

July 31, 2007

Investigator William Graham  
Office of the Chief Trial Counsel, Enforcement  
State Bar of California  
1149 South Hill Street  
Los Angeles, California 90015-2299

*via eMail*

**RE: Request Documents for California Bar Investigations # 06-O-15523 thru 06-O-15529**

Dear Mr. Graham:

This narrative accompanies the documents you requested ("Requested Documents") for the State Bar Of California ("CA Bar") in furtherance of the investigation of my Original Complaint 05-20211 as reasserted and supplemented by the Revised Complaint.

**"Respondents" herein includes each attorney, whether named or known, engaging in alleged misconduct as well as the law firm Hennigan, Bennett & Dorman**

The original respondents to the Revised Complaint were assigned case numbers 06-O-15523 thru 06-O-15529 by your office. The Revised Complaint additionally complained of the law firm Hennigan, Bennett & Dorman LLP ("HBD")<sup>1</sup>, as a separate entity, as to its standard policies and referring to §6169 of the Bar Act. Nevertheless, my understanding is that a case number has not yet been assigned to HBD. Subsequent to the submission of the Revised Complaint and the reopening of the investigation, it was determined that four additional attorneys were involved in the conflicted representation, including two named partners<sup>2</sup> of HBD. This narrative shall refer to all attorneys at HBD who engaged in any conflicted representation of Aureal or its adversaries, as well as the firm itself, as either Respondents or HBD, together or individually as appropriate, regardless if or when each has been assigned a case number or when their identity or related conduct becomes known.

**The Requested Documents Demonstrate the CA Bar Incorrectly Assumes Misconduct Is Reported By Officials**

The Requested Documents demonstrate that the CA Bar erroneously ruled upon the Original Complaint under the false assumption that when unethical conduct was found by a court in California, such misconduct would be reported to the CA Bar. The Original Complaint was rejected by the CA Bar decision<sup>3</sup> which indicated that a complaint which asserted misconduct by an attorney before a judge would not be investigated if such judge did not assert jurisdiction and refer such conduct to the CA Bar. The CA Bar must not draw any negative inference as to the validity of the Revised Complaint and related materials due to the lack of referral by any official or lawyer as the Requested Document clearly shows the court found misconduct. I believe that the CA Bar should assign resources sufficient for a

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1 The Original Complaint referred to the firm as "H&B" which was the firms' own abbreviation used their initial retention and blind waiver documents. Our current references to HBD are as successor to and incorporate H&B.

2 In addition to the firm HBD, specific lawyers listed in my eMail of 6/25/07 include Bruce Bennett, Esq., Roderick G, Dorman, Esq., William E. Stoner, Esq., and Thomas B. Watson, Esq.

3 A copy of said decision is included at EXHIBIT S - CA BAR #05-20211PAGE 1 of the Revised Complaint.

complete investigation of the Revised Complaint with all related materials in light of the disconcerting absence of referrals in the face of misconduct.

### **The Requested Documents illustrate misconduct by Respondents and another Law Firm**

The Requested Documents are the Memorandum of Decision dated July 23, 2002 (Exhibit A ) and the resulting Order Denying Second And Final Of PriceWaterhouseCoopers LLP, Directing Revocation Of Retention Order And Ordering Disgorgement (Exhibit B) together the "Requested Documents".

These documents clearly evidence numerous indisputable instances of misconduct by PriceWaterhouseCoopers ("PWC"), specifically referencing the Assistant General Counsel for PWC. HBD was involved with such misconduct not only by aiding and abetting such conduct, but by their attempts to hide the PWC conflict of interest issues from the court. Furthermore, the court found that HBD handled the PWC matters on behalf of the debtor with deceptive and purposeful intent, and found that the sworn declaration of HBD's lead counsel was not believable.

### **HBD likely failed to obtain CRPC 3-310 waivers vis-a-vis PWC and each of Aureal and Oaktree**

While not specifically mentioned in the Revised Complaint, PWC and HBD were clients of each other. HBD likely continued to implement their flawed CRPC 3-310 policy and resulting failures by failing to obtain contemporaneous informed written consent for the conflicts between 1) PWC & Aureal, and 2) PWC & the Oaktree entities. Furthermore, as with other conflicts, HBD should have bought failed to obtain substitute counsel to handle all instances when PWC and Aureal were potentially or actually adverse. Instead, HBD chose to handle all such issues themselves, a statutorially prohibited representation.<sup>4</sup>

***Reference is made, without limitation, to relevant statutes, under California and Federal codes.***

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## **Securities Exchange Act of 1934**

Section 13(a) of the Exchange Act and Rule 13a-11 promulgated thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act to file with the Commission current reports on Form 8-K upon the occurrence of certain events, including the departure of directors or principal officers. Item 5.02(a) of Form 8-K specifies that if a director has resigned because of a disagreement with the registrant, known to an executive officer of the registrant, on any matter relating to the registrant's operations, policies, or practices, the registrant must, among other things, disclose a brief description of the circumstances representing the disagreement that the registrant believes caused, in whole or in part, the director's resignation. In addition, the registrant must provide the resigning director with a copy of the disclosure no later than the day the company files the disclosure with the Commission. Also, the registrant must provide the director with the opportunity to furnish a response letter

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<sup>4</sup> Prohibited without limitation under Title 11 U.S.C. § 327(a)

stating whether the director agrees with the disclosure in the registrant's Form 8-K. In the event that the registrant receives a response letter from the former director, the letter must be filed by the registrant as an amendment to its Form 8-K within two business days of its receipt. No showing of scienter is required to establish a violation of Section 13(a) of the Exchange Act. *SEC v. Savoy*, 587 F.2d 1149, 1167 (D.C. Cir. 1978).<sup>5</sup>

**SEC forms are completed under criminal penalties and often include the warning:**

*“ATTENTION Intentional misstatements or omissions of fact constitute federal criminal violations (see 18 U.S.C. § 1001)”*

## **Federal Criminal Statutes**

- **Title 18 U.S.C. § 1001** (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—
  - (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
  - (2) makes any materially false, fictitious, or fraudulent statement or representation; or
  - (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;shall be fined under this title, imprisoned not more than 5 years.
- **Title 18 U.S.C. § 2 Principals.** (a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal. (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.
- **Title 18 U.S.C. § 3 Accessory after the fact.** Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.
- **Title 18 U.S.C. § 4 Misprision of felony.** Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.
- **Title 18 U.S.C. § 152 Concealment of assets; false oaths and claims;**

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<sup>5</sup> Excerpted from <http://www.sec.gov/litigation/admin/2007/34-55801.pdf>.

- **Title 18 U.S.C. § 153. Embezzlement against estate** (a) Offense.— A person described in subsection (b) who knowingly and fraudulently appropriates to the person’s own use, embezzles, spends, or transfers any property or **secretes or destroys any document belonging to the estate of a debtor** shall be fined under this title, imprisoned not more than 5 years, or both. (b) Person to Whom Section Applies.— A person described in this subsection is one who has access to property or documents belonging to an estate by virtue of the person’s participation in the administration of the estate as a trustee, custodian, marshal, attorney, or other officer of the court or as an agent, employee, or other person engaged by such an officer to perform a service with respect to the estate.
- **Title 18 U.S.C. § 157. Bankruptcy fraud** A person who, **having devised or intending to devise a scheme or artifice to defraud and for the purpose of executing or concealing such a scheme or artifice or attempting to do so**— (1) files a petition under title 11, including a fraudulent involuntary bankruptcy petition under section 303 of such title; (2) **files a document** in a proceeding under title 11, including a fraudulent involuntary bankruptcy petition under section 303 of such title; or (3) **makes a false or fraudulent representation, claim, or promise** concerning or in relation to a proceeding under title 11, including a fraudulent involuntary bankruptcy petition under section 303 of such title, at any time before or after the filing of the petition, or in relation to a proceeding falsely asserted to be pending under such title, shall be fined under this title, imprisoned not more than 5 years, or both.

## California Statutes and Rules

**California Evidence Code § 956.** Services of Lawyer Obtained to Aid in Commission of Crime or Fraud There is no privilege under this article if the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud. (Added by Stats. 1965, ch. 299, operative January 1, 1967.) Note: We believe this includes violations of SEC rules, statutes, and related 18 U.S.C. § 1001 crimes

**California Evidence Code § 958.** Breach of Duty Arising Out of Lawyer-Client Relationship in Issue There is no privilege under this article as to a communication relevant to an issue of breach, by the lawyer or by the client, of a duty arising out of the lawyer-client relationship. (Added by Stats. 1965, ch. 299, operative January 1, 1967.) Note: We believe this includes violations of California Rules of Professional Conduct including without limitation: Rule 3-310. Avoiding the Representation of Adverse Interests

### **CALIFORNIA PENAL CODE SECTIONS 132-140**

**§ 132.** Every person who upon any trial, proceeding, inquiry, or investigation

whatever, authorized or permitted by law, offers in evidence, as genuine or true, any book, paper, document, record, or other instrument in writing, knowing the same to have been forged or fraudulently altered or ante-dated, is guilty of felony.

§ 133. Every person who practices any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token, or writing, to any witness or person about to be called as a witness upon any trial, proceeding, inquiry, or investigation whatever, authorized by law, with intent to affect the testimony of such witness, is guilty of a misdemeanor.

§ 134. Every person guilty of preparing any false or ante-dated book, paper, record, instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced for any fraudulent or deceitful purpose, as genuine or true, upon any trial, proceeding, or inquiry whatever, authorized by law, is guilty of felony.

§ 135. Every person who, knowing that any book, paper, record, instrument in writing, or other matter or thing, is about to be produced in evidence upon any trial, inquiry, or investigation whatever, authorized by law, willfully destroys or conceals the same, with intent thereby to prevent it from being produced, is guilty of a misdemeanor.

### **California Code of Civil Procedure §§ 2016-2036 including § 2023**

**CALIFORNIA Business and Professions Code sections 6086.7; 6086.8(a); and 6068(o)**

## **Original Complaint's CRPC 3-310 Focus Emerges As Inextricably Intertwined With SEC Allegations**

The Original Complaint was focused solely on CRPC 3-310. The CA Bar decided against conducting an investigation, but invited a request for review accompanied by additional information. The Revised Complaint included approximately 700 pages of exhibit evidence and expanded the scope of the complaint to include other instances of misconduct and violations of rules and regulations governing attorneys in the state of California and under federal law. Furthermore, the Revised Complaint introduced allegations of criminal misconduct. This narrative presents new evidence to the CA Bar of SEC violations and contemporaneously related federal criminal violations ("SEC Allegations") by Respondents and their conflicted clients.<sup>6</sup>

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<sup>6</sup> Upon information and belief, no referral has been made to the Securities and Exchange Commission related to the SEC Allegations. My understanding is that SEC expects any governmental or regulatory entity aware of SEC violations to refer same. Linda Chatman Thomsen is Director of the Commission's Division of Enforcement (202) 551-4500; and Marc J. Fagel is Associate Regional Director (415) 705-2449 San Francisco Regional Office. I was unaware of the SEC Allegations at the time of the Revised Complaint.

**Consideration by the CA Bar of the ethical misconduct in the Revised Complaint involves allegations which are inextricably intertwined with statutory crimes.**

Specifically, the true nature of the Oaktree entities' involvement with Aureal commenced pre-petition and continued thereafter: the de-facto takeover of the public company Aureal by Oaktree. While we concede that Oaktree may have had a controlling interest in the public stock which may have eventually enabled Oaktree to accomplish a takeover of Aureal in a lawful manner; neither did Oaktree perform the takeover, nor did Aureal respond to certain events, in accordance with SEC regulations. Furthermore, as explained in the Original Complaint 2.5 Facts Illustrating Egregious Nature of Conflict<sup>7</sup>, Oaktree's conduct as secured lender to Aureal which then took control of the company gave rise to potential Lender Liability and Equitable Subordination claims by Aureal against Oaktree.

Thus, the failures of HBD to fully disclose the Oaktree issues was not merely a breach of Respondents duty to fully disclose under CRPC 3-310, but was executed in the furtherance of the SEC Allegations. Together the SEC Allegations and failures to fully disclose the Oaktree issues performed the same purpose.<sup>8</sup> To protect the financial interest of Oaktree, and to enable Oaktree to extract the full amount of the secured loan they purchased shortly before the bankruptcy filing<sup>9</sup> as quickly as possible without exposing Oaktree to Lender Liability and Equitable Subordination risk. It is impossible to perform a complete or intelligent investigation of the alleged ethical misconduct without acknowledging the parallel SEC violations and criminal conduct. The newly identified SEC Allegations will demonstrate multiple counts of civil SEC violations with related federal criminal violations.

**The SEC Allegations must be considered by the CA Bar as part of the Revised Complaint for several reasons:**

1. The SEC Allegations are *inextricably intertwined* with the alleged ethical misconduct of HBD such as their failing to meet CRPC 3-310 requirements vis-a-vis Oaktree (and perhaps PWC); as well as disclosures to the U.S. Trustee, the official committee of unsecured creditors, and the federal bankruptcy court, as to the full facts surrounding Oaktree.<sup>10</sup>
2. to understand the context of the failure to fully disclose the Oaktree conflict, and which further demonstrates intent.
3. To establish the “*relevant circumstances*” and “*reasonably foreseeable ... consequences*”<sup>11</sup> which were necessary components of HBD's required CRPC 3-310 written disclosure and consent with Aureal.
4. That the alleged ethical misconduct by Respondents in failing to fully disclose “*relevant circumstances*” and “*reasonably foreseeable ... consequences*” of their conflict involving Oaktree was in direct furtherance of violations of SEC regulations and related criminal statutes.

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7 Copy appearing in Revised Complaint EXHIBIT R - CA BAR #05-20211 PAGE 7.

8 HBD's own web site candidly states: “We are exceedingly entrepreneurial and frequently unconventional. We employ “outside the box” strategies to end commercial disputes quickly and advantageously for our clients.” In my opinion, it seems that the “box” and convention which HBD transcends include professional ethics and criminal statutes.

9 Oaktree is a premiere bankruptcy investor and is known to make most of their debt purchases at discount.

10 The Revised Complaint includes numerous statutory and case law references demonstrating the high standard imposed upon lawyers in California to make a full, broad, and candid disclosure of all facts related to a conflict.

11 CRPC 3-310 as referenced in the Original Complaint requires that “reasonably foreseeable” adverse consequences be disclosed. Clearly, consequences related to aiding, abetting, and furtherance of SEC Violations for the benefit of the Oaktree entities were important, relevant, and consequences to Aureal.

5. The SEC Allegations, specifically without limitation 18 U.S.C. 1001, act to broadly incriminate all professionals involved with the false statements and omissions. The CA Bar must consider 18 U.S.C. § 2 Principals which functions to equate the conduct of all professionals who would have contributed, allowed, or induced false statements or omissions. Clearly, this would include any professional at HBD, Oaktree, the Oaktree directors, and any accounting firm or other professional who was involved in the fraudulent SEC filings. Each of these parties is an extremely sophisticated member of the public company investment industry and thus has no excuse for claiming ignorance as to their role or their knowledge of the facts. Similarly, 18 U.S.C. § 3 *Accessory after the fact* and 18 U.S.C. § 4 *Misprision of felony* act to expand the parties with culpability for the SEC Allegations.<sup>12</sup>

## **Detail of SEC Civil and Related Criminal Violations**

Section 13(a) of the Securities Exchange Act of 1934 and Rule 13a-11 promulgated thereunder require an 8-K filing *within 4 business days* whenever:

1. A director resigns.
2. A directors is appointed.
3. If a directors resigns due to a dispute, a description of the dispute must be disclosed.

The requirement to file an 8-K disclosure is perhaps the most basic and most frequently occurring SEC filing required by a public company. Professionals of Aureal committed numerous counts of SEC Violations by their failure to disclose multiple instances of each of the above listed events. HBD prepared Aureal's **Amended Disclosure Statement In Support of Debtor's Second Amended Plan Of Reorganization**<sup>13</sup> which states at page 6 lines 5-6:

*"On March 24, 2000, the Debtor's management, including key officers and directors, resigned from employment with the Debtor."*

Thus, by Friday March 28, 2000 an 8-K filing was due with the SEC announcing the resignation of the officers and directors. The Original Complaint demonstrated that at least one of the resigning directors resigned due to a disagreement<sup>14</sup> and quoted the CEO and director of Aureal at as saying:

*"Management hoped to sell to avoid bankruptcy, while the shareholders thought we should hold out for a better deal. So we left"*<sup>15</sup>

We see that the dispute involved the actions of Oaktree, a secured lender, exerting de-facto control over Aureal. Significantly, such a fact would add to the risk of Oaktree under both Lender Liability and Equitable Subordination issues. Thus, the failure to make such a required disclosure can be seen to be purposeful to protect the private equity/hedge fund conglomerate: Oaktree. Since the resigning CEO was also a director of Aureal, any announced of his resignation as CEO would have to include that he was also resigning as a director, and therefore also include a description of the dispute which caused his

<sup>12</sup> A related question emerges related to opponents of Next Factors' efforts to expose the misconduct, now demonstrated to be inextricably intertwined with criminal acts. Arguably, any party opposing such efforts, for example by invoking privilege, may be culpable as an accessory after the fact or for misprision.

<sup>13</sup> Previously transmitted to the CA Bar as N148.pdf included herein at exhibit C

<sup>14</sup> See EXHIBIT R - CA BAR #05-20211 PAGE 29

<sup>15</sup> From press report in EXHIBIT R - CA BAR #05-20211 PAGE 7

resignation. An SEC Violation occurred for each instance where an 8-K was not issued to announce a director resignation, a director appointment, and that a director resignation due to a dispute. Upon information and belief, each such violation are continuing.

While an 8-K filing was not made by March 28, 2000, an SEC form Form NTN 10K signed on April 3, 2000 by Steve Mitchell, Director of Human Resources was filed with the SEC [Exhibit D] (hereinafter "SEC-F1"). Despite the clear warning in the official form: *ATTENTION Intentional misstatements or omissions of fact constitute federal criminal violations (see 18 U.S.C. 1001)*, SEC-F1 included omissions in violation of 18 U.S.C. § 1001. A criminal violation results for each failure to mention the resignation of each director, that all directors other than the Oaktree representative resigned, and a description of the dispute with respect to each director who resigned based upon a dispute. As to failing to mention a director resigned due to a dispute, we haven proven one count with respect to the CEO/director, but we can reasonably infer that the other directors also resigned due to the dispute. Remember, HBD and other professionals involved in the SEC documents can not hide behind the conduct of Steve Mitchell<sup>16</sup>.

A press release on April 11, 2000 indicates the appointment of two new directors, Kenneth Liang and Gloria Noh<sup>17</sup>.

The SEC violations described above continued, and the criminal 18 U.S.C. § 1001 violations compounded, by another filing. FORM 12b-25 was signed on May 16, 2000 by Steve Mitchell, Chief Operating Officer [Exhibit E] (hereinafter "SEC-F2"). SEC-F2 compounds each of the omissions of SEC-F1 by the continuing failures to disclose the director events, as well as the appointments of the two new directors. That Mr. Liang and Ms. Noh were Oaktree operatives underscores the intent and amplifies the severity of the violations. That Steve Mitchell was apparently appointed "Chief Operating Officer" begs obvious questions to Steve Mitchell, COO:

1. Who told you that you had to file SEC forms, and who assisted who?
2. Who appointed you COO?
3. Was there a meeting of directors?
4. Who was at the meeting?
5. Did you hide the change in directors and the circumstances of your appointment from HBD and any other professional who assisted or directed SEC-F1 and SEC-F2.

Thus at least six SEC violations and six related criminal violations of 18 U.S.C. § 1001 occurred by Aureal and all those culpable under 18 U.S.C. §§'s 2,3, & 4.

SEC-F2 also revealed:

*The Company [Aureal] is submitting a letter to the Securities and Exchange Commission (the "Commission") requesting confirmation that the Commission, or any member of its staff will not recommend enforcement action against the Company if the Company implements, in lieu of*

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16 Such would be frivolous even without the contemporaneous 3-310 violations, as HBD and Oaktree are themselves necessarily experts on SEC matters. Furthermore as explained above, 18 U.S.C. §§'s 2,3, & 4 are operative.

17 A press release does not satisfy SEC 8-K regulations but does indicate that Aureal's management and professionals were aware of the changing directors. Not surprisingly, Kenneth Liang and Gloria Noh are easily shown to be operatives of Oaktree by simple internet searches. The appointment of two replacement directors served no purpose but to consolidate Oaktree's control and was accomplished in a manner designed to keep Oaktree's involvement low profile. In any event, the director appointments were afoul of SEC regulations.



*the periodic reports required under the Exchange Act, a modified reporting procedure.*

Such letter likely continued the intentional omission re: the Oaktree issues and SEC Allegations; and may thus violate federal statutes. Furthermore, SEC-F1 and SEC-F2 were transmitted by mail and electronically and may thus trigger Mail Fraud and Wire Fraud statutes.

## **The Cumulative Effect of the Evidence of Criminal, Civil, And Ethical Misconduct Compels A Thorough Investigation By Authorities Empowered To Investigate Under Penalty of Obstruction Of Justice**

### **Attorney Client Privilege does not protect Respondents**

We believe that the SEC Allegations demonstrate that the retention of HBD was for unlawful purpose and thus attorney/client privilege does not exist. Furthermore, it is well settled that criminal conduct terminates, among other things, attorney/client privilege. *In any event, privilege would never cover an investigation of CRPC 3-310 violations as California Evidence Code § 958 invalidates any such claim to privilege.*

### **We believe that the Revised Complaint, Requested Documents, and this Narrative Expose Conspiracy Among HBD and PWC to defraud the Court**

The court found intentional misconduct on the parts of both HBD and PWC to hide relevant facts from the court. The court correctly equates the severity of intentional non-disclosure with a “*fraud upon the court*”.<sup>18</sup>

### **Low Threshold Exists for the Commission of Federal Crime of Bankruptcy Fraud**

The CA Bar must reevaluate the broken promises of HBD with respect to their promises to promptly notify the court of any conflict, and their promise to avoid representing Argo again without first seeking and obtaining authorization. Such promises were clearly broken. 18 U.S.C. § 157 clearly prohibits a false promise. Furthermore, 18 U.S.C. § 157 prohibits any document or false statement designed as part of a scheme to defraud or conceal same. Intentional non-disclosure is a fraud upon the court and upon all parties to whom the attorney, and his client, bore a fiduciary obligation. We believe that each of numerous instances of deception to the court violated 18 U.S.C. § 157 and taken as a whole is extremely egregious.

### **Magnitude of Conflict and Intent of the Professionals is Clear**

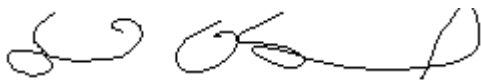
PWC and HBD shared as a conflicted client the \$40 Billion private equity/hedge fund conglomerate known as Oaktree. Their obvious selfish interest at protecting such a powerful and continuing client vastly overshadowed their incentive to zealously represent the small and liquidating Aureal. HBD's failure to provide full disclosure defrauded and deprived all parties from avoiding this conflict. No proof of any additional wrongdoing or possibility of an alternative superior result is required to demonstrate the existence of severity of misconduct by HBD in failing to fully disclose, such conduct by itself is of extreme ethical and criminal significance.

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<sup>18</sup> See Requested Document at Exhibit A herein page 14 lines 17 - 20

**Additional Criminal Allegations exist which are inextricably intertwined with Discovery Misconduct**

We have gone to great expense to research, detail, and report to date allegations of numerous instances of misconduct and criminal conduct by Respondents. Such efforts have resulted in severe retribution by HBD, and their designated successors, against Next Factors and its principal officer. Nevertheless, we believe additional acts of discovery misconduct exist which are themselves inextricably intertwined with state and federal criminal statutes. The Revised Complaint describes documents which were apparently fabricated. Such documents were produced at a deposition where HBD failed to obey the court's order to produce the officer who performed the search of the books and records and retrieved responsive documents. Instead, HBD produced an individual who clearly stated that he performed not document search, that documents were given to him by HBD, and he further claimed no knowledge that he was designated by Aural as the officer who searched for and retrieved the documents. The attorney for HBD, perhaps in another ill conceived attempt to change to testimony of the witness, procured testimony by the individual that he had been shown a number of documents the night before the deposition; these documents included the statements to the affect that the individual had performed the document search and was designated as the corporate officer to testify to such at the deposition. Clearly, the HBD attorney exposed a violation of CALIFORNIA PENAL CODE SECTION § 133.



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David P. O'Donnell, President

Enclosures:

Exhibit A

Memorandum of Decision dated July 23, 2002

Exhibit B

Order Denying Second And Final Of PriceWaterhouseCoopers LLP, Directing Revocation Of Retention Order And Ordering Disgorgement

Exhibit C

Amended Disclosure Statement N148.pdf

Exhibit D

SEC-F1 Form NTN 10K signed on April 3, 2000 by Steve Mitchell

Exhibit E

SEC-F2 Form 12b-25 signed on May 16, 2000 by Steve Mitchell, Chief Operating Officer

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**FILED**  
JUL 23 2002  
BANKRUPTCY COURT  
OAKLAND, CALIFORNIA

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re  
AUREAL, INC., etc.,  
Debtor.

No. 00-42104 T  
Chapter 11

**MEMORANDUM OF DECISION**

The fee application of PriceWaterhouseCoopers LLP ("PWC") (the "Second Fee Application") seeking final allowance of \$245,159.50 in fees and \$48,157.48 in costs came on for hearing on April 26, 2002. The Official Creditors Committee (the "Committee") objected to the Second Fee Application (the "Objection"), requesting disallowance of at least \$121,332.75 of the fees requested and all of the costs for a total reduction of at least \$169,490.23. The Court has reviewed all of the evidence and argument presented by the parties. Moreover, pursuant to its independent duty to scrutinize all fee applications, the Court has reviewed the entire case file. Based on its review, for the reasons specified below, the Court concludes that all fees and costs requested by PWC should be denied, that the order approving its retention should be revoked, and that PWC should be ordered to disgorge the \$94,735.36 balance of the retainer received pre-petition.

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**SUMMARY OF FACTS AND PROCEDURAL HISTORY**

On or about March 22, 2002, Aural, Inc. ("Aural") engaged PWC to provide it with financial consulting services in contemplation of filing bankruptcy. The PWC partner assigned responsibility for the engagement was Glenn Hiraga ("Hiraga"). An engagement letter was executed by Aural on April 5, 2000, the day the bankruptcy petition was filed. Between March 22, 2000 and April 4, 2000, PWC provided services to Aural, giving rise to fees of \$48,617.50, and incurred expenses of \$6,647.14.<sup>1</sup> On April 4, 2000, Aural paid PWC a retainer of \$150,000 which PWC applied to pay the fees and costs incurred pre-petition, leaving a \$94,735.36 balance of the retainer available for payment of post-petition fees and costs.

The engagement letter stated that PWC was checking for conflicts and would inform Aural promptly if it discovered a potential conflict. On or about April 4, 2000, Hiraga discovered that PWC was providing financial consulting services to Creative Technologies, Ltd. ("Creative") in connection with litigation between Creative and Aural.<sup>2</sup>

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<sup>1</sup>According to the Second Fee Application, the services provided actually gave rise to fees of \$49,707.50, but PWC voluntarily reduced its fees to \$48,617.50.

<sup>2</sup>The Court bases its finding regarding the date PWC discovered the conflict on the detailed time records covering PWC's pre-petition work for Aural provided to the Court by PWC in response to the Court's order of June 3, 2002. There was no time entry prior to April 4, 2000 relating to an investigation of conflicts. However, time entries on April 4, 2000 show that Hiraga spent 11 hours and Shawn Kelly, another PWC employee, spent 9 hours in work described as: "Examine and review interested parties re: employment disclosure and conflicts."

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Hiraga asked Hillary Krane ("Krane"), PWC's Assistant General Counsel, whether PWC's work for Creative would prevent PWC from providing consulting services to Aural. Krane assured Hiraga that it would not as long as PWC was not asked to provide any services to Aural in connection with the Creative litigation. Hiraga also informed Aural's bankruptcy counsel of the work being performed by PWC for Creative. Aural's bankruptcy counsel did not advise Hiraga that PWC's work for Creative would prevent Aural's engagement of PWC.

On or about April 4, 2000, either Krane or Hiraga also informed Matt Lynde ("Lynde"), the PWC partner in charge of the Creative engagement, of PWC's intention to perform work for Aural. Lynde was instructed to inform Creative's litigation counsel of this intention. When he did so, Creative's litigation counsel objected, expressing the fear that Aural would use the dual engagement as grounds for disqualifying PWC in the Creative litigation. In an attempt to mollify this fear, Krane advised Hiraga to obtain a letter from Aural agreeing not to do so. Aural agreed to provide such a letter (and in fact did so by a letter dated May 3, 2000.)

On or before April 19, 2000, Lynde informed Krane that, despite Aural's agreement not to attempt to disqualify PWC in the Creative litigation, Creative continued to object to Aural's employment of PWC. As a result, Krane had a series of conversations with Erica Rottenberg ("Rottenberg"), Creative's General Counsel. Rottenberg informed Krane that Creative anticipated asking PWC to assist it in

making a bid for Areal's assets. Consequently, Creative did not

wish PWC to do any work for Areal.

Notwithstanding Creative's continuing objection, Areal did not

attempt to find a different financial consultant nor did it

immediately file an application to employ PWC, disclosing the

existence of the dispute concerning PWC's qualification to be

employed. Instead, Areal did not file an employment application

(the "Employment Application") until May 4, 2000, approximately one

month after the bankruptcy petition was filed. During this period,

PWC continued to perform services for Areal, incurring substantial

fees and costs.

On May 24, 2000, the Office of the United States Trustee (the

"UST") and Creative filed objections to the Employment Application.

Both the UST and Creative contended that PWC's concurrent

representation of Creative and Areal created a conflict of interest

so that PWC was not qualified to be employed by Areal. Creative

represented that it had informed PWC that it would not waive the

conflict presented by this concurrent representation. The UST also

objected to the Employment Application's request for approval nunc

pro tunc as of the petition date.

PWC filed a response to the objections on June 14, 2000. In its

response, PWC contended that accountants should not be held to the

same ethical standards as attorneys because they perform a different

function. They do not "represent" or "advocate for" their clients as

do attorneys. As a consequence, a dual engagement such as the one

presented here would not prejudice either client as long as

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appropriate steps were taken to ensure that confidential information was not "shared." FWC indicated that it would take such steps.

A hearing was conducted with respect to the Employment Application on June 19, 2000, and the Court took the matter under submission. On June 28, 2000, the Court issued a written memorandum stating the terms upon which the Debtor would be permitted to employ FWC (the "Memorandum"). The Court concluded that FWC's concurrent employment by Creative and the Debtor constituted a conflict of interest which the creation of an ethical wall would not remedy.

However, the Court concluded that the Debtor could employ FWC if FWC agreed not to perform any services for Creative while employed by Aural and to create an "ethical wall" to protect against the disclosure of confidential information acquired during its prior engagement by Creative. If FWC accepted these conditions, the Court agreed that FWC could be employed on a nunc pro tunc basis, relating back to the bankruptcy petition date. The Court directed that any order employing FWC be "accompanied" by a declaration stating that FWC accepted these conditions.

According to Krane, shortly after reviewing the Memorandum, on or about July 6, 2000, she informed Hiraga and Lynde, who in turn informed Creative and Aural, that, because FWC was being compelled to cease providing services to Creative, FWC also felt compelled to cease providing services to Aural. Nevertheless, on July 7, 2000, Krane signed a declaration (the "Krane Declaration"), stating only that FWC would cease performing services for Creative and would create an "ethical wall" so that information acquired from Creative

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2002 JUL 23 COURT REPORT

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would not be "shared" with Aural. The Krane Declaration did not disclose that PWC would also resign from its engagement by Aural.

Moreover, the Krane Declaration did not "accompany" the proposed form of order as directed by the Memorandum. The proposed form of order (the "Retention Order") was not submitted for two more weeks. Like the Krane Declaration, the Retention Order did not disclose PWC's intent to resign.

On June 3, 2002, the Court issued an order, requesting additional information in connection with this dispute. In response to this order, PWC submitted a declaration executed by Krane in which she contended that PWC's decision to resign had been promptly communicated to the Court in the letter transmitting the Krane Declaration to the Court (the "Transmittal Letter"). A copy of the Transmittal Letter was attached to Krane's current declaration. The second page of the Transmittal Letter did disclose PWC's intent to resign. However, there was no copy of the Transmittal Letter in the case file, and the Court has no recollection of ever having seen it.

For purposes of this dispute, the Court will assume that the letter was actually sent to the Court with the Krane Declaration.<sup>3</sup> However, the Court does not view this method of disclosure as a good faith attempt to inform the Court. Moreover, although counsel for the Committee appeared at the hearing on the UST's and Creative's

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<sup>3</sup>At a telephonic hearing on July 10, 2002, PWC's counsel, the author of the letter, represented to the Court that he had sent the July 7, 2000 Letter to the Court with the Krane Declaration.



1 objection to the Employment Application, PWC's counsel failed to  
2 serve her with a copy of the Transmittal Letter.<sup>4</sup>

3 On August 9, 2000, the Debtor filed an application to employ EYR  
4 Restructuring LLC ("EYR") as its financial and restructuring  
5 advisors, nunc pro tunc as of July 24, 2000, based on a letter of  
6 understanding dated July 24, 2000. On September 15, 2000, the  
7 Debtor filed an application to employ Neilson Elggren, LLP ("Neilson  
8 Elggren") as its tax consultants and accountants, nunc pro tunc as of  
9 September 1, 2000. Neither application disclosed that the Debtor's  
10 need for these professionals' services was the result of PWC's  
11 resignation immediately after obtaining the Retention Order.

12 On August 25, 2000, PWC filed a fee application (the "First Fee  
13 Application"), seeking \$237,657.50 in fees and \$48,345.75 in expenses  
14 for services performed and expenses incurred from April 5, 2000  
15 through July 31, 2000. The First Fee Application did not expressly  
16 disclose that PWC had previously resigned from its engagement by  
17 Aureal. To the contrary, the First Fee Application was described as  
18 an "interim" fee application, suggesting that PWC's services were  
19 ongoing. The only clue to PWC's having resigned was on page 11, in  
20 the narrative description of the services performed in Category E,  
21 entitled "Transitional Procedures" as follows:

22 24. PwC played a significant role searching for  
23 a suitable replacement as financial advisor to  
24 Aureal. PwC transitioned the new financial

25 <sup>4</sup>At the telephonic hearing on July 10, 2002, counsel for PWC  
26 represented that the failure to serve the Committee's counsel was  
an oversight. Again, for purposes of this dispute, the Court will  
assume that this is true.

JUL 20 2002

1 advisors into their roles through updates on key  
2 issues including inventory valuations and the  
3 sale of Company assets as well as provide (sic)  
pertinent documents to facilitate their duties.

4 However, by this time, the Committee had apparently learned  
5 about PWC's resignation because, on September 14, 2000, the Committee  
6 filed an objection to the First Fee Application (the "First Fee  
7 Objection"). Aureal never scheduled a hearing with respect to the  
8 First Fee Application. Instead, on November 8, 2001, PWC filed the  
9 Second Fee Application.

10 The Second Fee Application sought final approval of fees and  
11 costs. The fees requested in the Second Fee Application were only  
12 slightly higher than those requested in the First Fee Application.  
13 The costs were approximately the same. On February 26, 2002, the  
14 Committee filed the Objection, raising the same grounds raised in the  
15 First Fee Objection: i.e., that the fees incurred litigating PWC's  
16 right to be employed by Aureal did not benefit the estate and, for  
17 other reasons as well, PWC's fees and costs were excessive.

18 PWC filed a reply (the "Reply") on March 8, 2002. In the Reply,  
19 PWC contended that the Objection should be overruled because, among  
20 other reasons, its services had been instrumental in obtaining an  
21 outstanding recovery for the Debtor's unsecured creditors: i.e.,  
22 approximately an 83% dividend. According to PWC, by the time it  
23 resigned, it had already performed the essential services leading to  
24 this outstanding result. A hearing was conducted with respect to the  
25 Second Fee Application on April 26, 2002 and a subsequent telephonic  
26 hearing was conducted on July 10, 2002.

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**DISCUSSION**

Section 327 of the Bankruptcy Code permits a debtor-in-possession, with the court's approval, to employ an attorney, accountant, or other professional person that does not hold or represent an interest adverse to the bankruptcy estate and who is "disinterested." The term "disinterested" is defined in 11 U.S.C. § 101(14). To be disinterested, a person must not "have an interest materially adverse to the interest of the estate...." 11 U.S.C. § 101(14).

The Bankruptcy Code does not define the phrase "adverse interest." However, an "adverse interest" has been described as an "economic interest that would tend to lessen the value of the bankruptcy estate or that would create either an actual or potential dispute in which the estate is a rival claimant, or;...a predisposition under circumstances that render such a bias against the estate." *In re Crivello*, 134 F.3d 831, 835 (7<sup>th</sup> Cir. 1998) (citing *In re Roberts*, 46 B.R. 815, 827 (Bankr.D.Utah (1985))." *In re Midway Industrial Contractors, Inc.*, 272 B.R. 651, 661-662. The Court views PWC's engagement by Creative, a major creditor and competitor of Aural, with which Aural was engaged in litigation, as an "economic interest" creating an "actual conflict" with the interests of the estate and therefore disqualifying PWC from employment by Aural.

The standards for employment applicable to attorneys apply equally to accountants. *Matter of BH & P, Inc.*, 119 B.R. 35, 42 (D. N.J. 1990). These standards:

1  
2 "serve the important policy of ensuring that  
3 all professionals pursuant to section 327(a)  
4 tender undivided loyalty and provide untainted  
5 advice and assistance in furtherance of their  
6 fiduciary responsibilities. *Id.* [Crivello] at  
7 836 (quoting *Rome v. Braunstein*, 19 F.3d 54, 58  
8 (1<sup>st</sup> Cir. 1994)).

9 Midway, 272 B.R. at 662. These standards may not be ignored out of  
10 expediency, based on the professional's confidence that, despite the  
11 conflict, it can act fairly and impartially or based on the debtor-  
12 in-possession's conclusion that the professional's services are  
13 unique and urgently needed. See In re Gray, 64 B.R. 505, 507 (Bankr.  
14 E.D. Mich. 1986) (accountants' fees were disallowed based on failure  
15 to disclose \$11,000 pre-petition claim despite accountants'  
16 confidence that "it could do the job for which it was retained fairly  
17 and impartially....excellent working relationship [with debtor  
18 and]...tax situation...so complex that to involve a different firm at  
19 this time would be a waste of assets....").

20 "The rule of disqualification is to be rigidly applied; it  
21 cannot be waived because of the integrity or ability of the  
22 particular person or firm involved. [Citation omitted]" *Id.* at 507.  
23 "[I]t is...plain that Congress, when it enacted § 327(a), made a  
24 choice that efficiency would be sacrificed for the appearance of  
25 propriety." Gray, at 508; see also In re Micro-Time Management  
26 Systems, Inc., 102 B.R. 602, 605 (Bankr. E.D. Mich. 1989) (citing,  
among other cases, In re Consolidated Bancshares, Inc., 785 F.2d  
1249, 1256 n.6 (5<sup>th</sup> Cir. 1986) and In re Chicago Rapid Transit Co.,  
93 F.2d 832, 838 (7<sup>th</sup> Cir. 1937)).

1 In the instant case, one day before the bankruptcy petition was  
2 due to be filed, PWC learned of its ongoing engagement with Creative.  
3 Nevertheless, it did not resign from its engagement by either client.  
4 Krane contended that PWC did not perceive any conflict in the dual  
5 engagement. PWC's perception (or lack thereof) cannot be squared  
6 with the case law. See e.g., In re CVC, Inc., 120 B.R. 874, 876-877  
7 (Bankr. N.D. Ohio 1990) (debtor-in-possession's accountant, who  
8 concurrently performed services for individual related to  
9 individual's purchase of estate assets, was not "disinterested" and  
10 had "obvious" conflict of interest; consequently, court disallowed  
11 all fees despite creditors' committee's withdrawal of its objection  
12 based on accountant's agreement to reduce amount of request); In  
13 re Micro-Time Management Systems, Inc., 102 B.R. 602, 608 (Bankr.  
14 E.D. Mich. 1989) ("...Bohl's work for Comerica does present a  
15 potential, if not an actual, conflict of interest. Comerica was a  
16 major creditor of Micro-Time. The amount of its debt was very  
17 strongly disputed and there had been an adverse relationship between  
18 the principal of the debtor (Kirkland) and Comerica....Any hint of  
19 any prior or ongoing relationship between Comerica and Bohl would  
20 create at least the appearance of impropriety").

21 PWC appeared to base its belief that its dual engagement  
22 presented no conflict on two assumptions, each of which the Court  
23 views as erroneous. First, as noted above, PWC contended that  
24 accountants should not be held to the same ethical standards as  
25 attorneys because they do not "represent" or "advocate" for their  
26 clients. In the past, some lower courts may have been persuaded by

1 this argument. See In re Aircraft Instrument and Development, Inc.,  
2 151 B.R. 939, 943 (Bankr. D. Kan. 1993), cited in Matter of Trust  
3 America Service Corp., 175 B.R. 413, 419, fn5 (Bankr. M.D. Fla.  
4 1994). Whatever persuasive force this argument had in the past  
5 (which this Court views as slight), it has no persuasive force at  
6 present.

7  
8 Second, PWC contended that it could protect its two clients from  
9 any prejudice as a result of the dual representation by creating an  
10 "ethical wall." However, an "ethical wall" is typically only viewed  
11 as sufficient protection against disclosure of confidential  
12 information acquired from a past conflicting representation. It is  
13 generally considered insufficient to protect against prejudice from  
14 concurrent conflicting engagements. See Trust America, 175 B.R. at  
15 421.

16 Based on its understanding of the law discussed above, the Court  
17 concluded that PWC could be employed by Aureal only if it ceased  
18 performing services for Creative and created an "ethical wall." The  
19 Memorandum made it clear that the Court's decision to permit Aureal  
20 to employ PWC was conditioned on PWC's compliance with these  
21 requirements. Moreover, the Court's approval of PWC's employment on  
22 a nunc pro tunc basis was clearly premised on the understanding that  
23 PWC would provide ongoing services to Aureal on the conditions set  
24 forth by the Court.<sup>5</sup>

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26 <sup>5</sup>Viewed in hindsight, the Court believes that its decision to  
approve PWC's employment on a nunc pro tunc basis was ill advised.  
Given the clear nature of the conflict and Creative's objection to  
Aureal's employment of PWC, Aureal's one month delay in filing the

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2 The Court's decision to approve PWC's employment on a  
3 conditional basis presented PWC with a dilemma. Unless PWC's  
4 employment was approved by the Court, it could not be paid the fees  
5 and costs incurred up to that point (which fees and costs represent  
6 the bulk of the compensation requested in the Second Fee  
7 Application).<sup>6</sup> Yet, perhaps out of fear of being sued by Creative,  
8 PWC was unwilling to accept the conditions for its employment  
9 established by the Court.<sup>7</sup>

10 PWC could have approached the dilemma in a straightforward  
11 manner. It could have advised the Court of its unwillingness to  
12 continue to provide services to Aural under the prescribed  
13 conditions and asked the Court to reconsider its ruling and to permit  
14 it to be employed only on a nunc pro tunc basis. The Court might not  
15 have granted the request. However, this would have been the ethical

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17 Employment Application seems unreasonable. Moreover, in light of  
18 subsequent delays, this delay now seems to have been designed to  
19 obtain the benefit of PWC's services regardless of the outcome of  
20 the dispute. Aural knew when it filed the case that it would only  
21 need PWC's services for a brief period since it intended to sell  
22 substantially all of its assets as soon as possible. Moreover, the  
23 strategy appears to have worked. As noted by PWC, by the time it  
24 resigned, PWC had provided the essential services that Aural  
25 desired.

22 <sup>6</sup>See In re Weibel, Inc., 176 B.R. 209, 211 (9<sup>th</sup> Cir.  
23 1994) ("(c)court approval of employment...is the sine qua non to  
24 counsel getting paid."); In re Monument Auto Detail, Inc., 226  
25 B.R. 219, 224 (9<sup>th</sup> Cir. BAP 1998).

25 <sup>7</sup>Given the case law cited above, PWC should have anticipated  
26 the possibility that the Court would require it to choose between  
its clients. It should have advised in connection with the  
Employment Application the Court whether, if forced to choose, it  
would choose Aural.

1 thing to do. Instead, as discussed above, PWC went to great lengths  
2 to give the appearance that it was accepting the Court's conditions  
3 despite its decision to resign. The only disclosure of its true  
4 intent was "buried" on the second page of a transmittal letter not  
5 even served on the Committee's counsel.

6 If the court has issued an order "erroneously" approving a  
7 professional's employment, the court can revoke the order and deny  
8 compensation. 11 U.S.C. § 328(c); see Midway, 272 B.R. at 663:  
9 "Bankruptcy judges are given wide latitude in deciding whether a  
10 denial of fees on an "erroneously employed" professional in whole or  
11 in part is appropriate. Crivello, 234 F.3d at 839....The first  
12 factor the bankruptcy court should consider before it elects to  
13 disallow a portion of the requested fees is whether any evidence  
14 exists to support an inference of intentional non-disclosure. *Id.*  
15 If there is evidence in support of such an inference, the court  
16 'should not fall prey to the professional's story of confusion,  
17 miscommunication or negligence'. *Id.* The punishment for intentional  
18 non-disclosure should be treated by the bankruptcy court as severely  
19 as a fraud upon the court. *Id.*<sup>8</sup> Based on the facts recited above,  
20 its inferences from those facts, and the above-cited case authority,  
21 the Court concludes that the Retention Order should be revoked.<sup>9</sup>

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23 <sup>8</sup>This principle distinguishes this case from In re Thrifty Oil  
24 Co., 205 B.R. 1009, 1015 (Bankr. S.D. Cal. 1997), in which PWC  
25 failed to do an adequate conflicts check so as to identify a  
26 disqualifying conflict but in which the court overruled this ground  
for objection to PWC's request for fees.

<sup>9</sup>Given the Committee's request for only a partial reduction in  
fees and costs, PWC may contend that it has not had an adequate



1 "Although some courts have allowed compensation to professionals  
2 who later turned out not to have been qualified to serve as debtor in  
3 possession," as the Gray court concluded (and this Court agrees),  
4 "the better procedure is to not only set aside the order authorizing  
5 the appointment of the professional, but also to disallow  
6 compensation for services rendered in that ostensible capacity...."  
7 Gray, 64 B.R. at 508. "[T]he denial of compensation [in such  
8 circumstances] is prophylactic. It constitutes a deterrent.' *In re*  
9 *Roberts*, 46 B.R. at 847.... 'the argument that possible harm...could  
10 be counter-balanced by greater benefit [to the estate],...does not  
11 cover the '...policy consideration which look to the harm to  
12 representation, the loss of confidence, etc.' *Id.* (footnotes and  
13 citations omitted)." Micro-Time Management, 102 B.R. at 608.

14 Given the case law cited above, PWC should have anticipated the  
15 possibility that the Court would require it to choose between its two  
16 clients. PWC should have advised the Court from the onset whether it  
17 was willing to relinquish its engagement by Creative and perform  
18 services solely for Aural. If PWC had disclosed that it was not  
19 willing to do so, the Court would never have issued the Retention  
20 Order. In that event, PWC could not have received any compensation  
21 for post-petition services and costs. Any ruling other than a  
22 complete denial of fees and costs would reward PWC's intentional  
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24 \_\_\_\_\_  
25 opportunity to address the basis for the Court's decision. The  
26 Court would not agree with this contention. Moreover, PWC's right  
to file a motion for reconsideration provides it an additional  
opportunity to correct any facts that the Court has mistaken or to  
persuade the Court that this ruling constitutes a manifest  
injustice. See Fed.R.Bankr.Proc. 9024; Fed.R.Civ.Proc. 60(b).

1 nondisclosure and thus would be contrary to the strict standards set  
2 forth in the case law.

3  
4 **CONCLUSION**

5 For the reasons stated above, the Second Fee Application will be  
6 denied in its entirety. PWC will be denied all compensation and all  
7 reimbursement of costs. The Retention Order will be revoked, and PWC  
8 will be ordered to disgorge the balance of the retainer received pre-  
9 petition. Counsel for the Committee is directed to submit a proposed  
10 form of order in accordance with this decision.

11 Dated: July 23, 2002

12   
13 United States Bankruptcy Judge

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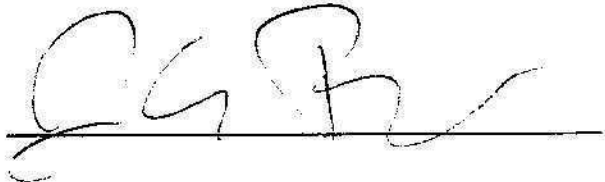
PROOF OF SERVICE

I, the undersigned, a regularly appointed and qualified clerk in the office of the United States Bankruptcy Court for the Northern District of California at Oakland, hereby certify:

That I, in the performance of my duties as such clerk, served a copy of the foregoing document by depositing it in the regular United States mail at Oakland, California, on the date shown below, in a sealed envelope bearing the lawful frank of the Bankruptcy Court, addressed as listed below.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: July 5, 2002



Office of the United States Trustee  
Document placed in UST mailbox at  
US Bankruptcy Court  
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8 UNITED STATES BANKRUPTCY COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

**FILED**  
AUG 07 2002  
BANKRUPTCY COURT  
OAKLAND, CALIFORNIA

10 In re  
11 AUREAL, INC., d/b/a Silo.com, f/k/a Aureal  
12 Semiconductor, Inc., f/k/a Media Vision  
13 Technology, Inc.,  
14 Debtor.

Case No. 00-42104-T11

Chapter 11

**ORDER DENYING SECOND AND  
FINAL FEE APPLICATION OF  
PRICEWATERHOUSECOOPERS LLP,  
DIRECTING REVOCATION OF  
RETENTION AND ORDERING  
DISGORGEMENT**

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16  
17 The Second and Final Fee Application of PriceWaterhouseCoopers LLP ("PWC")  
18 for Allowance and Payment of Compensation and Reimbursement of Expenses (the "Second Fee  
19 Application") having come before the Court and the Court having issued its Memorandum of  
20 Decision on July 23, 2002,

21 IT IS HEREBY ORDERED:

22 1. The Second Fee Application is denied in its entirety and PWC is denied all  
23 compensation and all reimbursement of costs;

24 2. The Order Approving Application to Employ PriceWaterhouseCoopers  
25 LLP Nunc Pro Tunc as Accountants and Financial Advisers to the Debtor and Debtor in  
26 Possession, filed July 26, 2000, is revoked; and

ORDER DENYING SECOND AND FINAL FEE APPLICATION OF PRICEWATERHOUSECOOPERS LLP  
DIRECTING REVOCATION OF RETENTION AND ORDERING DISGORGEMENT (Case No. 00-42104 T)

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3. PWC is ordered to disgorge \$94,735.36, the balance of the retainer received pre-petition.

IT IS SO ORDERED.

Dated: Aug. 7, 2002

Georgio Tchirbousky  
United States Bankruptcy Judge

APPROVED AS TO FORM:  
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By Montrey K. Rehfeld  
Montrey K. Rehfeld  
Attorneys for Price WaterhouseCoopers LLP

HENNIGAN, BENNETT & DORMAN

By \_\_\_\_\_  
Sidney P. Levinson  
Attorneys for Debtor and Debtor-in-Possession

JUL-26-2002 5:07PM

BINGHAM SCUTCHEN - SF

NO. 6988 P. 4/4

1           3.    PWC is ordered to disgorge \$94,735.36, the balance of the retainer  
2 received pre-petition.

3                   IT IS SO ORDERED.

4  
5 Dated: \_\_\_\_\_

\_\_\_\_\_  
United States Bankruptcy Judge

6  
7  
8 APPROVED AS TO FORM:

9 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
10

11 By \_\_\_\_\_  
12                   Jeffrey K. Rehfeld  
13 Attorneys for PriceWaterhouseCoopers LLP  
14

15 HENNIGAN, BENNETT & DORMAN

16  
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7  
8 UNITED STATES BANKRUPTCY COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10 OAKLAND DIVISION

11 In re ) Case No. 00-42104-T11  
12 )  
12 AUREAL INC., d/b/a SILO.COM, f/k/a AUREAL ) (Chapter 11)  
SEMICONDUCTOR, INC., f/k/a MEDIA VISION )  
13 TECHNOLOGY, INC., a Delaware corporation, ) **AMENDED DISCLOSURE STATEMENT IN**  
14 Debtor. ) **SUPPORT OF DEBTOR'S SECOND AMENDED**  
 ) **PLAN OF REORGANIZATION**  
15 )  
 ) Date: July 19, 2001  
16 ) Time: 3:00 p.m.  
 ) Place: Courtroom 201  
17 ) 1300 Clay Street  
 ) Oakland, CA 94612

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HENNIGAN, BENNETT & DORMAN

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1 **I. INTRODUCTION**

2 Aureal Inc., d/b/a Silo.com, f/k/a Aureal Semiconductor, Inc., f/k/a Media Vision Technology, Inc. ("Aureal" or  
3 the "Debtor") filed a voluntary petition under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code")  
4 on April 5, 2000 (the "Petition Date"), thereby commencing case number 00-42104-T11 (the "Bankruptcy Case")  
5 currently pending before the United States Bankruptcy Court for the Northern District of California (the "Bankruptcy  
6 Court"). Since the Petition Date, the Debtor has managed its affairs as a debtor and debtor in possession pursuant to  
7 sections 1107 and 1108 of the Bankruptcy Code.

8 The Debtor submits this Disclosure Statement to holders of impaired Claims and Equity Interests pursuant to  
9 Bankruptcy Code section 1125 for the purpose of soliciting acceptances of the Second Amended Plan of Reorganization  
10 (the "Plan") proposed by the Debtor and filed with the Bankruptcy Court. A copy of the Plan is attached hereto as  
11 Exhibit A. The Bankruptcy Court has conditionally determined that this Disclosure Statement contains "adequate  
12 information" within the meaning of section 1125 of the Bankruptcy Code and has authorized the Debtor to transmit it to  
13 holders of impaired Claims and Equity Interests in connection with the solicitation of votes with respect to the Plan.  
14 Unless otherwise defined herein, all capitalized terms contained herein shall have the meanings ascribed to them in the  
15 Plan.

16 As described more fully elsewhere in this document, the Debtor believes that the Plan provides the largest and  
17 earliest possible recoveries to holders of Claims and Equity Interests, that acceptance of the Plan is in the best interests of  
18 all parties, and that any alternative would result in further delay, uncertainty, expense, and ultimately, smaller  
19 distributions to holders of Allowed Unsecured Claims and Equity Interests (i.e., shareholders).

20 **A. The Purpose Of This Disclosure Statement**

21 The Bankruptcy Code generally requires that the proponent(s) of a plan of reorganization prepare and file with  
22 the Bankruptcy Court a "disclosure statement" that provides information of a kind, and in sufficient detail, that would  
23 enable a typical holder of claims or equity interests in a class impaired under that plan to make an informed judgment  
24 with respect to the plan. This Disclosure Statement provides such information, as well as information regarding the  
25 deadlines for casting ballots with respect to the Plan, the deadlines for objecting to confirmation of the Plan, the  
26 requirements that must be satisfied in order for the Bankruptcy Court to confirm the Plan, and other relevant information.  
27 Parties in interest should read this Disclosure Statement, the Plan, and all of the accompanying exhibits in their entirety  
28 in order to ascertain:

How the Plan will affect their Claims against and Equity Interests in the Debtor;

Their rights with respect to voting for or against the Plan;

Their rights with respect to objecting to confirmation of the Plan; and

How and when to cast a ballot with respect to the Plan.

The Disclosure Statement, however, cannot and does not provide holders of Claims and Equity Interests with  
legal or other advice, or inform such parties of all aspects of their rights. Claimants are advised to consult with their  
lawyers and/or financial advisors to obtain specific advice regarding how the Plan will affect them and regarding their  
best course of action with respect to the Plan.

The Disclosure Statement has been prepared by the Debtor in good faith and in compliance with applicable  
provisions of the Bankruptcy Code. Based upon information currently available, the Debtor believes that the information  
contained in this Disclosure Statement is correct as of the date of its filing. The Disclosure Statement, however, does not  
and will not reflect events that occur on or after May 9, 2001 (and certain earlier dates where indicated herein), and the  
Debtor assumes no duty and presently does not intend to prepare or distribute any amendments or supplements to reflect  
such events.

1                   **B.        Summary Of Entities Entitled To Vote On The Plan And Of Certain Requirements**

2                   Only holders of Allowed Claims in Classes 3 and 4 and Holders of Allowed Equity Interests in Class 5  
3 (collectively the "Voting Classes"), are entitled to vote on the Plan because such Classes are: (i) impaired under the Plan  
4 within the meaning of section 1124 of the Bankruptcy Code; and (ii) may receive distributions of property under the Plan  
5 and therefore are not deemed to have rejected the Plan under Section 1126(g) of the Bankruptcy Code. Classes 1 and 2  
6 are not impaired under the Plan, and holders of Allowed Claims in such Classes are deemed to have accepted the Plan  
7 and therefore are not entitled to vote on the Plan. Members of non-voting Classes, however, may object to confirmation  
8 of the Plan. (See Section III for a description of the various Classes of Claims and Equity Interests and of the treatment  
9 of such Claims and Equity Interests under the Plan, and see Section IV for an explanation of impairment and of the  
10 entities that are entitled to vote on the Plan.)

11                   The Bankruptcy Court may confirm the Plan only if at least one (1) Class of impaired Claims has voted to  
12 accept the Plan (without counting the votes of any insiders whose Claims are classified within that Class) and if certain  
13 statutory requirements are met as to both non-consenting members within a consenting Class and as to dissenting Classes.  
14 A Class of Claims has accepted the Plan only when at least one-half (1/2) in number and at least two-thirds (2/3) in dollar  
15 amount of the Allowed Claims actually voting in that Class vote in favor of the Plan. A Class of Interests has accepted  
16 the Plan when at least two-thirds (2/3) in amount of the Allowed Interests actually voting in that Class vote in favor of  
17 the Plan.

18                   In the event of a rejection of the Plan by one or more Voting Classes, the Debtor may request that the  
19 Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code, which permits  
20 confirmation notwithstanding such rejection if the Bankruptcy Court finds that the Plan "does not discriminate unfairly"  
21 and is "fair and equitable" with respect to the rejecting Classes.

22                   **C.        Voting Procedures, Balloting Deadline, Confirmation Hearing, And Other Important Dates,  
23                    Deadlines And Procedures**

24                   **1.        Voting Procedures And Deadlines**

25                   The Debtor has provided copies of this Disclosure Statement and ballots (which include detailed voting  
26 instructions) to all known holders of impaired Claims or Interests in the Voting Classes. Those holders of an Allowed  
27 Claim or Equity Interest in a Voting Class who seek to vote to accept or reject the Plan must complete the enclosed ballot  
28 and return it in the enclosed envelope to Ms. Joanne Stern, Hennigan, Bennett & Dorman, 601 South Figueroa Street,  
Suite 3300, Los Angeles, California 90017 (the "Ballot Tabulator"), so that it actually is received by no later than the  
Balloting Deadline (as defined below). Ballots do not constitute proofs of Claim or Equity Interests and must not be  
returned directly to the Debtor, the Official Committee of Unsecured Creditors (the "Committee"), counsel for the  
Committee, or the Bankruptcy Court. Readers are encouraged to read and review their ballots carefully.

All ballots, including ballots transmitted by facsimile, must be completed, signed, returned to, and actually  
received by the Ballot Tabulator by not later than July 9, 2001, at 4:00 p.m. Pacific Daylight Time (the "Balloting  
Deadline"). Ballots received after the Balloting Deadline, and ballots returned directly to the Debtor, the Committee,  
counsel for the Committee, the Bankruptcy Court, or any entity other than the Ballot Tabulator, will not be counted in  
connection with confirmation of the Plan.

**2.        Date Of The Confirmation Hearing And Deadlines For Objection To Confirmation Of  
The Plan**

The hearing to determine whether the Bankruptcy Court will confirm the Plan (the "Confirmation Hearing") will  
commence on July 19, 2001, at 3:00 p.m. Pacific Daylight Time in the Courtroom of the Honorable Leslie Tchaikovsky,  
United States Bankruptcy Judge for the Northern District of California, 1300 Clay Street, Courtroom 201, Oakland,  
California. The Confirmation Hearing may be continued from time to time by announcement in open Court without  
further notice.

Any objections to confirmation of the Plan must be filed with the Bankruptcy Court and served on the following  
entities (collectively, the "Notice Parties") so as to be received by no later than July 9, 2001 at 4:00 p.m. Pacific Daylight

1 Time: (a) Aureal Inc., 7034 Commerce Circle, Suite H, Pleasanton, California 94588, Attention: Steve Mitchell;  
2 (b) Hennigan, Bennett & Dorman, 601 South Figueroa Street, Suite 3300, Los Angeles, California 90017.  
3 Attention: Sidney P. Levinson, Esq.; (c) McCutchen, Doyle, Brown & Enersen LLP, Three Embarcadero Center,  
4 Suite 1800, San Francisco, California 94111, Attention: Randy Michelson, Esq.; (d) McDermott, Will & Emory,  
5 2049 Century Park East, 34th Floor, Los Angeles, California 90067, Attention: Eric Reimer, Esq.; and (e) The Office of  
6 the United States Trustee, 1301 Clay Street, Suite 690N, Oakland, California 94612-5217. Attention: Mark Pope, Esq.  
7 Objections that are not timely filed and served may not be considered by the Bankruptcy Court. *Please refer to the*  
8 *accompanying notice of the Confirmation Hearing for specific requirements regarding the form and nature of objections*  
9 *to confirmation of the Plan.*

6 **D. Important Notice And Cautionary Statement**

7 The historical financial data relied upon in preparing the Plan and this Disclosure Statement is based upon the  
8 Debtor's books and records. The liquidation analysis, estimates, and other financial information referenced in this  
9 Disclosure Statement or attached hereto as exhibits have been developed by the Debtor with the assistance of its  
10 professional advisors. Although these professional advisors assisted in the preparation of this Disclosure Statement, in  
11 doing so such professionals relied upon factual information and assumptions regarding financial, business, and  
12 accounting data provided by the Debtor and third parties, much of which information has not been audited. *The*  
13 *professional advisors of the Debtor have not independently verified such information and, accordingly, make no*  
14 *representations as to its accuracy.* Moreover, although reasonable efforts have been made to provide accurate  
15 information, the Debtor has not conducted an audit of its financial books and records since the resignation of its officers  
16 and directors in March 2000. Accordingly, the Debtor cannot warrant or represent that the information in this Disclosure  
17 Statement, including any and all financial information, is without inaccuracy or omissions, or that actual values or  
18 distributions will comport with the estimates set forth herein.

13 No entity may rely upon the Plan or this Disclosure Statement or any of the accompanying exhibits for any  
14 purpose other than to determine whether to vote in favor of or against the Plan. Nothing contained in such documents  
15 constitutes an admission of any fact or liability by any party, and no such information will be admissible in any  
16 proceeding involving the Debtor, the Committee, or any other person, nor will this Disclosure Statement be deemed  
17 evidence of the tax or other legal effects of the Plan on holders of Claims or Equity Interests in the Bankruptcy Case.

16 **CAUTIONARY STATEMENT**

17 Certain information included in this Disclosure Statement and its exhibits contains forward looking statements  
18 within the meaning of the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended.  
19 Such forward looking information is based on information available when such statements are made and is subject to  
20 risks and uncertainties that could cause actual results to differ materially from those expressed in the statements.

20 **E. Additional Information**

21 If you have any questions about the procedures for voting on the Plan, desire another copy of a ballot, or seek  
22 further information about the timing and deadlines with respect to confirmation of the Plan, please write to the Ballot  
23 Tabulator at the address set forth above. The Ballot Tabulator, however, cannot and will not provide holders of Claims  
24 or Equity Interests with any advice, including advice regarding how to vote on the Plan or the legal effect that  
25 confirmation of the Plan will have upon Claims against or Interests in the Debtor.

23 **II. BACKGROUND INFORMATION**

24 **A. The Debtor's Prepetition Business And Operations**

25 **1. The Debtor's Prior Bankruptcy Case**

26 Media Vision Technology Inc. ("Media Vision"), as predecessor to the Debtor, was formed in 1990 for the  
27 purpose of designing, manufacturing and marketing multimedia computing products, including circuit boards, sub-  
28 systems and chip sets, that added enhanced sound and graphic capabilities to IBM PC and compatible personal



1 computers. Media Vision acquired Pellucid, Inc. ("Pellucid") in May 1993 for the purpose of developing graphic  
2 accelerator technology for use in Media Vision's graphic accelerator board products.

3 On or about July 25, 1994, Media Vision and Pellucid filed voluntary petitions for bankruptcy relief under  
4 chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of California,  
5 Oakland Division, Case Nos. 94-45107 and 94-45108, respectively. The reasons precipitating the Media Vision and  
6 Pellucid bankruptcy filings, as set forth in more detail in the "Disclosure Statement for Debtors' Second Amended Joint  
7 Plan of Reorganization," a copy of which was filed with the bankruptcy court on or about November 10, 1994, include a  
8 combination of, among other things, significant operating losses suffered by the Debtors during fiscal year 1993 and the  
9 first two quarters of 1994, a dramatic decrease in value of Media Vision's shares and corresponding loss of investor  
10 confidence, loss of the Debtors' senior management and many employees, an investigation that was initiated by the SEC  
11 and the Department of Justice into alleged fraudulent conduct relating to the retroactive change in the 1993 financial  
12 results, and a multitude of lawsuits pending against Media Vision and certain of its directors and officers based on  
13 alleged securities fraud and collection actions by creditors.

14 As part of their Plan of Reorganization, Media Vision and Pellucid were substantively consolidated and merged.  
15 Media Vision, as the sole remaining entity, emerged from chapter 11 bankruptcy protection in December 1994.

## 16 2. The Debtor's Name Changes and the Public Trading of Its Stock

17 In August 1995, Media Vision announced that it was divesting its retail operations and implementing a business  
18 plan based on the sale of audio semiconductor solutions for personal computers and other consumer electronic markets,  
19 as well as licensing related audio technologies. In conjunction with its change in business strategy, the reorganized  
20 company formally changed its name to Aural Semiconductor Inc. at its annual stockholders meeting in May 1996.

21 Subsequently, in May 1999, the Debtor's stockholders voted to change the name of the company from Aural  
22 Semiconductor Inc. to Aural Inc. in an effort to explore more business opportunities and to not be limited by the  
23 "semiconductor" name.

24 Prior to the Petition Date, the Debtor's Common Stock was traded publicly on the OTC Bulletin Board with the  
25 symbol AURL. Shortly after the filing of the chapter 11 petition, however, the Debtor's Common Stock was delisted and  
26 is no longer traded on the OTC Bulletin Board.

## 27 3. The Debtor's General Business Operations Prior To The Petition Date

28 Prior to the Petition Date, the Debtor was a leading provider of advanced digital audio imaging solutions, which  
is the process of creating a highly realistic audio experience by closely simulating the real world physics of audio.  
Specifically, the Debtor's business involved the development and sale of audio processing semiconductor chips and  
audio-based add-in cards primarily for use in the personal computer market, as well as the licensing of technology that  
was designed to define and develop advanced audio standards in the marketplace. As of the Petition Date, the Debtor  
had developed a series of audio products based upon its proprietary A3D technologies, and was in the process of  
integrating its A3D technologies with internet based applications to increase its consumer base.

Prior to the Petition Date, the Debtor employed approximately sixty-one (61) employees. The majority of the  
Debtor's operations were located in approximately 103,000 square feet of leased office and warehouse space located in  
Fremont, California. Additional office space was leased in Austin, Texas. At these offices, the Debtor conducted sales,  
shipping, production, research and development for its proprietary technology.

The Debtor also has two (2) wholly-owned subsidiaries, neither of which are debtors in this Bankruptcy Case:  
Crystal Rivers Engineering, Inc. ("CRE") and Aural Limited (collectively, the "Affiliates"). CRE, a privately held firm  
that was founded in 1987, specialized in the development of 3D audio technologies. In May 1996, the Debtor acquired  
100% ownership of CRE for the purpose of incorporating CRE's 3D audio technology into a number of its future  
products. As such, CRE has been an inactive corporation since its acquisition by the Debtor in 1996, and does not have  
any assets. Aural Limited, located in Hong Kong, was established in March 1998 as an overseas sales, technical  
support and field engineering office. Although the Reorganized Debtor will continue to own and operate Aural Limited,  
it will endeavor to wind-down and ultimately deregister that business following confirmation of the Plan.

1 For the three years prior to the Petition Date, the Debtor recorded operating losses as a result of, among other  
2 things, the decision in mid-1995 to concentrate all of the company's resources on development of audio technologies and  
3 semiconductor solutions for the personal computer and consumer electronics markets, which led to a period of increased  
expenses for product development without significant corresponding revenues. Since the company's emergence from  
chapter 11 protection, the Debtor has recorded an accumulated deficit of \$201 million as of January 2, 2000, the end of  
fiscal year 1999.

4 In order to fund its business operations, on or about June 5, 1998, Aureal executed a Loan and Security  
5 Agreement, as amended and modified from time to time (collectively, the "Prepetition Credit Agreement"), with various  
6 financial institutions (collectively, the "Original Lenders") and Transamerica Business Credit Corporation as the  
7 administrative agent (the "Agent"). Through the Prepetition Credit Agreement, the Original Lenders provided a  
revolving loan commitment with a maximum loan amount that changed periodically pursuant to numerous amendments  
to the Prepetition Credit Agreement.

8 As security for the Debtor's obligations under the Prepetition Credit Agreement, the Debtor executed a Stock  
9 Pledge Agreement, dated June 5, 1998, whereby it pledged the stock of its two Affiliates in favor of the Agent. The  
10 Debtor also granted security interests in favor of the Agent on substantially all of its assets, including, without limitation,  
11 copyrights, patents, trademarks, books, records, accounts (including deposit accounts located at Wells Fargo Bank),  
general intangibles, negotiable instruments, and proceeds (collectively, together with the aforementioned pledge of stock,  
the "Prepetition Collateral"), through the execution of the Prepetition Credit Agreement, as well as a Copyright Security  
Agreement, Patent Security Agreement, Trademark Security Agreement, and Deposit Security Agreement, all dated  
June 5, 1998.

12 On March 17, 2000, various entities related to, affiliated with, or managed by Oaktree Capital Management  
13 LLC, specifically OCM Opportunities Fund II, L.P., TCW Special Credits Fund IIIb, TCW Special Credits Trust,  
14 TCW Special Credits Trust IIIb, The Board of Trustees of the Delaware State Employees' Retirement Fund,  
Weyerhaeuser Company Master Retirement Trust, and Columbia/HCA Master Retirement Trust (collectively, the  
15 "Lenders"), entered into an assignment and acceptance agreement with the Original Lenders and the Agent, whereby, the  
16 Original Lenders assigned to the Lenders their rights against the Debtor under the Prepetition Credit Agreement. The  
Lenders, in turn, assumed the obligation to fund the Prepetition Credit Agreement. In addition, on March 17, 2000, the  
Agent resigned and OCM Administrative Services II, LLC accepted the position as successor agent (the "Successor  
Agent").

17 As of the Petition Date, the Debtor believes that it was indebted to the Lenders in the aggregate principal  
18 amount of \$18,151,739, exclusive of accrued interest and alleged fees and expenses, under the Prepetition Credit  
Agreement.

19 **B. The Debtor's Financial Difficulties And Significant Events Leading To The Commencement Of**  
20 **The Bankruptcy Case**

21 **1. The Debtor's Litigation With Its Principal Market Competitor**

22 As more fully described below, the Debtor experienced significant financial difficulties and operated at a loss  
23 for the three (3) years prior to the filing of this Bankruptcy Case. These losses resulted from, among other things,  
substantial litigation expenses incurred by the Debtor predominantly in the defense of various patent claims brought  
against the Debtor relating to its technology.

24 Specifically, in February 1998, Creative Technology Ltd. ("Creative") and its subsidiary E-Mu Systems, Inc.  
25 ("E-Mu"), competitors of the Debtor, brought a lawsuit against the Debtor alleging patent infringement in the United  
States District Court for the Northern District of California. In October 1998, Creative Labs, Inc., the U.S. based  
26 subsidiary of Creative, filed a second lawsuit against the Debtor alleging false advertising and unfair business practices  
27 (the "Creative Labs Litigation"). In December 1998, the Debtor filed a lawsuit against Creative and E-Mu for infringing  
on two of its patents relating to its proprietary A3D technology (collectively, the three lawsuits are referred to as the  
"Creative Litigation").

1 The Creative Litigation was enormously expensive. As of the Petition Date, the Debtor had paid, in cash and  
2 stock options, an estimated \$6 million in attorneys' fees to Orrick, Herrington & Sutcliffe LLP ("Orrick"), counsel to the  
3 Debtor in connection with the Creative Litigation. Orrick also has asserted a claim against the Debtor in the Bankruptcy  
4 Case for an additional approximately \$1.5 million of alleged outstanding attorneys' fees and other expenses incurred  
5 between December 1999 and April 2000, which the Debtor disputes. In addition to the huge litigation expenses to  
6 defend itself, the Creative Litigation damaged the Debtor's business relationship with existing and potential customers  
7 and distracted the company and its employees from the business.

## 5 2. The Debtor's Loss Of Its Senior Management And Litigation Counsel

6 On or about March 24, 2000, the Debtor's management, including its key officers and directors, resigned from  
7 employment with the Debtor. This loss of key personnel not only had a demoralizing effect on the remaining employees,  
8 several of whom resigned shortly thereafter, but it also had a materially adverse effect on the Debtor's business and its  
9 ability to effectively continue its operations. With the exception of one officer's position, namely the position of Chief  
10 Operating Officer that was subsequently filled by Steve Mitchell following management's resignation, the prepetition  
11 management team of the Debtor has not been replaced.

12 In addition to the loss of its management, on April 4, 2000, Orrick unexpectedly submitted an *ex parte* motion  
13 to withdraw as Debtor's counsel in the Creative Litigation. The certificate of service attached to the motion revealed that  
14 Bruce Bennett of Hennigan, Bennett & Dorman had been retained by the Debtor as proposed reorganization counsel.  
15 Prior to the filing of Orrick's motion, the Debtor was exploring its business alternatives, which included the possibility of  
16 filing for chapter 11 bankruptcy protection. However, the fact that the Debtor had retained reorganization counsel was at  
17 that time confidential information that had been provided to Orrick in confidence. Unfortunately, Orrick's *ex parte*  
18 motion, with the certificate of service revealing the retention of Mr. Bennett and his law firm, although purportedly filed  
19 under seal, was served on Creative's counsel. Faced with this unexpected, unauthorized and premature disclosure by  
20 Orrick of the Debtor's business strategy, as well as the threat of losing the services of its legal counsel in the Creative  
21 Litigation (which had incurred more than \$7 million in fees during the past sixteen (16) months alone), the Debtor had no  
22 choice but to move immediately to file for bankruptcy protection, which it did the following day on April 5, 2001.

23 Orrick disputes the Debtor's description of these events.

## 24 3. Debtor's Marketing Of Its Business And Assets

25 The negative impact of the Creative Litigation adversely affected the Debtor's cash flow, and the Debtor  
26 realized that it might become unable to service its indebtedness to the Lenders, or otherwise satisfy its debts as they  
27 became due. Accordingly, beginning in late 1999, the Debtor began to explore strategic alternatives to its continued  
28 operation as a going concern, including commencing discussions with a number of third-parties toward potential  
29 transactions to provide additional capital to continue and grow the Debtor's operations. These early discussions  
30 occurred primarily with Creative (which discussions also focused on the Creative Litigation), Cirrus Logic, and Intel,  
31 Inc. Unfortunately, during the course of these preliminary discussions, the Debtor's entire senior management team  
32 resigned. The loss of such key personnel seriously impaired the Debtor's ability to negotiate a favorable going concern  
33 sale of its assets with a functioning management team and business plan in place.

### 34 C. The Current Bankruptcy Case

35 In order to preserve its assets and adjust to the loss of its senior management and threatened loss of its litigation  
36 counsel, and in light of the unauthorized and premature disclosure by Orrick that the Debtor had retained Hennigan,  
37 Bennett & Dorman as reorganization counsel, the Debtor filed a voluntary petition for relief under chapter 11 of the  
38 Bankruptcy Code in the Northern District of California on April 5, 2000. The Bankruptcy Case is assigned to the  
39 Honorable Leslie Tchaikovsky, United States Bankruptcy Judge for the Northern District of California.

1                   1.       **Matters Relating To The Administration Of The Debtor's Estate And The Debtor's**  
2                                           **Postpetition Business Operations**

3                                           a)       **Schedules Of Assets And Liabilities And Statements Of Financial Affairs**

4                   Pursuant to Rule 1007 of the Federal Rules of Bankruptcy Procedure, the Debtor filed separate Schedules of Assets and Liabilities (the "Schedules") and separate Statements of Financial Affairs on May 15, 2000. As set forth in the Schedules, the Debtor estimated that it had total liabilities in excess of \$24.5 million.

5                                           b)       **Appointment of the Official Committee of Unsecured Creditors**

6                   On April 18, 2000, the United States Trustee for the Northern District of California appointed, pursuant to section 1102 of the Bankruptcy Code, the following members to act as the Official Committee of Unsecured Creditors (the "Committee") in the Bankruptcy Case: (i) Edmond Wong for Ocean Data Products, Ltd.; (ii) Huai-Jen Lu for UMC (Group) USA; (iii) Terry Campbell for Flatland Online, Inc.; (iv) Juan Gonzales for KPMG, LLP; (v) O'Neil Petrone for Finova Capital Corporation; (vi) R. Scott Holmgren for Highsoft, Inc.; and (vii) John Lysdahl for Imagine Media, Inc.

7                                           c)       **Postpetition Debtor In Possession Financing**

8                   On the Petition Date, the Debtor filed a motion for interim approval of a stipulation between the Debtor and the Lenders to use cash collateral. The Court approved, initially on an interim basis and on May 1, 2000, on a final basis, a cash collateral stipulation that provided the Debtor with authority to use cash collateral in the ordinary course of business and the provision of replacement liens to the Lenders to the extent of the diminution of such collateral.

9                   Thereafter, the Debtor filed a financing motion seeking the Court's approval of a stipulation between the Debtor, the Lenders, and the Committee, dated September 6, 2000, which granted the Debtor authority to borrow up to \$500,000 from the Lenders (the "DIP Financing Stipulation"). Following a hearing, and by order entered September 8, 2000, the Court approved interim financing from the Lenders in an amount not to exceed \$275,000, pending a final hearing. The Court further ordered, in response to an objection asserted at the hearing by Orrick, that the interest rate charged by the Lenders could not exceed the maximum legal limit under applicable law. Orrick subsequently filed a written objection to final approval of the DIP Financing Stipulation, which was resolved through a letter agreement executed on September 27, 2000, between Orrick and the Lenders (the "Letter Agreement"). On October 2, 2000, the Court entered a final order approving the Stipulation (the "DIP Financing Order"), as modified by the Letter Agreement, authorizing the Debtor to borrow a maximum of \$500,000 under a debtor in possession facility (the "DIP Facility") funded by the Lenders.

10                   Under the DIP Facility, the Debtor borrowed \$500,000 from the Lenders. In accordance with the DIP Financing Order, and in order to prevent the accrual of additional interest, on November 6, 2000, the Debtor paid the Lenders the outstanding amount under the DIP Facility, which amount, with interest, totaled \$505,828.48 as of that date.

11                                           d)       **Retention Of Professionals**

12                   Following the Petition Date, pursuant to sections 327 and 328 of the Bankruptcy Code, the Court approved the employment of the following counsel, financial advisors, and other professionals by the Debtor and the Committee:

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<u>Professional</u>	<u>Nature of Representation</u>	<u>Retention Order Date</u>
Hennigan, Bennett & Dorman	Reorganization Counsel and Special Litigation Counsel for the Debtor	June 19, 2000 and October 25, 2000
McCutchen, Doyle, Brown & Enersen, LLP	Counsel to the Committee	August 3, 2000

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<u>Professional</u>	<u>Nature of Representation</u>	<u>Retention Order Date</u>
PricewaterhouseCoopers LLP	Accountants and Financial Advisors for the Debtor	July 26, 2000
E&Y Capital Advisors LLC	Financial and Restructuring Advisors for the Debtor	October 27, 2000
CB Richard Ellis, Inc.	Real Estate Broker for the Debtor	October 25, 2000
Ritter, Van Pelt and YI LLP	Special Patent Counsel for the Debtor	July 24, 2000
Gallagher & Lathrop	Special Patent Counsel for the Debtor	August 1, 2000
Mohler, Nixon & Williams	Auditors of the Tax Deferred Savings Plan of the Debtor	July 24, 2000
Neilson Elggren, LLP	Tax Consultants and Accountants for the Debtor	September 21, 2000
Sidley & Austin	Special Employee Benefits Counsel	May 3, 2001
Sall & Smolowitz	Special Litigation Counsel	May 14, 2001

From the Petition Date through April 30, 2001, pursuant to orders of the Bankruptcy Court, the Debtor's Estate has paid approximately \$1.3 million in fees and expenses to approved professionals (exclusive of any prepetition retainers held by certain of the professionals), as further set forth on Exhibit B hereto. The Debtor further estimates that approximately \$1.03 million in fees and expenses of Professional Persons retained in the Chapter 11 Case have accrued but remain unpaid as of May 1, 2001. The majority of these professional fees and expenses were incurred in connection with the Debtor's sale to Creative of substantially all of its assets (described further in Section C.2 below). Pursuant to sections 330 and 331 of the Bankruptcy Code, the fees and expenses of all professionals are subject to the interim and final review and approval of the Court. (See Section III.A for a description of provisions of the Plan regarding the deadlines for the filing of final fee applications by Professional Persons in the Bankruptcy Case.)

**e) The Debtor's Unexpired Nonresidential Real Property Leases**

As of the Petition Date, the Debtor was party to the following two agreements for the lease of nonresidential real property: (i) a sublease agreement, dated June 7, 1999 (the "Sublease"), with Lam Research Corporation ("Lam") for the lease of the Debtor's headquarter and warehouse facilities located in Fremont, California (the "Fremont Premises"); and (ii) a lease agreement, dated August 28, 1995, with USAA Stratum Executive Center for the lease of auxiliary commercial space located in Austin, Texas (the "Austin Premises").

**(1) Rejection of the Austin Premises**

In an effort to consolidate its business operations and decrease its administrative expenses, on or about April 21, 2000, the Debtor surrendered the Austin Premises to the landlord. Shortly thereafter, on May 4, 2000, the Debtor moved to reject the lease governing the Austin Premises pursuant to section 365 of the Bankruptcy Code. The rejection of the Austin Premises was approved pursuant to order of the Bankruptcy Court on June 5, 2000.

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(2) Extension Of Deadline To Assume Or Reject Leases

The Sublease governing the Fremont Premises was believed by the Debtor to be a valuable asset of the bankruptcy estate because the rental payments provided for under the Sublease were significantly under market, meaning that any assignment of the Sublease to a third party likely would generate additional value for the benefit of the Estate. Thus, in order to allow it adequate opportunity to sell the assets of the estate and to evaluate and market the Fremont Premises, the Debtor brought a motion to extend the deadline within which it was required to assume or reject the nonresidential lease governing the Fremont Premises. After resolution of objections by the landlord of the Fremont Premises, the Debtor was successful in obtaining two extensions of time, up to and including December 22, 2000, to allow for the orderly sale of substantially all of its assets and for the marketing of the Sublease to third parties.

(3) The Rejection Agreement with Lam

To facilitate its marketing efforts, on June 23, 2000, the Debtor applied to the Bankruptcy Court to employ CB Richard Ellis, Inc. as its real estate broker, which employment was approved by the Bankruptcy Court on October 25, 2000. On July 18, 2000, the Debtor filed a motion to sell certain of its assets to Guillemot Corporation ("Guillemot") for the sum of \$8 million (the "Sale Motion"), which assets included, among other things, approximately 10,000 square feet of the Fremont Premises to Guillemot through an assignment of the Sublease. The Debtor, through its real estate broker, also actively marketed the remaining space to other interested third parties. After receiving competing offers from potential tenants, on August 4, 2000, the Debtor executed a letter of intent with Centillium Communications, Inc. ("Centillium"), whereby the Debtor proposed to assign approximately 70,000 square feet of the Fremont Premises to Centillium. On or about August 7, 2000, the Debtor filed a "Motion for Order Authorizing the Assumption and Assignment of Nonresidential Real Property Lease" with the Bankruptcy Court seeking authority to assume the Sublease, and to assign the Sublease *pro tanto* to Guillemot and Centillium. In connection with the Sale Motion, Lam objected to the anticipated *pro tanto* assignment of the Sublease.

As further discussed below, Guillemot was not the successful bidder at the hearing on the Sale Motion. In addition, subsequent to the hearing on the Sale Motion, Centillium withdrew its offer to sublease the Fremont Premises. The Debtor nonetheless continued its efforts to seek out potential assignees, and although several potential tenants expressed an interest, none of the discussions resulted in a consummation of an assignment agreement. On or about November 2000, while the Debtor was negotiating with a potential third party assignee, Lam made a proposal for the Debtor to reject the Sublease in exchange for a cash payment by Lam. On November 28, 2000, the Debtor and Lam executed a rejection agreement (the "Rejection Agreement"), pursuant to which the Debtor agreed to reject the Sublease in exchange for a cash payment of \$350,000, the return of a \$100,000 security deposit (minus any amounts Lam was entitled to withhold under the Sublease), and Lam's waiver of the Debtor's rent obligations -- in the amount of approximately \$74,160 -- for the month of December. The Debtor and Lam also agreed to a mutual general release, with minor exceptions, of any and all claims either party may have against the other that relate to the Sublease. On December 18, 2000, the Bankruptcy Court entered an order approving the Rejection Agreement.

(4) The Debtor's New Headquarter Facilities

In anticipation of the Rejection Agreement and in an effort to reduce operating costs following the sale of substantially all of its assets to Creative (as further discussed below), the Debtor relocated its headquarter facilities from the Fremont Premises to new office space located in Pleasanton, California (the "Pleasanton Office"). The initial term of the lease for the Pleasanton Office expires on May 19, 2001, and continues from month to month thereafter. The Pleasanton Office is approximately 1,500 square feet, and requires a monthly rental payment of approximately \$1,600, which amount includes utilities.

f) Exclusive Period to File Plan of Reorganization

Pursuant to section 1121(b) of the Bankruptcy Code, a debtor has the exclusive right to file a plan of reorganization within the first 120 days after the commencement of a chapter 11 case (the "Exclusive Period"). Pursuant to section 1121(d) of the Bankruptcy Code, the Bankruptcy Court may "for cause" extend the Exclusive Period. By order dated July 17, 2000, the Bankruptcy Court extended the Debtor's Exclusive Period until December 1, 2000. On November 29, 2000, the Debtor filed a second motion requesting another extension of time of the Exclusive Period, up

1 to and including January 15, 2000 to file a plan of reorganization, and up to and including April 2, 2001 in which to  
2 solicit acceptances to such plan, which motion was granted by the Bankruptcy Court on December 19, 2000.

3 In order to enable the Debtor and the Committee to further negotiate and attempt to resolve any remaining  
4 issues with respect to the Plan, the Debtor and the Committee entered into three stipulations -- on January 16, 2001,  
5 January 26, 2001 and February 5, 2001 -- to extend further the exclusive period. The last of those stipulations extended  
6 the exclusive period until February 12, 2001 to file a plan and until April 19, 2001, to solicit acceptances to the Plan.

7 During these extensions, the Debtor and the Committee engaged in diligent negotiations. As a result of these  
8 efforts, the Debtor and the Committee were able to reach a consensus on nearly all of the issues related to the plan.  
9 However, the parties were unable to reach agreement concerning the manner of the future sale of the Creative Stock,  
10 which the Debtor received from Creative as partial consideration for the sale of the Debtor's assets. Accordingly, on  
11 February 9, 2001, the Debtor filed its original plan of reorganization (the "Original Plan"), which provided that the  
12 Reorganized Debtor would have the exclusive right for eight (8) months after the Effective Date to liquidate the Creative  
13 Stock, at which time control over the sale will transfer to the Committee. The Committee was unwilling to agree to that  
14 provision. Subsequently, on April 10, 2001, the Debtor requested an extension of the exclusive period to solicit  
15 acceptance of its Plan, from April 19, 2001 through June 15, 2001. The Committee objected. At a hearing held April  
16 30, 2001, the Court denied the motion and ruled that the exclusive period would not be further extended. A more  
17 detailed discussion of the events leading to the motion to extend the exclusive period for solicitation of acceptance until  
18 June 15, 2001 is set forth in Section III.C.3, below.

## 11 2. The Sale Process And Approval Of Proposed Sale Of Substantially All Of The Debtor's 12 Assets To Creative

13 Following the filing of the Bankruptcy Case, the Debtor continued, as it had before the Petition Date, to market  
14 and sell its assets. The Debtor, through its financial advisor at the time, PricewaterhouseCoopers ("PwC"), identified  
15 approximately fifteen (15) entities that were related to the computer audio imaging industry and that were potentially  
16 interested in purchasing all or a portion of the Debtor's assets (each an "Interested Party" and collectively, the  
17 "Interested Parties"). The Debtor executed confidentiality agreements with certain of the Interested Parties, and sent  
18 such parties copies of various bankruptcy pleadings, as well as other public financial information about the Debtor as  
19 requested. The Debtor also assembled a centralized "Data Room" located at the Debtor's headquarters in Fremont,  
20 California, to accord all Interested Parties an equal opportunity to review information concerning the Debtor's assets.  
21 The Data Room contained several different categories of information, including, without limitation, intellectual property,  
22 contracts, personnel data, inventory data, and litigation documents. Additionally, the Debtor provided Interested Parties  
23 with the opportunity to meet or speak with various former key personnel to answer any question concerning the assets.  
24 Specifically, the Debtor reached agreements with both Mr. Kip Kokinakakis, the former Chief Executive Officer, and Mr.  
25 Brendan O'Flaherty, the former General Counsel and Chief Operating Officer, to make them available during the due  
26 diligence process. Also, the Debtor set up a working demonstration of its technology at its headquarters to familiarize  
27 Interested Parties with the complete audio experience.

28 Upon assembling the contents of the Data Room, the Debtor then sent a letter to the Interested Parties that had  
executed Confidentiality Agreements, which letter described the information in the Data Room, the availability of the  
Data Room, and the deadline to submit letters of intent for a transaction with the Debtor. Of the more than fifteen (15)  
Interested Parties that were contacted about a possible transaction with the Debtor, approximately seven (7) conducted  
further discussions with the Debtor. Approximately five (5) Interested Parties visited the Data Room and conducted  
extensive due diligence.

The Debtor's marketing efforts culminated with three (3) Interested Parties presenting the Debtor with various  
letters of intent. Of those offers, the two (2) most favorable were those submitted by Conexant Systems, Inc. and  
Guillemot. Although the Debtor initially executed a letter of intent with Conexant, Conexant subsequently withdrew  
from the sale process. The Debtor then executed a letter of intent with Guillemot.

On or about June 12, 2000, the Debtor filed a motion for order: (i) establishing sale procedures for the  
proposed sale of certain assets of the estate, including approval of overbid procedures and break-up fee arrangements in  
the event that Guillemot was not the ultimate purchaser of the assets; and (ii) setting a hearing date to hold an auction, if  
necessary, for the Bankruptcy Court to consider and approve the sale (the "Sale Procedures Motion"). Limited

1 objections to the Sale Procedures Motion were filed by certain creditors of the Debtor, including the Committee, which  
2 objections eventually were resolved prior to the hearing on that motion. At the hearing on the relief requested in the Sale  
3 Procedures Motion, the Court approved the bidding procedures and breakup fee, and scheduled a final hearing on the  
4 sale of substantially all of the Debtor's assets for August 15, 2000.

5 On July 18, 2000, the Debtor filed with the Bankruptcy Court a motion seeking authority to sell substantially all  
6 of its assets free and clear of certain liens and authorizing the assumption and assignment of specified executory  
7 contracts (the "Sale Motion"). Objections to the Sale Motion were filed by the Committee and several of the Debtor's  
8 creditors, including Ocean Data Products, Orrick, Lam, and a potential buyer, 3dfx. Competing bids to purchase the  
9 assets of the estate were submitted by Guillemot and Creative. Unlike the Guillemot offer, the Creative bid required a  
10 mutual release and dismissal of all pending and future litigation between Creative and the Debtor. Following a spirited  
11 auction between Guillemot and Creative that began on August 15, 2000, and continued until August 18, 2000, the  
12 Debtor, the Committee, the Lenders, Ocean and Orrick agreed that the bid of Creative, as increased, was the superior bid,  
13 and requested that the Court approve the sale of the assets of the estate to Creative on the terms of its increased bid.

14 Pursuant to that bid, the purchase price to be paid to the Debtor's estate for the acquired assets and release and  
15 dismissal of the Creative Litigation, among other things, was approximately \$28 million cash (subject to various  
16 adjustments), plus the issuance to the Debtor of 208,079 shares of Creative's common stock, par value \$.25 Singapore  
17 dollars per share, plus the assumption by Creative of certain liabilities of the Debtor. The Debtor did not receive any  
18 higher bids for the assets, and the Court, with the express written consent of the Debtor, the Committee, Creative, Orrick  
19 and Ocean, entered an order approving the sale to Creative on September 20, 2000. The Debtor and Creative eventually  
20 entered into a final Asset Purchase Agreement, dated October 31, 2000, as amended from time to time (the "Asset  
21 Purchase Agreement"). On November 3, 2000, the Debtor and Creative closed the sale transaction, and on November  
22 14, 2000, the Debtor received the share certificates as provided in the Asset Purchase Agreement. The sale proceeds will  
23 be used to make the distributions contemplated by the Plan.

24 In accordance with the Asset Purchase Agreement, as well as the Mutual Release and Dismissal executed in  
25 connection therewith, on the Effective Date, any and all claims asserted by Creative shall be withdrawn or disallowed in  
26 their entirety.

### 27 3. The Dispute Between the Debtor and the Committee Regarding the Timing and Manner 28 of the Sale of the Creative Stock

As stated above, the Debtor and the Committee disagree on how to maximize the return to the estate from the  
sale of the Creative Stock held by the Debtor. The Debtor believes, based on its evaluation of the value of the Creative  
Stock as compared to its current market price per share, that it is premature to sell all of the Creative Stock immediately.  
The following is a list of some of the factors that have contributed to that belief.

THE ANALYSIS OF THE CREATIVE STOCK AND THE ESTIMATES PROVIDED HEREIN ARE  
FORWARD-LOOKING IN NATURE AND DO NOT PURPORT TO BE AN ESTIMATE OR PREDICTION OF THE  
CURRENT OR FUTURE VALUE, OR TRADING PRICE, OF THE CREATIVE STOCK. SUCH ACTUAL VALUE,  
OR TRADING PRICE, MAY BE MATERIALLY MORE OR LESS FAVORABLE THAN THE ANALYSIS SET  
FORTH HEREIN. BECAUSE SUCH ANALYSIS IS INHERENTLY SUBJECT TO UNCERTAINTIES AND  
CONTINGENCIES, ALL OF WHICH ARE DIFFICULT TO PREDICT, NEITHER THE DEBTOR, NOR ITS  
OFFICERS, DIRECTORS, PROFESSIONALS OR ADVISORS, NOR ANY OTHER PERSON, CAN PROVIDE ANY  
ASSURANCES OR ASSUME RESPONSIBILITY FOR ITS ACCURACY. HOLDERS OF CLAIMS OR EQUITY  
INTERESTS ARE ADVISED TO SEEK ADVICE FROM THEIR OWN PROFESSIONALS AND ADVISORS IN  
DECIDING WHETHER TO ACCEPT OR REJECT THE PLAN.

First, Creative has been and remains a strong, large and financially stable company. Sales for its fiscal year  
ending June 30, 2001 are estimated to exceed \$1.25 billion. Creative is well positioned to weather the current difficulties  
in the personal computer ("PC") market, given the stability of its balance sheet which has minimal debt and a high level  
of working capital (cash, accounts receivable and inventory) that is more than sufficient to remain current on its  
obligations. Creative's operating profit (excluding restructuring charges) as a percentage of sales has, for the last six (6)  
reported quarters, averaged about 5.6%.



1 Second. Creative has a near monopoly in the sound card area, particularly now that it has purchased the assets  
2 of Aural (its only viable competitor). As a result, Creative has consistently maintains high gross profit margin, which in  
recent quarters has averaged approximately 28%.

3 Third, the consensus estimate of analysts is that Creative's earnings per share will grow at 11-12% per year for  
4 the next five years. As the PC market emerges from this difficult period, the current consensus estimate for earnings per  
5 share for fiscal years ending June 30, 2001 and June 30, 2002 is \$0.72 and \$1.04 respectively (a 44.4% increase during  
that 12-month period). This includes an estimated increase in earnings per share between the third quarter ending  
March 31, 2001 and the fourth quarter ending June 30, 2001, from \$0.06 per share to \$0.10 per share.

6 Fourth, based on estimated earnings of \$0.72 for the year ending June 30, 2001, Creative currently trades at a  
7 price/earnings ratio ("P/E ratio") of about 13, and based on estimates of \$1.04 per share for the year ending June 30,  
8 2002, a P/E ratio of about 9. (By contrast, the S&P 500 has an aggregate P/E ratio of about 28 and NASDAQ has an  
aggregate P/E ratio in excess of 100). These multiples are highly attractive given Creative's dominant market position,  
strong balance sheet and the 1-year and 5-year growth rates estimated by analysts.

9 Fifth, the price of the Creative Stock has suffered in recent months, as evidenced by the decline from \$22.75 per  
10 share on August 18, 2000 (when the Creative bid for Aural's assets was accepted) to \$9.875 on December 18, 2000.  
11 This decline, which occurred prior to the approval of the registration of the Creative Stock, was attributable in large part  
12 to the slowdown in the PC market that serves as Creative's primary customer base, as well as the general decline during  
13 that period of stocks trading on the NASDAQ market. However, analysts believe that the slowdown will end in the near  
14 term as the liquidation of excess PC inventory concludes. Moreover, Creative has increased its presence in the retail sale  
channel, where it sells upgrades that can be used by existing PC owners. All of the above financial information and  
analysis suggests that the Creative Stock is undervalued. Indeed, numerous investment analysts at Zachs.com and  
elsewhere have, as of May 13, 2001, identified Creative as a "strong buy" during a period when many other technology  
stocks have been downgraded. Indeed, Zachs.com recently rated Creative first out of seventy (70) companies in the  
computer periphery industry.

15 In contrast to the Debtor, the Committee has taken the position that all of the Creative Stock should be  
16 liquidated immediately. To date, the Committee has provided no indication, either in filings with the Court or in  
discussions with the Debtor, that it has engaged in any analysis to determine whether the current value of the Creative  
Stock as compared with its price justifies an immediate liquidation of the Creative Stock, as the Committee advocates.

17 Notwithstanding the above, the Committee campaigned to solicit votes to reject the Debtor's Original Plan  
18 based solely on the dispute regarding the Creative Stock. This campaign included the circulation by the Committee, to  
19 all creditors, of a letter urging them to vote against the Original Plan. However, when the votes on the Original Plan  
20 were tallied, it turned out that 82% of the number of claims voted to *accept* the Plan, far more than the majority required  
21 under the Bankruptcy Code. Unfortunately, because the holders of larger dollar claims voted to reject the Original Plan,  
that plan did not receive the acceptances needed to confirm the Original Plan. Since filing the original Plan, the Debtor  
has continued to seek to engage in negotiations with the Committee to resolve the dispute concerning the Creative Stock.  
On March 22, 2001, the Debtor proposed the following timetable (the "March 22 Proposal") under which the Committee  
could direct the sale of the Creative Stock:

22 Fifteen percent (15%) – on the Confirmation Date (which assumed a confirmation hearing on April 16, 2001);

23 Twenty percent (20%) – on the Effective Date;

24 Fifteen percent (15%) – three (3) months after the Effective Date;

25 Twenty-five percent (25%) – five (5) months after the Effective Date; and

26 Twenty-five percent (25%) – six (6) months after the Effective Date.

27 After more than a week, with the April 2, 2001 voting and objection deadline on the Plan fast approaching, the  
28 Committee rejected the Debtor's March 22 Proposal, did not make any new proposal, and instead advised the Debtor that

1 its members would vote against the Plan and that the Committee would also seek the appointment of a trustee or  
conversion of the case to chapter 7. The Committee filed such a motion on April 4, 2001.

2 Although a significant majority of the number of claims supported the Plan, as well as a substantial majority of  
3 the stockholders, the Debtor continues to seek resolution and consensus with the Committee and with its largest creditors.  
4 Accordingly, on April 10, 2001, the Debtor filed an amended plan of reorganization (the "First Amended Plan"). The  
5 First Amended Plan, like the current Plan, essentially incorporates the March 22 Proposal made to the Committee  
6 regarding the sale of the Creative Stock, with one modification, to permit the Committee to direct the sale of the stock as  
7 follows:

8 Fifteen percent (15%) – on the Confirmation Date

9 Twenty percent (20%) – on the Effective Date

10 Fifteen percent (15%) – three (3) months after the Effective Date

11 Twenty-five percent (25%) – five (5) months after the Effective Date

12 Twenty-five percent (25%) – ten (10) months after the Effective Date.

13 A hearing on the Trustee Motion was held on April 30, 2001. At that hearing, the Court ruled that it would not  
14 appoint a general trustee or convert the case to chapter 7 as the Committee had requested. The Court did, however, by  
15 order dated May 8, 2001, appoint an examiner to evaluate the proposals of the Debtor and the Committee regarding the  
16 sale of the Creative Stock and determine the appropriate timing and manner of sale of the Creative Stock. The Debtor is  
17 in the process of evaluating whether it will seek reconsideration of, or appeal, the Court's ruling.

18 The Debtor remains open to negotiations with the Committee to resolve the dispute regarding the Creative  
19 Stock, so that the Plan can be confirmed promptly and distributions to creditors can begin.

#### 20 **4. The Bar Date and Resolution of Certain Claims**

##### 21 **a) The Bar Date Deadline**

22 The claims bar date established by the Court was July 31, 2000. On August 28, 2000, the Bankruptcy Court  
23 approved a stipulation between the Debtor, the Committee and the Lenders that set forth a supplemental notice of an  
24 extended bar date, up to and including September 30, 2000, for certain creditors that may not have received notice of the  
25 initial bar date. Creditors filed approximately 146 proofs of Claim, which together with the Claims scheduled by the  
26 Debtor, total approximately 227 in number and approximately \$19.8 million in Claims against the Estate. The Debtor  
27 currently is in the process of finalizing its review and analysis of all Claims filed to date to determine which Claims, if  
28 any, are Disputed Claims.

##### 21 **b) Payment of Prepetition Claims of Certain Critical Vendors**

22 In order to ensure that the Debtor's inventory that was located in overseas warehouses was released to the  
23 Debtor and made available to Creative under the Asset Purchase Agreement, the Debtor sought relief from the Court  
24 authorizing it to pay the prepetition claims of certain critical vendors. Specifically, on October 25, 2000, the Bankruptcy  
25 Court authorized the Debtor to pay the pre-petition sum of \$11,847.86 to Circle International (Holland) B.V. ("Circle")  
26 in exchange for Circle's agreement to release the Debtor's inventory, valued in excess of approximately \$135,000 book  
27 value, from its warehouse facility in Holland. The Debtor has, with Creative's consent, arranged for the release of that  
28 inventory, and will make a payment to Circle of \$15,000, representing both pre-petition and post-petition obligations due  
to Circle.

Similarly, on October 25, 2000, the Bankruptcy Court authorized the Debtor to pay the sum of \$431,415.64 to  
Caesar Technology, Inc. ("Caesar") in exchange for Caesar's agreement to release the Debtor's inventory, valued in  
excess of approximately \$1,398,000 book value, from its warehouse facility in Taiwan. All of the inventory that was

1 released to the Debtor was included in the assets that were sold to Creative. Absent the delivery of such inventory, the  
2 purchase price paid by Creative under the Asset Purchase Agreement would have decreased by nearly \$1.1 million.

3 Based on the foregoing, on the Effective Date, any and all Claims asserted by Caesar shall be disallowed in their  
4 entirety.

5 **c) Stipulation To Pay Prepetition Secured Claim**

6 As previously discussed, on April 7, 2000, the Court approved the Cash Collateral Stipulation finding, among  
7 other things, that as of the Petition Date, the Lenders assert that the Debtor was indebted to them in the aggregate  
8 principal amount of \$18,151,739, exclusive of accrued interest and alleged fees and expenses, under the Prepetition  
9 Credit Agreement (the "Prepetition Claim"). Because interest on the Prepetition Claim was accruing at a per diem rate of  
10 approximately \$7,311.12, on November 30, 2000, the Debtor filed with the Bankruptcy Court a "Stipulation and Order  
11 Authorizing Payment of Prepetition Secured Claim" (the "Stipulation"). The Stipulation was entered into by the Debtor,  
12 the Committee, the Lenders and the U.S. Trustee, and provided for the payment by the Debtor of the prepetition Claim in  
13 full satisfaction of any and all outstanding obligations owing by the Debtor to the Lenders. Pursuant to the Stipulation, in  
14 the event that the unsecured creditors are not paid in full, the Committee reserves its rights to assert, on behalf of the  
15 Estate, any objections or affirmative claims against the Lenders that have not otherwise been waived or released. An  
16 interim order approving the Stipulation was entered by the Bankruptcy Court on November 29, 2000, which order  
17 became final on or about December 18, 2000. On December 4, 2000, the Debtor paid the Lenders in Cash  
18 approximately \$20,289,269.96 in full satisfaction of their prepetition Claim.

19 **D. Claims Asserted Against The Debtor And Identification Of Disputed Claims**

20 As stated above, the Court established July 31, 2000, as the initial bar date and deadline for the filing of proofs  
21 of Claim against and Interests in the Debtor, and September 30, 2000 as the extended bar date deadline for certain other  
22 creditors and equity-holders of the Debtor. Claimants filed approximately 146 proofs of Claim and Interest, which  
23 together with the Scheduled Claims, represents more than approximately \$19.8 million in asserted Claims against the  
24 Debtor. As set forth below, the Debtor believes that the total amount of Claims allowed in this case will be significantly  
25 less than the amount of Claims asserted against the Debtor. In addition, the Debtor will be amending the Schedules to  
26 include approximately \$281,000 of Allowed Claims, and deleting from the Schedules approximately \$364,000 of Claims  
27 that were previously Scheduled.

28 **1. Allowed Claims**

Based on the Debtor's initial analysis of the Claims, the Debtor plans to consent to allow approximately  
\$2.2 million in asserted Claims, which Claims are listed on Exhibit C hereto, against the Debtor without objection.

**2. The Debtor's First Omnibus Objection to Claims**

On December 7, 2000, as amended on December 11, 2000, and re-noticed on February 2, 2001, the Debtor filed  
its "First Omnibus Objection to Claims (Duplicative Claims, Cured Claims, Reclassified Claims, No Basis Claims,  
Equity Claims, Amended Claims, and Late Claims)" (the "First Omnibus Objection"). Through the First Omnibus  
Objection, the Debtor disputed approximately seventy-four (74) of the approximately 146 Claims asserted against the  
Debtor, and sought Court approval to disallow, expunge, reclassify, and/or reduce approximately \$7.4 million of such  
Claims. Following four (4) hearings on the First Omnibus Objection, the Court entered orders that reduced allowed  
claims by an aggregate of \$6,995,948.30.

<sup>1</sup> The estimated \$19.8 million of asserted and Scheduled Claims includes both Claim No. 75 and Claim No. 145, filed  
by Ocean Data Products in the amount of \$5,889,342.40 and \$5,246,233.30 respectively. The Order Sustaining  
Debtor's First Omnibus Objection to Claims dated March 5, 2001, expunged Claim No. 75, and as such, the Debtor  
believes that the total amount of asserted and Scheduled Claims is significantly less.

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### 3. Additional Disputed Claims

Certain of the largest and most material Claims asserted against the Debtor are described or referenced below (or in other parts of the Disclosure Statement). Moreover, Exhibit D to this Disclosure Statement identifies those Claims that the Debtor currently anticipates will be disputed as of the Effective Date. As further described in Section III.D.1. the Plan enables objections to Claims and Equity Interests to be filed at any time before 120 days after the Effective Date of the Plan, except that the Committee has until 240 days after the Effective Date of the Plan in which to assert, on behalf of the Estate, any objection or affirmative defense to the prepetition Claim of the Lenders that has not otherwise been waived or released, in accordance with the order of the Bankruptcy Court approving the Stipulation.<sup>2</sup>

Given the number and complexity of the asserted Claims, the Debtor has not yet completed its review and analysis of such Claims. Accordingly, the Debtor reserves all rights with respect to the allowance and disallowance of any and all Claims, including Claims not referenced below or in Exhibit D. In voting on the Plan, creditors may not rely on the absence of a reference in this Disclosure Statement (including Exhibit D) or the Plan or the absence of an objection to their proofs of Claim as any indication that the Debtor or any other party in interest ultimately will not object to the amount, priority, security, or allowability of their Claims.

Conversely, there can be no assurance that the Debtor ultimately will prevail in any or all of the objections to the Claims summarized below and in Exhibit D. While the investigation by the Debtor to date supports the complete or partial objection to such Claims, given the fact that the investigation is ongoing and the inherent uncertainties in any litigation regarding such Claims, there can be no assurance regarding the outcome of any litigation that may be initiated in objection to the Claims. Litigation of the magnitude that may be initiated against the various claimants who have asserted Disputed Claims is by its very nature lengthy, difficult, expensive, and, most importantly, uncertain in nature. Accordingly, the total amount of the Allowed Claims against the Debtor, and hence the distributions to be made to holders of Allowed Claims, is likely to vary materially depending upon the results of the process of negotiating, objecting to, and litigating over Disputed Claims. The Debtor can make no assurances in this regard.

a. **Ocean Data Products, Ltd.:** Ocean has filed a proof of claim in the amount of \$5,246,233.20, based on certain purchase orders under which Ocean was to manufacture and ship Sound Cards, using Microchips provided by the Debtor. Of that amount, only \$1,890,960.17 reflects Sound Cards actually shipped to the Debtor. The Debtor disputes any liability with respect to unshipped goods, or with respect to the claims of Ocean relating to unused parts or lost profits. In addition, the Debtor asserts a claim against Ocean based on that company's wrongful conversion of the Debtor's Microchips, which totaled about 525,000 units as of the Petition Date. As of the Petition Date, those Microchips had a fair market value of \$2,390,468.70. That figure does not include Aureal's Microchips that were incorporated into Sound Cards manufactured by Ocean. Ocean admits that, both before and after the Petition Date, it sold the Debtor's Microchips, and Sound Cards contain those Microchips, to third parties and kept the proceeds for itself. Ocean never sought relief from the automatic stay, or the consent of the Debtor, prior to those sales. The Debtor did agree to sell 40,000 Microchips to Ocean in April 2000, which were used by Ocean to manufacture Sound Cards that were sold to Hewlett-Packard ("HP"). The sale of those Microchips generated proceeds of \$112,000.00, which are being held by Ocean. The Debtor does not take issue with the sale of those 40,000 Sound Cards by Ocean to HP.

The Debtor also asserts a claim against an affiliate of Ocean, Ocean Office Automation, Ltd. in the amount of \$460,773.44, based upon boards sold both pre-petition and post-petition by Aureal to Ocean and/or its affiliate. (This claim may be subject to an offset for services provided by Ocean in connection with such boards). Aureal also will assert tort claims against Ocean based upon its conversion, willful violation of the automatic stay, and unjust enrichment, among other claims, and will seek compensatory and punitive damages on account of such claims.

2 The statements and descriptions of Disputed Claims in this Disclosure Statement and in Exhibit D are intended to inform interested parties of the general nature of the Claims and of certain observations of and preliminary assessments by the Debtor with respect to such Claims. All of such statements, descriptions, observations, and assessments are based upon preliminary investigations and are not the result of extensive discovery. Accordingly, such matters may not be construed as admissions or waivers or in any way used by or against the Debtor, the Estate, the Reorganized Debtor, the Disbursing Agent, the Committee or any other entity, whether in any proceeding involving objections to such Claims or otherwise.

1 b. **3DSL:** Subsequent to the Petition Date, the Debtor and 3DSL negotiated a business  
2 transaction whereby the Debtor agreed to ship certain product to 3DSL, and 3DSL, through Barclays Bank PLC  
3 ("Barclays"), negotiated a letter of credit, dated June 13, 2000, for \$52,272.00 (the "Letter of Credit"), in order to pay  
4 for the goods shipped. On June 9, 2000, the Debtor received confirmation of the Letter of Credit, and in reliance  
5 thereon, the Debtor shipped the products to 3DSL in London on that same day. Due to a minor clerical error in the  
6 paperwork submitted to Barclays, namely a misspelling in the Debtor's name, Barclays refused to honor the Debtor's  
7 demand on the Letter of Credit. 3DSL has refused to provide the consent to Barclays necessary to resolve the minor  
8 clerical error notwithstanding the fact that 3DSL has been in receipt of and enjoyed the benefit of the Debtor's product  
9 for over seven (7) months. The Debtor engaged in exhaustive attempts to contact 3DSL, via e-mail, telephone, and  
10 letter, in order to resolve this issue to no avail. On April 27, 2000, 3DSL filed Claim Number 29 for \$72,852.67. As a  
11 result, the Debtor filed a Complaint for (1) Turnover of Property to the Estate and (2) Disallowance of Claim. The  
12 complaint prompted payment by 3DSL of the amounts owed to the Debtor, which were received on or about March 19,  
13 2001. The Debtor has since filed a Notice of Voluntary Dismissal of the complaint against 3DSL.

8 c. **Other Claims:** The Debtor also either has filed or anticipates filing, prior to the  
9 Confirmation Hearing, objections to the following Claims that are in excess of \$100,000 because, among other things,  
10 such asserted Claims differ from the amounts set forth in the Debtor's books and records and/or the Debtor's books and  
11 records, or the preliminary legal and factual analysis performed by the Debtor and its professionals to date, indicate that  
12 such claimants owe the Debtor funds: (i) Claim No. 129 in the amount of \$112,175.00 asserted by Krystaltech  
13 Semiconductors Inc.; (ii) Claim No. 88 in the amount of \$1,505,031.57 asserted by Orrick; (iii) Claim No. 95 in the  
14 amount of \$522,023.64 asserted by Integra-Dyne Corp.; (iv) Claim No. 96 in the amount of \$537,282.86 asserted by  
15 World Peace Industrial Co. Ltd.; (v) Claim No. 18 in the amount of \$504,393.10 asserted by UMC Group (USA); and  
16 (vi) Claim No. 62 in the amount of \$356,583.00 asserted by KPMG LLP. The Debtor expressly reserves its right to  
17 bring affirmative claims seeking damages or other relief (including an amount in excess of the amount of such asserted  
18 claims) as against each of these claimants.

#### 14 4. Summary of Liabilities

15 Assuming that the claim of Ocean Data Products is disallowed in its entirety, then the Debtor projects that, even  
16 under a "worse case" scenario, total estimated liabilities (including unpaid administrative expenses, priority claims, and  
17 unsecured claims) will not exceed \$7.6 million. Under a "better case" scenario, total liabilities fall to less than  
18 \$6.3 million.

#### 17 E. The Debtor's Remaining Assets

18 Following the sale of substantially all of its assets to Creative, the Debtor anticipates that the following assets of  
19 the Estate remain to be liquidated and the proceeds thereof distributed in accordance with this Plan:

<u>Asset</u>	<u>Estimated Fair Market Value</u>
Cash on hand	\$ 6,412,612.00
Creative Stock	\$ 1,976,750.50
Micron Settlement	\$ 100,000.00
Accounts Receivable	\$ 1,665,091.80
Furniture, Fixture & Equipment	\$ 0.00
Total	\$10,054,554.30

21 The Debtor's accounts receivable are derived from the Debtor's unaudited book balance for such assets as of  
22 December 31, 2000, and exclude recent write-offs as well as setoffs against Allowed Claims. The cash on hand and the  
23 proceeds of the Micron settlement reflect bank balances. As of May 9, 2001, the estimated fair market value of the  
24 Creative Stock is based upon the actual market value of such shares as of the close of business on May 9, 2001, which  
25

1 value was \$9.50 per share. In the Debtor's opinion, the fair market value of the furniture, fixture and equipment at the  
2 Pleasanton Office, which consists primarily of a computer, a telephone, a printer and a fax machine, are of *de minimis*  
value.

3 With respect to Accounts Receivables, the following is a summary of the specific claims that the Debtor has  
4 brought as of May 7, 2001, or intends to bring shortly.<sup>3</sup> Certain of the objections to claims the Debtor plans to file  
shortly, referenced in Section II.D.3.C. above, will also seek the recovery of unpaid receivables.

5 **1. Voyetra Turtle Beach, Inc.**

6 Until recently, Voyetra owed the Debtor over \$621,849.76 in unpaid invoices and shipping charges related to  
7 prepetition and postpetition credit sale transactions. On January 10, 2001, the Debtor commenced an adversary  
8 proceeding against Voyetra seeking recovery of the unpaid invoices and shipping charges, plus interest in the amount of  
9 10% per annum. In that adversary proceeding, the Debtor also seeks to disallow all but \$5,000 of the Proof of Claim  
10 filed by Voyetra on July 31, 2000. Voyetra's claim consists of three (3) separate components, totaling \$319,935.54. The  
11 three (3) separate components include: (i) an alleged contingent warranty exposure portion for \$188,707.00 (the  
"Warranty Exposure Claim"); (ii) an alleged indemnification obligation portion for \$126,228.54 (the "Indemnification  
Claim"); and (iii) an alleged license royalties portion for \$5,000.00 (the "License Amount"). The Debtor objects to the  
Warranty Exposure Claim and the Indemnification Claim as without merit. Trial is scheduled in late July. Since the  
commencement of the adversary proceeding, Voyetra recently paid the Debtor \$385,000 of the \$616,849.76 owed by  
Voyetra, leaving a balance due of \$231,849.76 (exclusive of interest). Voyetra asserts that the payment of \$385,000  
constitutes the undisputed amount owed to the Debtor. That adversary proceeding remains pending.

12 **2. American ADM, Inc.**

13 On February 20, 2001, the Debtor commenced an adversary proceeding against American ADM, Inc.  
14 ("American") seeking recovery of \$32,200.00 in unpaid prepetition invoices. In response, American paid the amount  
due. The Debtor has since filed a Notice of Voluntary Dismissal.

15 **3. Micron Electronics, Inc.**

16 On February 20, 2001, the Debtor commenced an adversary proceeding against Micron Electronics, Inc.  
17 ("Micron") seeking recovery of \$106,746.25 in unpaid prepetition invoices and seeking to disallow the Micron Claim.  
The Debtor and Micron were able to reach agreement regarding the payment of the unpaid prepetition invoices and the  
disallowance of the Micron Claim through a settlement agreement dated March 23, 2001 (the "Micron Settlement  
18 Agreement"), under which the Debtor will receive \$100,000. The money is being held in trust, pending Court approval  
of the Micron Settlement Agreement.

19 **4. Future Technologies International, Inc.**

20 On February 20, 2001, the Debtor commenced an adversary proceeding against Future Technologies  
21 International, Inc. ("FTI") seeking recovery of \$25,020.00 in unpaid prepetition invoices. On April 2, 2001, FTI filed its  
22 Answer to Complaint for Turnover of Property to the Estate. At the status conference on April 19, 2001, and through the  
Scheduling Order filed on April 19, 2001, the Court established a trial setting date of August 24, 2001.

23 **5. Fountain Technologies, Inc.**

24 On February 20, 2001, the Debtor commenced an adversary proceeding against Fountain Technologies, Inc.  
25 ("Fountain") seeking recovery of \$151,907.30 in unpaid prepetition invoices. The Debtor did not receive an answer  
26 from Fountain prior to the status conference on April 19, 2001, and is currently in the process of seeking a default  
judgment against Fountain in this matter.

27 <sup>3</sup> The amount of each Account Receivable listed below does not include interest, which the Debtor believes equals ten  
28 percent (10%) from the date of the breach.

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6. **Micro Pro Inc.**

On February 20, 2001, the Debtor commenced an adversary proceeding against Micro Pro Inc. ("MPI") seeking recovery of \$11,663.40 in unpaid prepetition invoices. The Debtor did not receive an answer from MPI prior to the status conference on April 19, 2001, and filed a Request to Enter Default. Upon receipt of the Request to Enter Default, counsel to MPI contacted counsel to the Debtor and appears to be in the process of investigating the claims set forth in the Complaint for Turnover of Property to the Estate.

7. **Ecovision Inc.**

On February 20, 2001, the Debtor commenced an adversary proceeding against Ecovision Inc. ("Ecovision") seeking recovery of \$46,048.14 in unpaid prepetition invoices. On May 3, 2001, Ecovision filed its Answer to Debtor's Complaint for Turnover of Property to the Estate. The Debtor does not believe that Ecovision has any meritorious defense to non-payment of the amount sought against Ecovision.

8. **Raab Karcher Electronic System**

On March 6, 2001, the Debtor commenced an adversary proceeding against Raab Karcher Electronic System ("RK") seeking recovery of \$228,312.00 in unpaid prepetition invoices. It appears that prior to the commencement of the adversary proceeding against RK, Avnet, Inc. ("Avnet"), purchased RK. Avnet contacted counsel to the Debtor and is in the process of determining whether it is liable for the amount sought by the Debtor. At the status conference on May 3, 2001, the Debtor sought a continuance, until July 9, 2001, in order to attempt to resolve this matter.

9. **Centerprise International Lmted.**

On March 6, 2001, the Debtor commenced an adversary proceeding against Centerprise International Lmted ("Centerprise") seeking recovery of \$46,800.00 in unpaid prepetition invoices. On April 7, 2001, counsel to Centerprise sent a letter to the Debtor that appears to be an informal answer to the Debtor's Complaint for Turnover of Property to the Estate. At the status conference on May 3, 2001, the Debtor sought a continuance, until July 9, 2001, in order to attempt to resolve this matter.

10. **Pam Pacific Associates, Inc.**

On March 26, 2001, the Debtor commenced an adversary proceeding against Pam Pacific Associates, Inc. ("Pam Pacific") seeking recovery of \$9,895.60 in unpaid prepetition invoices. The Debtor has yet to receive an answer from Pam Pacific and plans to seek the entry of a default at the status conference scheduled for May 16, 2001.

11. **Supercom Canada Ltd.**

On September 29, 2001, Supercom Canada Ltd. ("Supercom") filed Claim Number 131 (the "Supercom Claim"), asserting a claim for \$11,278.48. The Order Sustaining Debtor's First Omnibus Objection to Claims dated March 5, 2001 has subsequently reduced the Supercom Claim to \$7,225 (the "Remaining Supercom Claim"). On April 19, 2001, the Debtor commenced an adversary proceeding against Supercom seeking recovery of \$110,207.00 in unpaid prepetition invoices and disallowance of the Remaining Supercom Claim. The Debtor is currently awaiting verification of service of process on Supercom.

12. **I/O Magic**

I/O Magic and the Debtor entered into a distribution agreement dated August 4, 1999 (the "Distribution Agreement"). Pursuant to the terms of the Distribution Agreement, I/O Magic owes the Debtor \$561,700.00 (exclusive of interest) in unpaid prepetition invoices. The Debtor is currently preparing a complaint against I/O Magic.

III. **SUMMARY OF THE PLAN**

The Discussion of the Plan set forth below is qualified in its entirety by reference to the more detailed provisions set forth in the Plan and its exhibits, the terms of which are controlling. Holders of Claims and Equity

1 Interests and other interested parties are urged to read the Plan and the exhibits thereto in their entirety so that they may  
2 make an informed judgment concerning the Plan.

3 In summary, the Plan generally provides that, on the Effective Date of the Plan, all assets of the Estate shall be  
4 vested in the Reorganized Debtor. Except as otherwise provided in the Plan, the Reorganized Debtor shall sell and  
5 reduce to Cash all remaining assets of the Estate and distribute such Cash in the manner provided for in the Plan.

6 **A. Classification and Treatment of Claims and Equity Interests**

7 The Plan provides for the treatment of four (4) Classes of Claims and one (1) Class of Equity Interests. The  
8 treatment of Claims and Equity Interests described below applies only to Allowed Claims and Allowed Equity Interests.  
9 Claims that are the subject of a pending objection before the Bankruptcy Court or other pending litigation, or that have  
10 not been allowed pursuant to a Final Order of the Bankruptcy Court or a stipulation consented to by the Debtor, the  
11 Committee, and the claimant, will receive distributions under the Plan only if and after they become Allowed Claims.  
12 The Reorganized Debtor, and to a more limited extent, the Committee, retain the right to initiate proceedings to  
13 subordinate or otherwise object to Claims and Equity Interests (*see* Section III.D herein).

14 **1. Unclassified Claims**

15 Article II of the Plan governs the treatment of certain Claims that are not classified into Classes under the Plan.  
16 Specifically, Allowed Administrative Claims and Priority Tax Claims are not classified in the Plan. Distributions made  
17 to unclassified Claims are subject to the withholding procedures for Disputed Claims, as further described in Section  
18 III.D.2 herein.

19 **a) Administrative Claims**

20 **(1) Generally**

21 Administrative Claims are claims constituting a cost or expense of administration of the Bankruptcy Case  
22 allowed under sections 503(b) and 507(a)(1) of the Bankruptcy Code. Such claims include any actual and necessary  
23 costs and expenses of preserving the estate of the Debtor, any actual and necessary costs and expenses of operating the  
24 business of the Debtor in Possession, any indebtedness or obligations incurred or assumed by the Debtor in Possession in  
25 connection with the conduct of its business or the acquisition or lease of property or the rendition of services, any  
26 allowance of compensation and reimbursement of expenses to the extent allowed by a Final Order of the Bankruptcy  
27 Court under section 330 of the Bankruptcy Code, and fees or charges assessed against the Estate under section 1930 of  
28 title 28 of the United States Code.

Under the Plan, and except as provided in Section 2.2 of the Plan governing professional compensation and  
reimbursement claims, Allowed Administrative Claims shall be paid in full, in Cash, subject to the bar date provisions  
described below, on the later of the Effective Date and the date on which an asserted Claim becomes an Allowed  
Administrative Claim, or as soon thereafter as is practicable. Throughout the course of the Bankruptcy Case, the Debtor  
believes that, except with respect to Professional Claims, it has paid the administrative expenses of the Estate as they  
became due, and thus, the Debtor believes that, with the exception of Professional Claims, most Claims that would  
otherwise constitute Allowed Administrative Claims previously have been or will be satisfied in the ordinary course on  
or before the Effective Date. Because of delays in invoicing and the necessary approval process regarding Professional  
Claims, however, not all such Claims will have been paid on the Effective Date. Moreover, after the Effective Date, the  
Reorganized Debtor will retain a minimum number of employees and consultants, as needed, to assist with the orderly  
liquidation of the remaining assets, which employees and consultants will be paid in the ordinary course of business from  
amounts realized from the proceeds of the Estate as it is liquidated. The Debtor estimates that such compensation and  
fees will total less than \$50,000.

**(2) Compensation and Reimbursement Claims**

Pursuant to the Plan, all Professional Persons retained in this Bankruptcy Case that are awarded compensation  
and reimbursement of expenses by the Bankruptcy Court in accordance with section 330 or 331 or entitled to the  
priorities established pursuant to section 503(b)(2), 503(b)(3) or 503(b)(4) of the Bankruptcy Code, will be paid in full,



1 in Cash, the amounts allowed by the Bankruptcy Court: (a) on or as soon as reasonably practicable following the later to  
2 occur of: (i) the Effective Date, and (ii) the date on which the Bankruptcy Court order allowing such Claim becomes a  
3 Final Order; or (b) upon such other terms as may be mutually agreed upon between such holder of an Allowed  
4 Administrative Claim and the Debtor.

5 All payments to Professional Persons for compensation and reimbursement of expenses and all payments to  
6 reimburse expenses of members of the Committee incurred by the Debtor prior to the Effective Date will be made in  
7 accordance with the procedures established by the Bankruptcy Code, the Bankruptcy Rules and the Bankruptcy Court  
8 relating to the payment of interim and final compensation and expenses. The Debtor estimates that Allowed  
9 Administrative Claims relating to compensation and reimbursement of expenses of Professional Persons retained in the  
10 Bankruptcy Case and the Committee (net of previous allowances and amounts projected to have been paid prior to the  
11 Effective Date) will aggregate approximately \$250,000.00 as of the Effective Date.

12 From and after the Effective Date, the Reorganized Debtor and the Committee also will retain certain  
13 Professional Persons, including without limitation, Reorganization Counsel and Committee Counsel, as needed, to assist  
14 with implementing and consummating the Plan, including, without limitation, resolving Disputed Claims and liquidating  
15 and collecting the remaining assets of the Estate (*see* Section III.C.3 herein), which professionals will be paid in the  
16 ordinary course of business from the Professional Fee Reserve without the necessity for any approval by the Bankruptcy  
17 Court from amounts realized from the proceeds of the Estate as it is liquidated. The Debtor estimates that such  
18 compensation and fees will not exceed \$300,000.

19 (3) **Bar Date For The Assertion Of Requests For Payment Of**  
20 **Administrative Claims Other Than Claims by Professional Persons**

21 Section 2.2.c.i of the Plan provides that all requests for payment of Administrative Claims, other than Claims by  
22 Professional Persons, must be filed by no later than thirty (30) days after the mailing of the Notice of the Effective Date.  
23 Any request for payment of Administrative Claims that is not timely filed, as set forth above, shall be forever barred from  
24 asserting such claims against the Debtor or any of its property.

25 (4) **Bar Date For Compensation For Professional Persons**

26 Section 2.2.c.ii of the Plan provides that applications for final allowance of compensation and reimbursement of  
27 expenses by Professional Persons pursuant to sections 327, 328, 330, 331, 503(b) and 1103 of the Bankruptcy Code for  
28 services rendered before the Effective Date must be filed by no later than forty-five (45) days after the mailing of the  
Notice of the Effective Date. Except as provided in the Plan, objections to such applications of Professional Persons for  
compensation or reimbursement of expenses must be filed and served on the pertinent administrative claimant, the  
Reorganized Debtor, Reorganization Counsel, the United States Trustee, and Committee Counsel no later than sixty (60)  
days after the mailing of the Notice of the Effective Date. Any application for payment of such Claims that is not timely  
filed, as set forth above, shall be forever barred from asserting such Claims against the Debtor or any of its property.

b) **Priority Tax Claims**

Priority Tax Claims are those Claims for taxes entitled to priority in payment under section 507(a)(8) of the  
Bankruptcy Code. The Plan provides for the payment in full, in Cash (including the payment of interest at the applicable  
statutory rate from the Petition Date) of Allowed Priority Tax Claims on the later of the Effective Date and the date on  
which an asserted Priority Tax Claim becomes an Allowed Priority Tax Claim. As further set forth in Exhibit E, six (6)  
governmental taxing agencies have filed proofs of Claim for Priority Tax Claims in the aggregate amount of  
approximately \$228,000. The Debtor disputes all but two (2) of those Claims, and estimates that the aggregate amount  
of Allowed Priority Tax Claims will be less than \$10,200.

2. **Classes Of Claims And Equity Interests**

a) **Class 1 Claims (Secured Claims)**

Class 1 consists of all Allowed Secured Claims against the Debtor that have not been paid, released, or  
otherwise satisfied prior to the Effective Date. Each Secured Claim in Class 1 is considered to be its own separate sub-

1 class within Class 1. To the extent that any Class 1 Claim is allowed by Final Order of the Bankruptcy Court, such Claim  
2 shall be paid in Cash and in full by the Disbursing Agent on the later of the Effective Date and the date on which a Class  
3 1 Claim becomes an Allowed Class 1 Claim, or as soon thereafter as is practicable. For the reasons set forth below, the  
4 Debtor believes that there are no Allowed Class 1 Claims as of the date hereof because such Claims have been paid in  
5 full or the collateral securing such claims has been transferred to the claimant.

6 Class 1 is unimpaired under the Plan. The holders of such Claims, if any, are conclusively presumed to have  
7 accepted the Plan and are not entitled to vote to accept or reject the Plan.

8 (5) **Class 1A (the Lenders' Secured Claim).**

9 Class 1A is comprised of the Lenders' Claim arising from the Prepetition Credit Agreement, to the extent such  
10 obligations are secured by substantially all of the Debtor's assets. The Lenders' Secured Claim against the Debtor is  
11 Scheduled in the amount of approximately \$18,151,739, exclusive of interest and costs as provided for in the Prepetition  
12 Credit Agreement. As previously discussed, *see* Section II.C.3.c herein, on December 4, 2000, the Debtor paid the  
13 Lenders, in accordance with the Stipulation, approximately \$20,289,267 in full and complete satisfaction of their  
14 prepetition Claim.

15 (6) **Class 1B (Imperial A.I. Credit Companies' Secured Claim).**

16 Prior to the Petition Date, Imperial A.I. Credit Companies ("Imperial"), an insurance premium finance  
17 company, loaned certain sums to the Debtor to enable the Debtor to finance its insurance coverage. Pursuant to the  
18 premium finance agreement between the Debtor and Imperial, Imperial acquired a secured interest in the unearned  
19 premium that would be payable in the event of cancellation of the financed insurance coverage due to non-payment. On  
20 or about April 18, 2000, Imperial filed a proof of Claim, Claim No. 17, against the Debtor, asserting a secured claim in  
21 the amount of \$52,015. Subsequently, on September 20, 2000, Imperial filed an amended proof of Claim, Claim No.  
22 114, asserting that the Debtor did not owe it any amounts. Accordingly, in its First Omnibus Objection, the Debtor  
23 objected to Claim No. 17 as superceded by Claim No. 114. The Court expunged Claim No. 17 in the Order Sustaining  
24 Debtor's First Omnibus Objection to Claims dated March 5, 2001.

25 (7) **Class 1C (AFCO Credit Corporation's Secured Claim).**

26 Prior to the Petition Date, AFCO Credit Corporation ("AFCO") loaned certain sums to the Debtor to enable the  
27 Debtor to finance its insurance coverage. Pursuant to the premium finance agreement between the Debtor and AFCO,  
28 AFCO acquired a secured interest in the unearned premium that would be payable in the event of cancellation of the  
financed insurance coverage due to non-payment. On or about June 13, 2000, AFCO filed a proof of Claim, Claim No.  
64, asserting a secured claim in the amount of \$75,115.96. Because the Debtor's books and records indicate that the  
Claim asserted by AFCO has been paid in full, the Debtor plans to enter into a stipulation whereby AFCO agrees to  
withdraw Claim No. 64.

(8) **Class 1D (Telogy, Inc.'s Secured Claim).**

On or about June 16, 1999, the Debtor entered into a Master Lease Agreement with Telogy, Inc. ("Telogy"),  
pursuant to which the Debtor leased from Telogy certain equipment used in the engineering and testing of the Debtor's  
products. On or about April 24, 2000, Telogy filed a proof of Claim, Claim No. 23, asserting a secured claim against the  
Debtor's estate in the amount of \$70,059.60. Because the Debtor has returned the collateral that formed the basis of the  
secured claim, however, the Debtor believes that such claim is properly reclassified as an unsecured claim. As such, the  
Debtor, pursuant to the First Omnibus Objection, currently is seeking to reclassify Claim No. 23 as an unsecured claim,  
and also disputes the amount of the Claim. The Court reduced and reclassified Claim No. 23 in the Order Sustaining  
Debtor's First Omnibus Objection to Claims dated March 5, 2001. Accordingly, Claim No. 23 is allowed in the amount  
of \$3,502.98 and will be paid in accordance with the distribution for Convenience Claims, as set forth below.

(9) **Class 1E (Minolta Business Systems' Secured Claim).**

On or about December 22, 1998, the Debtor entered into a S.M.A.R.T. Solution equipment lease agreement  
with Minolta Business Systems ("Minolta"), pursuant to which Minolta agreed to lease to the Debtor that certain Minolta

1 DI 620 (the "S.M.A.R.T. Agreement"). On or about December 23, 1998, the Debtor entered into a Graphic Systems  
2 Solution equipment lease and rental agreement, pursuant to which Minolta agreed to lease to the Debtor that certain  
3 Minolta CF-900 with FIERY 2X-2100 (the "Graphic Systems Agreement"). Although Minolta filed a proof of Claim,  
4 Claim No. 23, against the Debtor's estate asserting a secured claim in the amount of \$117,157.35, on August 23, 2000,  
5 the Debtor and Copelco Capital Corporation, as successor in interest to Minolta, entered into a stipulation to reject the  
6 S.M.A.R.T. Agreement and the Graphic Systems Agreement. In accordance with the parties' stipulation, the Debtor  
7 returned the equipment governed by the two agreements to Copelco, and as such, the Debtor believes that Claim No. 44  
8 is properly reclassified as an unsecured claim. Pursuant to the First Omnibus Objection, the Court reduced and  
9 reclassified the Claim to a general unsecured claim for \$3,502.98. Accordingly, Claim No. 44 will be paid in accordance  
10 with the distribution for Convenience Claims, as set forth below.

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14 **b) Class 2 (Other Priority Claims)**

15 Class 2 consists of all Claims entitled to priority under section 507(a) of the Bankruptcy Code, other than  
16 Administrative Claims and Priority Tax Claims. Allowed Class 2 Claims consist primarily of Allowed Other Priority  
17 Claims for contributions to an employee benefit plan arising from services rendered within 180 days before the Petition  
18 Date in amounts of \$4,300 or less. Allowed Class 2 Claims will be paid in Cash and in full, less tax withholdings where  
19 appropriate, by the Disbursing Agent on the later of the Effective Date and the date on which a Class 2 Claim becomes  
20 an Allowed Class 2 Claim, or as soon thereafter as is practicable. Class 2 is unimpaired under the Plan. Holders of  
21 Allowed Class 2 Claims are conclusively presumed to have accepted the Plan and are not entitled to vote to accept or  
22 reject the Plan.

23 Four (4) claimants filed proofs of Claim for Other Priority Claims in the aggregate amount of approximately  
24 \$14,800. The Debtor believes, however, that after objections to either disallow or reclassify these claims, that there will  
25 be less than \$8,300 of Claims that fall within Class 2.

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28 **c) Class 3 (Convenience Claims)**

Class 3 consists of all Convenience Claims other than Convenience Claims with respect to which the holders  
thereof have elected to opt out of Class 3 and into Class 4 by making such election on their Ballots and returning said  
Ballots within the time fixed by the Bankruptcy Court. Any other holder of an Allowed Unsecured Claim which limits  
and reduces its Allowed Unsecured Claim to only such portion of its Claim as meets the criteria to be a Convenience  
Claim may elect to opt out of Class 4 and into Class 3 by electing and so reducing its Claim on the Ballot within the time  
fixed by the Bankruptcy Court for completing and returning Ballots. A creditor participating in Class 3 shall not be  
entitled to any distribution under Class 4. Class 3 is impaired under the Plan. Allowed Class 3 Claims shall be paid in  
Cash eighty percent (80%) of the amount of such Allowed Class 3 Claims by the Disbursing Agent on the later of: (a)  
the Effective Date; and (b) the date on which a Class 3 Claim becomes an Allowed Class 3 Claim. Approximately 57  
claimants filed proofs of Claim, which are less than \$10,000 and thus eligible to participate in Class 3. These claims  
aggregate about \$145,000.00.

**d) Class 4 (General Unsecured Claims)**

Class 4 consists of all other Unsecured Claims against the Debtor not otherwise classified in any other Class  
hereof, including Claims arising from the rejection of executory contracts and unexpired leases. Class 4 is impaired  
under the Plan, which provides that holders of Allowed Class 4 Claims, subject to the provisions of Article V of the Plan,  
will share Pro Rata in distributions in Cash from the Estate after payment in full, or reserve for payment in full, of Post-  
Effective Date Claims, Administrative Claims, Priority Tax Claims and Allowed Claims in Classes 1 and 2. Holders of  
Allowed Claims in Class 4 will, if there are sufficient proceeds available, receive payment of interest on account of their  
Allowed Claims for the period from the Petition Date through the date of payment. Such interest shall be paid at the  
federal judgment rate, which as of May 9, 2001, was 3.90%.

Approximately 48 claimants filed proofs of Claim for Unsecured Claims in the aggregate of over \$18 million.  
The Debtor believes that, after objections to disallow all or a portion of the Disputed Claims in Class 4 are resolved, the  
Allowed amounts of such Claims will be in the range of approximately \$4.6 million to approximately \$10.2 million. It is  
also possible, though unlikely, that the Allowed amounts of such Claims could be lower than this range. Based on the  
estimated range of Allowed Claims, the Debtor estimates that distributions on behalf of Allowed Class 4 Claims may be

1 in the range of 75% to 100% depending on, among other things, the successful defense of Disputed Claims, the  
2 collection of the Debtor's accounts receivable, and the value of the Creative Stock (*see* Section III.C.4).

3 ALL OF THESE VARIABLES ARE INHERENTLY SUBJECT TO UNCERTAINTIES, AND THE DEBTOR  
4 CAN PROVIDE NO ASSURANCE THAT DISTRIBUTIONS TO HOLDERS OF CLAIMS OR EQUITY INTERESTS  
5 WILL FALL WITHIN THIS RANGE.

6 The Plan provides that no distributions shall be made on account of Disputed Claims. The Disputed Claims, as  
7 set forth in Exhibit D, involve substantial amounts that are contingent or unliquidated, or both, and that are subject to a  
8 wide range of potential outcomes. The Reorganized Debtor intends to object to or compromise each of the Claims  
9 identified on Exhibit D based upon any defenses, counterclaims, and rights of offset or recoupment available under  
10 section 502 and 553 of the Bankruptcy Code, including on the grounds that the identified Disputed Claims are asserted in  
11 amounts in excess of the amounts reflected in the books and records of the Debtor. In addition, in those circumstances  
12 where a claimant has received a transfer that is avoidable under sections 544, 545, 546, 547, 548, 549, 550 or 553 of the  
13 Bankruptcy Code, the Reorganized Debtor intends to assert a defense to allowance of the claimant's Claims under  
14 section 502(d) of the Code. In voting on the Plan, all creditors listed on Exhibit D hereto should assume that the  
15 Reorganized Debtor will assert whatever defenses it may have to their Claims, including defenses based upon section  
16 502(d) of the Bankruptcy Code.

17  
18 **f) Class 5 (Equity Interests)**

19 Class 5 consists of all Equity Interests in the Debtor arising from the ownership of common stock in the Debtor.  
20 Class 5 is impaired under the Plan. The holders of any Allowed Class 5 Interests are entitled to vote to accept or reject  
21 the Plan. There shall be no distribution under the Plan to holders of Class 5 Interests unless and until all Allowed  
22 Administrative Claims, Allowed Priority Tax Claims, Post-Effective Date Claims, and Allowed Claims in Classes 1, 2,  
23 and 3 are paid in full, including the payment of interest at the federal judgment rate from the Petition Date thereon, and  
24 Allowed Claims in Class 4 are paid eighty percent of the Allowed amounts of their Claims. At such time, holders of  
25 Class 5 Interests shall receive a Pro Rata distribution of any remaining Cash that they would have otherwise received  
26 under applicable law in the event of a liquidation of the Debtor. The Debtor estimates that distributions on behalf of  
27 Allowed Class 5 Interests may be in the range of \$0 to approximately \$2.99 per share, based upon, among other things,  
28 the successful defense of Disputed Claims, the collection of the Debtor's accounts receivable, and the value of the  
Creative Stock. ALL OF THESE VARIABLES ARE INHERENTLY SUBJECT TO UNCERTAINTIES, AND THE  
DEBTOR CAN PROVIDE NO ASSURANCE THAT DISTRIBUTIONS TO HOLDERS OF EQUITY INTERESTS  
WILL EXCEED \$0 PER SHARE.

**B. Treatment Of Executory Contracts**

**1. Generally**

The Bankruptcy Code empowers a debtor in possession, subject to the approval of the Bankruptcy Court, to  
assume or reject the debtor's executory contracts and unexpired leases. An "executory contract" generally means a  
contract under which performance other than the payment of money is due by the parties. If an executory contract or  
unexpired lease is rejected by the debtor in possession, the rejection operates as a prepetition breach of such agreement.  
If an executory contract or unexpired lease is assumed by the debtor in possession, the assumption obligates the debtor in  
possession to perform under the agreement, and damages arising from any subsequent breach of the agreement are  
treated as administrative expenses of the bankruptcy estate.

The Debtor assumed a number of its executory contracts and assigned such contracts to Creative in connection  
with the consummation of the sale of substantially all of the Debtor's assets. A portion of these executory contracts were  
assumed by the Debtor and assigned to Creative pursuant to the Bankruptcy Court's order approving the Sale Motion,  
which was entered on or about September 20, 2000. Pursuant to the Asset Purchase Agreement, Creative had the right to  
amend the list of executory contracts that it sought to have assigned to it after the order approving the Sale Motion was  
granted. Based on Creative's amended list of executory contracts to be assigned, the Debtor also filed a motion to  
assume and assign to Creative additional executory contracts, which motion was approved by the Bankruptcy Court on  
December 13, 2000. All cure amounts for the executory contracts assigned to Creative have been paid or will be paid in  
full as of the Effective Date.

1 Section 3.1 of the Plan provides that all remaining executory contracts of the Debtor, with the exception of the  
2 executory contracts identified on Exhibit 1 to the Plan, will be rejected as of the Effective Date. Section 3.2 of the Plan  
3 in turn provides that the Debtor will assume the executory contracts identified on Exhibit 1 to the Plan. At this time  
4 Exhibit 1 does not contain any Executory Contracts.

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2. **Deadline For The Assertion Of Rejection Damage Claims And For The Objection To Such Claims; Treatment Of Rejection Damage Claims**

Section 3.1 of the Plan also provides that Claims arising from the rejection of executory contracts or unexpired leases under the Plan must be filed with the Bankruptcy Court and served on the Debtor no later than thirty (30) days after the mailing of the Notice of the Effective Date. Any such Claims for which a proof of Claim is not filed and served within such time will be forever barred from assertion and shall not be enforceable against the Debtor or its estate, assets, properties, or interests in property. Any party in interest wishing to object to the rejection an executory contract or unexpired lease under Section 3.1 of the Plan must file and serve an objection within the same deadline and in the same manner established for filing objections to the confirmation of the Plan. Failure to file any such objection within such time frame shall constitute consent to the rejection.

3. **Proposed Cure Amounts For Assumed Executory Contracts And The Deadline For Objection To Such Cure Amounts And To The Proposed Assumption**

With respect to each such executory contract or unexpired lease assumed by the Debtor, if any, any monetary amounts required as cure payments shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the cure amount, as listed on Exhibit 1 to the Plan, in Cash on the Effective Date or upon such other terms as the parties to such executory contracts or unexpired leases otherwise may agree. In the event of a dispute regarding: (a) the amount of any cure payment; (b) the ability of the Debtor or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed; or (c) any other matter pertaining to assumption, the cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving such dispute.

Any party to an executory contract or unexpired lease to be assumed under the Plan who contends that the proposed cure amount specified in Exhibit 1 to the Plan is incorrect, or who otherwise objects to the assumption or assumption and assignment of such contract or lease, must file with Bankruptcy Court and serve upon the Debtor, Reorganization Counsel, the United States Trustee, and Committee Counsel a written statement and accompanying declaration in support thereof specifying the basis for the objection within the same deadline and in the manner established for filing objections to confirmation of the Plan. Failure to timely file and serve such a statement shall waive any and all objections to the proposed assumption and cure amount. In the event of a dispute regarding: (a) the cure amount; (b) the provisions of adequate assurance of future performance under the contract or lease to be assumed; or (c) any other matter pertaining to assumption or assumption and assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving the dispute and approving assumption.

C. **Means For Execution And Implementation Of The Plan**

1. **Revesting of Assets**

On the Effective Date, all assets of the Estate (except for those assets delivered to the Disbursing Agent on the Effective Date for immediate distribution to holders of Allowed Claims) shall be vested in the Reorganized Debtor. Except as otherwise provided in the Plan, the Reorganized Debtor shall sell and reduce to Cash all remaining assets of the Estate and distribute such Cash in the manner provided in the Plan.

2. **The Reorganized Debtor's Board of Directors and Management**

a. **Composition of the Board of Directors.**

As of the Effective Date, the initial Board of Directors of the Reorganized Debtor shall consist of three (3) members, including Richard Masson, Kenneth Liang, and Gloria Noh. Each of these Directors is currently a director of

1 the Debtor. After the Effective Date, the terms and manner of selection of the Board of Directors of the Reorganized  
2 Debtor shall be as provided in the Amended and Restated Articles of Incorporation and the Amended and Restated  
3 Bylaws.

4 **b. Identity of Officers.**

5 Steve Mitchell, the Debtor's Chief Operating Officer, shall continue in his position for the Reorganized Debtor  
6 as of the Effective Date. Mr. Mitchell currently is paid at a rate of \$150 per hour for his services as Chief Operating  
7 Officer, and he will continue to be paid at that rate following the Effective Date.

8 **3. Rights, Powers and Duties of the Reorganized Debtor and the Committee**

9 The Reorganized Debtor shall become, on the Effective Date of the Plan, the exclusive representative of the  
10 Estate under section 1123(a)(5) of the Bankruptcy Code and other applicable law. Except as otherwise provided in this  
11 Plan, and without prior or further authorization of the Bankruptcy Court, the Reorganized Debtor shall possess all rights  
12 and powers possessed by a trustee appointed under the Bankruptcy Code. The following is a general summary of the  
13 rights, powers and duties of the Reorganized Debtor:

14 a. On or after the Effective Date, the Reorganized Debtor shall retain and may enforce any and all rights,  
15 causes of action, powers, privileges, licenses, and franchises of the Debtor or the Estate, including, but not limited to, all  
16 tax determinations under section 505 of the Code, and all causes of action arising under the Plan and the Bankruptcy  
17 Code, including avoiding powers and defenses to Disputed Claims arising under applicable non-bankruptcy law or under  
18 sections 502(d), 544, 545, 547, 548, 549, 550, 553, and 558 of the Bankruptcy Code; provided, however, that the  
19 Reorganized Debtor may not retain or enforce any right that is waived, relinquished, released, compromised or settled in  
20 accordance with this Plan. In the event that the Committee requests that the Reorganized Debtor pursue a Cause of  
21 Action and the Reorganized Debtor refuses to do so, the Committee shall be entitled to pursue such Cause of Action and  
22 shall have the same rights as those granted to the Reorganized Debtor herein, provided, however, that the Reorganized  
23 Debtor shall have the right to seek an order from the Bankruptcy Court to prevent the Committee from pursuing such  
24 Cause of Action. Notwithstanding the other provisions of this Subsection 4.3.b, in the event that there are not sufficient  
25 funds to pay Class 4 Claims in full, with Interest, the Committee shall be entitled to analyze whether to pursue Causes of  
26 Action under 11 U.S.C. § 547 and, if warranted, to commence such Causes of Action without further order of the Court.  
27 The proceeds of any Causes of Action shall inure to the benefit of the Estate and be delivered to the Disbursing Agent.

28 b. From time to time after the Effective Date, the Reorganized Debtor and the Committee may employ,  
engage the services of, and compensate other Persons (which may include employees, temporary employees or  
independent contractors) and Professional Persons (which may include professionals previously or concurrently  
employed by the Committee or the Debtor in Possession), reasonably necessary to assist the Reorganized Debtor and the  
Committee in performing their duties under this Plan without the necessity of further authorization or allowances of fees  
and expenses by the Bankruptcy Court. In the event that the Reorganized Debtor does not serve as the Disbursing Agent,  
the Disbursing Agent is not entitled to retain Professional Persons, provided, however, if the Disbursing Agent is a  
corporation or partnership, the Disbursing Agent shall be entitled to rely upon its employees or independent contractors  
in performing its duties under this Plan without the necessity of further authorization or allowances of fees and expenses  
by the Bankruptcy Court. The amount of any reasonable fees and expenses ("Professional Fees") incurred by the  
Reorganized Debtor or the Committee on account of the employment of such Persons or Professional Persons on or after  
the Effective Date shall be paid in Cash by the Disbursing Agent from the Professional Fee Reserve without further order  
of the Bankruptcy Court, provided that the Reorganized Debtor or the Committee shall be provided with statements of  
any fees and expenses ("Fee Statement") incurred by such Persons or Professional Persons and shall have fifteen (15)  
days after receiving a Fee Statement, to notify the Person or Professional Person of any objection, in whole or in part,  
to any fees and expenses that are not reasonable. To the extent the objection relates only to part of the Fee Statement, the  
balance of the amount requested in the Fee Statement shall be paid. With respect to any portion of the Fee Statement that  
is subject to a timely filed objection, the Bankruptcy Court shall retain jurisdiction to determine whether the fees and  
expenses subject to such objection are reasonable.

c. The Reorganized Debtor may, in its sole and absolute discretion, sell or dispose of any asset or  
compromise any Claim against the Estate or defense or cause of action by the Estate or Reorganized Debtor without  
notice and without a hearing if the Reorganized Debtor determines, in the exercise of its reasonable judgment, that such

1 asset has a value of \$50,000 or less, or such Claim has been Filed or Scheduled in the amount of \$50,000 or less;  
2 provided, however, that if the intended transaction involves a specific lien upon or interest in the subject matter of the  
3 Claim or asset, twenty (20) days written notice of the contemplated action shall be Filed with the Bankruptcy Court and  
4 served on the Persons claiming such an interest and Committee Counsel.

5 d. As to any transaction (other than the sale of the Creative Stock, which is discussed in Section C.4  
6 herein) involving an asset that the Reorganized Debtor determines, in the exercise of its reasonable judgment, has a value  
7 of, or any Claim Filed or Scheduled in the amount of, more than \$50,000 (or, with respect to any settlement of any  
8 Causes of Action regardless of the value of such Causes of Action), the Reorganized Debtor: (a) shall consult with, and  
9 seek the approval of, the Committee at least ten (10) days prior to Filing a notice of such transaction; and (b) shall File  
10 and give twenty (20) days written notice of the intended transaction to the Committee Counsel and to those Persons with  
11 a specific interest in or lien upon the subject of the claim or asset; provided, however, that consultation with and approval  
12 by the Committee as to any such transaction shall not be required in the event the Cash in the Reserve (after payment in  
13 full of Administrative Claims, Priority Tax Claims, Effective Date Claims, Class 1 Claims and Class 2 Claims) exceeds  
14 the aggregate amount of the outstanding Claims of the Class 3 and Class 4 claimants plus Interest. If no objection is  
15 timely Filed and served upon the Reorganized Debtor, then the Reorganized Debtor may proceed to consummate the  
16 intended transaction without further notice upon entry of an order by the Bankruptcy Court. If an objection is timely  
17 filed by the Committee or by those Persons with a specific interest in a lien upon the subject of the claim or asset, then  
18 the Reorganized Debtor shall seek approval by the Bankruptcy Court of the intended transaction.

19 e. Consistent with the Plan, the Reorganized Debtor may pay or otherwise compromise any debts, claims,  
20 costs, liabilities, expenses and other obligations and charges of the Estate, including, without limitation, interest, taxes,  
21 assessments, and other charges, public or private, of every kind and nature, including the claims, costs, charges, expenses  
22 and liabilities arising out of, and associated with, the execution, administration or operation of the Estate.

23 f. The Reorganized Debtor shall, subject to the limitation set forth in the Asset Purchase Agreement, sell,  
24 transfer, assign, vote and give proxies to vote any securities that are Estate assets.

#### 25 4. Sale of Creative Stock

26 The Confirmation Order shall constitute an authorization by the Court for the Reorganized Debtor to sell the  
27 Creative Stock without further Order of the Court, subject to otherwise applicable securities laws. After the Effective  
28 Date, to the extent that the Examiner has not sold any or all of the Creative Stock, the Reorganized Debtor shall sell the  
Creative Stock in one or more transactions. The timing and amount of any such sales shall be determined by the  
Reorganized Debtor in the exercise of its reasonable business judgment, except that to the extent that shares of the  
Creative Stock remain unsold as of the dates set forth below, the Committee shall be entitled to direct the sale of shares  
of the Creative Stock, pursuant to the following timetable and limitations:

29 Fifteen percent (15%) – on the Confirmation Date

30 Twenty percent (20%) – on the Effective Date

31 Fifteen percent (15%) – three (3) months after the Effective Date

32 Twenty-five percent (25%) – five (5) months after the Effective Date

33 Twenty-five percent (25%) – ten (10) months after the Effective Date.

34 By way of illustration, as of the Effective Date, if the Examiner and the Reorganized Debtor have sold only  
35 twenty-five percent (25%) of the Creative Stock, equal to approximately 52,020 shares), the Committee would be  
36 entitled to direct the sale of an additional ten percent (10%) of the Creative Stock, equal to approximately 20,808  
37 shares).

38 A hearing on the Trustee Motion was held on April 30, 2001. At that hearing, the Court ruled that the proceeds  
of the sale of the Creative Stock shall be held by the Reorganized Debtor for distribution in accordance with the terms of  
the Plan and for no other purpose.

1 The value of the Creative Stock has fluctuated substantially during this Chapter 11 Case. At the time the bid of  
2 Creative for substantially all of the Debtor's assets was accepted in August 2000, the Creative Stock had a value of  
3 approximately \$22 per share. By December 18, 2000, the price had declined to \$9.875 per share. As of May 9, 2001, the  
4 Creative Stock had a value of approximately \$9.50 per share.

5 The Creative Stock that is owned by the Estate became registered on February 20, 2001. To the extent that any  
6 of the Creative Stock remains unsold by the Examiner as of the Effective Date, and subject to the timetable under which  
7 the Committee can direct the sale of blocks of the Creative Stock, the Debtor (or Reorganized Debtor) will sell the  
8 Creative Stock in one or more transactions, at the discretion of the Board of Directors of the Debtor (or Reorganized  
9 Debtor) in the exercise of its reasonable business judgment. Accordingly, no assurance can be given concerning the  
10 value of the Creative Stock and the amount that will be realized by the Debtor from the Creative Stock for distribution to  
11 creditors and, potentially, shareholders.

#### 12 **5. Records and Reporting**

13 The Reorganized Debtor shall maintain good and sufficient books and records of account relating to the Estate  
14 assets, all transactions undertaken by the Reorganized Debtor, all expenses incurred by or on behalf of the Estate, and all  
15 distributions either contemplated or effectuated under the Plan. Not more than twenty (20) days after each month  
16 following the Effective Date, the Reorganized Debtor shall send to Committee Counsel and Reorganization Counsel a  
17 written report showing the receipts and disbursements of the Estate for such prior month and, subject to any  
18 confidentiality requirements, any significant activities, changes, and transactions affecting the Estate assets that occurred  
19 in such prior month or that are expected to occur in the near future. The Reorganized Debtor shall also file and serve on  
20 the United States Trustee post-confirmation quarterly reports in the format prescribed by the United States Trustee.

#### 21 **6. Indemnification**

22 Under certain circumstances as set forth in detail in the Plan, *see* Section 4.6 of the Plan, the Estate will defend,  
23 hold harmless and indemnify the Reorganized Debtor, the Committee and the employees, professionals and agents  
24 engaged by the Reorganized Debtor and the Committee with respect to losses claims, costs, expenses and liabilities  
25 (including legal fees and expenses) arising out of their respective acts or omissions related to the performance of their  
26 duties under the Plan or on behalf of the Estate, so long as their acts do not constitute willful misconduct or gross  
27 negligence. The provisions of this Subsection shall also apply with respect to any employees or independent contractors  
28 retained by the Disbursing Agent.

#### 29 **7. Continued Role of the Creditor's Committee**

30 The Committee shall survive confirmation of the Plan and the Effective Date, and shall continue to exist until  
31 the earlier of: (a) the payment in full with Interest of the Allowed Claims in Class 4; or (b) the date the Bankruptcy Case  
32 is closed.

#### 33 **8. United States Trustee Fees**

34 All unpaid fees due to the United States Trustee from the Petition Date through the calendar quarter in which  
35 the Effective Date occurs shall be paid on the Effective Date by the Estate and shall be based upon all distributions by  
36 the Estate on or prior to the Effective Date, including the transfers on the Effective Date of funds to the Disbursing Agent  
37 for distribution to holders of Allowed Claims. Commencing with the calendar quarter following the quarter in which the  
38 Effective Date occurs and continuing until the entry of a final decree or order converting or dismissing the case, the  
39 Disbursing Agent shall pay to the United States Trustee, from the assets of the Estate, such amounts as are required to be  
40 paid under 28 U.S.C. Section 1930(a)(6). The Reorganized Debtor shall, however, remain liable for the payment of any  
41 such fees, which are not paid by the Disbursing Agent.

#### 42 **9. Limitation on Liability**

43 The Plan provides that on or after the Effective Date, none of the Debtor, the Debtor in Possession, the Estate,  
44 the Reorganized Debtor, or the Committee, nor any of their employees, officers, members, directors, agents, or  
45 representatives, nor any Professional Persons employed by any of them, shall have or incur any liability to any Person for



1 any act taken or omission made in good faith in connection with or related to the administration of the Estate, objections  
2 to or estimations of claims, dispositions of assets, and/or formulating, soliciting acceptances to or confirming the Plan or  
3 the Disclosure Statement. Any of the foregoing parties in all respects shall be entitled to rely upon the advice of counsel  
4 with respect to their duties and responsibilities under the Plan.

#### 10. Execution of Documents and Corporate Action

5 Under the Plan, the Debtor, the Debtor in Possession, the Reorganized Debtor and/or the Disbursing Agent  
6 without being required to obtain any directors' or shareholders' approval or action whatsoever, shall execute such  
7 documents and take such other actions as are necessary to effectuate the transactions provided for in this Plan. Following  
8 the Effective Date, the Reorganized Debtor, and its officers and directors, shall be authorized to execute all required  
9 documents and conveyances on behalf of the Estate.

#### 11. Material Default

10 If there is a material default under the terms of the Plan and upon a successful post-confirmation motion to  
11 convert this case to a case under Chapter 7 of the Bankruptcy Code, this Plan shall terminate, and the chapter 7 estate  
12 shall consist of all remaining property not already administered. Such remaining property shall be administered by the  
13 chapter 7 trustee as prescribed in Chapter 7 of the Bankruptcy Code.

#### D. Objections to Claims and Distributions

##### 1. Claims Objection Deadline

14 After the Effective Date, the Reorganized Debtor shall have the right to object to the allowance of Claims or  
15 Equity Interests filed with the Bankruptcy Court with respect to which liability or allowance in whole or in part is  
16 disputed, except that the Committee also shall have the right to object to the allowance of Claims if: (a) the objections  
17 are asserted against the Lenders as provided below; or (b) the Reorganized Debtor has not, within thirty (30) days  
18 following the Effective Date, Filed an objection to such Claim; or (c) no objection to the allowance of such Claims or  
19 Equity Interests has been filed within fifteen (15) days prior to the deadline to object to Claims under Section 5.1.a of the  
20 Plan. The hearing shall be scheduled as soon as is reasonably practicable, subject to the Bankruptcy Court's calendar.  
21 Any objection to any Claim or Equity Interest must be Filed and served upon the holder of such Claim within 120 days  
22 after the Effective Date or such later date as may be provided in the Confirmation Order or pursuant to an Order of the  
23 Bankruptcy Court; however, objections may be Filed after the aforementioned deadline if circumstances warrant.

24 The Committee shall have the right to assert, on behalf of the Estate, any objection to the prepetition Claim of  
25 the Lenders, or any affirmative claims against the Lenders arising from the prepetition Claim that has not been waived or  
26 released, including any objection to the prepetition Claim amount, as provided in the "Stipulation Authorizing Payment  
27 of Prepetition Secured Claim By Debtor and Debtor in Possession," which Stipulation was approved by the Bankruptcy  
28 Court on an interim basis on November 29, 2000, and on a final basis on or about December 18, 2000. The Committee  
shall also have the right to assert, on behalf of the Estate, all Causes of Action (as defined in Section 4.3.a) against the  
Lenders arising during the period from the Petition Date to the Effective Date, except any Causes of Action that relate to  
the stipulation dated September 6, 2000, authorizing the Debtor to borrow up to \$500,000 from the Lenders. The  
Committee shall file and serve all such objections and assertions of Causes of Action against the Lenders, if any, by no  
later than 240 days after the Effective Date, or such later date as may be provided in the Confirmation Order or pursuant  
to an Order of the Bankruptcy Court.

##### 2. Reserves for Disputed Claims

25 Prior to making any distributions, the Disbursing Agent shall establish reserves for Disputed Claims, unpaid  
26 Administrative Claims (including the Professional Fee Reserve) and Priority Tax Claims, and for Post-Effective Date  
27 Claims. Except to the extent that the Bankruptcy Court shall determine that a good and sufficient reserve for Disputed  
28 Claims is less than the full amount thereof, the reserve for a Disputed Claim shall be based on the Filed amount of the  
Disputed Claim or the deemed filed amount of the Scheduled Claim. All Cash held in the reserve shall be invested in  
investments authorized by the Bankruptcy Code or by the Bankruptcy Court in its Order Approving Centralized Cash  
Management Systems, Use of Existing Bank Accounts and Business Forms, and Current Investment Practices entered on

1 April 7, 2000. The Plan provides that any interest earned on reserves established by the Reorganized Debtor for  
2 Disputed Claims, Post-Effective Date Claims, or for any other purpose shall be earned for the account of, and retained  
3 by, the Estate, and shall be distributed only in the manner provided for in the Plan.

4 Under the Plan, the Reorganized Debtor may request that the Committee consent to, or the Committee may  
5 request the Reorganized Debtor to, increase or decrease the reserve amounts. Such increase or decrease may be  
6 authorized by a majority vote of the Committee and consent of the Reorganized Debtor. If the Reorganized Debtor does  
7 not consent or the Committee does not vote to consent, either the Reorganized Debtor or the Committee, pursuant to a  
8 Committee vote, may file a motion requesting the Bankruptcy Court to authorize such increase or decrease, which motion  
9 shall be served on the Reorganized Debtor, Reorganization Counsel, Committee Counsel and the All Notices List at least  
10 twenty (20) days prior to any hearing.

### 7 3. Estimation of Claims

8 Under the Plan, either the Committee or the Debtor in Possession prior to the Effective Date, or, after the  
9 Effective Date, the Reorganized Debtor (or, with respect to objections to the prepetition Claims of the Lenders, the  
10 Committee) may commence or continue such actions and proceedings in the Bankruptcy Court as are appropriate to  
11 estimate any Disputed Claim as permitted or required under section 502(c) of the Bankruptcy Code. The "Estimated  
12 Amount" with respect to such Disputed Claim shall be in an amount established by the Bankruptcy Court pursuant to  
13 section 502(c) of the Bankruptcy Code after notice and an opportunity for hearing to the holder of the Disputed Claim  
14 and the All Notices List. If the Bankruptcy Court estimates a Disputed Claim for purposes of voting, such estimation  
15 shall constitute and represent the dollar amount of the Claim for voting purposes only.

16 As provided in the Plan, the Bankruptcy Court shall have exclusive jurisdiction to determine or estimate the  
17 appropriate amount of funds the Reorganized Debtor shall hold as a reserve for Post-Effective Date Claims,  
18 Administrative Claims, Priority Tax Claims or Disputed Claims pending objections to or estimations of such Disputed  
19 Claims. The Reorganized Debtor shall reduce any reserve for Disputed Claims to the amount determined or estimated by  
20 the Bankruptcy Court as reasonably necessary to cover Disputed Claims for purposes of making any interim distributions  
21 under the Plan. Notwithstanding any such determination or estimation, the Disbursing Agent shall not make any  
22 distribution on account of a Disputed Claim until such Claim becomes an Allowed Claim.

### 16 4. Distributions

17 Under the Plan, the Reorganized Debtor and the Committee shall attempt to agree on the appointment of the  
18 Disbursing Agent. In the event that the Reorganized Debtor and the Committee are unable to reach agreement as to the  
19 appointment of the Disbursing Agent, the Bankruptcy Court shall have exclusive jurisdiction to determine who shall be  
20 appointed as the Disbursing Agent. The Reorganized Debtor, the Committee and the Disbursing Agent shall use their  
21 reasonable efforts to dispose of Estate assets, to make prompt and timely distributions, and to avoid undue prolongation  
22 of the duration of the Estate and the Bankruptcy Case.

23 On the Effective Date, reasonable reserves acceptable to the Reorganized Debtor and the Committee shall be  
24 established for: (1) unpaid Administrative Claims and Priority Tax Claims (including a Professional Fee Reserve for  
25 professional fees that accrued but remained unpaid prior to the Effective Date); (2) estimated Post-Effective Date  
26 Claims; and (3) Disputed Claims in Classes 1, 2, 3 and 4. Following the establishment of the foregoing reserves, on the  
27 Effective Date the holders of Allowed Class 1 Claims will be paid in accordance with Section 2.3.a of the Plan, holders  
28 of Allowed Class 2 Claims will be paid in accordance with Section 2.3.b of the Plan, holders of Class 3 Claims will be  
paid in accordance with Section 2.3.c of the Plan, and the balance of the Cash assets of the Estate will be distributed Pro  
Rata to holders of Allowed Class 4 Claims until they have received full payment of their claims, plus interest at the  
federal judgment rate from the Petition Date through the date of payment.

Except to the extent that the Bankruptcy Court shall determine that a good and sufficient reserve for Disputed  
Claims is less than the full amount thereof, in determining the amount of the distributions due to holders of Allowed  
Claims, the Pro Rata calculations required by Article V of the Plan shall be made as if all Disputed Claims (including  
Disputed Administrative Claims and Priority Tax Claims) were Allowed in the full amount claimed by the holders  
thereof.

1 Pursuant to the Plan, as additional assets are liquidated and Disputed Claims are resolved, the Reorganized  
2 Debtor shall make distributions as promptly as possible in the exercise of its reasonable judgment after review and  
3 adjustment of the amounts of appropriate reserves for Disputed Claims, including Disputed Administrative Claims and  
4 Priority Tax Claims. The Estate shall not retain Cash or cash equivalents in excess of a reasonable amount to meet  
5 Claims and contingent liabilities or to maintain the value of assets during the orderly liquidation. If, after taking into  
6 account reserves for Disputed Claims, including disputed or unpaid Administrative Claims, disputed or unpaid Priority  
7 Tax Claims and Post-Effective Date Claims, \$1,000,000 is available for general distributions to holders of Allowed  
8 Claims, then the Disbursing Agent shall cause an interim distribution to be made. In addition, the Disbursing Agent may,  
9 in the exercise of its reasonable judgment after consultation with the Committee, declare any additional interim  
10 distributions so long as appropriate reserves for Disputed Claims, including disputed or unpaid Administrative Claims,  
11 disputed or unpaid Priority Tax Claims and Post-Effective Date Claims, have been established.

12 At such time as all non-cash assets of the Estate have been liquidated or abandoned, all Disputed Claims have  
13 been resolved by Final Order or disallowed, all Post-Effective Date Claims have been paid in full and the Bankruptcy  
14 Case has been fully administered, the Disbursing Agent shall make a final Pro Rata distribution and request that the  
15 Bankruptcy Court enter a final decree closing the Bankruptcy Case.

16 **E. Continuing Jurisdiction Of The Bankruptcy Court**

17 The Plan also provides for the Bankruptcy Court to retain jurisdiction over a broad range of matters relating to  
18 the Bankruptcy Case, the Plan, and other related items. Readers are encouraged to review Section 4.11 of the Plan to  
19 ascertain the nature of the Bankruptcy Court's Post-Effective Date jurisdiction.

20 **IV. CONFIRMATION AND EFFECTIVENESS OF THE PLAN**

21 Because the law with respect to confirmation of a plan of reorganization is very complex, creditors concerned  
22 with issues regarding confirmation of the Plan should consult with their own attorneys. The following discussion is  
23 intended solely for the purpose of providing basic information concerning certain confirmation issues. The Debtor  
24 cannot and does not represent that the discussion contained below is a complete summary of the law on this topic.

25 Many requirements must be met before the Bankruptcy Court may confirm the Plan. Some of the requirements  
26 discussed in this Disclosure Statement include acceptance of the Plan by the requisite number of holders of Claims and  
27 Equity Interests, and whether the Plan pays such holders at least as much as they would receive in a liquidation of the  
28 Debtor under chapter 7 of the Bankruptcy Code. These requirements, however, are not the only requirements for  
confirmation, and the Bankruptcy Code will not confirm the Plan unless and until it determines that the Plan satisfies all  
applicable requirements, including requirements not referenced in this Disclosure Statement.

**A. Voting And Right To Be Heard At Confirmation**

**1. Who May Support Or Object To Confirmation Of The Plan?**

Any party in interest may support or object to the confirmation of the Plan. Even entities that may not have a  
right to vote (e.g., entities whose Claims are classified into an unimpaired Class) may still have a right to support or  
object to confirmation of the Plan. (See Section I.C.2 for information regarding the applicable deadlines for objecting to  
confirmation of the Plan).

**2. Who May Vote To Accept Or Reject The Plan?**

A holder of a Claim generally has a right to vote for or against the Plan if their Claim or Equity Interest is both  
"allowed" for purposes of voting and classified into an impaired Class.

**a) What Is An Allowed Claim Or Equity Interest For Voting Purposes?**

As noted above, a creditor's Claim must be "allowed" for purposes of voting in order for such claim or equity  
interest to have the right to vote on the Plan. Generally, for voting purposes, a Claim is deemed "allowed" if: (a) a proof  
of Claim or Equity Interest was timely filed; or (b) if no proof of Claim or Equity Interest was filed, the holder of the

1 Claim or Equity Interest is identified in the Schedules as other than "disputed," "contingent," or "unliquidated." In either  
2 case, when an objection to a Claim or Equity Interest has been filed, the claim or equity interest holder cannot vote  
3 unless the Bankruptcy Court, after notice and hearing, either overrules the objection or allows the claim or equity interest  
4 for voting purposes.

5 The definitions of "Allowed Claim" and "Allowed Equity Interest" used in the Plan for purposes of determining  
6 whether Claim or Equity Interest holders are entitled to receive distributions thereunder may differ materially from those  
7 used by the Bankruptcy Court to determine whether a particular Claim or Equity Interest is "allowed" for purposes of  
8 voting. Holders of Claims and Equity Interests are advised to review the definitions of "Allowed," "Claim," "Disputed,"  
9 and "Equity Interest" set forth in Article I of the Plan to determine whether they may be entitled to receive distributions  
10 under the Plan.

11 **b) What Is An Impaired Claim Or Equity Interest?**

12 As noted above, the holder of a Claim or Equity Interest has the right to vote on the Plan if that Claim or Equity  
13 Interest is allowed and classified into a Class that is *impaired* under the Plan. A Class is impaired if the Plan alters the  
14 legal, equitable, or contractual rights of the members of that Class with respect to their claims or equity interests. The  
15 Debtor believes that Classes 3, 4 and 5 are impaired under the Plan. Any party that disputes such characterization,  
16 however, may request that the Bankruptcy Court find that its Claim or Equity Interest is impaired in order to obtain the  
17 right to vote on the Plan.

18 **B. Who Is Not Entitled To Vote?**

19 The holders of the following five types of Claims or Equity Interests are not entitled to vote on the Plan:  
20 (a) Claims or Equity Interests that have been disallowed; (b) Claims or Equity Interests that are subject to an order  
21 disallowing such claim or Equity Interest entered prior to the Confirmation Hearing or Scheduled as disputed, contingent  
22 or unliquidated and that have not been allowed for voting purposes; (c) Claims in unimpaired Classes (*i.e.*, Classes 1 and  
23 2); (d) Claims in impaired Classes that do not receive or retain any interest, property, or other consideration under the  
24 Plan; and (e) Claims entitled to priority pursuant to sections 507(a)(1), (a)(2), and (a)(7) of the Bankruptcy Code.  
25 Holders of Claims and Equity Interests in unimpaired Classes are not entitled to vote because such Classes are deemed to  
26 have accepted the Plan. Holders of Claims entitled to priority pursuant to sections 507(a)(1), (a)(2), and (a)(7) of the  
27 Bankruptcy Code are not entitled to vote because such Claims are not placed in Classes and they are required to receive  
28 certain treatment specified by the Bankruptcy Code. Holders of Claims or Equity Interests of the type described above,  
however, nevertheless may have the right to support or object to the confirmation of the Plan.

18 **C. Votes Necessary To Confirm The Plan**

19 The Bankruptcy Court cannot confirm the Plan unless, among other things: (a) at least one (1) impaired Class  
20 of Claims has accepted the Plan without counting the votes of any insiders within that Class; and (b) either all impaired  
21 Classes have voted to accept the Plan, or the Plan is eligible to be confirmed by "cramdown" with respect to any  
22 dissenting impaired Class, as discussed in Section I.B herein.

22 **1. Votes Necessary For A Class To Accept The Plan**

23 A Class of Claims is considered to have accepted the Plan when more than one-half (1/2) in number and at least  
24 two-thirds (2/3) in dollar amount of the Claims that actually voted in that Class have voted in favor of the Plan.

24 **2. Treatment Of Nonaccepting Classes**

25 As noted above, even if certain impaired Classes do not accept the proposed Plan, the Bankruptcy Court may  
26 nonetheless confirm the Plan if the nonaccepting Classes are treated in the manner required by the Bankruptcy Code.  
27 The process by which nonaccepting Classes are forced to be bound by the terms of a plan is commonly referred to as a  
28 "cramdown." Specifically, the Bankruptcy Code allows the Plan to be "crammed down" on nonaccepting Classes of  
Claims or Equity Interests if the Plan meets the requirements of section 1129(a)(1) through (a)(7) and 1129(a)(9) through  
(a)(13) of the Bankruptcy Code and if the Plan does not "discriminate unfairly" and is "fair and equitable" as those terms  
are defined in section 1129(b) of the Bankruptcy Code.

1                                   3.       **Request For Confirmation Despite Nonacceptance By One or More Impaired Classes**

2           The Debtor has requested that the Bankruptcy Court confirm the Plan by cramdown on any impaired Class that  
3           does not vote to accept the Plan, and the Debtor believes that cramdown is appropriate under the circumstances.

4                                   **D.       Liquidation Analysis**

5           Another confirmation requirement is the so-called "Best Interests Test" created by section 1129(a)(7) of the  
6           Bankruptcy Code. The Best Interests Test requires that, if a holder of a Claim or Equity Interest is in an impaired Class  
7           and does not vote to accept the Plan, such holder receives or retains an amount under the Plan not less than the amount  
8           that such holder would receive or retain if the Debtor was to be liquidated under chapter 7 of the Bankruptcy Code.

9           In a chapter 7 case, a trustee or trustees would be elected or appointed to liquidate the Debtor's assets for  
10           distribution to creditors in accordance with the priorities set forth in the Bankruptcy Code. Under those priorities,  
11           secured creditors generally are paid first from the sales proceeds of properties securing their liens. Administrative  
12           expenses generally are next to receive payment. Unsecured creditors then are paid from any remaining sales proceeds,  
13           according to their statutory and contractual rights to priority. Unsecured creditors with the same priority share in  
14           proportion to the amount of their allowed claim in relationship to the amount of total allowed unsecured claims. Finally,  
15           shareholders receive the balance, if any that remains after all creditors are paid.

16           For the Bankruptcy Court to be able to confirm the Plan, it must find that holders of Claims and Equity Interests  
17           who do not accept the Plan will receive at least as much under the Plan as such holders would receive under a  
18           hypothetical chapter 7 liquidation with respect to the Debtor. The Debtor submits that this requirement is met here  
19           because, among other things, the Plan provides for the liquidation of the Debtor in a manner that is at least as efficient as  
20           would occur in the event that the Bankruptcy Case was converted to a case under chapter 7 of the Bankruptcy Code. In  
21           fact, there are a number of reasons why the Plan will result in greater recoveries to holders of Allowed Claims than  
22           would result under a chapter 7 liquidation case with respect to the Debtor.

23           First, the Debtor plans on making an initial distribution to creditors on the Effective Date, which is scheduled to  
24           occur as early as July 2000, and on making interim distributions thereafter as appropriate. The Debtor also will endeavor  
25           to liquidate the remaining assets of the Estate, fully administer the Bankruptcy Case, and make a final distribution within  
26           the next six (6) to twelve (12) months under the Plan. In a chapter 7 case, however, creditors likely would not receive a  
27           chapter 7 dividend until a considerably greater amount of time, possibly as much as two (2) years after the Effective  
28           Date. This delay would likely result in higher administrative fees incurred by the Estate, which in turn would reduce the  
29           distribution to unsecured creditors.

30           Second, in a chapter 7 case, a chapter 7 trustee (or trustees) with no familiarity with the Bankruptcy Case would  
31           be appointed to complete the liquidation and distribution process. The trustee(s) likely would retain new professionals,  
32           who also would be unfamiliar with the Bankruptcy Case, to assist with the liquidation of the Estate (including the pursuit  
33           of claims and causes of action and the objection to disputed claims and equity interests), and the trustee(s) would have to  
34           expend considerable time and effort to "get up to speed" on the issues implicated by such liquidation and litigation  
35           (thereby duplicating the substantial efforts made to date by the Debtor, the Committee, and their professionals). Given  
36           the lack of familiarity with the factual and legal issues involved, and the complexity of those issues, the Debtor believes  
37           that Allowed Claims will be lower and the percentage of receivables recovered will be higher under the Plan than in a  
38           liquidation under chapter 7.

39           Finally, in the event of a conversion to chapter 7, creditors of the Estate also would have to bear an additional  
40           layer of administrative expenses in the form of the chapter 7 trustee statutory fees which, as calculated in accordance  
41           with section 326 of the Bankruptcy Code, could approximate at least \$275,000 or more.

42                                   **E.       Feasibility**

43           Because the Plan contemplates a liquidation of the assets of the Debtor, the Debtor submits that the feasibility  
44           requirement set forth in section 1129(a)(11) is not applicable to the Plan.

1           **F.       Effective Date**

2                   **1.       Conditions To The Occurrence Of The Effective Date**

3           The Plan will not become effective and operative unless and until the Effective Date occurs. Section 9.1 of the  
4           Plan sets forth certain conditions to the occurrence of the Effective Date, which conditions are not waivable by the  
5           Debtor. The conditions to the occurrence of the Effective Date are: (a) the Confirmation Order shall be in full force and  
6           effect; and (b) at least twenty (20) calendar days have passed since the Confirmation Order was entered.

7                   **2.       Non-Occurrence Of The Effective Date**

8           If Confirmation occurs, but the Effective Date does not occur within the time period authorized by the Plan,  
9           then the Plan provides that: (a) the Confirmation Order shall be vacated; (b) no distributions under the Plan shall be  
10          made; (c) the Debtor and all holders of Claims and Equity Interests shall be restored to the *status quo ante* as of the day  
11          immediately preceding the Confirmation Date as though the Confirmation Date never occurred; and (d) all the Debtor's  
12          obligations with respect to the Claims and Equity Interests shall remain unchanged and nothing contained herein shall be  
13          deemed to constitute a waiver or release of any Claims by or against the Debtor or any other Entity or to prejudice in any  
14          manner the rights of the Debtor, the Committee, or any Entity in any further proceedings involving the Debtor.

15           **G.       Channeling of Claims and Injunction**

16          Because the Plan provides for the liquidation of all or substantially all of the property of the Estate,  
17          confirmation of the Plan will not discharge the Debtor from Claims that arose prior to confirmation. The Plan, however,  
18          provides that the treatment of all Claims and Equity Interests (including Post-Effective Date Claims) thereunder shall be  
19          the sole and exclusive remedy on account of such Claims and Equity Interests with respect the Estate, including any  
20          interest accrued from and after the Petition Date or interest that would have accrued but for the commencement of the  
21          Bankruptcy Case.

22          As a consequence, except as otherwise provided in the Plan, on or after the Effective Date, all Persons who have  
23          held, currently hold or may hold a Claim or Equity Interest treated or provided for pursuant to the Plan will be  
24          permanently enjoined from taking any of the following actions on account of any such Claim or Equity Interest:  
25          (a) commencing or continuing, in any manner and any place, any action or other proceeding against the Estate without  
26          leave of the Bankruptcy Court; (b) enforcing, attaching, collecting or recovering in any manner any judgment award,  
27          decree, or order against any property without leave of the Bankruptcy Court; (c) creating, perfecting or enforcing any lien  
28          against property of the Estate without leave of the Bankruptcy Court; (d) taking any action to obtain possession of  
29          property of the Estate or to obtain possession of property from the Estate; and (e) commencing or continuing any action  
30          or proceeding, in any manner and in any place, that does not comply with or is inconsistent with the provisions of the  
31          Plan. Any claim or cause of action asserted against the Estate, the Reorganized Debtor, Professional Persons or the  
32          Committee arising out of or related to the conduct of their duties in the Bankruptcy Case, whether before or after the  
33          Effective Date, shall be commenced only in the Bankruptcy Court. Except as provided for in the Plan, all property dealt  
34          with in the Plan (including property of the Estate) is free and clear of all Claims and Equity Interests (including Post-  
35          Effective Date Claims). Any Person injured by any willful violation of such injunction will be entitled to recover actual  
36          damages, including costs and professional fees, and, where appropriate, punitive damages from the willful violator.

37           **H.       Plan Controls**

38          In the event there are inconsistencies between the Disclosure Statement and the Plan, the terms of the Plan shall  
39          control.

40           **V.       CERTAIN FEDERAL INCOME TAX CONSEQUENCES**

41                   **A.       Introduction**

42          Implementation of the Plan may have federal, state, and local tax consequences to the Debtor and its estate as  
43          well as to the creditors and shareholders of the Debtor. No tax opinion has been sought or will be obtained with respect  
44          to any tax consequences of the Plan, and the following disclosure does not constitute and is not intended to constitute  
45          either a tax opinion or tax advice to any person.

1 This disclosure is provided for informational purposes only. Moreover, this disclosure summarizes only certain  
2 of the federal income tax consequences associated with the Plan's confirmation and implementation and does not attempt  
3 to comment on all such aspects. Similarly, this disclosure does not attempt to consider any facts or limitations applicable  
4 to any particular creditor or shareholder which may modify or alter the consequences described below. This disclosure  
5 also does not address state, local, or foreign tax consequences or the consequences of any federal tax other than the  
6 federal income tax.

7 This disclosure is based upon the provisions of the Internal Revenue Code of 1986, as amended, the regulations  
8 promulgated thereunder, existing judicial decisions, and administrative rulings. In light of the numerous recent  
9 amendments to the Internal Revenue Code, there can be no assurance that legislative, judicial, or administrative changes  
10 will not be forthcoming that would affect the accuracy of the discussion below. Any such changes could be material and  
11 could be retroactive with respect to the transactions entered into or completed prior to the enactment or promulgation  
12 thereof. Finally, the tax consequences of certain aspects of the Plan are uncertain due to a lack of applicable legal  
13 authority and may be subject to judicial or administrative interpretations that differ from the discussion below.

14 Creditors and shareholders therefore are advised to consult with their own tax advisors regarding the tax  
15 consequences to them and to the Debtors of the transactions contemplated by the Plan, including federal, state, local, and  
16 foreign tax consequences.

## 17 **B. Federal Income Tax Consequence To The Debtor**

### 18 **1. Sales Of Assets In Liquidation**

19 As discussed above, the Debtor has sold substantially all of its operating assets and will distribute the proceeds  
20 of such assets to creditors pursuant to the terms of the Plan. In the event that, as anticipated, the asset sales generate a net  
21 gain for federal income tax purposes, the Debtor will incur tax on such gain to the extent that the net gain exceed the  
22 Debtor's net operating loss ("NOL") or to the extent of any Alternative Minimum Tax liability ("AMT") which may not  
23 be fully offset by net operating loss carryforwards (as re-computed for AMT purposes).

### 24 **2. Reduction Of Indebtedness**

25 Because the Debtor will not recommence any business operations under the Plan, but will instead liquidate its  
26 remaining assets, the Debtor will be denied a discharge with respect to its outstanding indebtedness. Nevertheless, the  
27 modification of the terms of the Debtor's indebtedness that occurs (or may be deemed to occur) as a result of the  
28 confirmation and consummation of the Plan may create actual or constructive debt cancellation for tax purposes. Such  
actual or constructive debt cancellation hereinafter is referred to as a "Debt Discharge Amount."

In general, the Internal Revenue Code provides that a taxpayer who realizes a cancellation or discharge of  
indebtedness must include the Debt Discharge Amount in its gross income in the taxable year of discharge to the extent  
that the Debt Discharge Amount exceeds any consideration given for such discharge. No income from the discharge of  
indebtedness is realized to the extent that payment of the liability being discharged would have given rise to a deduction.

If a taxpayer is in a case under the Bankruptcy Code and a cancellation of indebtedness occurs pursuant to a  
confirmed plan, however, such discharge of indebtedness is specifically excluded from gross income pursuant to an  
exception commonly referred to as the "Bankruptcy Exception." Although it is unclear whether the constructive  
cancellation of indebtedness that may occur as a result of the Plan's implementation qualifies for exclusion from income  
under the Bankruptcy Exception, the Debtor intends to take the position that the Bankruptcy Exception in fact does  
apply, such that the Debt Discharge Amount is excluded from income.

A Debt Discharge Amount is also excluded from income, pursuant to an exception commonly referred to as the  
"Insolvency Exception," if and to the extent that the Debtor is insolvent at the time of the cancellation of indebtedness.  
The Debtor believes that it is and has for some time been insolvent within the meaning of this exception. Accordingly,  
even if the Debtor was unable to exclude constructive debt cancellation from income under the Bankruptcy Exception,  
the Debtor believes that the Debtor likely qualifies to exclude such cancellation under the Insolvency Exception.

1 Accordingly, the Debtor believes that the Debtor will not be required to include in income any Debt Discharge  
2 Amount as a result of confirmation and consummation of the Plan. The Internal Revenue Code, however, requires  
3 certain tax attributes of the Debtor to be reduced by the Debt Discharge Amount that is excluded from income.  
4 Specifically, tax attributes are reduced in the following order of priority: (a) net operating losses and net operating loss  
5 carryovers; (b) general business credits; (c) minimum tax credits; (d) capital loss carryovers; (e) basis of property of the  
6 taxpayer; (f) passive activity loss or credit carryovers; and (g) foreign tax credit carryovers. Tax attributes generally are  
7 reduced by one dollar for each dollar excluded from gross income, except that general tax credits, minimum tax credits,  
8 and foreign tax credits are reduced by 33.3 cents for each dollar excluded from gross income.

### 9 C. Federal Income Tax Consequences To Creditors

10 The tax consequences of the Plan's confirmation and implementation to a creditor will depend on the type of  
11 consideration received by the creditor in exchange for its Claim, whether the creditor reports income on the cash or  
12 accrual method, whether the creditor receives consideration in more than one tax year of the creditor, and whether all the  
13 consideration received by the creditor is deemed to be received by that creditor in an integrated transaction.

#### 14 1. In General

##### 15 a) Gain/Loss on Exchange

16 A creditor will recognize gain or loss on the actual or constructive exchange of such creditor's existing Claims  
17 (other than Claims for accrued interest) for rights under the Plan, cash and any other consideration received pursuant to  
18 the Plan in an amount equal to the difference between: (i) the "amount realized" in respect of such Claims; and (ii) the  
19 creditor's tax basis in such Claims. The "amount realized" will be equal to the sum of the cash and: (i) as to a cash-basis  
20 taxpayer, the fair market value of all other consideration received (or, possibly, in the case of debt instruments, the issue  
21 price of such debt instruments); and (ii) as to an accrual-basis taxpayer, the fair market value of consideration received,  
22 less any amounts allocable to interest, unstated interest, or original issue discount.

#### 23 2. Receipt Of Interest

24 Income attributable to accrued but unpaid interest will be treated as ordinary income, regardless of whether the  
25 creditor's existing Claims are capital assets in its hands. A creditor who, under its accounting method, was not  
26 previously required to include in income accrued but unpaid interest attributable to existing Claims and who exchanges  
27 its interest Claim for cash or other property pursuant to the Plan will be treated as receiving ordinary interest income to  
28 the extent of any consideration so received allocable to such interest, regardless of whether that creditor realizes an  
overall gain or loss as a result of the exchange of its existing Claims. A creditor who previously had included in income  
accrued but unpaid interest attributable to its existing Claims will recognize a loss to the extent that such accrued but  
unpaid interest is not satisfied in full. For purposes of the above discussion, "accrued" interest means interest, which was  
accrued while the underlying claim was held by the creditor.

#### 3. Other Tax Considerations

##### a) Market Discount

If a creditor has a lower tax basis in an obligation than its face amount, the difference may constitute market  
discount under section 1276 of the Internal Revenue Code. (Certain obligations are excluded from the operation of this  
rule, such as obligations with a fixed maturity date not exceeding one year from the date of issue, installment obligations  
to which section 453B of the Internal Revenue Code applies and, probably, demand instruments). Holders in whose  
hands obligations are market discount bonds will be required to treat as ordinary income any gain recognized upon the  
exchange of such obligations to the extent of the market discount accrued during the holder's period of ownership, unless  
the holder has elected to include such market discount in income as it accrued.

##### b) Taxation Of Certain Reserves

Section 468B(g) of the Internal Revenue Code provides that escrow accounts, settlement funds or similar funds  
are subject to current taxation. That section also provides that the Internal Revenue Service will prescribe regulations for



1 the taxation of any such account or fund, whether as a grantor trust or otherwise, and the Internal Revenue Service issued  
2 final regulations regarding settlement funds on December 18, 1992 and proposed additional regulations on February 1,  
3 1999. However, the final regulations specifically reserve the tax treatment of settlement funds in bankruptcy, and the  
4 proposed additional regulations do not address such funds. Thus, issues regarding who is responsible for reporting  
5 income generated by the funds in any unclaimed property or in the Disputed Claims Reserve established pursuant to the  
6 Plan are uncertain. If the reserves are treated as a grantor trust for which the creditor beneficiaries are treated as  
7 grantors, the creditor beneficiaries would be subject to current taxation on the income generated by such reserves.

8 **c) Withholding**

9 The Disbursing Agent appointed under the Plan will withhold from payments made to creditors pursuant to the  
10 Plan any amounts required by law to be withheld. In order to assist that withholding process, creditors may be required  
11 to provide general tax information to the Disbursing Agent prior to receiving their distributions under the Plan.

12 **D. General Disclaimer**

13 PERSONS CONCERNED WITH THE TAX CONSEQUENCES OF THE PLAN SHOULD CONSULT  
14 THEIR OWN ACCOUNTANTS, ATTORNEYS AND/OR ADVISORS. THE DEBTOR MAKES THE ABOVE-  
15 NOTED DISCLOSURE OF POSSIBLE TAX CONSEQUENCES FOR THE SOLE PURPOSE OF ALERTING  
16 READERS TO TAX ISSUES THEY MAY WISH TO CONSIDER. THE DEBTOR CANNOT AND DOES NOT  
17 REPRESENT THAT THE TAX CONSEQUENCES MENTIONED ABOVE ARE COMPLETELY ACCURATE  
18 BECAUSE, AMONG OTHER THINGS, THE TAX LAW EMBODIES MANY COMPLICATED RULES THAT  
19 MAKE IT DIFFICULT TO PROVIDE ANY ASSURANCE AS TO THE POTENTIAL TAX IMPLICATIONS OF  
20 THE PLAN.

21 **VI. RECOMMENDATION AND CONCLUSION**

22 The Debtor believes that confirmation and implementation of the Plan are preferable to all other available and  
23 feasible alternatives because under the Plan the Reorganized Debtor -- which is familiar with the Debtor's business  
24 operations, the Disputed Claims and remaining assets -- will complete the liquidation. Accordingly, the Debtor believes  
25 that confirmation of the Plan will provide for a more favorable liquidation of assets and an earlier distribution to holders  
26 of Claims than would the appointment of a chapter 7 trustee who is unfamiliar with the Bankruptcy Case. The Debtor  
27 thus urges holders of impaired Claims and Equity Interests to vote to accept the Plan by so indicating on their ballots and  
28 returning them as specified in this Disclosure Statement and on their ballots.

DATED: June 13, 2001

AUREAL INC.

/s/ Steve Mitchell

Steve Mitchell  
Chief Operating Officer

Presented by:

HENNIGAN, BENNETT & DORMAN

/s/ Sidney P. Levinson

Sidney P. Levinson  
Reorganization Counsel for Debtor  
And Debtor in Possession

**EXHIBIT A**

**PLAN OF REORGANIZATION**

1 BRUCE BENNETT (SBN 105430)  
MICHAEL MORRIS (SBN 89842)  
2 SIDNEY P. LEVINSON (SBN 139419)  
HENNIGAN, BENNETT & DORMAN  
3 601 South Figueroa Street, Suite 3300  
Los Angeles, California 90017  
4 Telephone (213) 694-1200  
Facsimile (213) 694-1234

5  
6 Reorganization Counsel for  
Debtor and Debtor in Possession

7 UNITED STATES BANKRUPTCY COURT  
8  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10  
11 OAKLAND DIVISION

11 In re AUREAL INC., ) Case No.00-42104-T11  
d/b/a SILO.COM, f/k/a AUREAL SEMICONDUCTOR, )  
12 INC., f/k/a MEDIA VISION TECHNOLOGY, INC., ) (Chapter 11)  
a Delaware corporation, )  
13 ) **DEBTOR'S SECOND AMENDED PLAN OF**  
14 ) **REORGANIZATION**  
15 Debtor. ) Confirmation Hearing  
16 ) Date: July 19, 2001  
17 ) Time: 3:00 p.m.  
18 ) Place: Courtroom 201  
19 ) 1300 Clay Street  
20 ) Oakland, CA 94612  
21 )  
22 )  
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24 )  
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27 )  
28 )

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Exhibit 1 .....A-1

1 This Second Amended Plan of Reorganization (the "Plan") is proposed by Aural Inc., d/b/a Silo.com, f/k/a  
2 Aural Semiconductor, Inc., f/k/a Media Vision Technology, Inc. ("Aural" or the "Debtor"), pursuant to section 1121 of  
3 title 11 of the Bankruptcy Code. The Disclosure Statement for this Plan discusses the Debtor's history, business,  
4 properties, and results of operations, and contains a summary of this Plan. All holders of Claims and Equity Interests are  
5 encouraged to read this Plan and the Disclosure Statement in their entirety before voting to accept or reject this Plan.  
6 Capitalized terms not otherwise defined herein shall have the definitions set forth below.

7  
8 **ARTICLE I**  
9 **DEFINITIONS AND RULES OF CONSTRUCTION**

10 1.1 Definitions. In addition to such other terms as are defined in other Articles of this Plan, the following  
11 terms have the respective meanings specified below, unless the context otherwise requires:

12 1. "Administrative Claim" means any Claim under sections 503(b) and 507(a)(1) of the Bankruptcy  
13 Code, including, without limitation, any actual and necessary expenses of preserving the estate of the Debtor, any actual  
14 and necessary expenses of operating the business of the Debtor, all compensation and reimbursement of expenses  
15 allowed by the Bankruptcy Court under section 330 of the Bankruptcy Code, and any fees or charges assessed against the  
16 estate of the Debtor under section 1930 of title 28 of the United States Code.

17 2. "Administrative Tax Claim" means an Administrative Claim held by a governmental unit for  
18 taxes (and for interest and/or penalties related to such taxes) for any tax year or period from, or any portion of which  
19 occurs or falls within the period from, the Petition Date through and including the Effective Date.

20 3. "Affiliate" means an affiliate as defined in section 101(2) of the Bankruptcy Code. The Debtor's  
21 Affiliates include Aural Limited and Crystal Rivers Engineering, Inc.

22 4. "All Notices List" means the Persons who have, following the mailing of the Notice of Effective  
23 Date, Filed and served on the Reorganized Debtor and Reorganization Counsel a request for special notice requesting  
24 service of all notices in the Bankruptcy Case required by the Plan to be served on parties in interest following the  
25 Effective Date. For a period of thirty (30) days following the mailing of the Notice of Effective Date, the All Notices  
26 List shall also include those Persons who previously had Filed and served a request for special notice pursuant to the  
27 Bankruptcy Rules. Thereafter, those Persons who have not affirmatively requested that they be continued on the All  
28 Notices List after the Effective Date shall be deleted from the All Notices List.

5. "Allowed Claim" means any Claim against the Debtor to the extent that: (a)(i) a proof of such  
claim was timely Filed, or (ii) is deemed timely Filed under applicable law or by reason of an order of the Bankruptcy  
Court; and (b)(i) a Claim as to which no objection to the allowance thereof has been interposed within the applicable  
period of limitation fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules or the Confirmation Order, or (ii) as  
to which an objection has been interposed and such Claim has been allowed in whole or in part by a Final Order. An  
"Allowed \_\_\_\_\_ Claim" means an Allowed Claim of a particular type or class, such as an Allowed Class 1 Claim or an  
Allowed Unsecured Claim.

6. "Asset Purchase Agreement" means that certain Asset Purchase Agreement, dated October 31,  
2000, between the Debtor and Creative Technology, Ltd., and all of the documents and instruments relating thereto as  
amended from time to time.

7. "Available Cash" means all Cash of the Estate, other than amounts contained, pursuant to  
Sections 4.3.c, 5.3 and 5.4 of this Plan, in reserve on account of Disputed Claims, unpaid Administrative Claims  
(including amounts in the Professional Fee Reserve), Priority Tax Claims, and Post-Effective Date Claims, whether  
deposited in an account of the Debtor pursuant to the Order Approving Centralized Cash Management Systems, Use of  
Existing Bank Accounts and Business Forms, and Current Investment Practices, entered by the Bankruptcy Court on  
April 7, 2000, or otherwise, including, without limitation, any interest earned on all Cash held by the Estate.

8. "Ballot" means the form or forms on which is to be indicated the acceptance or rejection of the  
Plan and which are distributed to holders of impaired Claims and impaired Equity Interests entitled to vote on the Plan.



1                   9.    “Ballot Date” means the date set by the Bankruptcy Court by which all completed Ballots must be  
2 received.

3                   10. “Bankruptcy Code” means title 11 of the United States Code, as amended from time to time, as  
4 applicable to the Chapter 11 Case.

5                   11. “Bankruptcy Court” means the United States Bankruptcy Court for the Northern District of  
6 California, Oakland Division, or such other court having jurisdiction over the Chapter 11 Case.

7                   12. “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, as amended from time  
8 to time, as applicable to the Chapter 11 Case, including the Local Rules of the Bankruptcy Court.

9                   13. “Business Day” means any day other than a Saturday, Sunday or a “legal holiday” as defined in  
10 Bankruptcy Rule 9006(a).

11                   14. “Cash” means lawful currency of the United States of America.

12                   15. “Chapter 11 Case” means the case under chapter 11 of the Bankruptcy Code commenced by the  
13 Debtor, entitled In re Aureal Inc., d/b/a Silo.com, f/k/a Aureal Semiconductor, Inc., f/k/a Media Vision Technology, Inc.,  
14 Case No. 00-42104-T11 currently pending in the Bankruptcy Court.

15                   16. “Claim” means: (a) any right to payment from the Debtor, whether or not such right is reduced  
16 to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable,  
17 secured, or unsecured, known or unknown; or (b) any right to an equitable remedy for breach of performance if such  
18 breach gives rise to a right of payment from the Debtor, whether or not such right to an equitable remedy is reduced to  
19 judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

20                   17. “Class” means one of the classes of Claims or Equity Interests established under Article II  
21 pursuant to section 1122 of the Bankruptcy Code.

22                   18. “Committee” means the statutory committee of unsecured creditors appointed by the United  
23 States Trustee in the Chapter 11 Case pursuant to section 1102 of the Bankruptcy Code.

24                   19. “Committee Counsel” means McCutchen, Doyle, Brown & Enersen, LLP, Three Embarcadero  
25 Center, Suite 1800, San Francisco, California 94111, Attn: Randy Michelson, Esq., or its successors.

26                   20. “Confirmation Date” means the date on which the Clerk of the Bankruptcy Court enters the  
27 Confirmation Order on the docket.

28                   21. “Confirmation Hearing” means the hearing held pursuant to Bankruptcy Rule 3020(b), including  
any continuances thereof, at which the Bankruptcy Court will consider confirmation of the Plan.

                  22. “Confirmation Order” means the order of the Bankruptcy Court confirming the Plan pursuant to  
section 1129 of the Bankruptcy Code.

                  23. “Convenience Claim” means all general Unsecured Claims in an amount of \$10,000 or less,  
after aggregation of all of the Allowed Unsecured Claims asserted by the holder of such Claims (other than Claims  
acquired by assignment, which Claims shall be aggregated as if still held by the original claimant). Notwithstanding the  
foregoing, a Claim that would otherwise be excluded from the definition of a Convenience Claim may, by the timely  
election of the holder of such claim as set forth on the Ballot.

                  24. “Creative” means Creative Technology Ltd., or its successor.

                  25. “Creative Stock” means the 208,079 shares of common stock, par value \$0.25 Singapore dollars  
per share, that were issued to the Debtor by Creative in accordance with the Asset Purchase Agreement.

1           26. "Debtor" means Aural Inc., a Delaware corporation, formerly known as Aural Semiconductor, Inc., formerly known as Media Vision Technology, Inc., and doing business as Silo.com.

2           27. "Debtor in Possession" means the Debtor, when acting in its capacity as debtor in possession  
3 prior to the Effective Date pursuant to section 1107(a) of the Bankruptcy Code.

4           28. "Disbursing Agent" means any entity acting in its capacity as a disbursing agent or successor  
5 disbursing agent under Section 5.5 of the Plan.

6           29. "Disclosure Statement" means the disclosure statement relating to the Plan, including all exhibits  
7 and schedules thereto, as may be amended, modified or superceded that is approved by the Bankruptcy Court pursuant to  
8 section 1125 of the Bankruptcy Code.

9           30. "Disputed Claim" means any Claim, including, without limitation, an Administrative Claim and  
10 Priority Tax Claim, against the Debtor, to the extent the allowance of which is the subject of a timely objection or request  
11 for estimation (with respect to voting) in accordance with the Bankruptcy Code, the Plan, the Bankruptcy Rules, and/or  
12 the Confirmation Order, or is otherwise disputed in accordance with applicable law, which objection, request for  
13 estimation (with respect to voting) or dispute has not been withdrawn or determined by a Final Order.

14           31. "Effective Date" means the first Business Day: (i) that is at least twenty (20) Business Days after  
15 the Confirmation Date; and (ii) on which no stay of the Confirmation Order is in effect.

16           32. "Entity" means an individual, a corporation, a general partnership, a limited partnership, a  
17 limited liability company, a limited liability partnership, an association, a joint stock company, a joint venture, an estate,  
18 a trust, an unincorporated organization, a government or any subdivision thereof, or any other entity.

19           33. "Equity Interest" means any equity interest in the Debtor of any kind or nature, including,  
20 without limitation, all common stock interests and membership interests, and any option, warrant or other agreement  
21 requiring the issuance of or granting the right to acquire any such equity interest.

22           34. "Estate" means the estate created in the Bankruptcy Case on the Petition Date pursuant to  
23 section 541 of the Code, and includes all the property, proceeds, profits, and rents resulting or derived therefrom that are  
24 acquired (a) by the Estate or by the Debtor from the Petition Date to the Effective Date, and (b) by the Estate or the  
25 Reorganized Debtor on or after the Effective Date.

26           35. "Examiner" means the person appointed by the Office of the United States Trustee pursuant to  
27 the Court's order entered on May 8, 2001, to determine the timing and manner of the sale of the Creative Stock.

28           36. "Filed" means properly filed with the Bankruptcy Court in the Bankruptcy Case, as reflected on  
the official docket of the Bankruptcy Court.

          37. "Final Distribution Date" means the first Business Day after the date on which (i) all non-Cash  
assets of the Estate have been liquidated or abandoned, (ii) all Disputed Claims (including disputed Administrative  
Claims and Priority Tax Claims) have been resolved by Final Order or disallowed, (iii) all Post-Effective Date Claims  
have been paid in full, and (iv) the Bankruptcy Case has been fully administered.

          38. "Final Fee Applications" shall have the meaning described in Section 2.2.c.ii hereof.

          39. "Final Order" means an order or judgment of the Bankruptcy Court that has not been reversed,  
stayed, modified or amended, that is in full force and effect, and as to which: (a) the time to appeal, petition for  
*certiorari*, or move for reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other  
proceedings for reargument or rehearing shall then be pending; or (b) in the event that an appeal, *writ of certiorari*, or  
reargument or rehearing thereof has been sought, such order shall have been determined by the highest court to which  
such order was appealed, or *certiorari*, reargument or rehearing shall have been denied, and the time to take any further  
appeal, petition for *certiorari* or move for reargument or rehearing shall have expired; provided, however, that the  
possibility that a motion under Rules 59 or 60 of the Federal Rules of Civil Procedure, or any analogous rule under the

1 Bankruptcy Rules, may be but has not then been filed with respect to such order shall not cause such order not to be a  
2 Final Order.

3 40. "First Omnibus Objection" means the "First Omnibus Objection to Claims (Duplicate Claims,  
4 Cured Claims, Reclassified Claims, No Basis Claims, Equity Claims, Amended Claims, and Late Claims)" originally  
5 filed by the Debtor in the Bankruptcy Court on or about December 7, 2000, as amended on December 11, 2000, as re-  
6 noticed on February 2, 2001.

7 41. "Interest" means the interest accrued at the legal rate, meaning the federal judgment rate, on the  
8 applicable Claim from the Petition Date to the date of payment of the Claim.

9 42. "Lenders" means various entities related to, affiliated with, or managed by Oaktree Capital  
10 Management LLC, specifically OCM Opportunities Fund II, L.P., TCW Special Credits Fund IIIb, TCW Special Credits  
11 Trust, TCW Special Credits Trust IIIb, The Board of Trustees of the Delaware State Employees' Retirement Fund,  
12 Weyerhaeuser Company Master Retirement Trust, and Columbia/HCA Master Retirement Trust, or their successors  
13 and/or assigns.

14 43. "Lenders' Claims" means all Claims asserted by the Lenders, including, without limitation, all  
15 Administrative Claims, Secured Claims, Priority Claims, and Unsecured Claims asserted against the Debtor.

16 44. "Lien" means any charge against, encumbrance upon or other interest in property, the purpose of  
17 which is to secure payment of a debt or performance of an obligation.

18 45. "Notice of Effective Date" means the notice to be mailed by the Reorganized Debtor to the All  
19 Notices List and all holders of Claims against and Equity Interests in the Debtor pursuant to Section 9.4 hereof, notifying  
20 them of: (a) entry of the Confirmation Order; (b) the occurrence of the Effective Date; (c) the assumption and rejection  
21 of executory contracts and unexpired leases as provided in this Plan and the related bar date for Claims relating to any  
22 rejected executory contracts and unexpired leases; (d) the bar date for filing Administrative Claims arising from and after  
23 the Petition Date through the Effective Date as provided in Section 2.2.c hereof; and (e) the procedure to be included on  
24 the All Notices List.

25 46. "Other Secured Claim" means any Secured Claim, other than the Lenders' Secured Claim.

26 47. "Other Priority Claims" means Claims entitled to priority under section 507(a) of the  
27 Bankruptcy Code, except for Administrative Claims and Priority Tax Claims.

28 48. "Person" means any individual, corporation, general partnership, limited partnership,  
association, joint stock company, joint venture, estate, trust, government or any political subdivision, governmental unit,  
official committee appointed by the United States Trustee, unofficial committee of creditors, or other entity.

49. "Petition Date" means April 5, 2000.

50. "Plan" means this chapter 11 plan of reorganization (including all exhibits annexed hereto),  
either in its present form or as it may be altered, amended, or modified from time to time in accordance with the Plan, the  
Bankruptcy Code and the Bankruptcy Rules.

51. "Post-Effective Date Claims" mean: (a) the actual and necessary expenses including, without  
limitation, wages, salaries, fees, payroll-related taxes, and other costs accrued on or after the Effective Date with respect  
to employees, temporary employees, independent contractors, the Disbursing Agent, and Professional Persons engaged  
by the Reorganized Debtor, the Committee, or the Disbursing Agent to administer the Estate and conclude the  
Bankruptcy Case; (b) the actual and necessary expenses of the Committee and Committee Counsel accrued on or after  
the Effective Date; (c) any sales taxes attributable to the Estate and accrued on or after the Effective Date; and (d) all fees  
that accrue after the Effective Date that are payable pursuant to Section 4.8 hereof to the United States Trustee under 28  
U.S.C. § 1930(a)(6).

52. "Priority Tax Claim" means a Claim entitled to priority under section 507(a)(8) of the  
Bankruptcy Code.

1           53.    “Professional Fee Reserve” means a Cash reserve to be used for the payment of unpaid  
2 professional fees incurred by the Estate prior to the Effective Date, and payment of professional fees incurred by the  
3 Reorganized Debtor or the Committee after the Effective Date.

4           54.    “Professional Person” means (a) a Person retained or to be compensated pursuant to sections  
5 326, 327, 328, 330, 331, 503(b)(2), 1103 and/or 1107(b) of the Bankruptcy Code, or (b) an accountant, attorney,  
6 appraiser or other professional employed by the Reorganized Debtor or the Committee on or after the Effective Date.

7           55.    “Pro Rata” means proportionately so that the ratio of (a) cumulative amount of all funds  
8 distributed or to be distributed on account of a particular Allowed Claim to (b) the amount of such Allowed Claim is the  
9 same as the ratio of (x) the cumulative amount of all funds distributed or to be distributed on account of all Allowed  
10 Claims in a particular Class to (y) the amount of all Allowed Claims of that Class.

11           56.    “Reorganized Debtor” means the Debtor as reorganized pursuant to the Plan on and after the  
12 Effective Date.

13           57.    “Reorganization Counsel” means Hennigan, Bennett & Dorman, 601 S. Figueroa Street, Suite  
14 3300, Los Angeles, California 90017, Attn: Sidney P. Levinson, or its successors.

15           58.    “Schedules” means the schedules of assets and liabilities and the statement of financial affairs  
16 filed by the Debtor as required by section 521 of the Bankruptcy Code, and all amendments and supplements thereto.

17           59.    “Secured Claim” means (unless otherwise provided herein) a Claim against the Debtor to the  
18 extent of the value, as determined in accordance with section 506(a) of the Bankruptcy Code, of any interest in property  
19 of the Estate securing such Claim.

20           60.    “Secured Tax Claim” means every Claim of a governmental unit for taxes which, by operation  
21 of applicable non-bankruptcy law, is a Secured Claim.

22           61.    “Unsecured Claim” means any Claim that is not a Secured Claim, Administrative Claim, Priority  
23 Tax Claim, Other Priority Claim, Post-Effective Date Claim or Other Secured Claim.

24           1.2    Interpretation, Rules of Construction, and Computation of Time.

25           a.    Any term used in this Plan that is not defined in this Plan, either in this Article I or elsewhere, but that  
26 is used in the Bankruptcy Code or the Bankruptcy Rules, has the meaning assigned to that term in the Bankruptcy Code  
27 or the Bankruptcy Rules, as applicable, unless the context requires otherwise;

28           b.    Whenever from the context it is appropriate, each term, whether stated in the singular or the plural,  
shall include both the singular and the plural;

          c.    Any reference in the Plan to a contract, instrument, release or other agreement or document being in a  
particular form or on particular terms and conditions means that such document shall be substantially in such form or  
substantially on such terms and conditions, but if there exists any inconsistency between a summary of or reference to  
any document in the Plan or Confirmation Order and the document itself, the terms of the document as of the Effective  
Date shall control;

          d.    Any reference in the Plan to an existing document or exhibit Filed or to be Filed means such document  
or exhibit as it may have been or may be amended, modified or supplemented through and including the Confirmation  
Date;

          e.    Unless otherwise specified in a particular reference, all references in the Plan to “Section,” “Articles,”  
and “Exhibits” are references to Sections, Articles, and Exhibits of or to the Plan;

          f.    The words “herein,” “hereof,” “hereto,” “hereunder” and other words of similar import refer to the  
Plan in its entirety rather than to only a particular portion of the Plan;

- 1 g. All exhibits to this Plan are incorporated herein, regardless of when those exhibits are Filed;
- 2 h. Wherever the terms of the Confirmation Order or the Plan contain a specific clause regarding a  
3 particular provision, such specific clause shall control over any general provision; provided, however, that the whole of  
4 each of the Confirmation Order and the Plan shall be taken together to give effect to every part thereof, if reasonably  
5 practicable;
- 6 i. The rules of construction set forth in Bankruptcy Code § 102 shall apply; and
- 7 j. In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy  
8 Rule 9006(a) shall apply. Any reference to "day" or "days" shall mean calendar days.

9 **ARTICLE II**  
10 **DESIGNATION AND TREATMENT OF CLASSES**  
11 **OF CLAIMS AND EQUITY INTERESTS**

12 2.1 General Provisions. The following is a designation of the Classes of Claims and Equity Interests under  
13 this Plan. Administrative Claims and Priority Tax Claims have not been classified and are excluded from the following  
14 Classes in accordance with section 1123(a)(1) of the Bankruptcy Code. A Claim or Equity Interest is classified in a  
15 particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and is  
16 classified in a different Class to the extent that any remainder of the Claim or Equity Interest qualifies within the  
17 description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that the Claim or  
18 Equity Interest is an Allowed Claim or Allowed Equity Interest in that Class and has not been paid, released, or  
19 otherwise satisfied before the Effective Date.

20 2.2 Unclassified Claims.

21 a. Administrative Claims. Subject to the bar date provisions of Section 2.2.c hereof, and except  
22 to the extent that the holder of an Allowed Administrative Claim agrees to a different treatment, the Disbursing Agent  
23 shall pay to each holder of an Allowed Administrative Claim, on account of and in full satisfaction of the Allowed  
24 Administrative Claim, Cash in an amount equal to such Allowed Administrative Claim on the later of: (i) the Effective  
25 Date; and (ii) the date such Administrative Claim becomes an Allowed Administrative Claim (or as soon thereafter as is  
26 practicable).

27 (i) Compensation and Reimbursement Claims. Notwithstanding the foregoing, all  
28 Entities that are awarded compensation or reimbursement of expenses by the Bankruptcy Court in accordance  
with section 330 or 331 of the Bankruptcy Code or that are entitled to the priorities established pursuant to  
section 503(b)(2), 503(b)(3), 503(b)(4) or 503(b)(5) of the Bankruptcy Code, shall be paid in full, in Cash, the  
amounts allowed by the Bankruptcy Court: (a) on or as soon as reasonably practicable following the later to  
occur of (i) the Effective Date, and (ii) the date on which the Bankruptcy Court order allowing such Claim  
becomes a Final Order; or (b) upon such other terms as may be mutually agreed upon between such holder of an  
Allowed Administrative Claim and the Debtor.

(ii) Payment of Statutory Fees. On or before the Effective Date, all fees payable  
pursuant to 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be  
paid in full, in Cash in the amount of such Allowed Administrative Claim.

b. Priority Tax Claims. Except to the extent that the holder of an Allowed Priority Tax Claim  
agrees to a different treatment, the Disbursing Agent shall pay to each holder of an Allowed Priority Tax Claim, on  
account of and in full satisfaction of such Allowed Priority Tax Claim, Cash in an amount equal to such Allowed Priority  
Tax Claim, including the payment of interest at the applicable legal rate from the Petition Date, on the later of: (i) the  
Effective Date; and (ii) the date such Priority Tax Claim becomes an Allowed Priority Tax Claim (or as soon thereafter  
as is practicable).

1 c. Bar Date for Administrative Claims.

2 (i) General Provisions. All requests for payment of Administrative Claims, other than  
3 Claims by Professional Persons, must be filed with the Bankruptcy Court and served upon the Reorganized  
4 Debtor, Reorganization Counsel and Committee Counsel no later than thirty (30) days after the mailing of  
5 Notice of the Effective Date. Holders of Administrative Claims that do not file such requests by such bar date  
6 shall be forever barred from asserting such Claims against the Debtor or any of its property. Notwithstanding  
7 the foregoing, nothing provided herein shall prevent the Disbursing Agent, with the consent of the Reorganized  
8 Debtor and the Committee, from paying any Administrative Claim that was not timely Filed but that was  
9 incurred in the ordinary course of business by the Debtor and is not disputed as to amount or liability.

10 (ii) Professional Persons. All Professional Persons or other Persons requesting  
11 compensation or reimbursement of expenses pursuant to sections 327, 328, 330, 331, 503(b) and 1103 of the  
12 Bankruptcy Code for services rendered before the Effective Date (including, without limitation, any  
13 compensation requested by any Professional Persons or other Persons or any other entity for making a  
14 substantial contribution in the Chapter 11 Case) shall File with the Bankruptcy Court and serve on the  
15 Reorganized Debtor, Reorganization Counsel, the United States Trustee, and Committee Counsel an application  
16 for final allowance of compensation and reimbursement of expenses no later than forty-five (45) days after the  
17 mailing of the Notice of the Effective Date. Objections to such applications of Professional Persons or other  
18 Persons for compensation or reimbursement of expenses must be filed and served on the Professional Person or  
19 other Person that is the subject of the objection, the Reorganized Debtor, Reorganization Counsel, the U.S.  
20 Trustee, and Committee Counsel no later than sixty (60) days after the mailing of the Notice of the Effective  
21 Date, unless the Professional Person or other Person that is the subject of the objection agrees in writing to  
22 extend the objection deadline. The Bankruptcy Court shall disallow any request for payment of an  
23 Administrative Claim filed by any Professional Person not employed pursuant to an order of the Bankruptcy  
24 Court.

25 2.3 Classified Claims and Equity Interests.

26 a. Class 1: Secured Claims. Class 1 consists of all Allowed Secured Claims against the Debtor  
27 that have not been paid, released, or otherwise satisfied prior to the Effective Date. Each Secured Claim in Class 1 shall  
28 be considered to be its own separate sub-class within Class 1 as set forth below. To the extent that any Class 1 Claim is  
allowed by Final Order of the Bankruptcy Court, such Claim shall be paid in Cash and in full by the Disbursing Agent on  
the later of: (a) the Effective Date; and (b) the date on which a Class 1 Claim becomes an Allowed Class 1 Claim (or as  
soon thereafter as is practicable). Notwithstanding the foregoing, the Debtor believes that, as of the date hereof, there are  
no Allowed Class 1 Claims because such Claims have been paid in full. Class 1 Claims, if any, are unimpaired under the  
Plan, and the holders of such Claims are conclusively presumed to have accepted the Plan and are not entitled to vote to  
accept or reject the Plan.

29 i. Class 1A (the Lenders' Secured Claim). Class 1A is comprised of the Lenders'  
30 Claim arising from the Debtor's obligations under the Prepetition Credit Agreement, to the extent such  
31 obligations are secured by substantially all of the Debtor's assets.

32 ii. Class 1B (Imperial A.I. Credit Companies' Secured Claim). Class 1B is comprised  
33 of Imperial A.I. Credit Companies' Claim arising from the Debtor's obligations under an insurance premium  
34 finance agreement, to the extent such obligations are secured by the unearned premiums, if any, that would be  
35 payable in the event of cancellation of the Debtor's insurance coverage in the event of non-payment.

36 iii. Class 1C (AFCO Credit Corporation's Secured Claim). Class 1C is comprised of  
37 AFCO Credit Corporation's Claim arising from the Debtor's obligations under an insurance premium finance  
38 agreement, to the extent such obligations are secured by the unearned premiums, if any, that would be payable  
39 in the event of cancellation of the Debtor's insurance coverage in the event of non-payment.

40 iv. Class 1D (Telogy, Inc.'s Secured Claim). Class 1D is comprised of Telogy Inc.'s  
41 Claim arising from the Debtor's obligations under a Master Lease Agreement for the lease of certain  
42 engineering and testing equipment (the "Equipment"), to the extent such obligations are secured by the  
43 Equipment.

1 v. Class 1E (Minolta Business Systems' Secured Claim). Class 1E is comprised of  
2 Minolta Business Systems' Claim arising from the Debtor's obligations under two equipment lease agreements,  
3 to the extent such obligations are secured by the equipment that is the subject of the agreements.

4 b. Class 2: Other Priority Claims. Class 2 consists of all Other Priority Claims. Allowed Class 2  
5 Claims will be paid in Cash and in full (less tax withholdings where appropriate) by the Disbursing Agent on the later of:  
6 (a) the Effective Date; and (b) the date on which a Class 2 Claim becomes an Allowed Class 2 Claim (or as soon  
7 thereafter as is practicable). Class 2 is unimpaired under the Plan, and thus holders of such Claims are conclusively  
8 presumed to have accepted the Plan and are not entitled to vote to accept or reject the Plan.

9 c. Class 3: Convenience Claims. Class 3 consists of all Convenience Claims other than  
10 Convenience Claims with respect to which the holders thereof have elected to opt out of Class 3 and into Class 4 by  
11 making such election on their Ballots and returning said Ballots within the time fixed by the Bankruptcy Court. Any  
12 other holder of an Allowed Unsecured Claim which limits and reduces its Allowed Unsecured Claim to only such portion  
13 of its Claim as meets the criteria to be a Convenience Claim may elect to opt out of Class 4 and into Class 3 by electing  
14 and so reducing its Claim on the Ballot within the time fixed by the Bankruptcy Court for completing and returning  
15 Ballots. A creditor participating in Class 3 shall not be entitled to any distribution under Class 4. Class 3 is impaired  
16 under the Plan. Allowed Class 3 Claims shall be paid in Cash eighty percent (80%) of the amount of such Allowed Class  
17 3 Claims by the Disbursing Agent on the later of: (a) the Effective Date; and (b) the date on which a Class 3 Claim  
18 becomes an Allowed Class 3 Claim.

19 d. Class 4: General Unsecured Claims. Class 4 consists of all other Unsecured Claims against  
20 the Debtor not otherwise classified in any other Class hereof, including Claims arising from the rejection of executory  
21 contracts and unexpired leases pursuant to Article III hereof. Class 4 is impaired under the Plan. Subject to the  
22 limitations contained in Article V hereof, holders of Allowed Class 4 Claims will share Pro Rata in distributions of  
23 Available Cash from the Estate after payment in full, or reserve for the payment in full, of Post-Effective Date Claims,  
24 Administrative Claims, Priority Tax Claims and Allowed Claims in Classes 1, 2 and 3. Pro Rata distributions shall  
25 include Interest on each Allowed Class 4 Claim.

26 e. Class 5: Interests in the Debtor. Class 5 consists of all Equity Interests in the Debtor arising  
27 from the ownership of common stock in the Debtor. Class 5 is impaired under the Plan, and the holder of any Allowed  
28 Class 5 Interest is entitled to vote to accept or reject the Plan. There shall be no distribution under the Plan to holders of  
Class 5 Interest unless and until all Allowed Administrative Claims, Allowed Priority Tax Claims, Post-Effective Date  
Claims, and Allowed Claims in Classes 1, 2, 3 and 4 are paid in full, including with respect to Class 4, the payment of  
Interest. At such time, holders of Equity Interests shall receive a Pro Rata distribution of any remaining Available Cash  
that they would have otherwise received under applicable law in the event of a liquidation of the Debtor.

### 19 ARTICLE III 20 TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

#### 21 3.1 Rejection of Executory Contracts and Unexpired Leases.

22 a. Rejections Generally. As of the Effective Date, the following executory contracts and  
23 unexpired leases shall be rejected to the extent, if any, they constitute executory contracts or unexpired leases of the  
24 Debtor: (i) each executory contract or unexpired lease of the Debtor that has not previously been assumed, assumed and  
25 assigned or rejected by Final Order of the Bankruptcy Court; (ii) each executory contract or unexpired lease of the  
26 Debtor that is not the subject of a motion Filed by the Debtor prior to the Effective Date to assume or assume and assign  
27 or reject; (iii) each executory contract or unexpired lease of the Debtor that has not expired by its own terms on or prior  
28 to the Effective Date; and (iv) each executory contract or unexpired lease of the Debtor that is not assumed under Section  
3.2 hereof.

29 b. Approval of Rejections. The Confirmation Order shall constitute an order of the Bankruptcy  
30 Court approving the rejection of the executory contracts and unexpired leases as provided herein pursuant to sections  
31 365(a) and 1123(b)(2) of the Bankruptcy Code, as of the Effective Date. The Confirmation Order also shall constitute a  
32 finding by the Bankruptcy Court that each such rejected executory contract or unexpired lease is burdensome and that the  
33 rejection thereof is in the best interests of the Debtor, its estate, and all parties in interest in the Chapter 11 Case.

1           c.       Objections to Rejection of Executory Contracts and Unexpired Leases. Any party in interest  
2 wishing to object to the rejection of an executory contract or unexpired lease identified for rejection as provided for  
3 herein shall, within the same deadline and in the same manner established for Filing objections to confirmation of the  
4 Plan, File and serve on the Debtor, Reorganization Counsel, the U.S. Trustee, and Committee Counsel any objection to  
5 such rejection. Failure to File any such objection within the foregoing time period shall constitute consent to the  
6 rejection to the extent that such contract or lease is an executory contract or unexpired lease. Failure to File a timely  
7 objection shall not constitute a waiver of any claims, rights or damages that a party may hold as a result of any such  
8 rejection, so long as such claims are asserted timely under Section 3.1.d hereof.

9           d.       Bar Date for Rejection Damages. If the rejection of an executory contract or unexpired lease  
10 pursuant to this Article III gives rise to a Claim by the other party or parties to such contract or lease, such Claim, to the  
11 extent that it is timely Filed and is an Allowed Claim, shall be classified in Class 3 or Class 4 pursuant to Section 2.3  
12 hereof. A proof of Claim arising from the rejection of executory contracts or unexpired leases as provided herein must  
13 be filed with the Bankruptcy Court and served on the Reorganized Debtor and Reorganization Counsel no later than  
14 thirty (30) days after the mailing of the Notice of Effective Date; provided, however, that in the event a claimant has  
15 previously filed a proof of Claim based on the rejection of an executory contract or unexpired lease, no further proof of  
16 Claim needs to be Filed. Any Claims for which a proof of Claim has not been Filed and served within such time will be  
17 forever barred from assertion, and shall not be enforceable against the Debtor or its estate, assets, properties, or interests  
18 in property.

19           3.2       Assumption of Executory Contracts and Unexpired Leases.

20           a.       Assumption Generally. Except as otherwise provided in the Plan or any Final Order of the  
21 Bankruptcy Court, on the Effective Date, any executory contracts or unexpired leases of the Debtor set forth on Exhibit 1  
22 of the Plan shall be deemed to have been assumed by the Debtor as of the Effective Date pursuant to sections 365 and  
23 1123(b)(2) of the Bankruptcy Code. Each executory contract and unexpired lease identified on Exhibit 1 shall be  
24 assumed only to the extent, if any, that it constitutes an executory contract or unexpired lease on the Effective Date, and  
25 the listing of such contract or lease on Exhibit 1 shall not constitute an admission by the Debtor, Debtor in Possession,  
26 the Estate or the Reorganized Debtor that such contract or lease is an executory contract or unexpired lease or that the  
27 Debtor, the Debtor in Possession, the Reorganized Debtor or the Estate has any liability thereunder.

28           b.       Approval of Assumptions and Assignments. The Confirmation Order shall constitute an order  
of the Bankruptcy Court approving the assumption or assumption and assignment of the executory contracts and  
unexpired leases as provided for herein, pursuant to section 365 of the Bankruptcy Code, as of the Effective Date. With  
respect to each such executory contract or unexpired lease assumed by the Debtor, any monetary amounts required as  
cure payments shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the cure amount,  
as listed on Exhibit 1, in Available Cash on the Effective Date or upon such other terms as the parties to such executory  
contracts or unexpired leases otherwise may agree. In the event of a dispute regarding (i) the amount of any cure  
payment, (ii) the ability of the Debtor or any assignee to provide "adequate assurance of future performance" (within the  
meaning of section 365 of the Bankruptcy Code), or (iii) any other matter pertaining to assumption, the cure payments  
required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving such  
dispute.

          c.       Objections to Assumption. Any party in interest wishing to object to the assumption or  
assumption and assignment of an executory contract or unexpired lease identified herein shall, within the same deadline  
and in the same manner established for Filing objections to confirmation of the Plan, File and serve on the Debtor,  
Reorganization Counsel, the United States Trustee and Committee Counsel any objection to such assumption or  
assumption and assignment. Failure to file an objection within the time period set forth above by a party to such  
executory contract or unexpired lease shall constitute consent to the assumption or assumption and assignment, an  
acknowledgement that there are no defaults under the executory contract or unexpired lease identified for assumption,  
except as set forth in Exhibit 1, and that the Debtor or its assignee has provided adequate assurance of future  
performance in connection with the proposed assumption or assumption and assignment.

          3.3       Limitation on Liability. Except as provided for herein, nothing in the Plan creates an obligation or  
liability on the part of the Estate, the Reorganized Debtor, or any other Person that is not currently liable on such  
obligation, with respect to any executory contract or unexpired lease.



**ARTICLE IV**  
**MEANS FOR EXECUTION AND IMPLEMENTATION OF THE PLAN**

1  
2       4.1     Revesting of Assets. On the Effective Date all assets of the Estate shall be vested in the Reorganized  
3 Debtor. Except as otherwise provided by this Plan, the Reorganized Debtor shall sell and reduce to Cash all non-Cash  
assets of the Estate and deliver such Cash to the Disbursing Agent.

4       4.2     Corporate Governance and Management of the Reorganized Debtor.

5             a.     General. On the Effective Date, except as provided herein, the management, control and  
6 operation of the Reorganized Debtor shall become the general responsibility of the Board of Directors of the  
7 Reorganized Debtor. The Reorganized Debtor shall conduct no business operations, and shall engage in no other  
8 activities, other than those set forth in the Plan, unless the Committee consents to such business operations or activities.

9             b.     Directors. As of the Effective Date, the Board of Directors of the Reorganized Debtor shall  
10 consist of the Debtor's three (3) current board members, including Richard Masson, Kenneth Liang, and Gloria Noh.  
11 Thereafter, the terms and manner of selection of the Board of Directors of the Reorganized Debtor shall be as provided  
12 in the Amended and Restated Articles of Incorporation and the Amended and Restated Bylaws.

13            c.     Amendment of Articles of Incorporation. On the Effective Date, the articles of incorporation  
14 of the Debtor shall be amended and restated to prohibit the issuance of nonvoting equity securities as required by section  
15 1123(a)(6) of the Bankruptcy Code, which amendment and restatement shall be deemed authorized and approved as of  
16 the Effective Date without further action under applicable law, regulation, order or rule, including, without limitation,  
17 any action by the stockholders of the Debtor or Reorganized Debtor.

18       4.3     Rights, Powers and Duties of the Reorganized Debtor and the Committee.

19            a.     The Reorganized Debtor shall become, on the Effective Date of the Plan, the successor to the  
20 Debtor under section 1123(a)(5) of the Bankruptcy Code and other applicable law. Except as otherwise provided in this  
21 Plan, and without prior or further authorization of the Bankruptcy Court, the Reorganized Debtor shall possess all rights  
22 and powers possessed by a trustee appointed under the Bankruptcy Code and the Committee shall possess all rights and  
23 powers possessed by a Committee appointed under the Bankruptcy Code.

24            b.     On or after the Effective Date, the Reorganized Debtor shall retain and may enforce any and  
25 all rights, causes of action, powers, privileges, licenses, and franchises of the Debtor or the Estate, including, but not  
26 limited to, all tax determinations under section 505 of the Code, and all causes of action arising under the Plan and the  
27 Bankruptcy Code, including avoiding powers and defenses to Disputed Claims arising under applicable non-bankruptcy  
28 law or under sections 502(d), 544, 545, 547, 548, 549, 550, 553, and 558 of the Bankruptcy Code (collectively, the  
"Causes of Action"), provided, however, that the Reorganized Debtor may not retain or enforce any right that is waived,  
relinquished, released, compromised or settled in accordance with this Plan. In the event that the Committee requests  
that the Reorganized Debtor pursue a Cause of Action and the Reorganized Debtor refuses to do so, the Committee shall  
be entitled to pursue such Cause of Action and shall have the same rights as those granted to the Reorganized Debtor  
herein, provided, however, that the Reorganized Debtor shall have the right to seek an order from the Bankruptcy Court  
to prevent the Committee from pursuing such Cause of Action. Notwithstanding the other provisions of this Subsection  
4.3.b, in the event that there are not sufficient funds to pay Class 3 Claims and Class 4 Claims in full, with Interest, the  
Committee shall be entitled to analyze whether to pursue Causes of Action under 11 U.S.C. § 547 and, if warranted, to  
commence such Causes of Action without further order of the Court. The proceeds of any Causes of Action shall inure  
to the benefit of the Estate and be delivered to the Disbursing Agent.

          c.     From time to time after the Effective Date, the Reorganized Debtor and the Committee may  
employ, engage the services of, and compensate other Persons (which may include employees, temporary employees or  
independent contractors) and Professional Persons (which may include professionals previously or concurrently  
employed by the Committee or the Debtor in Possession), reasonably necessary to assist the Reorganized Debtor and the  
Committee in performing their duties under this Plan without the necessity of further authorization or allowances of fees  
and expenses by the Bankruptcy Court. In the event that the Reorganized Debtor does not serve as the Disbursing Agent,  
the Disbursing Agent is not entitled to retain Professional Persons, provided, however, if the Disbursing Agent is a  
corporation or partnership, the Disbursing Agent shall be entitled to rely upon its employees or independent contractors

1 in performing its duties under this Plan without the necessity of further authorization or allowances of fees and expenses  
2 by the Bankruptcy Court. The amount of any reasonable fees and expenses ("Professional Fees") incurred by the  
3 Reorganized Debtor or the Committee on account of the employment of such Persons or Professional Persons on or after  
4 the Effective Date shall be paid in Cash by the Disbursing Agent from the Professional Fee Reserve without further order  
5 of the Bankruptcy Court, provided that the Reorganized Debtor or the Committee shall be provided with statements of  
6 any fees and expenses ("Fee Statement") incurred by such Persons or Professional Persons and shall have fifteen (15)  
7 days after receiving a Fee Statement, to notify the Person or Professional Person of any objection, in whole or in part, to  
8 any fees and expenses that are not reasonable. To the extent the objection relates only to part of the Fee Statement, the  
9 balance of the amount requested in the Fee Statement shall be paid. With respect to any portion of the Fee Statement that  
10 is subject to a timely filed objection, the Bankruptcy Court shall retain jurisdiction to determine whether the fees and  
11 expenses subject to such objection are reasonable.

12  
13 d. Notwithstanding any provision of the Bankruptcy Code, the Reorganized Debtor, and the  
14 Committee where indicated, shall have the following powers and duties with respect to the sale, lease or other disposition  
15 of assets, the compromises and settlements of Claims, causes of action and controversies and other activities and  
16 transactions undertaken in connection with the administration of the Estate:

17 i. The Reorganized Debtor may, in its sole and absolute discretion, sell or dispose of  
18 any asset or compromise any Claim against the Estate or defense or cause of action by the Estate or  
19 Reorganized Debtor without notice and without a hearing if the Reorganized Debtor determines, in the exercise  
20 of its reasonable judgment, that such asset has a value of \$50,000 or less, or such Claim has been Filed or  
21 Scheduled in the amount of \$50,000 or less; provided, however, that if the intended transaction involves a  
22 specific lien upon or interest in the subject matter of the Claim or asset, twenty (20) days written notice of the  
23 contemplated action shall be Filed with the Bankruptcy Court and served on the Persons claiming such an  
24 interest and Committee Counsel.

25 ii. As to any transaction (other than the sale of the Creative Stock, which is addressed in  
26 Section 4.4 herein) involving an asset that the Reorganized Debtor determines, in the exercise of its reasonable  
27 judgment, has a value of, or any Claim Filed or Scheduled in the amount of, more than \$50,000 (or, with respect  
28 to any settlement of any Causes of Action regardless of the value of such Causes of Action), the Reorganized  
Debtor: (a) shall consult with, and seek the approval of, the Committee at least ten (10) days prior to Filing a  
notice of such transaction; and (b) shall File and give twenty (20) days written notice of the intended transaction  
to the Committee Counsel and to those Persons with a specific interest in or lien upon the subject of the claim or  
asset; provided, however, that consultation with and approval by the Committee as to any such transaction shall  
not be required in the event the Cash in the Reserve (after payment in full of Administrative Claims, Priority  
Tax Claims, Effective Date Claims, Class 1 Claims, Class 2 Claims and Class 3 Claims) exceeds the aggregate  
amount of the outstanding Claims of the Class 4 claimants plus Interest. If no objection is timely Filed and  
served upon the Reorganized Debtor, then the Reorganized Debtor may proceed to consummate the intended  
transaction without further notice upon entry of an order by the Bankruptcy Court. If an objection is timely  
filed by the Committee or by those Persons with a specific interest in a lien upon the subject of the claim or  
asset, then the Reorganized Debtor shall seek approval by the Bankruptcy Court of the intended transaction.

29 e. Except as otherwise provided in the Plan, the Reorganized Debtor (or, if, pursuant to Section  
30 4.2, the Committee is so authorized) may pursue or decline to pursue or settle and compromise, as appropriate, any and  
31 all rights of action, causes of action, counterclaims and defenses to Claims held by the Estate. The Estate may, but shall  
32 not be required to, set off or recoup against any Claim and distributions to be made pursuant to the Plan in respect of  
33 such Claim, any counterclaims, setoffs or recoupments of any nature whatsoever the Estate may have against the  
34 claimant, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by  
35 the Estate, the Committee or the Reorganized Debtor of any such cause of action, setoff or recoupment.

36 f. Consistent with the Plan, the Reorganized Debtor may pay or otherwise compromise any  
37 debts, claims, costs, liabilities, expenses and other obligations and charges of the Estate, including, without limitation,  
38 interest, taxes, assessments, and other charges, public or private, of every kind and nature, including the claims, costs,  
charges, expenses and liabilities arising out of, and associated with, the execution, administration or operation of the  
Estate.

1 g. The Reorganized Debtor shall carry insurance of the kinds and in the amounts that the  
2 Reorganized Debtor, in its reasonable business judgment, considers advisable or appropriate, at the expense of the  
3 Estate, to protect the Estate assets and the Reorganized Debtor against any liability, fixed or contingent, of whatever kind  
4 and nature whatsoever.

5 h. The Reorganized Debtor shall, subject to the limitation set forth in the Asset Purchase  
6 Agreement, sell, transfer, assign, vote and give proxies to vote any securities that are Estate assets.

7 i. The Reorganized Debtor, consistent with the Plan, may litigate, defend, object to, implead,  
8 compromise, submit to arbitration, interplead or discharge and release, with or without consideration, at the expense of  
9 the Estate, any claims against the Debtor, the Estate, the Estate assets, and the Reorganized Debtor, including Claims and  
10 Disputed Claims provided for in the Plan, and any other claims, suits or other actions, whether at law or in equity,  
11 relating to the Reorganized Debtor, the Estate, or the Debtor, or the operation or administration thereof, or any interest  
12 thereof that the Reorganized Debtor (or the Committee to the extent provided under the Plan), in its reasonable business  
13 judgment, considers advisable. In the event the Committee is authorized to pursue the Causes of Action pursuant to the  
14 Plan, then the Committee shall have the authority to undertake the actions set forth in this Subsection.

15 j. The Reorganized Debtor shall determine which books and records of the Estate should be  
16 permanently or temporarily preserved and make appropriate provision for the temporary or permanent preservation of  
17 such records, and the disposal or abandonment of books and records when, in the Reorganized Debtor's reasonable  
18 business judgment, abandonment or disposal is in the best interest of the Estate.

19 k. The Reorganized Debtor shall prepare, review, approve, consent to, or refuse to consent to  
20 any tax return for the Debtor or the Estate.

#### 21 4.4 Sale of Creative Stock.

22 a. Authorization to Sell Creative Stock. The Confirmation Order shall constitute an  
23 authorization by the Court for the Reorganized Debtor to sell the Creative Stock, to the extent not sold by the Examiner  
24 prior to the Effective Date, without further Order of the Court, subject to otherwise applicable securities laws.

25 b. Sale of Stock. After the Effective Date, the Reorganized Debtor shall sell the Creative Stock  
26 in one (1) or more transactions subject to applicable securities laws. The timing and amount of any such sales shall be  
27 determined by the Reorganized Debtor in the exercise of its reasonable business judgment, provided, however, that the  
28 Committee, after the approval of the Bankruptcy Court, may direct the timing and sale price of a percentage of the  
Creative Stock, if not sold by the Reorganized Debtor or the Examiner, consistent with the following schedule: (i)  
Confirmation Date - fifteen percent (15%) of the Creative Stock; (ii) Effective Date - twenty percent (20%) of the  
Creative Stock; (iii) three (3) months after the Effective Date - fifteen percent (15%) of the Creative Stock; (iv) five (5)  
months after the Effective Date - twenty-five percent (25%) of the Creative Stock; (v) ten (10) months after the Effective  
Date - twenty-five percent (25%) of the Creative Stock.

29 c. Retention of Proceeds. The proceeds of the sale of the Creative Stock shall be delivered to  
30 the Disbursing Agent for distribution in accordance with the terms of this Plan and for no other purpose.

31 4.5 Records and Reporting. The Reorganized Debtor shall maintain good and sufficient books and records  
32 of account relating to the Estate assets, all transactions undertaken by the Reorganized Debtor, all expenses incurred by  
33 or on behalf of the Estate, and all distributions either contemplated or effectuated under the Plan. Not more than  
34 twenty (20) days after each month following the Effective Date, the Reorganized Debtor shall send to Committee  
35 Counsel and Reorganization Counsel a written report showing the receipts and disbursements of the Estate for such prior  
36 month and, subject to any confidentiality requirements, any significant activities, changes, and transactions affecting the  
37 Estate assets that occurred in such prior month or that are expected to occur in the near future. The Reorganized Debtor  
38 shall also file and serve on the United States Trustee post-confirmation quarterly reports in the format prescribed by the  
United States Trustee.

1                   4.6     Liability.

2                   a.         Except in the case of willful misconduct or gross negligence, neither the Reorganized Debtor,  
3                   the Committee nor the Disbursing Agent shall be liable for any loss or damage by reason of any action taken or omitted  
4                   by any of them pursuant to the discretion, power, and authority conferred under this Plan or the Confirmation Order.

5                   b.         Except as provided in the Plan or under applicable law, neither the Reorganized Debtor, the  
6                   Committee nor the Disbursing Agent, nor any of the officers, employees, or Professional Persons or Agents engaged by  
7                   any of them shall be liable for the acts or omissions of the Debtor's prior officers, directors, employees, agents, or  
8                   Professional Persons engaged before the Effective Date, or the acts or omissions of any Creditor or the Committee.

9                   c.         Neither the Committee nor any Committee member shall be liable for the acts or omissions of  
10                  the Reorganized Debtor, any person employed by the Reorganized Debtor, the Debtor, the Disbursing Agent, any  
11                  creditor, or the acts or omissions of the Debtor's officers, directors, employees, agents, or Professional Persons.

12                  d.         In the exercise or administration of any powers granted under this Plan, or in the performance  
13                  of any of the Reorganized Debtor's or the Committee's duties and obligations, the Reorganized Debtor or the Committee  
14                  may consult with and act directly or through any Professional Persons or Agents. Neither the Reorganized Debtor nor  
15                  the Committee shall be liable for anything done, suffered or omitted in good faith in accordance with the advice or  
16                  opinion of any Professional Persons or Agents, so long as such advice or opinion pertains to matters that the Reorganized  
17                  Debtor or the Committee may reasonably presume to be within the scope of such Professional Person's or Agent's  
18                  expertise. The provisions of this Subsection shall also apply with respect to any employees or independent contractors  
19                  retained by the Disbursing Agent.

20                  e.         None of the officers, employees, or Professional Persons or agents engaged by the  
21                  Reorganized Debtor shall be liable to any individual creditor, and shall be liable only to the Estate for acts or omissions  
22                  related to performance of their duties for the Estate. Officers and employees employed by the Reorganized Debtor shall  
23                  be liable to the Estate only for such of their own acts as shall constitute willful misconduct or gross negligence. Except  
24                  as aforesaid, the officers, employees, and Professional Persons or agents engaged by the Reorganized Debtor or the  
25                  Committee, or the employees or independent contractors retained by the Disbursing Agent shall be defended, held  
26                  harmless, and indemnified by the Estate against any and all losses, claims, costs, expenses, and liabilities (including legal  
27                  fees and expenses) asserted by any Person other than the Estate and any costs of defending any action brought by any  
28                  Person other than the Estate to which they may be subject by reason of their execution in good faith of their duties under  
29                  the Plan and in a manner such Person reasonably believes to be in the best interests of the Estate. This indemnity is  
30                  intended to be and shall be interpreted as providing indemnity to the fullest extent permissible under California law.

31                  f.         Neither the Committee nor any Committee member nor any Professional Person engaged by  
32                  either of them shall be liable to any individual creditor, and shall be liable only to the Estate for acts or omissions related  
33                  to performance of their duties for the Estate. The Committee, each Committee member and Professional Persons or  
34                  agents engaged by either of them shall be liable to the Estate only for such of their own acts as shall constitute willful  
35                  misconduct or gross negligence. Except as aforesaid, the Committee, each Committee member and Professional Persons  
36                  or agents engaged by either of them shall be defended, held harmless, and indemnified by the Estate against any and all  
37                  losses, claims, costs, expenses, and liabilities (including legal fees and expenses) asserted by any Person other than the  
38                  Estate and any costs of defending any action brought by any Person other than the Estate to which they may be subject by  
39                  reason of their execution in good faith of their duties under the Plan and in a manner the Committee or such Committee  
40                  member reasonably believes to be in the best interests of the Estate. This indemnity is intended to be and shall be  
41                  interpreted as providing indemnity to the fullest extent permissible under California law.

42                  g.         Notwithstanding the foregoing provisions, the Committee shall have the right to assert, on  
43                  behalf of the Estate and as the successor to the Debtor under section 1129(a)(5) of the Bankruptcy Code and other  
44                  applicable law, any of the Causes of Action (as defined in Section 4.3.a hereof), which have not been waived, against the  
45                  Debtor's Board of Directors, officers, managers and other employees arising prior to the Petition Date.

46                  4.7     Survival of the Committee. The Committee shall survive confirmation of the Plan and the Effective  
47                  Date, and shall continue to exist until the earlier of: (a) the payment in full of the Allowed Claims in Class 4 with  
48                  Interest; or (b) the date the Bankruptcy Case is closed in accordance with Sections 5.6.b.iv and 10.4.

1 4.8 United States Trustee Fees. All unpaid fees due to the United States Trustee from the Petition Date  
2 through the calendar quarter in which the Effective Date occurs shall be paid on the Effective Date by the Estate and  
3 shall be based upon all distributions by the Estate on or prior to the Effective Date, including the transfers on the  
4 Effective Date of funds to the Disbursing Agent for distribution to holders of Allowed Claims. Commencing with the  
5 calendar quarter following the quarter in which the Effective Date occurs and continuing until the entry of a final decree  
6 or order converting or dismissing the case, the Disbursing Agent shall pay to the United States Trustee, from the assets of  
7 the Estate, such amounts as are required to be paid under 28 U.S.C. Section 1930(a)(6). The Reorganized Debtor shall,  
8 however, remain liable for the payment of any such fees, which are not paid by the Disbursing Agent.

9 4.9 Limitation Of Liability. On or after the Effective Date, none of the Debtor, the Debtor in Possession,  
10 the Estate, the Reorganized Debtor, the Committee or the Disbursing Agent, nor any of their employees, officers,  
11 members, directors, agents, or representatives, nor any Professional Persons employed by any of them, shall have or  
12 incur any liability to any Person for any act taken or omission made in good faith in connection with or related to the  
13 administration of the Estate, objections to or estimations of Claims, dispositions of assets, and/or formulating, soliciting  
14 acceptances to or confirming the Plan or the Disclosure Statement.

15 4.10 Execution of Documents and Corporate Action. The Debtor, the Debtor in Possession, the  
16 Reorganized Debtor, and/or the Disbursing Agent, without being required to obtain any directors' or shareholders'  
17 approval or action whatsoever, shall execute such documents and take such other actions as are necessary to effectuate  
18 the transactions provided for in this Plan. Following the Effective Date, the Reorganized Debtor, and its directors and  
19 officers, the Committee and the Disbursing Agent shall be authorized to execute, deliver, file, or record such contracts,  
20 instruments, releases, indentures, and other agreements or documents and take such actions as may be necessary or  
21 appropriate to effectuate and further evidence the terms and provisions of the Plan.

22 4.11 Material Default. If there is a material default under the terms of the Plan and upon a successful post-  
23 confirmation motion to convert this case to a case under Chapter 7 of the Bankruptcy Code, this Plan shall terminate, and  
24 the chapter 7 estate shall consist of all remaining property not already administered. Such remaining property shall be  
25 administered by the chapter 7 trustee as prescribed in Chapter 7 of the Bankruptcy Code.

26 4.12 Retention of Jurisdiction. After the Confirmation Date and before and after the Effective Date, the  
27 Bankruptcy Court shall retain all jurisdiction as is legally permissible and have exclusive jurisdiction over any matter  
28 arising under the Bankruptcy Code, arising in or related to the Chapter 11 Case or the Plan, or relating to the following:

a. To hear and determine all disputes or controversies arising in connection with or relating to  
the Plan or the interpretation, implementation, or enforcement of the Plan or the extent of any Entity's obligations  
incurred in connection with or released under the Plan;

b. To determine or estimate the allowance, classification or priority of any Claims or Equity  
Interests, or any groups of Claims or Equity Interests, upon objection or motion by the Reorganized Debtor, the  
Committee or other parties in interest with standing to bring such objection or proceeding, and to estimate the amount  
reasonably necessary to reserve on account of any Disputed Claim or group of Disputed Claims;

c. To determine the extent, validity, and priority of any Lien asserted against the property of the  
Estate;

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

e. To enter such orders as may be necessary or appropriate to implement or consummate the  
provisions of the Plan and all contracts, instruments, releases, and other agreements or documents related to the Plan;

f. To determine any and all motions, adversary proceedings, applications and contested or  
litigated matters that may be pending on the Effective Date, or that, pursuant to the Plan, may be instituted by the  
Reorganized Debtor after the Effective Date;

1                   g.       To ensure that distributions on account of Allowed Claims are accomplished as provided  
2       herein:

3                   h.       To hear and determine any objections to Claims or Equity Interests or to proofs of Claim  
4       filed, both before and after the Confirmation Date, including any objections to the classification of any Claim or Equity  
5       Interest, and to allow, disallow, determine, liquidate, classify, estimate or establish the priority of or secured or unsecured  
6       status of any Claim, in whole or in part;

7                   i.       To enter and implement such orders as may be appropriate in the event the Confirmation  
8       Order is for any reason stayed, revoked, modified, reversed or vacated;

9                   j.       To issue such orders in aid of execution of the Plan, to the extent authorized by section 1142  
10       of the Bankruptcy Code;

11                   k.       To consider any modifications of the Plan, to cure any defect or omission, or reconcile any  
12       inconsistency in any order of the Bankruptcy Court, including the Confirmation Order;

13                   l.       To hear and determine all applications for awards of compensation for services rendered and  
14       reimbursement of expenses incurred prior to the Effective Date;

15                   m.       To issue injunctions, enter and implement other orders or take such other actions as may be  
16       necessary or appropriate to restrain interference by any Entity with consummation or enforcement of the Plan or any  
17       provision thereof;

18                   n.       To determine any other matters that may arise in connection with or related to the Plan, the  
19       Disclosure Statement, the Asset Purchase Agreement, the Confirmation Order, or any contract, instrument, release or  
20       other agreement or document related to the Plan or the Disclosure Statement;

21                   o.       To hear and determine matters concerning state, local and federal taxes in accordance with  
22       sections 346, 505, and 1146 of the Bankruptcy Code;

23                   p.       To hear any other matter or for any purpose that is not inconsistent with the Bankruptcy Code;  
24       and

25                   q.       To enter a final decree closing the Chapter 11 Case.

26                   The Bankruptcy Court shall retain and may exercise jurisdiction over the Estate and actions of the Reorganized  
27       Debtor to the same extent as it could assert jurisdiction over a chapter 7 trustee and the property of a chapter 7 estate.

28                   4.13   Successors and Assigns. The rights, benefits, and obligations of any Person named or referred to in  
29       this Plan are binding on, and will inure to the benefit of, any permitted heirs, executors, administrators, successors or  
30       assigns of such Person, including any successor to the Equity Interest in the Debtor, successor to the Estate or the  
31       Reorganized Debtor, or successor to the Committee.

## 32                   ARTICLE V 33                   OBJECTIONS AND DISTRIBUTIONS

### 34                   5.1    Objections to Claims.

35                   a.       Claims Objection Deadline. After the Effective Date, the Reorganized Debtor shall have the  
36       right to object to the allowance of Claims or Equity Interests Filed with the Bankruptcy Court with respect to which  
37       liability or allowance in whole or in part is disputed, except that the Committee also shall have the right to object to the  
38       allowance of Claims if: (i) the objections are asserted against the Lenders as provided below; or (ii) the Reorganized  
39       Debtor has not, within thirty (30) days following the Effective Date, Filed an objection to such Claims; or (iii) no  
40       objection to the allowance of such Claims has been filed within forty-five (45) days prior to the deadline to object to  
41       Claims under this Section 5.1.a. The hearing shall be scheduled as soon as is reasonably practicable, subject to the  
42       Bankruptcy Court's calendar. All objections shall be litigated to Final Order or compromised and settled or otherwise

1 resolved, subject to approval by the Bankruptcy Court. Unless otherwise ordered by the Bankruptcy Court, the  
2 Reorganized Debtor (or the Committee, if applicable) shall file and serve all objections to Claims and Equity Interests as  
3 soon as practicable, but in no event later than 120 days after the Effective Date or such later date as may be provided in  
4 the Confirmation Order or pursuant to an Order of the Bankruptcy Court; provided, however, that the foregoing Claims  
objection deadline shall not prohibit or bar the Reorganized Debtor from objecting to late-filed Claims or amendments to  
Claims, raising new objections to Disputed Claims based upon newly discovered facts, or seeking reconsideration of any  
Claim that has been allowed.

5 The Committee shall have the right to assert, on behalf of the Estate, any objection to the prepetition  
6 Claim of the Lenders, or any affirmative claims against the Lenders arising from the prepetition Claim that has not been  
7 waived or released, including any objection to the prepetition Claim amount, as provided in the "Stipulation Authorizing  
8 Payment of Prepetition Secured Claim By Debtor and Debtor in Possession," which Stipulation was approved by the  
9 Bankruptcy Court on an interim basis on November 29, 2000, and on a final basis on or about December 18, 2000. The  
Committee shall also have the right to assert, on behalf of the Estate, all Causes of Action (as defined in Section 4.3.a)  
against the Lenders arising during the period from the Petition Date to the Effective Date, except any Causes of Action  
that relate to the stipulation dated September 6, 2000, authorizing the Debtor to borrow up to \$500,000 from the  
Lenders. The Committee shall file and serve all such objections and assertions of Causes of Action against the Lenders,  
if any, by no later than 240 days after the Effective Date, or such later date as may be provided in the Confirmation Order  
or pursuant to an Order of the Bankruptcy Court.

10 b. Authority. The Reorganized Debtor (and as to any claim which the Reorganized Debtor shall  
11 fail to object within thirty (30) days following the Effective Date, the Committee) shall have the authority to examine  
12 Claims and to file and resolve objections to Disputed Claims in all instances in which objections have not been filed by  
13 the Debtor in Possession or the Committee prior to the Effective Date. The party filing such objections shall be vested  
on the Effective Date with all authority with respect to such objections and any defenses or counterclaims or other relief  
related thereto.

14 c. Standing. Nothing in this Plan shall deprive the Estate, the Reorganized Debtor, the  
15 Committee or any creditor of any standing that it may have to object to Disputed Claims, subject to the provision of  
16 Section 5.1.a. The Estate, the Reorganized Debtor and the Committee shall be vested with the right to intervene as a  
matter of right in any contested matter or adversary proceeding concerning an objection to any Disputed Claim.

17 5.2 Disputed Claims. No payment or distribution will be made with respect to all or any portion of a  
18 Disputed Claim until such Claim is an Allowed Claim. Distributions to each holder of a Disputed Claim (but only to the  
19 extent that it ultimately becomes an Allowed Claim) will be made in accordance with this Plan.

20 5.3 Reserves For Disputed Claims. Prior to making any distributions, the Disbursing Agent shall establish  
21 reserves for Disputed Claims, unpaid Administrative Claims (including the Professional Fee Reserve) and Priority Tax  
22 Claims, and for Post-Effective Date Claims. Except to the extent that the Bankruptcy Court shall determine that a good  
and sufficient reserve for Disputed Claims is less than the full amount thereof, the reserve for a Disputed Claim shall be  
based on the Filed amount of the Disputed Claim or the deemed filed amount of the Scheduled Claim plus Interest.  
Except as provided in the Plan, any interest earned on reserves established by the Disbursing Agent for Disputed Claims,  
Post-Effective Date Claims, or for any other purpose shall be earned for the account of the Estate, retained by the  
Disbursing Agent, and distributed only in the manner provided for in this Plan.

23 Subject to the provisions of the Plan and the Confirmation Order, the Reorganized Debtor may request that the  
24 Committee consent to, or the Committee may request that the Reorganized Debtor consent to, increase or decrease the  
25 reserves required or permitted by the Plan. Such increase or decrease may be authorized by the Committee and the  
26 Reorganized Debtor jointly. If the Reorganized Debtor or the Committee does not consent, either the Reorganized  
Debtor or the Committee may file a motion requesting the Bankruptcy Court to authorize such increase or decrease,  
which motion shall be served on the Reorganized Debtor, Reorganization Counsel, Committee Counsel, the Disbursing  
Agent, and the All Notices List at least twenty (20) days prior to any hearing.

27 All Cash held in the reserve shall be invested in investments authorized by the Bankruptcy Code or by the  
28 Bankruptcy Court in its Order Approving Centralized Cash Management Systems, Use of Existing Bank Accounts and  
Business Forms, and Current Investment Practices entered by the Bankruptcy Court on April 7, 2000.

1           5.4     Estimation of Claims. After the Effective Date, the Reorganized Debtor may commence or continue  
2 such actions and proceedings in the Bankruptcy Court as are appropriate under section 502(c) of the Bankruptcy Code to  
3 estimate any Disputed Claim. The "Estimated Amount" with respect to such Disputed Claim shall be in an amount  
4 established by the Bankruptcy Court pursuant to section 502(c) of the Bankruptcy Code after notice and an opportunity  
5 for hearing to the holder of the Disputed Claim and the All Notices List. If the Bankruptcy Court estimates a Disputed  
6 Claim for purposes of voting, then the amount so estimated shall establish the dollar amount to be used for purposes of  
7 calculating the vote of the creditors asserting such Disputed Claim.

8           The amount of the Reserves for the Post-Effective Date Claims, Administrative Claims (including the  
9 Professional Fee Reserve), Priority Tax Claims or Disputed Claims from time to time shall be determined jointly by the  
10 Reorganized Debtor and the Committee in the exercise of reasonable business judgment. In case the Reorganized Debtor  
11 and the Committee do not agree on issues regarding reserve amounts, the Bankruptcy Court shall have exclusive  
12 jurisdiction to determine or estimate the appropriate amount of funds the Disbursing Agent shall hold for Post-Effective  
13 Date Claims, Administrative Claims (including the Professional Fee Reserve), Priority Tax Claims or Disputed Claims  
14 pending objections to or estimations of such Disputed Claims. The Disbursing Agent shall reduce any reserve for  
15 Disputed Claims to the amount determined or estimated by the Bankruptcy Court as reasonably necessary to cover  
16 Disputed Claims, including Interest, for purposes of making any interim distributions under this Plan. Notwithstanding  
17 any such determination or estimation, the Disbursing Agent shall not make any distribution on account of a Disputed  
18 Claim until such Claim becomes an Allowed Claim.

19           5.5     The Disbursing Agent.

20           a.     Appointment of the Disbursing Agent. The Reorganized Debtor and the Committee shall  
21 attempt to agree on the appointment of the Disbursing Agent. In the event that the Reorganized Debtor and the  
22 Committee are unable to reach agreement as to the appointment of the Disbursing Agent, the Bankruptcy Court shall  
23 have exclusive jurisdiction to determine who shall be appointed as the Disbursing Agent. The Reorganized Debtor, the  
24 Committee and the Disbursing Agent shall use their reasonable efforts to dispose of Estate assets, to make prompt and  
25 timely distributions, and to avoid undue prolongation of the duration of the Estate and the Bankruptcy Case.

26           b.     No Bond. In the event that the Reorganized Debtor serves as the Disbursing Agent, the  
27 Disbursing Agent shall not be required to give a bond or surety or other security for the performance of its duties unless  
28 otherwise ordered by the Bankruptcy Court, and in the event that the Disbursing Agent is so otherwise ordered, all costs  
and expenses of procuring any such bond or surety shall be borne by the Estate.

          c.     Powers of the Disbursing Agent. The Disbursing Agent shall be empowered to: (i) make all  
distributions contemplated by the Plan; and (ii) to maintain appropriate reserves for Disputed Claims and Post-Effective  
Date Claims in accordance with this Plan.

          d.     Expenses Incurred On or After the Effective Date. Except as otherwise ordered by the  
Bankruptcy Court, the amount of any fees payable to the Disbursing Agent, and any reimbursement of expenses (other  
than Professional Fees) incurred by the Disbursing Agent in the performance of its duties (including, without limitation,  
taxes) shall be paid in Cash by the Disbursing Agent from the Reserves other than the Professional Fee Reserve.

          5.6     Procedures for Distributions.

          a.     Surrender or Cancellation of Instruments. Except as otherwise provided by order of the  
Bankruptcy Court, the Claim of any holder that is based upon a promissory note or trade acceptance must be  
accompanied by a surrender or cancellation of such note or trade acceptance as a precondition to any distribution to the  
holder thereof.

          b.     Reserves and Initial, Interim and Final Distributions.

          i.     On the Effective Date, the reserves shall be established in accordance with Section  
5.3. On the Effective Date, the holders of Allowed Class 1 Claims will be paid in accordance with Section 2.3.a  
hereof, holders of Allowed Class 2 Claims will be paid in accordance with Section 2.3.b hereof, the holders of  
Allowed Class 3 Claims will be paid in accordance with Section 2.3.c hereof, and the balance of the Cash will  
be distributed Pro Rata to holders of Allowed Class 4 Claims.



1                   ii.       Except to the extent that the Bankruptcy Court shall determine that a good and  
2 sufficient reserve for Disputed Claims is less than the full amount thereof, in determining the amount of the  
3 distributions due to holders of Allowed Claims, the Pro Rata calculations required by Article V of the Plan shall  
4 be made as if all Disputed Claims (including Disputed Administrative Claims) were Allowed in the full amount  
5 claimed by the holders thereof plus Interest.

6                   iii.       As additional assets are liquidated and Disputed Claims are resolved, the Disbursing  
7 Agent shall make distributions as promptly as possible in the exercise of its reasonable judgment after review  
8 and adjustment of the amounts of appropriate reserves for Disputed Claims, including Disputed Administrative  
9 Claims. The Disbursing Agent shall not retain Cash or cash equivalents in excess of a reasonable amount to  
10 meet Claims and contingent liabilities or to maintain the value of assets during the orderly liquidation. If, after  
11 taking into account reserves for Disputed Claims, including disputed or unpaid Administrative Claims, disputed  
12 or unpaid Priority Tax Claims, disputed or unpaid Unsecured Claims and Post-Effective Date Claims,  
13 \$1,000,000 is available for general distributions to holders of Allowed Claims, then the Disbursing Agent shall  
14 cause an interim distribution to be made. In addition, the Disbursing Agent may, in the exercise of its  
15 reasonable judgment after consultation with the Committee and the Reorganized Debtor, declare any additional  
16 interim distributions so long as appropriate reserves are maintained, pursuant to Section 5.3, for disputed or  
17 unpaid Administrative Claims, disputed or unpaid Priority Tax Claims, disputed or unpaid Unsecured Claims  
18 and Post-Effective Date Claims.

19                   iv.       Immediately after the Final Distribution Date has occurred, the Disbursing Agent  
20 shall make a final Pro Rata distribution and the Reorganized Debtor shall request that the Bankruptcy Court  
21 enter a final decree closing the Bankruptcy Case in accordance with Section 10.4 hereof.

22                   v.       Each Pro Rata distribution made by the Reorganized Debtor shall be calculated on  
23 such a cumulative basis, after giving effect to all prior interim distributions, including distributions by the  
24 Disbursing Agent as a result of transfers made by the Estate on the Effective Date.

25                   c.       Unclaimed Distributions. If any distribution to any holder of an Allowed Claim is returned to  
26 the Disbursing Agent as undeliverable, no further distributions shall be made to such holder unless and until the  
27 Disbursing Agent is notified, in writing, of such holder's then-current address. Undeliverable distributions shall be  
28 deposited into the reserve until such time as a distribution becomes deliverable. No Entity ultimately receiving initially  
undeliverable Cash shall be entitled to any interest or other accruals thereon of any kind after the date the initially  
undeliverable Cash is returned to the Disbursing Agent as undeliverable. Nothing contained in the Plan shall require the  
Disbursing Agent, Reorganized Debtor or Committee to attempt to locate any holder of an Allowed Claim. Any  
unclaimed distributions as of the Final Distribution Date shall be distributed Pro Rata to holders of Allowed Claims as  
provided for in the Plan.

Any holder of an Allowed Claim that does not assert its rights pursuant to the Plan to receive an  
undeliverable distribution before the earlier of (a) the Final Distribution Date, and (b) ten (10) days before the first  
anniversary of the Effective Date shall have no right to receive such undeliverable distribution. Upon the final  
distribution, any consideration held for distribution on account of such Claim shall be redistributed first on a Pro Rata  
basis to the holders of Allowed Class 4 Claims including Interest and then to Allowed Class 5 Interests as provided for in  
the Plan.

23                   d.       Time Bar to Cash Payments. Checks issued by the Disbursing Agent on account of Allowed  
24 Claims shall be null and void if not negotiated within ninety (90) days from and after the date of issuance thereof.  
25 Requests for reissuance of any check shall be made directly to the Disbursing Agent or the Reorganized Debtor by the  
26 holder of the Allowed Claim with respect to which such check originally was issued. Any Claim in respect of such a  
27 voided check shall be made on or before ten (10) days before the first anniversary of the Effective Date. After such date,  
28 all Claims in respect of voided checks shall be discharged and forever barred and the monies related thereto shall be  
distributed as an undeliverable distribution pursuant to Section 5.6.c of the Plan.

29                   e.       De Minimis Distributions. Notwithstanding anything to the contrary contained in the Plan,  
30 the Disbursing Agent shall not be required to disburse Cash as an interim dividend to the holder of an Allowed Class 3  
31 Claim, an Allowed Class 4 Claim, or an Allowed Class 5 Interest if the amount of Cash otherwise due is less than Twenty  
32 Dollars (\$20.00). Cash not so distributed shall be deposited in the unclaimed distributions reserve and distributed in the

1 same manner as unclaimed distributions under Section 5.6.c hereof. For purposes of the final distribution, the Disbursing  
Agent may, but shall not be required to, disburse Cash to a holder of an Allowed Claim in Class 3, Class 4 or Class 5 if  
2 the Cash due is less than Twenty Dollars (\$20.00).

3 5.7 Manner of Payment Under the Plan. Cash payments made pursuant to the Plan shall be in United  
States Dollars by checks drawn on the domestic bank selected by the Disbursing Agent or by wire transfer from a  
4 domestic bank, at Disbursing Agent's option.

5 5.8 Delivery of Distributions/Address of Holder. For purposes of all notices and distributions under this  
Plan, the Reorganized Debtor, the Disbursing Agent, and the Committee shall be entitled to rely on the name and address  
6 of the holder of each Claim as shown on the proof of Claim, and distributions to holders of Allowed Claims shall be  
made by regular U.S. first class mail to the following addresses: (i) the address set forth in the respective proof of Claim  
7 of such holder; (ii) the address set forth in any written notice of address change delivered by the holder to the Disbursing  
Agent or Reorganized Debtor after the date of any related proof of Claim; or (iii) the address reflected on the Schedules  
8 if no proof of Claim or proof of Interest is Filed and the Disbursing Agent or Reorganized Debtor has not received a  
written notice of a change of address. The Reorganized Debtor, the Disbursing Agent, and the Committee shall be under  
9 no duty to attempt to locate holders of Allowed Claims that are entitled to unclaimed distributions.

10 5.9 Cancellation and Surrender of Existing Securities and Instruments. Except as otherwise provided in  
the Plan, on the Final Distribution Date, all promissory notes, share certificates and other instruments evidencing any  
11 Claim or Equity Interest shall be deemed cancelled and null and void without further act or action under any applicable  
agreement, law, regulation, order, or rule, and the obligations of the Debtor under the agreements and certificates of  
12 designations governing such Claims and Equity Interests, as the case may be, shall be discharged.

13 5.10 Allocations of Distributions to Allowed Claims. For the purpose of determining the amount of an  
Allowed Claim, any distributions received by a holder of an Allowed Claim shall be allocated first to the principal  
14 portion of such Claim to the extent thereof, and thereafter to the portion of such Claim, if any, representing Interest.

15 5.11 Compliance With Tax Requirements. In connection with the Plan, to the extent applicable, the  
Reorganized Debtor and Disbursing Agent shall comply with all withholding and reporting requirements imposed on it  
16 by any governmental unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting  
requirements.

## 17 ARTICLE VI CRAMDOWN REQUEST

18 6.1 The Debtor hereby requests that the Bankruptcy Court confirm the Plan - pursuant to section 1129(b)  
19 of the Bankruptcy Code - by cramdown on any impaired Class that does not vote to accept the Plan. The Debtor believes  
that cramdown is appropriate under the circumstances.

## 20 ARTICLE VII EFFECT OF CONFIRMATION AND INJUNCTION

21 7.1 Channeling of Claims. The rights provided in the Plan and its treatment of all Claims and Equity  
22 Interests (including Post-Effective Date Claims) shall be in exchange for and in complete satisfaction and release of all  
23 Claims, Equity Interests, Post-Effective Date claims and Administrative Claims of any kind whatsoever (including any  
interest accrued thereon before or after the Petition Date) against the Estate and the Reorganized Debtor, and any of its  
24 assets or properties, regardless of whether a proof of Claim or Equity Interest or request for Administrative Claim was  
filed, whether the Claim or Equity Interest, Post-Effective Date Claim or Administrative Claim is Allowed, or whether  
25 the holder thereof votes to accept the Plan or is entitled to receive a distribution thereunder. No holder of any Claim,  
Equity Interest, or Administrative Claim may receive any payment from or seek recourse against any assets that are to be  
26 distributed under this Plan, except for those assets required to be distributed to such holder, if any, as expressly provided  
in this Plan. As of the Effective Date, all Entities are precluded from asserting against the Estate and the Reorganized  
27 Debtor, any of its assets and properties, or any property that is to be distributed under this Plan, any Claims, rights,  
causes of action, liabilities or Equity Interests based upon any document, instrument, act, omission, transaction or other  
28 activity of any kind or nature that occurred prior to the Effective Date, other than as expressly provided in this Plan or  
the Confirmation Order, regardless of the filing, lack of filing, allowance or disallowance of such a Claim or Equity

1 Interest and regardless of whether such entity has voted to accept this Plan. Any claim or cause of action asserted against  
2 the Estate, the Reorganized Debtor, Professional Persons, the Committee or the Disbursing Agent arising out of or  
3 related to the conduct of their duties in the Bankruptcy Case, whether before or after the Effective Date, shall be  
4 commenced only in the Bankruptcy Court. Except as provided for in the Plan, all property dealt with in the Plan  
(including property of the Estate) is free and clear of all Claims and Equity Interests (including Post-Effective Date  
Claims). Notwithstanding the foregoing, nothing provided in this Plan shall be deemed to have granted a discharge to  
the Debtor.

5 7.2 Injunction. Except as otherwise provided in the Plan or the Confirmation Order, on and after the  
6 Effective Date, all Entities that have held, currently hold, or may hold a debt, Claim, other liability or Equity Interest  
7 (including Post-Effective Date Claims) against or in the Debtor are permanently enjoined from taking any of the  
8 following actions on account of such debt, Claim, liability, Equity Interest or right: (a) commencing or continuing, in  
9 any manner and in any place, any action or other proceeding on account of such debt, Claim, liability, Equity Interest or  
10 right against the Estate, the Reorganized Debtor, Professional Persons, the Committee or the Disbursing Agent without  
11 leave of the Bankruptcy Court; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award,  
12 decree, or order against any property to be distributed to creditors under this Plan; (c) creating, perfecting or enforcing  
13 any lien against property of the Estate without leave of the Bankruptcy Court; (d) taking any action to obtain possession  
14 of property of or from the Estate; and (e) commencing or continuing any action or proceeding, in any manner and in any  
15 place, that does not comply with or is inconsistent with the provisions of the Plan. Any Person injured by any willful  
16 violation of such injunction shall recover actual damages, including costs and professional fees, and where appropriate,  
17 punitive damages from the willful violator.

18 7.3 Term of Existing Injunctions or Stays. Unless otherwise provided, all injunctions or stays provided for  
19 in the Chapter 11 Case pursuant to sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence as of the  
20 Confirmation Date, shall remain in full force and effect until the Effective Date.

21 7.4 Reservation of Rights if the Plan is not Substantially Consummated. In the event that the Plan is not  
22 substantially consummated, the Lenders, the Reorganized Debtor, the Debtor and the Committee shall not have waived,  
23 and shall not be deemed to have waived, any right or legal argument with respect to payment of the Lenders' prepetition  
24 Claim, as provided for in the Stipulation and Order Authorizing Payment of Prepetition Secured Claim dated November  
25 29, 2000 (the "Stipulation"), or any issue or matter in connection therewith, arising therefrom or relating thereto, and the  
26 Lenders, the Committee, the Reorganized Debtor, the Debtor and other parties in interest expressly reserve all of such  
27 rights and legal arguments, including, without limitation, the right to contest such payment, in whole or in part, and to  
28 submit different or alternative allocations to the Lenders or valuations of such Claim in any successor plan or in litigation  
regarding the Estate. If Allowed Class 4 Claims are paid in full with Interest, then the payment to the Lenders on account  
of their Claim shall be binding on all parties in interest, including the Lenders and the Committee.

## ARTICLE VIII MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN

29 8.1 Modification of the Plan. The Debtor reserves the right, in accordance with the Bankruptcy Code and  
30 the Bankruptcy Rules, to amend or modify the Plan at any time prior to the entry of the Confirmation Order. After the  
31 entry of the Confirmation Order, the Debtor may, upon order of the Bankruptcy Court, amend or modify the Plan in  
32 accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any  
33 inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan. A holder of  
34 a Claim or Equity Interest that has accepted the Plan shall be deemed to have accepted the Plan as modified if the  
35 proposed modification does not materially and adversely change the treatment of the Claim or Equity Interest of such  
36 holder.

### 8.2 Revocation or Withdrawal.

37 a. The Plan may be revoked or withdrawn prior to the Confirmation Date by the Debtor for any  
38 reason whatsoever.

b. If the Plan is revoked or withdrawn prior to the Confirmation Date, then the Plan shall be  
deemed null and void. In such event, nothing contained herein shall be deemed to constitute a waiver or release of any

1 claims by the Debtor or any other Entity or to prejudice in any manner the rights of the Debtor or any other Entity in any  
2 further proceedings involving the Debtor.

3 **ARTICLE IX**  
4 **CONDITIONS TO EFFECTIVE DATE**

5 9.1 **Conditions Precedent to Effective Date.** The "effective date of the plan." as used in section 1129 of  
6 the Bankruptcy Code, shall not occur, and the Plan shall be of no force and effect, until the Effective Date. The  
7 occurrence of the Effective Date is subject to the satisfaction of the following conditions precedent or concurrent:

8 a. **Confirmation Order.** The Clerk of the Bankruptcy Court shall have entered the Confirmation  
9 Order, which shall be in form and substance satisfactory to the Debtor and consistent with this Plan. The Confirmation  
10 Order shall be in full force and effect and shall have become a Final Order.

11 b. **Timing.** Except as may be otherwise ordered by the Bankruptcy Court, the eleventh (11th)  
12 calendar day following the entry of the Confirmation Order on the official docket of the Bankruptcy Court shall have  
13 occurred and there shall not have been in existence any stay or injunction against enforcement and execution of the  
14 Confirmation Order.

15 9.2 **Effect of Failure of Conditions.** In the event that the foregoing conditions have not been timely  
16 satisfied, and upon notification submitted by the Debtor to the Bankruptcy Court and Committee Counsel, (a) the  
17 Confirmation Order shall be vacated, (b) no distributions under the Plan shall be made, (c) the Debtor and all holders of  
18 Claims and Equity Interests shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation  
19 Date as though the Confirmation Date never occurred, and (d) all the Debtor's obligations with respect to the Claims and  
20 Equity Interests shall remain unchanged and nothing contained herein shall be deemed to constitute a waiver or release of  
21 any Claims by or against the Debtor or any other Entity or to prejudice in any manner the rights of the Debtor, the  
22 Committee, or any Entity in any further proceedings involving the Debtor. Notwithstanding the foregoing, the failure of  
23 the Effective Date to occur within the time period required by this Plan, and the consequences thereof as set forth above,  
24 shall not affect the validity of any order entered by the Bankruptcy Case other than the Confirmation Order.

25 9.3 **Waiver of Conditions.** The foregoing conditions are not waivable absent modification of the Plan  
26 pursuant to section 1127 of the Bankruptcy Code.

27 9.4 **Notice of Effective Date.** As promptly as practicable following the occurrence of the Effective Date,  
28 the Reorganized Debtor shall cause to be served the Notice of Effective Date on the All Notices List and on all holders  
of Claims against and Equity Interests in the Debtor.

19 **ARTICLE X**  
20 **MISCELLANEOUS PROVISIONS**

21 10.1 **Severability.** If, prior to the Confirmation Date, any term or provision of the Plan is held by the  
22 Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court shall, upon the request of the Debtor, have  
23 the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable,  
24 consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or  
25 provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or  
26 interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no  
27 way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall  
28 constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered  
or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

10.2 **Governing Law.** Except to the extent that the Bankruptcy Code or other federal law is applicable, or to  
the extent that an Exhibit hereto provides otherwise, the rights, duties and obligations arising under this Plan shall be  
governed by, and construed and enforced in accordance with the laws of the State of California, without giving effect to  
principles of conflicts of laws.

1 10.3 Notices. All notices, requests, and demands to or upon the Debtor and the Reorganized Debtor to be  
2 effective shall be in writing, including by facsimile transmission, and, unless otherwise expressly provided herein, shall  
3 be deemed to have been duly given or made when actually delivered, or in the case of notice by facsimile transmission,  
4 when received and telephonically confirmed, addressed as follows: Sidney P. Levinson, Esq., Hennigan, Bennett &  
5 Dorman, 601 South Figueroa Street, Suite 3300, Los Angeles, California 90017, Facsimile: (213) 694-1234.

6 10.4 Closing of the Chapter 11 Case. Immediately following the Final Distribution Date, the Reorganized  
7 Debtor shall file with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of  
8 the Bankruptcy Court.

9 10.5 Section Headings. The section headings contained in this Plan are for reference purposes only and  
10 shall not affect in any way the meaning or interpretation of the Plan.

11 10.6 Exemption from Transfer Taxes. Pursuant to section 1146(c) of the Bankruptcy Code, the issuance,  
12 transfer or exchange of notes or equity securities under the Plan, the creation of any mortgage, deed of trust, or other  
13 security interest, the making or assignment of any lease or sublease, or the making or delivery of any deed or other  
14 instrument of transfer under, in furtherance of, or in connection with the Plan, shall not be subject to any stamp, real  
15 estate transfer, mortgage recording, or other similar tax.

16 10.7 Exhibits. All Exhibits to the Plan are incorporated into and are a part of the Plan as set forth in full  
17 herein.

18 DATED: June 13, 2001

AUREAL INC.

19 \_\_\_\_\_  
20 /s/ Steve Mitchell

21 Steve Mitchell  
22 Chief Operating Officer

23 Presented by:

HENNIGAN, BENNETT & DORMAN

24 \_\_\_\_\_  
25 /s/ Sidney P. Levinson

26 Sidney P. Levinson  
27 Reorganization Counsel for Debtor  
28 And Debtor in Possession

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**EXHIBIT 1**

**Schedule of Executory Contracts and Unexpired Leases  
to be Assumed or Assumed and Assigned**

[None]

**EXHIBIT B**

**COMPENSATION OF PROFESSIONALS**

(Estimated and Actual as of May 7, 2001)

PROFESSIONAL	FEES & EXPENSES REQUESTED	DATE FEE APPLICATION SUBMITTED	PERIOD OF COMPENSATION	DATE OF ORDER APPROVING FEES	AMOUNT PAID BY DEBTOR
Hennigan, Bennett & Dorman	\$664,188.51	08/30/2000	04/05 - 06/30/2000	11/15/2000	\$542,800.91
	\$489,086.27	12/01/2000	07/01 - 09/30/2000	02/16/2001	\$399,155.63
	\$115,774.81	12/27/2000	10/01 - 10/31/2000	02/21/2001	\$92,570.71
	\$113,754.65	02/16/2001	11/01 - 12/31/2000	04/04/2001	\$108,657.85
	\$69,933.70	04/20/2001	01/01 - 01/31/2001	pending	
McCutchen, Doyle, Brown & Enersen	\$156,705.82	09/25/2000	06/19 - 08/31/2000	11/13/2000	\$126,055.62
	\$36,688.35	01/25/2001	9/01 - 12/31/2000	03/13/2001**	\$24,996.80
Pricewaterhouse Coopers	\$286,003.25	08/25/2000	04/05/ - 07/31/2000	pending	
Ernst & Young	\$275,000.00*		08/09/ - 12/31/2000		
Ritter, Van Pelt & YI	\$44,402.32	04/20/2001	05/01 - 09/30/2000	pending	
Mohler, Nixon & Williams	\$11,538.00	03/15/2001	06/25 - 10/31/2000	04/11/2001	\$9,330.40
Gallagher & Lathrop	\$7,492.23	03/15/2001	05/02 - 11/01/2000	04/02/2001	\$7,418.56
Neilsen, Elggren LLP	To be determined				
CB Richard Ellis	\$50,000.00	03/27/2001	10/25 - 12/18/2000	pending	
Sidley & Austin	To be determined***				
Sall & Smolowitz	To be determined****				

(\*) Estimated amounts

(\*\*) Order denied fees requested by Committee of \$5,442.35

(\*\*\*) Fees shall not exceed \$6,000.00

(\*\*\*\*) Fees shall not exceed \$5,000.00

**EXHIBIT C**  
**ESTIMATED ALLOWED CLAIMS**  
**(AS OF MAY 7, 2001)**

Claim #	Claimant	Claim Amount	Estimated Allowed Amount
1	Takeout Taxi	\$271.27	\$271.27
2	PC World Communications	\$88,595.69	\$88,595.69
3	The Flying Logo Sisters	\$1,489.36	\$1,489.36
5	Custom Coffee Plan	\$86.80	\$86.80
7	Ritter Van Pelt & Yi LLP	\$19,254.37	\$19,254.37
8	IT&E Corporation	\$81,200.00	\$76,800.00*
9	Alterflex Corporation	\$1,995.00	\$1,995.00*
10	Fitzgerald Communications	\$3,265.89	\$3,265.89
12	Ziff Davis	\$70,821.35	\$70,821.35
13	Avnet Electronics Marketing	\$170,467.35	\$170,467.35
14	DRA Laboratories	\$5,700.00	\$5,700.00
15	National Bag	\$75.60	\$75.60
16	Ficus N Fern	\$575.00	\$575.00
19	David F. Mainland	\$500.00	\$500.00
20	Ilsi America	\$112.00	\$112.00
21	Jacobs Weeds & Pest Control	\$825.00	\$825.00
22	Luce Press Clippings, Inc.	\$1,547.86	\$1,547.86
23	Telogy Test Equipment	\$70,059.60	\$3,502.98*
24	Pacific Gas and Electric	\$14,334.46	\$14,334.46
25	Eagle Management Group, Inc.	\$3,049.28	\$3,049.28
26	Tiburon, Inc.	\$1,153.62	\$1,153.62
27	Digi-Key	\$69.78	\$69.78
28	Blazer Exhibit Graphics	\$2,282.58	\$2,382.58
29	3DSL	\$72,852.67	\$72,852.67
30	Recall Total Info Mgmt, Inc.	\$1,324.12	\$837.42*
31	Post Studios Photographic	\$72.85	\$72.85
36	Cadence Design Systems, Inc.	\$172,539.58	\$172,539.58
37	PR Newsire	\$4,618.10	\$3,911.75*
38	Earl Vickers	\$768.11	768.11
39	MarTech Sales Company	\$2,826.54	\$2,826.54
41	Oculux, Inc.	\$139.50	\$139.50
42	Psinet, Inc.	\$8,160.94	\$8,160.94
43	Vifa/Scan Speak USA, Inc.	\$25,616.00	\$25,616.00
44	Minolta Business Solutions	\$117,157.35	\$4,444.46*
45	Trial Analysis Group	\$2,400.00	\$2,400.00
47	Comp USA	\$2,921.67	\$2,921.67
48	Wishnow Tearney & Killion	\$628.45	\$628.45
49	Artwork Conversion Software, Inc.	\$6,126.42	\$6,126.42
51	Credence Systems, Corp.	\$135,000.00	\$135,000.00
52	State of Washington Dept. of Revenue	\$2,266.17	\$2,266.17
53	Heller Ehrman White & McAulliffe	\$5,427.00	\$5,247.00*
54	Brooks Technical Group, Inc.	\$6,580.85	\$6,580.85*
55	Herman-Miles	\$61.50	\$61.50
56	Synopsys, Inc.	\$31,581.00	\$31,581.00



Claim #	Claimant	Claim Amount	Estimated Allowed Amount
57	General Electric Capital Corp.	\$270,399.07	\$270,399.07
58	Advantel, Inc.	\$37,749.79	\$37,749.79
59	Q-The Sports Club/Sports an Fitness Club	\$317.12	\$317.12
60	Trans World Airlines	\$9,613.42	\$9,613.42
61	Kent H. Landsberg Co.	\$29,124.84	\$29,124.84
63	Chasemellon Shareholder Svc.	\$880.48	\$880.48
65	Allied Electronics, Inc.	\$914.96	\$914.96
66	Pacific Bell	\$2,304.06	\$2,304.06
68	AT&T Corp.	\$9,319.82	\$9,319.82
69	Innominds Software, Inc.	\$26,010.55	\$24,840.00*
70	Video Solutions	\$2,563.75	\$2,563.75*
71	Combs Greenley	\$6,465.46	\$6,465.46*
72	Gray, Cary, Ware & Freidenrich	\$27,632.56	\$27,632.56*
73	State Board of Equalization	\$729.12	\$729.12
76	Interim Personnel	\$35,541.44	\$35,541.44
80	Gary Catlin	\$5,000.00	\$5,000.00
83	Flatland Online, Inc.	\$200,000.00	\$200,000.00
84	Finova Capital Corporation	\$351,788.81	\$332,646.48*
85	United Parcel Service	\$8,977.53	\$8,977.53
86	Lexington Insurance Co., et al	\$0.00	\$0.00
87	Emery Worldwide	\$14,458.48	\$14,458.48
90	Gallagher Lathrop	\$1,100.21	\$1,100.21
97	Alan Yee	\$5,000.00	\$5,000.00
99	Mark Pereira	\$4,000.00	\$4,000.00
102	Highsoft, Inc.	\$41,457.59	\$41,457.59
105	Thomson Consumer Electronics Sales GmbH	\$26,073.35	\$25,000.00*
106	Fraunhofer-Gesellschaft	\$75,000.00	\$75,000.00
114	Imperial A.I.Credit Companies	\$0.00	\$0.00
119	Lexis Publishing	\$50.10	\$50.10
124	Network Guys, Inc.	\$8,502.43	\$8,502.43
126	The Martin Agencies, Inc.	\$37,647.47	\$37,647.47
127	AON Consulting, Inc.	\$6,150.00	\$6,150.00
146	Nelda Wells Spears, Travis County Tax Collector	\$613.73	\$613.73
Claims Included in Schedules Where No Proof of Claim Filed			\$280,811.68
Adjustment for Anticipated Amendments to Schedules			\$381,759.81
Adjustment for Anticipated Deletions to Schedules			(\$363,913.68)
Adjustment for Employee Benefits			\$189,758.00
<b>TOTAL PROJECTION OF CLAIMS ALLOWED</b>			<b>\$2,664,273.84</b>

(\* ) Represents allowed claim amounts remaining after Debtor's First Omnibus Objection to Claims

**EXHIBIT D**  
**ESTIMATED DISPUTED CLAIMS**  
**(AS OF MAY 7, 2001)**

<b>Claim #</b>	<b>Claimant</b>
6	Wall Street Interviewers, Inc.
18	UMC Group (USA)
40	Alameda County Water District
46	New York State Corporation Tax (Bankruptcy Unit)
62	KPMG LLP
64	AFCO Credit Corporation
79	Creative Technology, Ltd.
81	Delaware Secretary of State
88	Orrick, Herrington and Sutcliffe
91	Infogrames North America
95	Integra-Dyne Corp.
96	World Peace Industrial Co.
98	Voyetra Turtle Beach
111	Momentum Data Systems
129	Krystaltech Semiconductors, Inc.
131	Supercom Canada Ltd.
132	Id Software, Inc.
144	Lim Boon Seng
145	Ocean Data Products

**EXHIBIT E**  
**ASSERTED PRIORITY TAX CLAIMS**

<b>Claim #</b>	<b>Claimant</b>	<b>Amount Asserted by Claimant</b>
32	Commonwealth of Massachusetts	\$11,503.69
46	New York State Dept. of Taxation & Finance	\$7,277.48
50	Commonwealth of Massachusetts	\$11,503.69
52	State of Washington Dept. of Revenue	\$2,266.17
81	Delaware Secretary of State, Division of Corp.	\$184,911.15
92	Nelda Wells Spears, Travis County Tax Collector	\$318.86
100	Department of the Treasury	\$10,000.00
146	Nelda Wells Spears, Travis County Tax Collector	\$613.73
<b>TOTAL</b>	<b>ASSERTED PRIORITY TAX CLAIMS</b>	<b>\$228,394.77</b>



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CONFORMED PERIOD OF REPORT: 20000102
FILED AS OF DATE: 20000427

FILER:

COMPANY DATA:
COMPANY CONFORMED NAME: AUREAL SEMICONDUCTOR INC
CENTRAL INDEX KEY: 0000892433
STANDARD INDUSTRIAL CLASSIFICATION: PRINTED CIRCUIT BOARDS [3672]
IRS NUMBER: 943117385
STATE OF INCORPORATION: DE
FISCAL YEAR END: 0103

FILING VALUES:
FORM TYPE: NTN 10K
SEC ACT:
SEC FILE NUMBER: 000-22626
FILM NUMBER: 610099

BUSINESS ADDRESS:
STREET 1: 4245 TECHNOLOGY DR
CITY: FREMONT
STATE: CA
ZIP: 94538-6339
BUSINESS PHONE: 5102524245

MAIL ADDRESS:
STREET 1: 4245 TECHNOLOGY DR
CITY: FREMONT
STATE: CA
ZIP: 94538-6339

FORMER COMPANY:
FORMER CONFORMED NAME: MEDIA VISION TECHNOLOGY INC
DATE OF NAME CHANGE: 19931210

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 12b-25

NOTIFICATION OF LATE FILING

Commission File Number 0-20684

(Check one)

[X] Form 10-K and Form 10-KSB [ ] Form 11-K  
[ ] Form 20-F [ ] Form 10-Q and Form 10-QSB [ ] Form N-SAR

For period ended January 2, 2000

[ ] Transition Report on Form 10-K and Form 10-KSB  
[ ] Transition Report on Form 20-F  
[ ] Transition Report on Form 11-K  
[ ] Transition Report on Form 10-Q and Form 10-QSB  
[ ] Transition Report on Form N-SAR

For period ended

Read Attached Instruction Sheet Before Preparing Form. Please Print or Type

Nothing in this form shall be construed to imply that the Commission has verified any information contained herein.

If the notification relates to a portion of the filing checked above, identify the item(s) to which the notification relates:

PART I  
REGISTRANT INFORMATION

Full name of registrant Aureal, Inc.  
-----

Former name if applicable Aureal Semiconductor, Inc.  
-----

Address of principal executive office (Street and number)  
45757 Northport Loop West  
-----

City, state and zip code Fremont, California 94538  
-----

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PART II  
RULE 12b-25(b) AND (c)

If the subject report could not be filed without unreasonable effort or expense and the registrant seeks relief pursuant to Rule 12b-25(b), the following should be completed. (Check box if appropriate.)

- (a) The reasons described in reasonable detail in Part III of this form could not be eliminated without unreasonable effort or expense.
- (b) The subject annual report, semi-annual report, transition report on Form 10-K, 10-KSB, 20-F, 11-K or Form N-SAR, or portion thereof will be filed on or before the 15th calendar day following the prescribed due date; or the [X] subject quarterly report or transition report on Form 10-Q, 10-QSB, or portion thereof will be filed on or before the fifth calendar day following the prescribed due date; and
- (c) The accountant's statement or other exhibit required by Rule 12b-25(c) has been attached if applicable.

PART III  
NARRATIVE

State below in reasonable detail the reasons why Form 10-K, 10-KSB, 11-K, 20-F, 10-Q, 10-QSB, N-SAR, or the transition report portion thereof could not be filed within the prescribed time period. (Attach extra sheets if needed.)

SEE ATTACHED.

PART IV  
OTHER INFORMATION

(1) Name and telephone number of person to contact in regard to this notification.

Steve Mitchell (510) 252-4245

-----  
(Name) (Area Code) (Telephone Number)

(2) Have all other periodic reports under Section 13 or 15(d) or the Securities Exchange Act of 1934 or Section 30 of the Investment Company Act of 1940 during the preceding 12 months or for such shorter period that the registrant was required to file such report(s) been filed? If the answer is no, identify report(s).

[X] Yes [ ] No

(3) Is it anticipated that any significant change in results of operations from the corresponding period for the last fiscal year will be reflected by the earnings statements to be included in the subject report or portion thereof?

[ ] Yes [X] No

If so: attach an explanation of the anticipate change, both narratively and quantitatively, and, if appropriate, state the reasons why a reasonable estimate of the results cannot be made.

Aureal, Inc.

-----  
(Name of Registrant as Specified in Charter)

Has caused this notification to be signed on its behalf by the undersigned thereunto duly authorized.

Date April 3, 2000 By

-----  
Steve Mitchell, Director of Human Resources  
-----

Instruction. The form may be signed by an executive officer of the registrant or by any other duly authorized representative. The name and title of the person signing the form shall be typed or printed beneath the signature. If the statement is signed on

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behalf of the registrant by an authorized representative (other than an executive officer), evidence of the representative's authority to sign on behalf of the registrant shall be filed with the form.

ATTENTION

Intentional misstatements or omissions of fact constitute federal criminal violations (see 18 U.S.C. 1001).

GENERAL INSTRUCTIONS

1. This form is required by Rule 12b-25 of the General Rules and Regulations under the Securities Exchange Act of 1934.
2. One signed original and four conformed copies of this form and amendments thereto must be completed and filed with the Securities and Exchange Commission, Washington, DC 20549, in accordance with Rule 0-3 of the General Rules and Regulations under the Act. The information contained in or filed with the form will be made a matter of the public record in the Commission files.
3. A manually signed copy of the form and amendments thereto shall be filed with each national securities exchange on which any class of securities of the registrant is registered.
4. Amendments to the notifications must also be filed on Form 12b-25 but need not restate information that has been correctly furnished. The form shall be clearly identified as an amended notification.
5. Electronic Filers. This form shall not be used by electronic filers unable to timely file a report solely due to electronic difficulties. Filers unable to submit a report within the time period prescribed due to difficulties in electronic filing should comply with either Rule 201 or Rule 202 of Regulation S-T or apply for an adjustment in filing date pursuant to Rule 13(b) of Regulation S-T.

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ATTACHMENT  
PART III  
NARRATIVE

Aureal, Inc. (the "Company") hereby requests an extension of time to file its annual 10-K report (the "Report") due to recent unforeseen events. On March 24, 2000, all of the executive officers and senior staff members of the Company announced their immediate resignation from the Company. The loss of such key personnel has forced the Company to seek replacement or turnaround management. In addition, the Company is considering various options for the continuation of its business, including actions to either sell the Company or its assets or to wind down the Company.

In light of the loss of senior management, the Company has been required to focus its limited remaining resources on continuing the operations of the Company. In order to file the Report in a timely fashion, the Company would need to divert scarce resources and personnel from critical operational duties and responsibilities. Such diversion would require unreasonable effort and expense during this time of transition.

The Company anticipates that it will be able to file the Report within fifteen days from the date originally prescribed for the filing of the Report, absent further relief from the Commission.

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-----END PRIVACY-ENHANCED MESSAGE-----



-----BEGIN PRIVACY-ENHANCED MESSAGE-----

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CONFORMED SUBMISSION TYPE: NT 10-Q  
PUBLIC DOCUMENT COUNT: 1  
CONFORMED PERIOD OF REPORT: 20000402  
FILED AS OF DATE: 20000517

FILER:

COMPANY DATA:

COMPANY CONFORMED NAME: AUREAL SEMICONDUCTOR INC  
CENTRAL INDEX KEY: 0000892433  
STANDARD INDUSTRIAL CLASSIFICATION: PRINTED CIRCUIT BOARDS [3672]  
IRS NUMBER: 943117385  
STATE OF INCORPORATION: DE  
FISCAL YEAR END: 0103

FILING VALUES:

FORM TYPE: NT 10-Q  
SEC ACT:  
SEC FILE NUMBER: 000-22626  
FILM NUMBER: 638310

BUSINESS ADDRESS:

STREET 1: 4245 TECHNOLOGY DR  
CITY: FREMONT  
STATE: CA  
ZIP: 94538-6339  
BUSINESS PHONE: 5102524245

MAIL ADDRESS:

STREET 1: 4245 TECHNOLOGY DR  
CITY: FREMONT  
STATE: CA  
ZIP: 94538-6339

FORMER COMPANY:

FORMER CONFORMED NAME: MEDIA VISION TECHNOLOGY INC  
DATE OF NAME CHANGE: 19931210

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WASHINGTON, DC 20549

FORM 12b-25

NOTIFICATION OF LATE FILING

Commission File Number 0-20684

(Check one)

[ ] Form 10-K and Form 10-KSB [ ] Form 11-K  
[ ] Form 20-F [X] Form 10-Q and Form 10-QSB [ ] Form N-SAR

For period ended April 2, 2000

[ ] Transition Report on Form 10-K and Form 10-KSB  
[ ] Transition Report on Form 20-F  
[ ] Transition Report on Form 11-K  
[ ] Transition Report on Form 10-Q and Form 10-QSB  
[ ] Transition Report on Form N-SAR

For period ended \_\_\_\_\_

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If the notification relates to a portion of the filing checked above, identify the item(s) to which the notification relates:  
\_\_\_\_\_  
\_\_\_\_\_

PART I  
REGISTRANT INFORMATION

Full name of registrant Areal Inc.  
\_\_\_\_\_  
Former name if applicable Areal Semiconductor, Inc.  
\_\_\_\_\_  
Address of principal executive office (Street and number)  
45757 Northport Loop West  
\_\_\_\_\_  
City, state and zip code Fremont, California 94538  
\_\_\_\_\_

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PART II  
RULE 12B-25(b) AND (c)

If the subject report could not be filed without unreasonable effort or expense and the registrant seeks relief pursuant to Rule 12b-25(b), the following should be completed. (Check box if appropriate.)

- (a) The reasons described in reasonable detail in Part III of this form could not be eliminated without unreasonable effort or expense.
- (b) The subject annual report, semi-annual report, transition report on Form 10-K, 10-KSB, 20-F, 11-K or Form N-SAR, or portion thereof will be filed on or before the 15th calendar day following the prescribed due date; or the subject quarterly report or transition report on Form 10-Q, 10-QSB, or portion thereof will be filed on or before the fifth calendar day following the prescribed due date; and
- [X] (c) The accountant's statement or other exhibit required by Rule 12b-25(c) has been attached if applicable.

PART III

NARRATIVE

STATE BELOW IN REASONABLE DETAIL THE REASONS WHY FORM 10-K, 10-KSB, 11-K, 20-F, 10-Q, 10-QSB, N-SAR, OR THE TRANSITION REPORT PORTION THEREOF COULD NOT BE FILED WITHIN THE PRESCRIBED TIME PERIOD. (ATTACH EXTRA SHEETS IF NEEDED.)

On April 5, 2000 (the "Petition Date"), Aural Inc. (the "Company") filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of California, Oakland Division, Case No. 00-42104-T11. Since the Petition Date, the Company has continued to operate its business as a debtor-in-possession while the chapter 11 case is pending. Specifically, the Company has spent considerable time and resources addressing the many pressing issues associated with the bankruptcy filing, including, without limitation, addressing immediate business issues, transitioning to operating as a debtor in possession, negotiating the use of cash collateral, assembling documents and information to prepare Schedules and enable due diligence by potential purchasers, and negotiating a potential sale of the Company's assets. In addition, prior to the Petition Date, on March 24, 2000, all of the executive officers and senior staff members of the Company resigned from their employment. Thus, along with the difficult transition into bankruptcy, the Company also has been faced with replacing its key management personnel.

In light of the recent bankruptcy filing, as well as the loss of its senior management, a diversion of the Company's scarce resources and personnel from critical operational duties and responsibilities in order to timely file the Quarterly Report on Form 10-Q (the "Report") would require unreasonable effort and expense. As described above, since the Petition Date, the Company has been required to focus its limited remaining resources on continuing the operations of the Company. Moreover, the Company, which at its peak employed over 144 people, presently has approximately 32 full-time employees, only 1 of whom performs senior executive management functions. The size of the Company's finance and accounting staff also has been reduced, and the remaining staff must devote substantially all of its time to the maintenance of the remaining operations, preparation for the potential sale of the Company's assets, and the administrative burdens of the chapter 11 case. Furthermore, the drastic reduction in personnel has required the remaining members of the Company's management team and finance and accounting staff to assume tasks and responsibilities previously handled by others. As a result, the Company is unable to allocate the personnel necessary to prepare and properly review the Report in the time prescribed.

The Company is submitting a letter to the Securities and Exchange Commission (the "Commission") requesting confirmation that the Commission, or any member of its staff,

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will not recommend enforcement action against the Company if the Company implements, in lieu of the periodic reports required under the Exchange Act, a modified reporting procedure. Absent such relief from the Commission, the Company will endeavor to file the Report within the fifth calendar day following the prescribed due date.

PART IV  
OTHER INFORMATION

(1) Name and telephone number of person to contact in regard to this notification.

Steve Mitchell

(510) 252-4245

-----  
(Name)

(Area Code) (Telephone Number)

(2) Have all other periodic reports under Section 13 or 15(d) or the Securities Exchange Act of 1934 or Section 30 of the Investment Company Act of 1940 during the preceding 12 months or for such shorter period that the

registrant was required to file such report(s) been filed? If the answer is no, identify report(s).

[ ] Yes [X] No

The Annual Report on Form 10-K was due to be filed on April 3, 2000, but Aureal Inc. submitted a Notification of Late Filing on Form 12b-25 for that Report on April 4, 2000 in paper form, and on April 27, 2000 in electronic form.

(3) Is it anticipated that any significant change in results of operations from the corresponding period for the last fiscal year will be reflected by the earnings statements to be included in the subject report or portion thereof?

[ ] Yes [X] No

If so: attach an explanation of the anticipated change, both narratively and quantitatively, and, if appropriate, state the reasons why a reasonable estimate of the results cannot be made.

Aureal Inc.

-----  
(Name of Registrant as Specified in Charter)

Has caused this notification to be signed on its behalf by the undersigned thereunto duly authorized.

Date May 16, 2000 By /s/ Steve Mitchell

-----  
Steve Mitchell, Chief Operating Officer  
-----

Instruction. The form may be signed by an executive officer of the registrant or by any other duly authorized representative. The name and title of the person signing the form shall be typed or printed beneath the signature. If the statement is signed on behalf of the registrant by an authorized representative (other than an executive officer), evidence of the representative's authority to sign on behalf of the registrant shall be filed with the form.

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under the Act. The information contained in or filed with the form will be made a matter of the public record in the Commission files.

3. A manually signed copy of the form and amendments thereto shall be filed with each national securities exchange on which any class of securities of the registrant is registered.

4. Amendments to the notifications must also be filed on Form 12b-25 but need not restate information that has been correctly furnished. The form shall be clearly identified as an amended notification.

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12b25-4

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-----END PRIVACY-ENHANCED MESSAGE-----