Eric Carlson and Monte Green. Solyndra proposes that a "Qualified Bidder" be a Potential Bidder that delivers the documents described in subsection (a) above, whose financial information and credit-quality support or enhancement demonstrate, in Solyndra's sole discretion, the financial capability of the Potential Bidder to consummate the proposed transaction for the Property, and that Solyndra determines, in its sole discretion, is reasonably likely to submit a bona fide offer for the Property and be able to consummate such transaction if selected as the Successful Bidder (as defined below) within a time frame acceptable to Solyndra, and who submits a Qualified Bid as set forth below. As promptly as practicable after a Potential Bidder delivers the agreement required by subsection (a) above, after consultation with the Committee and with Argonaut Ventures I, L.L.C., as the Prepetition Tranche A Representative and the Prepetition Tranche E Agent and the U.S. Department of Energy, acting by and through the Secretary of Energy, as the Prepetition Tranche B/D Agent (together, the "Secured Lenders"),

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<sup>3</sup> The Property is also summarized in the *Motion for an Order: (I) Approving Asset Purchase Agreement and Authorizing the Sale of Real Property and Related Property to Seagate Technology LLC or a Higher and Better Bidder; (II) Authorizing the Sale of Property Free and Clear of All Liens, Claims, Encumbrances and Interests Pursuant to Sections 363(a), (f) and (m) of the Bankruptcy Code, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (IV) Granting Related Relief* filed concurrently herewith.

Solyndra shall determine, and shall notify the Potential Bidder in writing, whether the Potential Bidder is a Qualified Bidder.

Qualified Bidders requesting information in connection with their due diligence should contact Solyndra at Imperial Capital, LLC, 55 2nd Street, Suite 1950, San Francisco, CA 94105, Attn: Eric Carlson and Monte Green, or Solyndra's counsel, Pachulski Stang Ziehl & Jones, LLP, 150 California Street, 15th Floor, San Francisco, CA 94111, Attn: Debra I. Grassgreen and Joshua M. Fried. Notwithstanding the foregoing or anything else in the Bid Procedures, the Buyer is hereby determined to be a Qualified Bidder for all purposes at the Auction.

3. Proposed Bid Protections for the Buyer

Recognizing: 1) the Buyer's expenditure of time, energy and resources in connection with the Purchase Agreement and the negotiation thereof and the transactions contemplated therein; and 2) in the absence of Solyndra's obligation to pay the Break-Up Fee and Expense Reimbursement, Buyer would not have entered into the Purchase Agreement, Solyndra has agreed to provide the Bid Protections to the Buyer, consisting of (i) the Break-Up Fee amount of \$1,805,510, and (ii) the Expense Reimbursement of up to \$500,000 on the terms and conditions as more fully set forth in the Purchase Agreement. In the event that the Property is sold to a Successful Bidder that is not the Buyer, Solyndra shall be obligated to pay the Buyer the amount of the Break-Up Fee and Expense Reimbursement in accordance with the terms of the Purchase Agreement.

4. Proposed Requirements for a Qualified Bid

In order to participate in the Auction, if any, Solyndra proposes that a Qualified Bidder must deliver to Solyndra a written offer (each, a "Written Offer"), which in order to be deemed a "Qualified Bid," must meet each of the requirements listed below:

- (a) State that the Qualified Bidder is prepared to enter into a legally binding purchase and sale agreement for the purchase of the Property on terms and conditions no less favorable to Solyndra than the terms and conditions contained in the Purchase Agreement, as determined by Solyndra in its reasonable business judgment, after consultation with the Committee and Secured Lenders;
- (b) Be accompanied by a clean and duly executed and binding Purchase Agreement or alternate purchase and sale agreement (a "Modified Agreement");
- (c) Be accompanied by a marked Modified Agreement reflecting any variations from the Purchase Agreement;

- (d) Be accompanied by a list of any executory contracts or unexpired leases that are to be assumed and/or assigned under such Modified Agreement.
- (e) Be willing to consummate and fund the proposed transaction on or prior to fifteen (15) days from the date of the order approving the Sale Motion (the "Closing Deadline"), unless otherwise agreed by Solyndra;
- (f) To the extent not previously provided, state that the Qualified Bidder is financially capable of consummating the transactions contemplated by the Purchase Agreement or Modified Agreement, and contain evidence satisfactory to Solyndra, in its discretion, that such Qualified Bidder is reasonably likely to consummate the transactions contemplated by the Purchase Agreement or Modified Agreement;
- (g) To Solyndra's satisfaction, fully disclose (i) the identity of each entity that will be bidding for the Property or otherwise participating in connection with such bid, and (ii) the terms of any such participation, and if an entity has been formed for the purpose of acquiring some, or all, of the Property, the parties that will bear liability for any breach by such entity;
- (h) State that the Written Offer is irrevocable until the closing of the transaction if such Qualified Bidder is designated as a Successful Bidder or a Backup Bidder (each as defined below);
- (i) Not request or entitle the Qualified Bidder to any transaction or break-up fee, expense reimbursement, or similar type of payment;
- (j) Is a higher and better offer than that contained in the Purchase Agreement with the Buyer, in Solyndra's business judgment and after consultation with the Committee and Secured Lenders;
- (k) Not contain any material due diligence or financing contingencies as determined by Solyndra in its reasonable discretion;
- (l) In Solyndra's discretion, provide evidence of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Purchase Agreement or Modified Agreement to Solyndra's satisfaction;

- (m) Include a good faith deposit (the “Good Faith Deposit”) in the form of a certified check, wire transfer or such other form as is acceptable to Solyndra, payable to the order of Solyndra in an amount equal to \$10,000,000; and
- (n) All documentation submitted in support of the Written Offer must be submitted both in hard copy and electronically.

The Purchase Agreement with the Buyer shall constitute a Qualified Bid.

Any Good Faith Deposit accompanying a Written Offer that Solyndra, in its business judgment and after consultation with the Committee and the Secured Lenders, determines not to be a Qualified Bid shall be returned promptly following such determination. Between the Bid Deadline (as defined below) and the Auction, Solyndra may negotiate or seek clarification of any Qualified Bid from a Qualified Bidder. Each Qualified Bidder shall provide to Solyndra any information reasonably required by such parties in connection with the evaluation of a Written Offer or Qualified Bid within one business day after such request is made. Without the consent of Solyndra, a Qualified Bidder may not amend, modify or withdraw its Qualified Bid, except for proposed amendments to increase the amount or otherwise improve the terms of the Qualified Bid, during the period that such Qualified Bid is required to remain irrevocable and binding.

5. Proposed Bid Deadline

Solyndra proposes that all Qualified Bids must be received prior to 5:00 p.m. (Eastern Time) on the proposed bid deadline that is no sooner than 45 days after entry of the Bid Procedures Order (the “Bid Deadline”), by Solyndra: to the attention of Imperial Capital, LLC, 55 2nd Street, Suite 1950, San Francisco, CA 94105, Attn: Eric Carlson and Monte Green; Debtors’ Counsel: Pachulski Stang Ziehl & Jones LLP, 150 California Street, 15<sup>th</sup> Floor, San Francisco, California 94111-4500, Attn: Debra I. Grassgreen, Esquire and Joshua M. Fried, Esquire; Fax: (415) 263-7010; (email: dgrassgreen@pszjlaw.com and jfried@pszjlaw.com); Counsel to AE DIP 2011, LLC, the DIP Lender, and Argonaut Ventures I, L.L.C., as the Prepetition Tranche A Representative and the Prepetition Tranche E Agent: Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, Attn: Michael A. Rosenthal (email: mrosenthal@gibsondunn.com) and Young Conaway Stargatt & Taylor, LLP, 1000 West Street, 17th Floor, Wilmington, DE 19899, Attn: Sean M. Beach, Esq. (email: sbeach@ycst.com); Counsel to the U.S. Department of Energy, acting by and through the Secretary of Energy, as the Prepetition Tranche B/D Agent, U.S. Department of Justice, Civil Division, 1100 L Street NW, Room 10030, Washington, D.C. 20530, Attn: Matthew J. Troy (email: matthew.troy@usdoj.gov); Counsel to the Committee: Blank Rome LLP,

1201 Market Street, Suite 800, Wilmington, DE 19801, Attn: Bonnie Glantz Fatell and David W. Carickhoff (email: fatell@blankrome.com and carickhoff@blankrome.com); and Office of the U.S. Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801, Attn: Jane M. Leamy (email: jane.m.leafy@usdoj.gov).

6. Determination of Qualified Bids

Solyndra proposes to, by no later than one (1) Business Day prior to the Auction, (i) determine, in its business judgment and after consultation with the Committee and the Secured Lenders, whether a Written Offer is a Qualified Bid, and (ii) notify each Qualified Bidder submitting a Written Offer whether that Written Offer is a Qualified Bid.

7. “As Is, Where Is”

Except as otherwise provided in the applicable agreement, the sale of any or all of the Property shall be on an “as is, where is” basis and without representations or warranties of any kind, nature or description by Solyndra, its agents or its estate except to the extent set forth in the applicable agreement of the Successful Bidder(s) as approved by the Bankruptcy Court. Except as otherwise provided in the applicable agreement, all of Solyndra’s right, title and interest in and to the Property subject thereto shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and there-against (collectively, the “Interests”) in accordance with sections 363 and 365 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the sale of the Property. Each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all desired due diligence regarding the Property prior to making its Qualified Bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Qualified Bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Property, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bid Procedures or, as to the Successful Bidder(s), the terms of the transaction(s) as set forth in the applicable agreement.

8. Auction

Solyndra proposes that in the event that two or more Qualified Bids are received, Solyndra will conduct an Auction of the Property. The Auction shall be held at the offices of Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17<sup>th</sup> Floor, Wilmington, DE 19899, at the date and

time as set forth in the Bid Procedures Order (defined below), which Solyndra requests be one day prior to the Sale Hearing, and continue thereafter until completed. Subject to the Purchase Agreement, Solyndra may adjourn the Auction at any time, continue the Auction from time to time and re-open the Auction at any time prior to the commencement of the Sale Hearing, as is appropriate in Solyndra's reasonable business judgment and after consultation with the Committee and the Secured Lenders.

Solyndra proposes that, except as otherwise permitted in Solyndra's discretion, only Solyndra, the Committee, the U.S. Trustee, the Secured Lenders, and Qualified Bidders and their respective professionals shall be entitled to attend the Auction. Only a Qualified Bidder that submitted a Qualified Bid is eligible to participate in the Auction.

The Auction shall be governed by the following proposed procedures:

- (a) Qualified Bidders shall appear in person at the Auction, or through a duly authorized representative.
- (b) Except with respect to subsections (e) and (f) below, Solyndra, in its discretion, may conduct the Auction in the manner that it determines, in its reasonable business judgment, will result in the Successful Bid(s) that will maximize the overall value of Solyndra's estate, and may adopt rules for the Auction at the Auction that, in Solyndra's reasonable business judgment, will better promote the goals of the Auction and that are not inconsistent with any of the provisions of the Bid Procedures Order (defined below) or the Purchase Agreement. All such rules will provide that: (i) the Auction procedures must be fair and open, and not intended to cause any participating Qualified Bidder to be disadvantaged in any material way as compared to any other participating Qualified Bidder, and (ii) the Committee, Secured Lenders and all participating Qualified Bidders shall be entitled to be present for all bidding with the understanding that the true identity of each bidder (i.e., the principals submitting each bid) shall be fully disclosed to all other participating Qualified Bidders and that all material terms of each Qualified Bid will be fully disclosed to all other bidders throughout the entire Auction. Each bid by a Qualified Bidder at the Auction, if not inconsistent with the provisions of the Bid Procedures, shall be deemed to constitute a Qualified Bid. Notwithstanding the foregoing, any overbid by the Buyer will be credited with the amount of the Bid Protections, for purposes of comparison with other bids (it being understood that, as provided in Section 8(e) of these Bid Procedures, if the

Buyer is the Successful Bidder at the Auction, it shall not be entitled to payment of the Bid Protections). The Break-Up Fee and Expense Reimbursement shall be paid to Buyer in accordance with the terms of Purchase Agreement and the Bid Procedures Order notwithstanding whether the Buyer chooses, in its sole and absolute discretion, not to bid at the Auction.

- (c) Solyndra will arrange for the actual bidding at the Auction to be transcribed.
- (d) Each Qualified Bidder participating in the Auction will be expected to confirm at the Auction that it has not engaged in any collusion regarding these Bid Procedures with any other Qualified Bidder, the Auction or any proposed transaction relating to the Property or a portion thereof.
- (e) At the Auction, the first bid for the Property other than the offer of Buyer set forth in the Purchase Agreement shall be considered only if it exceeds the purchase price set forth in the Purchase Agreement by a minimum of (i) the amount that would be owed if Solyndra would be required to pay the Bid Protections to the Buyer plus (ii) cash consideration in an amount not less than \$1,000,000. Subsequently, bidding will continue in minimum increments of at least \$500,000, with the specific increments for each round of bidding to be announced on the record at the Auction.
- (f) All Qualified Bidders shall have the right to, at any time, request that Solyndra announce, subject to any potential new Bids, the then current highest or best bid and, to the extent requested by any Qualified Bidder, use reasonable efforts to clarify any and all questions such Qualified Bidder may have regarding Solyndra's announcement of the then current highest or best bid.
- (g) In Solyndra's discretion, all Qualified Bidders shall have the right to submit additional bids and make additional modifications to the Purchase Agreement or Modified Agreement, as applicable, at the Auction, provided, however, that any such modifications to the Purchase Agreement or Modified Agreement, on an aggregate basis and viewed in whole, shall not be less favorable to Solyndra as determined by Solyndra in its business judgment and after consultation with the Committee and Secured Lenders.
- (h) Upon conclusion of the bidding, the Auction shall be closed, and Solyndra shall, as soon as practicable, identify and

determine, in its business judgment, after consultation with the Committee and Secured Lenders, the highest and best Qualified Bid for the Property that would maximize the overall value to Solyndra's estate, taking into account the Buyer's entitlement to the Bid Protections, if applicable (each a "Successful Bid" and the entity or entities submitting such Successful Bid, each a "Successful Bidder") and advise the Qualified Bidders of such determination, and require the Successful Bidder (other than Buyer) to deliver an executed Modified Agreement prior to commencement of the Sale Hearing and deposit (in addition to the Good Faith Deposit) the sum of 10% of the Successful Bid within two (2) Business Days after conclusion of the Auction (unless the Closing Date occurs prior to such time).

- (i) In addition, Solyndra will determine in its business judgment, after consultation with the Committee and Secured Lenders, which Qualified Bid, if any, is the next highest and best Qualified Bid and designate such Qualified Bid as a "Backup Bid" in the event the Successful Bidder fails to consummate the contemplated transaction. A Qualified Bidder that submitted a Qualified Bid that is designated a Backup Bid is a "Backup Bidder." Each Backup Bid shall remain open and binding until two business days after the closing of the transaction(s) by which all of the Property that was subject to such Backup Bid has been transferred to one or more Qualified Bidders pursuant to these Bid Procedures. Notwithstanding anything to the contrary, Buyer must consent to be designated a Backup Bidder.
- (j) Following the conclusion of the Auction, Solyndra may resume bidding on such procedures determined by Solyndra in its discretion for the sale of discrete assets (if any) not sold to the Successful Bidder.

9. Sole Qualified Bid

If the Purchase Agreement with the Buyer is the only Qualified Bid submitted by the Bid Deadline, Solyndra proposes to not hold any Auction and instead request at the Sale Hearing that the Court approve the Purchase Agreement with the Buyer.

10. Proposed Sale Hearing

Solyndra proposes that the Sale Hearing occur at the time to be scheduled by the Court and in accordance with the terms of the Purchase Agreement and Bid Procedures Order. After consultation with the Committee and

Secured Lenders, but subject to the terms of the Purchase Agreement, Solyndra may adjourn or continue the Sale Hearing from time to time without further notice to parties in interest other than by announcement of the adjournment in open court or on the Court's calendar on the date scheduled for the Sale Hearing or any adjourned date. At the Sale Hearing, Solyndra shall present the results of the Auction to the Bankruptcy Court and seek approval for the Successful Bid and the Backup Bid. Upon (i) entry of an order approving a Successful Bid other than that of Buyer, (ii) consummation of a Sale to a Successful Bidder other than the Buyer, and (iii) to the extent allowed, in accordance with the provisions of the Purchase Agreement, Solyndra shall pay to Buyer a sum equal to the Bid Protections without further court order.

Following the Sale Hearing approving the transaction with respect to the Property to the Successful Bidder, if such Successful Bidder fails to consummate an approved transaction for any reason, the appropriate Backup Bidder(s) shall be designated the Successful Bidder and Solyndra shall be authorized to effect such transaction without further order of the Court. The Successful Bidder and Backup Bidder (if any) should be represented by counsel at the Sale Hearing.

11. Consummation of the Purchase

(a) Closing Deadline

The Successful Bidder shall consummate the sale transaction contemplated by the Successful Bid (the "Purchase") on or before the deadline set forth in the Purchase Agreement or Modified Agreement, as applicable, requested to close the sale of the Property to either the Buyer or the Successful Bidder (the "Closing Deadline"). Subject to the terms of the Purchase Agreement or Modified Agreement, Solyndra may extend the Closing Deadline from time to time in its business judgment. If a Successful Bidder successfully consummates an approved transaction by the Closing Deadline, such Successful Bidder's Good Faith Deposit shall be applied to the purchase price in such transaction.

If the Successful Bidder either fails to consummate the Purchase on or before the Closing Deadline, breaches the Purchase Agreement or Modified Agreement or otherwise fails to perform, Solyndra may, in its business judgment, after consultation with the Committee and Secured Lenders, and without further order of the Bankruptcy Court, deem the Successful Bidder to be a "Defaulting Buyer," at which time the Successful Bid shall be deemed rejected.

Subject to Buyer's rights to the Bid Protections and pursuant to the Purchase Agreement, Solyndra shall be entitled to (i) retain the Good Faith Deposit as part of its damages resulting from the breach or failure to

perform by the Defaulting Buyer, and (ii) seek all available damages from such Defaulting Buyer occurring as a result of such Defaulting Buyer's failure to perform.

(b) Back-Up Purchase

Upon a determination by Solyndra, after consultation with the Committee and Secured Lenders, that the Successful Bidder is a Defaulting Buyer, Solyndra will be authorized, but not required, to consummate a sale transaction with the Backup Bidder on the terms and conditions of the Backup Bid (the "Backup Purchase") without further order of the Bankruptcy Court.

If a Backup Bidder consummates a Backup Purchase, the Good Faith Deposit of such Backup Bidder will be applied to the purchase price in such transaction. On an as-needed basis, Solyndra, in the exercise of its business judgment and after consultation with the Committee and Secured Lenders, shall determine an alternative Closing Deadline for the Backup Purchase. In the event that Solyndra seeks to consummate a Backup Purchase with a Backup Bidder and such Backup Bidder fails to consummate the Backup Purchase on or before the alternative Closing Deadline, breaches the Purchase Agreement or Modified Agreement or otherwise fails to perform, Solyndra may, in its business judgment and after consultation with the Secured Lenders and the Committee, and without further order of the Bankruptcy Court, deem such Backup Bidder to be a Defaulting Buyer and pursue the same remedies as under these Bid Procedures.

12. Return of Good Faith Deposits

Good Faith Deposits of all Qualified Bidders shall be held in an interest-bearing escrow account. Except for the Successful Bidder and the Backup Bidder(s), Solyndra shall hold the Good Faith Deposits of all Qualified Bidders that submit Written Offers until three (3) business days after the Auction.

Objections

16. Objections to the relief requested by the Sale Motion shall be set forth in writing and shall specify with particularity the grounds for such objections or other statements of position and shall be filed with the Court by 4:00 p.m. Eastern standard time on \_\_\_\_\_,

2012, and shall be served so as to be received by that same date and time on Solyndra's financial advisors, Imperial Capital, LLC, 55 Second Street, Suite 1950, San Francisco, CA 94105, Attn: Eric Carlson and Monte Green (email: [ecarlson@imperialcapital.com](mailto:ecarlson@imperialcapital.com) and [mgreen@imperialcapital.com](mailto:mgreen@imperialcapital.com)), with copies to: (a) Solyndra's counsel, Pachulski Stang Ziehl & Jones LLP, 150 California Street, 15<sup>th</sup> Floor, San Francisco, CA 94111, Attn: Debra I. Grassgreen and Joshua M. Fried (email: [dgrassgreen@pszjlaw.com](mailto:dgrassgreen@pszjlaw.com) and [jfried@pszjlaw.com](mailto:jfried@pszjlaw.com)); (b) counsel to AE DIP 2011, LLC, as the DIP Lender, and Argonaut Ventures I, L.L.C., as the Prepetition Tranche A Representative and the Prepetition Tranche E Agent, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, Attn: Michael A. Rosenthal (email: [mrosenthal@gibsondunn.com](mailto:mrosenthal@gibsondunn.com)) and Young Conaway Stargatt & Taylor, LLP, 1000 West Street, 17<sup>th</sup> Floor, Wilmington, DE 19899, Attn: Sean M. Beach, Esq. (email: [sbeach@ycst.com](mailto:sbeach@ycst.com)); (c) counsel to the U.S. Department of Energy, acting by and through the Secretary of Energy, as the Prepetition Tranche B/D Credit Facility Agent, U.S. Department of Justice, Civil Division, 1100 L Street NW, Room 10030, Washington, D.C. 20530, Attn: Matthew J. Troy (email: [matthew.troy@usdoj.gov](mailto:matthew.troy@usdoj.gov)); (d) counsel to the Official Committee of Unsecured Creditors, Blank Rome LLP, 1201 Market Street, Suite 800, Wilmington, DE 19801, Attn: Bonnie Glantz Fatell (email: [fatell@blankrome.com](mailto:fatell@blankrome.com)); and (e) Office of the U.S. Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801, Attn: Jane M. Leamy (email: [jane.m.leamy@usdoj.gov](mailto:jane.m.leamy@usdoj.gov)) (collectively, the "Notice Parties").

**Court Approval**

17. An evidentiary hearing on the relief requested in the Sale Motion (among other things, to confirm the results of the Auction and approve the sale to the Successful Bidder) (the "Sale Hearing") will be held before the Honorable Mary Walrath, United States Bankruptcy Judge, on \_\_\_\_\_, 2012 at \_\_\_\_\_.m. (prevailing Eastern time) or as such time thereafter as counsel may be heard. The sale of the Property will be subject to the entry of an order of the Bankruptcy Court approving the sale.

**Closing**

18. The closing on the Sale (the "Closing") shall take place in accordance with the terms of the Purchase Agreement, or in accordance with the terms of such other agreement approved by the Bankruptcy Court at the Sale Hearing.

PLEASE BE FURTHER ADVISED that all requests for information concerning the Property and/or the Bid Procedures, should be directed in writing to Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17<sup>th</sup> Floor, P.O. Box 8705, Wilmington, Delaware 19899-8705 (Courier 19801), Attn: Joshua M. Fried, Esq.

Dated: \_\_\_\_\_, 2012

PACHULSKI STANG ZIEHL & JONES LLP

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Richard M. Pachulski (CA Bar No. 90073)  
Debra I. Grassgreen (CA Bar No. 169978)  
Bruce Grohsgal (DE Bar No. 3583)  
Joshua M. Fried (CA Bar No. 181541)  
919 North Market Street, 17<sup>th</sup> Floor

P.O. Box 8705  
Wilmington, DE 19899-8705 (Courier 19801)  
Telephone: (302) 652-4100  
Facsimile: (302) 652-4400  
E-mail:       rpachulski@pszjlaw.com  
              dgrassgreen@pszjlaw.com  
              bgrohsgal@pszjlaw.com  
              jfried@pszjlaw.com

Counsel for the Debtors and  
Debtors in Possession

**EXHIBIT C**

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)  
 )  
 ) (Jointly Administered)  
Debtors. )  
Deadline for Submitting Bids: \_\_\_\_\_, 2012 at 4:00 p.m. PT  
Auction Date: \_\_\_\_\_, 2012 at \_\_\_\_\_.m. PT  
Deadline for Objections to Sale Motion: \_\_\_\_\_, 2012 at 4:00 p.m. ET  
Hearing Date on Sale Motion: \_\_\_\_\_, 2012 at \_\_\_\_\_.m. ET

**NOTICE OF AUCTION AND SALE HEARING**

PLEASE BE ADVISED that, on \_\_\_\_\_, 2012, Solyndra LLC (“Solyndra”), one of the above-captioned debtors and debtors in possession herein (the “Debtors”), filed the *Motion of Solyndra LLC for an Order (A) Approving Procedures for Sale of Real Property and Related Property; (B) Scheduling Auction and Hearing to Consider Approval of Sale and Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (C) Approving Forms of Notice; and (D) Granting Related Relief* (the “Bid Procedures Motion”).<sup>2</sup>

PLEASE BE FURTHER ADVISED that, on \_\_\_\_\_, 2012, the Court entered an order approving the Bid Procedures Motion (the “Bid Procedures Order”), which approved certain bid procedures for the sale (the “Bid Procedures”). As set forth in the Bid

<sup>1</sup> The Debtors in these proceedings and the last four digits of each Debtors’ 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.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings set forth in the Bid Procedures Motion.

Procedures, Solyndra seeks to sell its real property located at 47488 Kato Road, Fremont, California and certain related property (the "Property") to Seagate Technology, LLC (the "Buyer") or to such other successful bidder(s) who purchases the Property (the "Successful Bidder"), all to the extent described in the *Agreement of Sale and Purchase Between Solyndra LLC and Seagate Technology LLC* (the "Purchase Agreement").

PLEASE BE FURTHER ADVISED that among other things, the Bid Procedures Order sets \_\_\_\_\_ at 4:00 p.m. (prevailing Eastern time) as the deadline for submitting bids on the Property, and (ii) provides that an auction (the "Auction") of the Property may be conducted on \_\_\_\_\_, commencing at approximately \_\_\_\_\_ .m. (prevailing Eastern time), at Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17<sup>th</sup> Floor, Wilmington, DE 19801, or at such other date, time and place as determined and announced by Solyndra.

PLEASE BE FURTHER ADVISED that Solyndra has filed a motion (the "Sale Motion") seeking Court approval of the sale of the Property to the highest and best bidder(s) at the Auction, free and clear of all liens, claims and encumbrances pursuant to section 363 of title 11 of the United States Code, with all liens, claims and encumbrances to attach to the proceeds of the sale with the same validity and in the same order of priority as they attached to the Property prior to the sale, including the assumption by Solyndra and assignment to the buyer of certain executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code, all as more fully set forth in the Bid Procedures Order and Bid Procedures.

PLEASE BE FURTHER ADVISED that any response or objection to the Sale Motion or the conduct of the Auction must be filed with the United States Bankruptcy Court for

the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, on or before October 19, 2011, at 4:00 p.m. (prevailing Eastern time). By the same time, you must also serve a copy of the response or objection upon Solyndra's financial advisors, Imperial Capital, LLC, 55 Second Street, Suite 1950, San Francisco, CA 94105, Attn: Eric Carlson and Monte Green (email: [ecarlson@imperialcapital.com](mailto:ecarlson@imperialcapital.com) and [mgreen@imperialcapital.com](mailto:mgreen@imperialcapital.com)), with copies to: (a) Solyndra's counsel, Pachulski Stang Ziehl & Jones LLP, 150 California Street, 15<sup>th</sup> Floor, San Francisco, CA 94111, Attn: Debra I. Grassgreen and Joshua M. Fried (email: [dgrassgreen@pszjlaw.com](mailto:dgrassgreen@pszjlaw.com) and [jfried@pszjlaw.com](mailto:jfried@pszjlaw.com)); (b) counsel to AE DIP 2011, LLC, as the DIP Lender, and Argonaut Ventures I, L.L.C., as the Prepetition Tranche A Representative and the Prepetition Tranche E Agent, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, Attn: Michael A. Rosenthal (email: [mrosenthal@gibsondunn.com](mailto:mrosenthal@gibsondunn.com)) and Young Conaway Stargatt & Taylor, LLP, 1000 West Street, 17<sup>th</sup> Floor, Wilmington, DE 19899, Attn: Sean M. Beach, Esq. (email: [sbeach@ycst.com](mailto:sbeach@ycst.com)); (c) counsel to the U.S. Department of Energy, acting by and through the Secretary of Energy, as the Prepetition Tranche B/D Credit Facility Agent, U.S. Department of Justice, Civil Division, 1100 L Street NW, Room 10030, Washington, D.C. 20530, Attn: Matthew J. Troy (email: [matthew.troy@usdoj.gov](mailto:matthew.troy@usdoj.gov)); (d) counsel to the Official Committee of Unsecured Creditors, Blank Rome LLP, 1201 Market Street, Suite 800, Wilmington, DE 19801, Attn: Bonnie Glantz Fatell (email: [fatell@blankrome.com](mailto:fatell@blankrome.com)); and (e) Office of the U.S. Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801, Attn: Jane M. Leamy (email: [jane.m.leafy@usdoj.gov](mailto:jane.m.leafy@usdoj.gov)) (collectively, the "Notice Parties").

PLEASE BE FURTHER ADVISED that an evidentiary hearing (the “Sale Hearing”) on the relief requested in the Sale Motion (among other things, to confirm the results of any Auction and approve the sale of the Property to the Buyer or the Successful Bidder(s)) will be held on \_\_\_\_\_, 2012 at \_\_\_\_\_ .m. (prevailing Eastern time) before the Honorable Mary F. Walrath, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Wilmington, Delaware 19801. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing.

PLEASE BE FURTHER ADVISED that all requests for information concerning information on the Bid Procedures, the proposed sale of the Property, or the Sale Motion should be directed in writing to Solyndra’s financial advisors, Imperial Capital, LLC, 55 Second Street, Suite 1950, San Francisco, CA 94105, Attn: Eric Carlson (email: [ecarlson@imperialcapital.com](mailto:ecarlson@imperialcapital.com) and [mgreen@imperialcapital.com](mailto:mgreen@imperialcapital.com)) and to Solyndra’s counsel, Pachulski Stang Ziehl & Jones LLP, 150 California Street, 15<sup>th</sup> Floor, San Francisco, CA 94111, Attn: Debra I. Grassgreen and Joshua M. Fried (email: [dgrassgreen@pszjlaw.com](mailto:dgrassgreen@pszjlaw.com) and [jfried@pszjlaw.com](mailto:jfried@pszjlaw.com)).

Dated: \_\_\_\_\_, 2012

PACHULSKI STANG ZIEHL & JONES LLP

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Richard M. Pachulski (CA Bar No. 90073)  
Debra I. Grassgreen (CA Bar No. 169978)  
Bruce Grohsgal (DE Bar No. 3583)  
Joshua M. Fried (CA Bar No. 181541)  
919 North Market Street, 17<sup>th</sup> Floor  
P.O. Box 8705  
Wilmington, DE 19899-8705 (Courier 19801)

Telephone: (302) 652-4100

Facsimile: (302) 652-4400

E-mail:       rpachulski@pszjlaw.com  
              dgrassgreen@pszjlaw.com  
              bgrohsgal@pszjlaw.com  
              jfried@pszjlaw.com

Counsel for the Debtors and  
Debtors in Possession

**EXHIBIT D**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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

Cure Objection Deadline: \_\_\_\_\_, 2012 at 4:00 p.m. ET  
Sale Hearing: \_\_\_\_\_, 2012 at \_\_\_\_\_.m. ET

**NOTICE TO COUNTERPARTIES TO EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES THAT MAY BE ASSUMED AND ASSIGNED**

PLEASE TAKE NOTICE that, on \_\_\_\_\_, 2012, Solyndra LLC (“Solyndra”), one of the above-captioned debtors and debtors in possession herein (the “Debtors”), filed the *Motion of Solyndra LLC for an Order (A) Approving Procedures for Sale of Real Property and Related Property; (B) Scheduling Auction and Hearing to Consider Approval of Sale and Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (C) Approving Forms of Notice; and (D) Granting Related Relief* (the “Bid Procedures Motion”).<sup>2</sup>

PLEASE BE FURTHER ADVISED that, on \_\_\_\_\_, 2012, the Court entered an order approving the Bid Procedures Motion (the “Bid Procedures Order”), which approved certain bid procedures for the sale (the “Bid Procedures”). As set forth in the Bid Procedures, Solyndra seeks to sell its real property located at 47488 Kato Road, Fremont, California and certain related property (the “Property”) to Seagate Technology, LLC (the “Buyer”) or to such other successful bidder(s) who purchases the Property (the “Successful Bidder”), all as set forth in that certain *Agreement of Sale and Purchase Between Solyndra LLC and Seagate Technology, LLC* (the “Purchase Agreement”).

PLEASE BE FURTHER ADVISED that among other things, the Bid Procedures Order sets \_\_\_\_\_, 2012 at \_ :00 p.m. (prevailing Eastern time) as the deadline for submitting bids on the Property, and (ii) provides that an auction (the “Auction”) of the Property may be conducted on \_\_\_\_\_, 2012, commencing at approximately \_\_\_\_\_.m. (prevailing Eastern time), at Pachulski Stang Ziehl & Jones LLP, 150 California Street, 919 N. Market Street, 17<sup>th</sup> Floor, Wilmington, DE 19801, or at such other date, time and place as determined and announced by Solyndra.

PLEASE BE FURTHER ADVISED that Solyndra has filed a motion (the “Sale Motion”) seeking Court approval of the sale of the Property to the highest and best bidder (the “Successful Bidder”) at the Auction, free and clear of all liens, claims and encumbrances pursuant to section 363 of title 11 of the United States Code (the “Bankruptcy Code”), with all liens, claims and encumbrances to attach to the proceeds of the sale with the same validity and in the same order of priority as they attached to the Property prior to the sale, including the assumption by Solyndra and assignment to the buyer of certain executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code, all as more fully set forth in the Bid Procedures Order and Bid Procedures.

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<sup>1</sup> The Debtors in these proceedings and the last four digits of each Debtors’ 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.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings set forth in the Bid Procedures Motion to Seagate Technology, LLC (the “Buyer”) or to such other successful bidder(s) who purchases the Property (the “Successful Bidder”).

PLEASE BE FURTHER ADVISED that any response or objection to the Sale Motion or the conduct of the Auction must be filed with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, on or before \_\_\_\_\_, 2012, at 4:00 p.m. (prevailing Eastern time). By the same time, you must also serve a copy of the response or objection upon Solyndra's financial advisors, Imperial Capital, LLC, 55 Second Street, Suite 1950, San Francisco, CA 94105, Attn: Eric Carlson and Monte Green (email: ecarlson@imperialcapital.com and mgreen@imperialcapital.com), with a copy to: (a) Solyndra's counsel, Pachulski Stang Ziehl & Jones LLP, 150 California Street, 15<sup>th</sup> Floor, San Francisco, CA 94111, Attn: Debra I. Grassgreen and Joshua M. Fried (email: dgrassgreen@pszjlaw.com and jfried@pszjlaw.com); (b) counsel to AE DIP 2011, LLC, as the DIP Lender, and Argonaut Ventures I, L.L.C., as the Prepetition Tranche A Representative and the Prepetition Tranche E Agent, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, Attn: Michael A. Rosenthal (email: mrosenthal@gibsondunn.com) and Young Conaway Stargatt & Taylor, LLP, 1000 West Street, 17<sup>th</sup> Floor, Wilmington, DE 19899, Attn: Sean M. Beach, Esq. (email: sbeach@ycst.com); (c) counsel to the U.S. Department of Energy, acting by and through the Secretary of Energy, as the Prepetition Tranche B/D Credit Facility Agent, U.S. Department of Justice, Civil Division, 1100 L Street NW, Room 10030, Washington, D.C. 20530, Attn: Matthew J. Troy (email: matthew.troy@usdoj.gov); (d) counsel to the Official Committee of Unsecured Creditors, Blank Rome LLP, 1201 Market Street, Suite 800, Wilmington, DE 19801, Attn: Bonnie Glantz Fatell (email: fatell@blankrome.com); and (e) Office of the U.S. Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801, Attn: Jane M. Leamy (email: jane.m.leafy@usdoj.gov) (collectively, the "Notice Parties").

PLEASE BE FURTHER ADVISED that an evidentiary hearing (the "Sale Hearing") on the relief requested in the Sale Motion (among other things, to confirm the results of any Auction and approve the sale of the Property to the Buyer or the Successful Bidder(s), if any) will be held on \_\_\_\_\_, 2012 at \_\_\_\_\_m. (prevailing Eastern time) before the Honorable Mary J. Walrath, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Wilmington, Delaware 19801. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing.

**PLEASE TAKE FURTHER NOTICE THAT, PURSUANT TO THE SALE MOTION AND CONSISTENT WITH THE BID PROCEDURES ORDER, SOLYNDRA INTENDS TO ASSUME AN EXECUTORY CONTRACT OR UNEXPIRED LEASE TO WHICH YOU ARE A PARTY (THE "ASSUMED EXECUTORY CONTRACT"). THE ASSUMED EXECUTORY CONTRACT IS DESCRIBED ON EXHIBIT 1 ATTACHED TO THIS NOTICE. THE ASSUMED EXECUTORY CONTRACT WILL BE ASSUMED BY SOLYNDRA AND ASSIGNED TO THE SUCCESSFUL BIDDER. THE AMOUNT SHOWN ON EXHIBIT 1 HERETO AS THE "CURE AMOUNT" IS THE AMOUNT, IF ANY, BASED UPON SOLYNDRA'S BOOKS AND RECORDS, WHICH SOLYNDRA ASSERTS IS OWED TO CURE ANY DEFAULTS EXISTING UNDER THE ASSUMED EXECUTORY CONTRACT AS OF THE DATE SHOWN ON SUCH EXHIBIT.**

PLEASE TAKE FURTHER NOTICE that if you disagree with the Cure Amount shown for the Assumed Executory Contract on Exhibit 1, you must file in writing with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Wilmington, Delaware 19801, an objection on or before 4:00 p.m. prevailing Eastern time on \_\_\_\_\_, 2012, and serve such objection the Notice Parties. If a contract or lease is assumed and assigned pursuant to this Court's order approving same, then unless you properly and timely file and serve an objection to the Cure Amount contained in this Notice, you shall be paid by Solyndra at the time of the closing of the sale (or as soon as reasonably practicable thereafter), the Cure Amount, if any, set forth herein, with payment, if any, made pursuant to the terms of your applicable Assumed Executory Contract or lease. The Buyer or the Successful Bidder may remove any executory contracts or unexpired leases from the list of Assumed Executory Contracts at any time until the closing of the Sale of the Property pursuant to the Purchase Agreement.

PLEASE TAKE FURTHER NOTICE that if you have any other objection to Solyndra's assumption and assignment of the Assumed Executory Contract to which you may be a party or to the Sale Motion, you also must file that objection in the manner and by the date and time stated above; provided, however, that you may raise at the Sale Hearing an objection to the assumption and assignment of the Assumed Executory Contract *solely* with respect to the ability of the Buyer or the Successful Bidder(s) to provide adequate assurance of future performance under the Assumed Executory Contract. In addition, any objection must set forth the specific default or defaults alleged and set forth any cure amount as alleged by you.

PLEASE TAKE FURTHER NOTICE that the Buyer or the Successful Bidder shall be responsible for satisfying any requirements regarding adequate assurance of future performance that may be imposed under section 365(b) of the Bankruptcy Code in connection with the proposed assignment of any Assumed Executory Contract, as will be provided in the Sale Motion. The Court shall make its determinations concerning adequate assurance of future performance under the Assumed Executory Contracts pursuant to section 365(b) of the Bankruptcy Code at the Sale Hearing. Cure Amounts disputed by any counterparty will be resolved by the Court at the Sale Hearing.

**PLEASE TAKE FURTHER NOTICE THAT IF YOU DO NOT TIMELY FILE AND SERVE AN OBJECTION AS STATED ABOVE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE SALE MOTION WITH NO FURTHER NOTICE.**

**ANY NON-DEBTOR PARTY TO ANY ASSUMED EXECUTORY CONTRACT WHO DOES NOT FILE A TIMELY OBJECTION TO THE CURE AMOUNT FOR SUCH ASSUMED EXECUTORY CONTRACT IS DEEMED TO HAVE CONSENTED TO SUCH CURE AMOUNT.**

Dated: \_\_\_\_\_, 2012

PACHULSKI STANG ZIEHL & JONES LLP

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                      jfried@pszjlaw.com  
Counsel for the Debtors and  
Debtors in Possession

**EXHIBIT 1**

<b>COUNTERPARTY</b>	<b>DEBTORS PARTY</b>	<b>ASSUMED EXECUTORY CONTRACT OR UNEXPIRED LEASE</b>	<b>CURE AMOUNT (AS OF _____, 2012)</b>
	Solyndra LLC		