

1 Penn Ayers Butler (Bar No. 56663)
2 Tracy Green (Bar No. 114876)
3 **WENDEL, ROSEN, BLACK & DEAN LLP**
4 1111 Broadway, 24th Floor
5 Oakland, California 94607
6 Telephone: (510) 834-6600
7 Fax: (510) 834-1928
8 Email: pbutler@wendel.com
9
10 Attorneys for Debtor
11 ECO2 Plastics, Inc.

8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

12 In Re
13 ECO2 PLASTICS, INC.,
14 a Delaware corporation
15 Debtor.

Case No. 09-33702-DM
Chapter 11
ECO2 PLASTICS, INC.
CHAPTER 11 PLAN (APRIL 21, 2010)
Date: TBD
Time: TBD
Dept: TBD
Judge: Hon. Dennis Montali

16 Tax ID No. 31-1705310
17

Wendel, Rosen, Black & Dean LLP
1111 Broadway, 24th Floor
Oakland, CA 94607

18
19
20
21
22
23
24
25
26
27
28

1	I.	EXECUTIVE SUMMARY	1
2	II.	DEFINITIONS AND INTERPRETATION	2
3	A.	Defined Terms.....	2
4	B.	Rules of Interpretation	9
5	C.	Computation of Time:.....	10
6	III.	TREATMENT OF CLAIMS NOT CLASSIFIED UNDER THE PLAN	10
7	A.	Debtor in Possession Loan.....	10
8	B.	General Administration Expense Claims.....	11
9	C.	Professional Compensation Expenses of Administration	11
10	D.	Priority Tax Claims.....	11
11	IV.	DESIGNATION OF CLASSES OF CLAIMS AND INTERESTS	12
12	A.	Class D – Claims Secured by Liens on Property of ECO2 (Schedule D).....	12
13	B.	Class E – Classified Priority Claims (Schedule E)	13
14	C.	Class F – General Unsecured Claims (Schedule F).....	14
15	D.	Class G - Equity Interests of Stock Holders	14
16		Class G-1: The Interests of Holders of ECO2 Prepetition Series “A” Preferred Stock.....	14
17	V.	TREATMENT OF CLASSIFIED CLAIMS AND SPECIFICATION OF IMPAIRED CLASSES	14
18	A.	Secured Claims – Class D.....	14
19	B.	Priority Claims – Class E.....	15
20	C.	General Unsecured Claims – Class F.....	15
21	D.	Class G: Equity Interests of Stock Holders and Warrant Holders	16
22	VI.	PROCEDURES FOR RESOLVING CLAIMS AND DISPUTES.....	16
23	A.	Claim Defenses	16
24	B.	Responsibilities for Claims Administration.....	16
25	C.	Estimation of Claims.....	16
26	D.	Periodic Reports of Claim Dispositions.....	17
27	E.	Disallowance of Claims	17
28	VII.	TREATMENT OF EXECUTORY CONTRACTS	17
	A.	Assumption and Rejection of Executory Contracts	17
	B.	Cure of Defaults for Assumed Executory Contracts.....	18
	C.	Claims Based on Rejection or Repudiation of Executory Contracts	18
	D.	Reservation of Rights.....	19
	VIII.	MEANS FOR IMPLEMENTATION OF THE PLAN.....	19
	A.	The Plan Fund	19
	B.	Post Effective Date Notices	19

1	C.	Reorganized Debtor Equity Interests	19
2	D.	New Common Stock	20
3	E.	New Preferred Stock	20
4	F.	Corporate Existence	20
5	G.	Vesting of Assets in the Reorganized Debtor	20
6	H.	Discharge of Debtor	21
7	I.	Restructuring Transactions	21
8	J.	Corporate Action.....	22
9	K.	Post-Effective Date Governance	22
10	L.	Effectuating Documents; Further Transactions	22
11	M.	Senior Management	22
12	N.	Preservation of Rights of Action.....	23
13	IX.	PROVISIONS GOVERNING DISTRIBUTIONS	24
14	A.	Distributions on Account of Claims Allowed As of the Effective Date	24
15	B.	Distributions on Account of Claims and Interests Allowed After the Effective Date	24
16	C.	Delivery of Distributions	25
17	X.	ALLOWANCE AND PAYMENT OF CERTAIN EXPENSES OF ADMINISTRATION	27
18	A.	Professional Compensation Expenses of Administration	27
19	B.	Other Administrative Expense Claims.....	27
20	XI.	EFFECT OF PLAN CONFIRMATION ON LIENS.....	27
21	XII.	CONDITIONS PRECEDENT TO EFFECTIVE DATE	27
22	A.	Conditions Precedent to Effective Date	27
23	B.	Waiver of Conditions Precedent	28
24	C.	Effect of Non-Occurrence of Conditions to the Effective Date.....	28
25	XIII.	MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN	29
26	XIV.	RETENTION OF JURISDICTION	29
27	XV.	MISCELLANEOUS PROVISIONS.....	32
28	A.	Immediate Binding Effect.....	32
	B.	Additional Documents	32
	C.	Payment of Statutory Fees	32
	D.	Reservation of Rights.....	32
	E.	Successors and Assigns.....	33
	F.	Service of Documents	33
	G.	Term of Injunctions or Stays.....	33
	H.	Entire Agreement	34

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. Governing Law 34
J. Conflicts Among the Plan and Plan Related Pleadings and Documents 34
K. Closing of Chapter 11 Case 35

1
2 ECO2 Plastics, Inc., a Delaware corporation and Debtor in Possession in this Chapter 11
3 case (“ECO2” or the “Debtor”), hereby proposes this Chapter 11 Plan, dated April 21, 2010 (the
4 “Plan”). Reference is made to the Disclosure Statement, dated April 21, 2010, for a discussion of
5 the history of ECO2, its business, assets, liabilities, results of Chapter 11 operations, and a
6 summary and description of the Plan and certain related matters. The Debtor is the proponent of
7 the Plan within the meaning of Section 1129 of the Bankruptcy Code.

8 **I. EXECUTIVE SUMMARY**

9 The goal of a Chapter 11 case is the satisfaction of creditor claims through the
10 confirmation of a Chapter 11 Plan that complies with the requirements of the Bankruptcy Code.
11 The Plan is a contract between the debtor and its creditors by which the debtor agrees to satisfy its
12 obligations. To become effective, the Plan must be accepted by at least one (1) class of creditors
13 whose claims are modified under the Plan, and the Plan must be confirmed by the court after a
14 duly noticed hearing.

15 The objective of the ECO2 Plan is to allow the Debtor to emerge from bankruptcy to use
16 its waterless plastic recycling process and to continue to operate its facility and employ people in
17 the Modesto area. To accomplish this goal, it is necessary to obtain Exit Financing, and to
18 recapitalize the Reorganized Debtor through the cancellation of all equity interests as of the Plan
19 Confirmation Date, the satisfaction of the secured claims of entities who have made Court
20 authorized loans to ECO2 during the Chapter 11 case and the Secured Bridge Noteholders by the
21 issuance of new Series A Preferred Stock. The senior secured claim, held by the California
22 Department of Resources Recycling and Recovery (“CalRecycle”) an agency of the State of
23 California, shall be satisfied by the issuance of an amended, restated note in the sum of
24 \$1,351,900.12, which note includes all prepetition and post petition defaults in the new principal
25 amount, and which shall continue to be secured by a first lien on the same collateral as its
26 prepetition lien. Other secured claims shall be satisfied by the issuance of Common Stock equal
27 to 5% of the amount of their allowed claim, and unsecured creditors shall receive a cash
28 distribution equal to 5% of the allowed amount of their claims. Funds necessary to make cash
distributions under the Plan will be provided by Buff Investment Limited Partnership.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II. DEFINITIONS AND INTERPRETATION

A. Defined Terms.

As used in the Plan, the capitalized terms below have the following meanings, except as expressly provided or unless the context otherwise requires. Any term used but not defined in the Plan, but that is used in the Bankruptcy Code or the Bankruptcy Rules, has the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules.

1. “**Administrative Expense Claim**” means a Claim for costs and expenses of administration of the Estate under Sections 503(b), 507(b) or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after the Petition Date of preserving the Estate and operating the businesses of the Debtor; (b) Allowed Claims of retained Professionals in the Chapter 11 Case; and (c) all fees and charges assessed against the Estate under 28 U.S.C., Sections 1911-1930.

2. “**Agent for Plan Distributions**” means the Reorganized Debtor, or the entity or entities chosen by the Reorganized Debtor to make or to facilitate distributions pursuant to the Plan.

3. “**Allowed Claim**” or “**Allowed Interest**” means a claim against, or equity interest in, ECO2 to the extent that:

- (a) If the claim or interest arose or is deemed to have arisen on or before the Filing Date:
 - (i) proof of the claim or interest either is timely filed or is deemed filed under Code §1111(a); and
 - (ii) the claim or interest either is not the subject of a timely filed objection or is allowed by a Final Order; or
- (b) If the claim arose after the Filing Date and is not deemed to have arisen on or before such date:
 - (i) the claim is of a kind that can be voluntarily paid from the ECO2 estate without Court approval and is so paid; or
 - (ii) the claim has been allowed by a Final Order.
- (c) Such claim is not subject to disallowance pursuant to Section 502(d) of the Code.

1
2 4. “**Ballot**” means the form distributed to holders of Claims to indicate
3 acceptance or rejection of the Plan.

4 5. “**Ballot Date**” means the date by which a completed Ballot must be
5 received to be counted as an acceptance or rejection of the Plan.

6 6. “**Bankruptcy Code**” means Title 11 of the United States Code, 11 U.S.C.
7 Sections 101-1532.

8 7. “**Bankruptcy Court**” means the United States Bankruptcy Court for the
9 Northern District of California or its successor.

10 8. “**Bankruptcy Local Rules**” means the Bankruptcy Local Rules for the
11 Northern District of California (“B.L.R.”).

12 9. “**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure as
13 promulgated by the United States Supreme Court under Section 2075 of Title 28 of the United
14 States Code, 28 U.S.C., Section 2075.

15 10. “**Bar Date**” means March 29, 2010, for general creditors, and May 24,
16 2010, for governmental units, the dates fixed as the last days for filing proofs of claims in the
17 Chapter 11 Case.

18 11. “**Board of Directors**” means the board of directors of the Reorganized
19 Debtor.

20 12. “**Business Day**” means any day other than a Saturday, Sunday or any other
21 day on which banking institutions in San Francisco, California are required or authorized to close
22 by law or executive order.

23 13. “**Cash**” means legal tender of the United States of America.

24 14. “**Chapter 11 Case**” means the Chapter 11 Case of ECO2 Plastics filed
25 November 24, 2009.

26 15. “**Chapter 11 Exit Financing**” means loans by Buff Investment Limited
27 Partnership (the “Commitment Party”) under the Commitment Letter.

28 16. “**Chapter 11 Plan**” or “**Plan**” means the ECO2 Chapter 11 Plan dated
April 21, 2010.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

17. “**Chapter 11 Plan Fund**” means the cash fund established to provide for payments of obligations as the Plan Effective Date and Post Effective Date Expenses of Administration.

18. “**Claim**” means any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal equitable, secured or unsecured; or any right to an equitable remedy for breach of performance, if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

19. “**Commitment Letter**” means the letter executed between Buff Investment Limited Partnership and ECO2 regarding funding of Chapter 11 Exit Financing and the Chapter 11 Plan Fund a copy of which is attached hereto as **Exhibit A**.

20. “**Commitment Party**” means Buff Investment Limited Partnership (“BILP”).

21. “**Confirmation**” means the entry of the Confirmation Order on the docket of the Chapter 11 Case.

22. “**Confirmation Date**” means the date upon which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Case.

23. “**Confirmation Hearing**” means the hearings conducted by the Bankruptcy Court pursuant to Section 1128(a) of the Bankruptcy Code to consider confirmation of the Plan.

24. “**Confirmation Hearing Notice**” means the notice of the Confirmation Hearing that sets forth in detail the voting and objection deadlines with respect to the Plan.

25. “**Confirmation Order**” means the order of the Bankruptcy Court confirming the Plan pursuant to, among others, Section 1129 of the Bankruptcy Code.

26. “**Creditor**” means any Holder of a Claim.

27. “**Creditors’ Committee**” means the Official Committee of Unsecured Creditors appointed in the Chapter 11 Case by the United States Trustee [Docket No. 35], with

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

such additions and changes as may occur from time to time. The members of which are the following:

L&M Sharpening
Attn: James Rohner, President
2817 Cherryland, No. 7
Stockton, CA 95215

Titus Maintenance & Installation Services, Inc.
Attn: Michael C. Centers
1430 Willow Pass Rd., Ste. 250
Concord, CA 94520

Geiger Mfg.
Attn: Roger
11 East Scotts Ave.
POB 1449
Stockton, CA 95201

Plastic Recycling Corp., of CA
Attn: John Herrick
POB 1327
Sonoma, CA 95476

F&H Construction
Attn: Harold Jones
4945 Waterloo Rd.
Stockton, CA 95215

The Committee is represented by counsel:

Clifford Stevens, Esq.
Neumiller & Beardsley
509 W. Weber Ave.
Stockton, CA 95203
Tel: (209) 948-8200
Fax: (209) 948-4910
cstevens@neumiller.com

28. “**Cure**” means the payment of Cash by the Debtor, or the distribution of other property (as the Debtor and the counterparty to the applicable Executory Contract may agree or the Bankruptcy Court may order), as necessary to (a) cure a monetary default by the Debtor in accordance with the terms of an Executory Contract, and (b) permit the Debtor to assume such Executory Contract under Section 365(a) of the Bankruptcy Code.

29. “**D&O Liability Insurance Policies**” means all insurance policies for directors and officers’ liability maintained by the Debtor as of the Petition Date.

30. “**Debtor in Possession Loans**” means those loans made pursuant to the Order Approving Post-Petition Financing and Providing Lenders with Superpriority Administrative Claim, Property Lien and Subordinating existing Secured Creditors or their Assignee by Trident Capital Fund-VI, L.P., Trident Capital Fund-VI, Principals Fund, LLC, and Buff Investment Limited Partnership.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

31. “**Disclosure Statement**” means the disclosure statement for the Plan, as amended, supplemented or modified from time to time, that is prepared and distributed in accordance with Sections 1125, 1126(b) and 1145 of the Bankruptcy Code, Bankruptcy Rule 3018 and other applicable law.

32. “**Disputed Claim**” means a claim against ECO2 (a) which has been listed in the schedules as disputed, contingent, or unliquidated or (b) for which an objection has been filed which neither is the subject of a Final Order nor has been withdrawn.

33. “**Distributions**” means the payments of Cash and other consideration to be distributed under the Chapter 11 Plan to holders of Allowed Claims.

34. “**ECO2**” means ECO2 Plastics, Inc., a Delaware corporation and Debtor in Possession in this Chapter 11 Case.

35. “**Effective Date**” means the first Business Day after the date the Reorganized Debtor declares that all conditions to the effectiveness of the Plan have been satisfied or waived which date shall not be more than thirty (30) days after Confirmation.

36. “**Executory Contract**” means a contract or lease to which the Debtor is a party that is subject to assumption or rejection under Sections 365 or 1123 of the Bankruptcy Code. Any executory contract that is not assumed shall be deemed rejected, unless otherwise noted, and such executory contract holder will have a claim as an unsecured creditor in Class F.

37. “**Filing Date**” means November 24, 2009.

38. “**Final Order**” means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction with respect to the subject matter, as entered on the docket in any Chapter 11 Case or the docket of any court of competent jurisdiction, that has not been reversed, stayed, modified or amended, and as to which the time to appeal, or seek certiorari or move for a new trial, reargument or rehearing has expired and no appeal or petition for certiorari or other proceedings for a new trial, reargument or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been timely filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

from which certiorari was sought or the new trial, reargument or rehearing shall have been denied, resulted in no modification of such order or has otherwise been dismissed with prejudice.

39. **“General Unsecured Claim”** means any and all Claims against the Debtor that are not a/an (a) Administrative Expense Claim; (b) Professional Compensation Administrative Expense; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; (e) Secured Claim; or (f) Interest.

40. **“Holder”** means an entity holding a Claim or Interest, as applicable.

41. **“Interest”** or **“Equity Interest”** means any equity security in the Debtor, including all issued, unissued, authorized or outstanding shares of stock together with any warrants, options, equity-based awards or contractual rights to purchase or acquire such equity securities at any time and all rights arising with respect thereto.

42. **“New Common Stock”** means, the new common stock, par value \$.001 per share, of the Reorganized Debtor.

43. **“New Series A Preferred Stock”** means the Reorganized Debtor series A preferred stock.

44. **“Petition Date”** means November 24, 2009.

45. **“Plan”** means this Chapter 11 Plan, including exhibits and attachments contained in the Plan Supplement.

46. **“Plan Fund”** means the fund to be established by ECO2 prior to the Confirmation Hearing in accordance with Article VIII of the Plan from which Cash Distributions will be made.

47. **“Plan Supplement”** means the compilation of documents and forms of documents and exhibits to the Plan, as supplemented or modified from time to time.

48. **“Priority Non-Tax Claims”** means any and all Claims entitled to priority in payment as specified in Section 507(a)(4), (5), (6), or (7) of the Bankruptcy Code.

49. **“Priority Tax Claims”** mean any and all Claims of a governmental unit of the kind specified in Section 507(a)(8) of the Bankruptcy Code.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

50. “Professional” means an entity: (a) employed pursuant to a Bankruptcy Court order in accordance with Sections 327 or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to or on the Confirmation Date, pursuant to Sections 327, 328, 329, 330 or 331 of the Bankruptcy Code or (b) awarded compensation and reimbursement by the Bankruptcy Court pursuant to Section 503(b)(4) of the Bankruptcy Code.

51. “Professional Compensation Administrative Expense” means a request by a Professional seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Effective Date under Sections 330, 331, 503(b)(2), of the Bankruptcy Code.

52. “Proof of Claim” means a proof of Claim filed in the Chapter 11 Case.

53. “Rejection Damages Claim” means any Claim on account of the rejection of an Executory Contract pursuant to Section 365 of the Bankruptcy Code. Any holder of a Rejection Damages Claim shall be a member of Class F.

54. “Schedules” means the schedules of assets and liabilities, schedules of Executory Contracts, and statement of financial affairs filed by the Debtor pursuant to Section 521 of the Bankruptcy Code, the official bankruptcy forms, and the Bankruptcy Rules.

55. “Secured Claim” means, with respect to any Claim against the Debtor that portion, which, pursuant to Section 506 of the Bankruptcy Code is (a) secured by a valid, perfected, and enforceable security interest, Lien, mortgage or other encumbrance, that is not subject to avoidance under applicable bankruptcy or nonbankruptcy law, in or upon any right, title or interest of a Debtor in and to property of its estate, to the extent of the value of the interest of the Holder in such property as of the relevant determination date or (b) Allowed as such pursuant to the terms of the Plan (subject to the occurrence of the Effective Date).

56. “Unclaimed Distribution” means any distribution under the Plan on account of an Allowed Claim or Interest to a Holder that has not: (a) accepted a particular distribution or, in the case of distributions made by check, negotiated such check within sixty (60) days; (b) given notice to the Reorganized Debtor of an intent to accept a particular distribution;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- (c) responded to requests for information necessary to facilitate a particular distribution; or
- (d) taken any other action necessary to facilitate such distribution.

B. Rules of Interpretation.

For purposes of the Plan:

1. each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine, and the neuter gender;
2. unless otherwise specified, any reference in the Plan or Plan Supplement to a contract, instrument, release, indenture, 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, except that any contract, instrument, release, indenture, or other agreement or document attached as an exhibit to the Plan Supplement shall be in the form attached, subject to technical amendments prior to the Effective Date to correct ambiguities, inconsistencies or errors, as applicable;
3. unless otherwise specified, any reference in the Plan to an existing document or exhibit, whether or not filed with the Bankruptcy Court, shall mean such document or exhibit, as it may have been or may be amended, modified or supplemented in accordance with its terms;
4. any reference to an entity as a Holder of a Claim or Interest includes the successors and assigns of such entity;
5. unless otherwise specified, all references in the Plan to exhibits are references to exhibits in the Plan Supplement;
6. subject to the provisions of any contract, certificate of incorporation, bylaw, instrument, release or other agreement or document entered into in connection with the Plan, the rights and obligations arising pursuant to the Plan shall be governed by, and construed and enforced in accordance with, applicable federal law, including the Bankruptcy Code and Bankruptcy Rules;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

7. captions and headings of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan;

8. unless otherwise set forth in the Plan, the rules of construction set forth in Section 102 of the Bankruptcy Code shall apply;

9. any term used in capitalized form in the Plan that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as applicable;

10. all references to docket numbers of documents filed in the Chapter 11 Case are references to the docket numbers under the Bankruptcy Court CM/ECF system;

11. all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, as applicable to the Chapter 11 Case, unless otherwise stated; and

12. any immaterial effectuating provisions may be interpreted by the Reorganized Debtor after the Effective Date in such a manner that is consistent with the overall purpose and intent of the Plan, all without further Bankruptcy Court order.

C. Computation of Time:

In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

III. TREATMENT OF CLAIMS NOT CLASSIFIED UNDER THE PLAN

In accordance with Section 1123(a)(1) of the Bankruptcy Code, Expenses of Administration and Priority Claims have not been classified and are excluded from the Classes of Claims set forth in Article IV.

A. Debtor in Possession Loan.

Holders of Allowed Administration Expense Claims based on Debtor in Possession Loans made pursuant to the Order Granting Motion for Order Approving Post-Petition Financing and Providing Lenders with Super Priority Administrative Claim, Property Lien and Subordinating Existing Secured Creditors or their assignees (Docket #138) shall receive, on the Effective Date, New Series A Preferred Stock equal in value to 100% of the amount of their loans.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

B. General Administration Expense Claims.

Except for Administration Expense Claims based on Debtor in Possession Loans and Administration Expense Claims that are for Professional Compensation and, except to the extent that a Holder of an allowed Administration Expense Claim and the Debtor agree to less favorable treatment for such Holder, each Holder of an Allowed Administration Expense Claim shall be paid in full in Cash on the later of the Effective Date of the Plan, the date such claim is Allowed, and the date such allowed Administration Expense Claim becomes due and payable, or as soon thereafter as is practicable.

C. Professional Compensation Expenses of Administration.

All entities seeking awards by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date under Sections 330, 331, or 503(b)(2), of the Bankruptcy Code shall (1) file, on or before the first Business Day that is **thirty (30)** days after the Effective Date, their respective applications for final allowances of compensation for services rendered and reimbursement of expenses incurred and (2) be paid in full, in Cash, in such amounts as are allowed by the Bankruptcy Court in accordance with the Order relating to or allowing any such expense of administration. The Reorganized Debtor is authorized to pay compensation for Professional services rendered and reimbursement of expenses incurred after the Effective Date in the ordinary course and without the need for prior Bankruptcy Court approval.

D. Priority Tax Claims.

Each Holder of an Allowed Priority Tax Claim shall receive, on the Effective Date or such later date as such Allowed Priority Tax Claim becomes due and payable, at the option of the Debtor, one of the following treatments on account of such Claim: (1) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, plus, to the extent provided for by Section 511 of the Bankruptcy Code, interest at the rate determined under applicable nonbankruptcy law; or (2) such other treatment as may be agreed to by such Holder and the Debtor or otherwise determined upon an order of the Bankruptcy Court.

1
2 **IV. DESIGNATION OF CLASSES OF CLAIMS AND INTERESTS**

3 Pursuant to Section 1122 of the Bankruptcy Code, set forth below is a designation of
4 Classes of Claims against and Interests in the Debtor. A Claim or Interest is placed in a particular
5 Class for the purposes of voting on the Plan and receiving distributions pursuant to the Plan only
6 to the extent that such Claim or Interest is an Allowed Claim or an Allowed Interest in that Class
7 and such Claim or Interest has not been paid, released or otherwise settled prior to the Effective
8 Date.

9 **A. Class D – Claims Secured by Liens on Property of ECO2 (Schedule D).**

10 **Class D-1: (First Seniority).** Claims secured by a lien on substantially all
11 personal property of ECO2 under a UCC-1 filing on in July 28, 2005 originally in the name of the
12 California Integrated Waste Management Board (“CIWMB”) securing that loan to predecessor to
13 ECO2 the sum of \$2,000,000.00 by way of a secured promissory note dated May 13, 2005, with
14 interest accruing at the rate of 4.25%. The outstanding balance as of March 10, 2010, including
15 accrued but unpaid payments and interest was approximately \$1,351,900.00. On January 1, 2010,
16 CIWMB merged with the Division of Recycling and is now known as the California Department
17 of Resources Recycling and Recovery (“CalRecycle”).

18 **Class D-2: (Bridge Notes - Second Seniority).** Claims of William & Michelle
19 Whittaker Trust and Whittaker Family Interests, LLC, successor to Whittaker Capital Partners,
20 LLC, Charles Buff, PPC Holdings, LLC, successor to Peninsula Packaging, LLC, Trident Capital
21 Fund-VI, LP, Trident Capital Fund-VI Principals Fund, LLC, and Trident Capital, Inc., as
22 Collateral Agent secured by a lien on substantially all personal property of ECO2. Between
23 August 14, 2009 and October 12, 2009, these secured lenders loaned the Debtor the sum of
24 \$1,381,000.00, with interest accruing at the rate of 8%. These loans have seniority over Classes
25 D-3, D-4, D-5 and D-6, as a subsequent advance secured under that Security Agreement dated
26 June 2, 2009.

27 **Class D-3: (Preferred D-3rd Seniority).** The claims of PPC Holdings, LLC,
28 successor to Peninsula Packaging, LLC, Trident Capital Fund-VI, LP, Trident Capital Fund-VI
Principals Fund, LLC, Hutton Living Trust (Dated 12-10-96), Whittaker Family Interests, LLC as

1
2 successor to Whittaker Capital Partners, LLC, and Trident Capital, Inc., as Collateral Agent
3 secured by a lien on substantially all personal property of ECO2 under a UCC-1 filing on June 4,
4 2009. Between May and June 2009, these lenders loaned the Debtor \$2,157,865.88, with interest
5 accruing at the rate of 8%, secured under that Security Agreement dated June 2, 2009.

6 **Class D-4: (Preferred C – December: 4th Seniority).** The claims of PPC
7 Holdings, LLC, successor to Peninsula Packaging, LLC, Trident Capital Fund-VI Principals
8 Fund, LLC, Trident Capital Fund-VI, LP, Trident Capital, Inc., as Collateral Agent, and the
9 Hutton Family Living Trust (dated December 10, 1996) secured by a lien on substantially all
10 personal property of ECO2 under a UCC-1 filing on December 22, 2008. These lenders loaned
11 the Debtor the sum of \$3,449,089.71, with interest accruing at the rate of 8% and secured under
12 that Security Agreement dated December 17, 2008.

13 **Class D-5: (Preferred C – September: 5th Seniority).** The claims of Trident
14 Capital Fund-VI Principals Fund, LLC, Trident Capital Fund-VI, LP, Trident Capital, Inc., as
15 Collateral Agent, and the Hutton Family Living Trust (dated December 10, 1996) secured by a
16 lien on substantially all personal property of ECO2 under a UCC-1 filing on August 28, 2008.
17 Between August 22, 2008 and September 25, 2008, the lenders loaned the Debtor the sum of
18 \$4,015,144.35, with interest accruing at the rate of 8% and secured under that Security
19 Agreement dated September 2, 2009.

20 **Class D-6: (Unperfected Security Interest of Cool Clean Technologies, Inc.).**
21 Pursuant to that Settlement Agreement and Security Agreement between Cool Clean
22 Technologies, Inc. (“Cool Clean”) and the Debtor dated June 15, 2009, in which Cool Clean was
23 to obtain a security interest in the assets of the Debtor, but which security interest was not
24 perfected prior to the commencement of the Chapter 11 case.

25 **B. Class E – Classified Priority Claims (Schedule E).**

26 **Class E:** The Priority portion of claims scheduled or filed as priority employee
27 wage claims under 507(a)(3) of the Bankruptcy Code totaling approximately \$36,750.00.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

C. Class F – General Unsecured Claims (Schedule F).

Class F: Claims scheduled or filed as general unsecured claims, and Rejection Damages Claims.

D. Class G - Equity Interests of Stock Holders

Class G-1: The Interests of Holders of ECO2 Prepetition Series “A” Preferred Stock.

Class G-2: The Interests of Holders of ECO2 Prepetition Series “B-1” Preferred Stock.

Class G-3: The Interests of Holders of ECO2 Prepetition Common Stock.

Class G-4: Any Interest not included in G-1 through G-3, including, but not limited to, warrants, options and other contractual right to an Interest.

V. TREATMENT OF CLASSIFIED CLAIMS AND SPECIFICATION OF IMPAIRED CLASSES

To the extent a Class contains Allowed Claims, the treatment provided to each Class for distribution purposes is specified below. Holders of Allowed Claims shall receive the Distributions set forth in this Article on account of, and in full satisfaction of, such Allowed Claims. In no event will the holder of an Allowed Claim, receive Distributions of a value equal to more than 100% of the amount of such Allowed Claim.

A. Secured Claims – Class D

Class D-1: (First Seniority). Class D-1 is impaired by the Plan as all arrearages will be added to the principal debt. The Holder of the Allowed Class D-1 Claim shall receive, on the Effective Date, a Class D-1 Note, secured by the prepetition lien now held by CalRecycle. The Class D-1 Note shall be in the amount of \$1,351,900.12, and provide for monthly payments as necessary to fully amortize the principal balance over the original term of the loan until it is paid in full on or before May 1, 2015, at the existing contract rate of interest of 4.250% per annum. The Class D-1 Note may be paid in full, at any time at the election of the Reorganized Debtor, on or after the Effective Date, without penalty.

Class D-2: (Bridge Notes - Second Seniority). Class D-2 is impaired by the Plan. The Holders of Allowed Class D-2 Claims shall receive, on or at the Effective Date, New Series A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Preferred Stock, with liquidation and participating preferences for each dollar amount equal to 50% of their Allowed Claim, rounded to the nearest whole dollar.

Class D-3: (Preferred D-3rd Seniority). Class D-3 is impaired by the Plan. The Holders of Allowed Class D-3 Claims shall receive, on the Effective Date, New Common Stock for each dollar amount equal to 5% of their Allowed Claims, rounded to the nearest whole dollar.

Class D-4: (Preferred C – December: 4th Seniority). Class D-4 is impaired by the Plan. The Holders of Allowed Class D-4 Claims shall receive, on the Effective Date, New Common Stock for each dollar amount equal to 5% of their Allowed Claims, rounded to the nearest whole dollar.

Class D-5: (Preferred C – September: 5th Seniority). Class D-5 is impaired by the Plan. The Holders of Allowed Class D-5 Claims shall receive, on the Effective Date, New Common Stock for each dollar amount equal to 5% of their Allowed Claims, rounded to the nearest whole dollar.

Class D-6: Class D-6 is impaired as a secured creditor and shall receive nothing on account of its secured claim, however, it shall be paid in accordance with its contractual agreement with the Debtor and with the Court Order of March 22, 2010 (Docket #158) and is not impaired as an unsecured creditor.

B. Priority Claims – Class E

Class E: Class E is not impaired by the Plan. The Holders of Allowed Class E Claims shall receive payment in full in Cash, on the Effective Date, or the date the specific Class E Claim is Allowed.

C. General Unsecured Claims – Class F

Class F: Class F is impaired by the Plan. The Holders of Allowed Class F Claims shall receive, in full satisfaction of their Allowed Claims, cash in an amount equal to 5% of their Allowed Claim, on the first Business Day after the Effective Date or the date the specific Class F Claim is Allowed. Notwithstanding any other provisions of the Plan, the minimum distribution to each Holder of an Allowed Class F Claim shall be \$5.00.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

D. Class G: Equity Interests of Stock Holders and Warrant Holders

Class G-1: Class G-1 is impaired by the Plan. All holders of interests or rights to acquire interests in Class G-1 as of the Effective Date, of any kind, shall have their interests and rights canceled and terminated effective upon the Effective Date.

Class G-2: Class G-2 is impaired by the Plan. All holders of interests or rights to acquire interests in Class G-2 as of the Effective Date, of any kind, shall have their interests and rights canceled and terminated effective upon the Effective Date.

Class G-3: Class G-3 is impaired by the Plan. All holders of interests or rights to acquire interests in Class G-3 as of the Effective Date, of any kind, shall have their interests and rights canceled and terminated effective upon the Effective Date.

Class G-4: Class G-4 is impaired by the Plan. All holders of interests or rights to acquire interests in Class G-4 as of the Effective Date, of any kind, shall have their interests and rights canceled and terminated effective upon the Effective Date.

VI. PROCEDURES FOR RESOLVING CLAIMS AND DISPUTES

A. Claim Defenses

After the Effective Date, the Reorganized Debtor shall have and retain any and all rights and defenses the Debtor had with respect to any Claim immediately prior to the Effective Date.

B. Responsibilities for Claims Administration.

Except as otherwise specifically provided in the Plan, after the Effective Date, the Reorganized Debtor shall have the sole authority to file, withdraw or litigate to judgment, objections to Claims; or to settle or compromise any Disputed Claim without any further notice to or action, order or approval by the Bankruptcy Court.

C. Estimation of Claims

Before or after the Effective Date, the Debtor or Reorganized Debtor, as applicable, may, at any time, request that the Bankruptcy Court estimate any Disputed Claim that is contingent or unliquidated pursuant to Section 502(c) of the Bankruptcy Code for any reason, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

D. Periodic Reports of Claim Dispositions

Beginning on the end of the first full calendar quarter that is at least ninety (90) days after the Effective Date, the Reorganized Debtor shall file each calendar quarter a list of all Claims that have been paid, satisfied, or disallowed during such prior calendar quarter.

E. Disallowance of Claims.

Any Claims held by entities from which property is recoverable under Section 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under Section 522(f), 522(h), 544, 545, 547, 548, 549 or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to Section 502(d) of the Bankruptcy Code, and Holders of such Claims may not receive any distributions on account of such Claims until such time as such causes of action against that entity have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, to the Debtor by that entity have been turned over or paid to the Reorganized Debtor.

VII. TREATMENT OF EXECUTORY CONTRACTS

A. Assumption and Rejection of Executory Contracts.

The Executory Contract between the Debtor and Honeywell Federal Manufacturing & Technologies, LLC (“Honeywell”) shall be assumed as of the Effective Date, as modified. There shall be no payment to Honeywell to cure any default that existed as of the Filing Date. The Executory Contract of Haulaway Storage Containers, Inc. (“Haulaway”) shall be assumed, and Haulaway shall be paid \$305.00 to cure its arrearage. The Officer and Director Indemnity Agreements set forth in the ECO2 Bylaws shall be assumed. No cure payment shall be paid.

The June 15, 2009 Cool Clean contract shall not be rejected, and shall survive the Bankruptcy Case subject to performance on its terms. All other Executory Contracts listed on Schedule G shall be deemed rejected as of the Effective Date. Entry of the Confirmation Order shall constitute a Bankruptcy Court order approving the assumptions or rejections of such Executory Contracts as set forth in the Plan, all pursuant to Sections 365(a) and 1123 of the Bankruptcy Code. Unless otherwise indicated, all assumptions or rejections of such Executory Contracts in the Plan are effective as of the Effective Date. Each such Executory Contract

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

assumed pursuant to the Plan or by Bankruptcy Court order but not assigned to a third party prior to the Effective Date shall revert in and be fully enforceable by the Reorganized Debtor in accordance with its terms, except as such terms may have been modified by such order.

Notwithstanding anything to the contrary in the Plan, the Debtor or Reorganized Debtor, as applicable, reserve the right, with the consent of the Relevant Counterparty, to alter, amend, modify or supplement the Schedule of Executory Contracts prior to Confirmation.

B. Cure of Defaults for Assumed Executory Contracts.

If the Debtor or Reorganized Debtor, as applicable, or contract counterparts, object to any Cure or any other matter related to assumption, the Bankruptcy Court shall determine the Allowed amount of such Cure and any related issues. If there is a dispute regarding such Cure, the ability of the Reorganized Debtor or any assignee to provide “adequate assurance of future performance” within the meaning of Section 365 of the Bankruptcy Code, or any other matter pertaining to assumption, then Cure shall occur as soon as reasonably practicable after entry of a Final Order resolving such dispute, approving such assumption (and, if applicable, assignment), or as may be agreed upon by the Debtor or Reorganized Debtor, and the counterparty to the Executory Contract. Any counterparty to an Executory Contract that fails to object timely to the proposed assumption of any Executory Contract will be deemed to have consented to such assumption.

Assumption of any Executory Contract pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract at any time prior to the effective date of assumption.

C. Claims Based on Rejection or Repudiation of Executory Contracts.

Unless otherwise provided by a Bankruptcy Court order, any Proofs of Claim asserting Claims arising from the rejection or repudiation of the Debtor Executory Contracts pursuant to the Plan or otherwise must be filed with the Court no later than fifteen (15) days after the later of the Effective Date or the date of rejection or repudiation.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

D. Reservation of Rights.

Neither the exclusion nor inclusion of any contract or lease in the Plan Supplement, nor anything contained in the Plan, shall constitute an admission by the Debtor that any such contract or lease is an Executory Contract or that the Reorganized Debtor has any liability thereunder.

VIII. MEANS FOR IMPLEMENTATION OF THE PLAN

A. The Plan Fund.

Prior to the Effective Date, ECO2 shall establish the Chapter 11 Plan Fund. Cash Distributions under the Plan shall be paid from the Chapter 11 Plan Fund funded by the proceeds of the Debtor in Possession Loan and the Chapter 11 Exit Financing as set forth in the Commitment Letter attached hereto as **Exhibit A**, as subsequently modified, amended or revised. The Reorganized Debtor shall utilize the Chapter 11 Plan Fund as follows: (a) to pay Administrative Expense Claims and to make other payments as needed to confirm the Plan and to cause the Effective Date to occur; and (b) to pay the fees and expenses described in Article IX. Upon entry of an Order Closing the Chapter 11 Case, the remaining balance of the Chapter 11 Plan Fund shall be disbursed to the Reorganized Debtor.

B. Post Effective Date Notices.

Notwithstanding the Order Limiting Notices in the Chapter 11 Case (Docket #13), beginning the first Business Day after the Effective Date notices for any motion or other pleading, requiring notice, shall be limited to:

1. The natural person responsible for the duties and obligations of the Debtor pursuant to B.L.R. 4002-1 of the Bankruptcy Local Rules for the Northern District of California (“Responsible Individual”);
2. The Office of the United States Trustee in San Francisco, California;
3. The specific parties affected by the particular notice; and
4. Any party in interest who serves on the counsel for the Reorganized Debtor and files with the Clerk of the Court a request for special notice on or after the Effective Date.

C. Reorganized Debtor Equity Interests.

Equity interests of the Reorganized Debtor shall consist of New Class A Preferred Stock,

1
2 New Class B Preferred Stock and New Common Stock. Pursuant to Section 1123 of the
3 Bankruptcy Code, the charter of the Reorganized Debtor shall include a provision to prohibit the
4 issuance of nonvoting equity securities, and provide as to the several classes of securities
5 possessing voting power, an appropriate distribution of such power among such classes,
6 including, in the case of any class of equity securities having a preference over another class of
7 equity securities with respect to dividends, adequate provisions for the election of directors
8 representing such preferred class in the event of default in the payment of such dividends.

9 **D. New Common Stock.**

10 Shares of New Common Stock shall be issued to Holders of Allowed Claims in Class D-3,
11 D-4, and D-5.

12 **E. New Preferred Stock.**

13 **1. New Class Series A Preferred Stock.** Shares of New Class Series A
14 Preferred Stock shall be issued to Holders of Allowed Administrative Expense Claims based on
15 the Debtor in Possession Loan and Allowed Claims in Class D-2.

16 **2. New Class Series B Preferred Stock.** The New Class Series B Preferred
17 Stock shall be issued to those persons who provide Chapter 11 Exit Financing. Authorized Class
18 B Preferred Stock Holders shall be identical to the New Class A Stock except with respect to
19 certain liquidation, transfer and conversion rights.

20 **F. Corporate Existence.**

21 The Reorganized Debtor shall continue to exist after the Effective Date as a corporate
22 entity, with all the powers of a corporation, pursuant to the applicable law in the jurisdiction in
23 which the Debtor and pursuant to its certificate of incorporation and bylaws in effect prior to the
24 Effective Date, except to the extent such certificate of incorporation and bylaws are amended by
25 the Plan or otherwise, and to the extent such documents are amended, such documents are
26 deemed to be pursuant to the Plan and require no further action or approval.

27 **G. Vesting of Assets in the Reorganized Debtor.**

28 Except as otherwise provided in the Plan or any agreement, instrument, or other document
incorporated therein, on the Effective Date, all property in the Estate, all causes of action, and any

1
2 property acquired by the Debtor pursuant to the Plan shall vest in the Reorganized Debtor, free
3 and clear of all Liens, Claims, charges or other encumbrances (except for the CalRecycle Lien).
4 On and after the Effective Date, except as otherwise provided in the Plan, the Reorganized Debtor
5 may operate its business and may use, acquire or dispose of property and compromise or settle
6 any Claims or causes of action without supervision or approval by the Bankruptcy Court and free
7 of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

8 **H. Discharge of Debtor.**

9 Except as otherwise provided in the Plan, on the Effective Date and effective as of the
10 Effective Date: (1) the rights afforded in the Plan and the treatment of all Claims and Interests
11 shall be in exchange for and in complete satisfaction, discharge and release of all Claims and
12 Interests of any nature whatsoever, including any interest accrued on such Claims from and after
13 the Petition Date, against the Debtor, or any of its assets, property or Estate; (2) the Plan shall
14 bind all Holders of Claims and Interests, notwithstanding whether any such Holders failed to vote
15 to accept or reject the Plan or voted to reject the Plan; (3) all Claims against and Interests in the
16 Debtor shall be satisfied, discharged and released in full, and the Debtor liability with respect
17 thereto shall be extinguished completely, including any liability of the kind specified under
18 Section 502(g) of the Bankruptcy Code; and (4) all entities shall be precluded from asserting
19 against the Debtor, the Debtor Estate, the Reorganized Debtor, each of their successors and
20 assigns, and each of their assets and properties, any other Claims or Interests based upon any
21 documents, instruments or any act or omission, transaction or other activity of any kind or nature
22 that occurred prior to the Effective Date. All debt under the Plan that shall be surrendered,
23 redeemed, exchanged or cancelled shall be deemed for all purposes, including income tax
24 purposes, to be outstanding until the Effective Date, and such debt shall not be deemed
25 surrendered, redeemed, exchanged or cancelled on any date earlier than the Effective Date.

26 **I. Restructuring Transactions.**

27 On the Effective Date or as soon as reasonably practicable thereafter, the Reorganized
28 Debtor may take all actions as may be necessary or appropriate to effect any transaction described
in, approved by, contemplated by or necessary to effectuate the Plan.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

J. Corporate Action.

Each of the matters provided for by the Plan involving the corporate structure of the Debtor or corporate or related actions to be taken by or required of the Reorganized Debtor shall, as of the Effective Date, be deemed to have occurred and be effective as provided in the Plan (except to the extent otherwise indicated), and shall be authorized, approved, and, to the extent taken prior to the Effective Date, ratified in all respects without any requirement of further action by Holders of Claims or Interests, directors of the Debtor or any other entity.

K. Post-Effective Date Governance.

The Reorganized Debtor shall enter into such agreements and amend its corporate governance documents to the extent necessary to implement the terms and conditions of the Plan. Without limiting the generality of the foregoing, as of the Effective Date, the Reorganized Debtor shall be governed by the Amended and Restated Certificate of Incorporation and the Amended and Restated Bylaws.

L. Effectuating Documents; Further Transactions.

On and after the Effective Date, the Reorganized Debtor, and the officers and members of the board of directors, are authorized to and may issue, execute, deliver, file or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate the Plan.

M. Senior Management.

The CEO of the Reorganized Debtor shall be the same as the CEO on the date of the Filing. The CEO shall receive compensation in the sum of \$330,000 per year and benefits (such as vacation, health care etc) on substantially the same terms as (but not less economically favorable than) those contained in his employment agreement in effect on the date of the Filing. The CEO prepetition employment agreement is an executory contract that has been rejected by this Plan, and he has no promise of employment for any future period of time. The Commitment Party has indicated that it intends to bring in a new CEO to operate the Reorganized Debtor, but the identity and compensation of the replacement CEO has not been determined.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

N. Preservation of Rights of Action.

In accordance with Section 1123(b) of the Bankruptcy Code, the Reorganized Debtor shall retain, for its sole benefit, and may enforce all rights to commence and pursue, as appropriate, any and all causes of action, whether arising before or after the Petition Date, including any actions specifically enumerated in the Plan Supplement, and the right of Reorganized Debtor's to commence, prosecute, or settle such causes of action shall be preserved notwithstanding the occurrence of the Effective Date. The Reorganized Debtor may pursue such causes of action, as appropriate, in accordance with the best interests of the Reorganized Debtor and for the benefit of the Reorganized Debtor. **No entity may rely on the absence of a specific reference in the Plan, the Plan Supplement or the Disclosure Statement to any causes of action against them as any indication that the Debtor or Reorganized Debtor, as applicable, will not pursue any and all available causes of action against them. Except as otherwise expressly provided in the Plan or By law, the Debtor or Reorganized Debtor, as applicable, expressly reserve all rights to prosecute any and all causes of action against any entity.** Unless any causes of action against an entity are expressly waived, relinquished, exculpated, released, compromised or settled in the Plan or a Bankruptcy Court order, the Reorganized Debtor expressly reserve all causes of action, for later adjudication, and, therefore no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches, shall apply to such causes of action upon, after, or as a consequence of the Confirmation or the Effective Date.

The Reorganized Debtor reserves and shall retain the foregoing causes of action notwithstanding the rejection or repudiation of any Executory Contract during the Chapter 11 Case or pursuant to the Plan. In accordance with Section 1123(b)(3) of the Bankruptcy Code, any causes of action that a Debtor may hold against any entity shall vest in the Reorganized Debtor. The Reorganized Debtor, through its authorized agents or representatives, shall retain and may exclusively enforce any and all such causes of action. The Reorganized Debtor shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw or litigate to judgment any such causes of action

1
2 and to decline to do any of the foregoing without further notice to or action, order or approval of
3 the Bankruptcy Court.

4 **IX. PROVISIONS GOVERNING DISTRIBUTIONS**

5 **A. Distributions on Account of Claims Allowed As of the Effective Date.**

6 Except as otherwise provided in the Plan, a Final Order, or as agreed to by the relevant
7 parties, distributions under the Plan on account of Claims Allowed on or before the Effective
8 Date shall be made on the Effective Date; provided, however, that (1) Allowed Administrative
9 Expense Claims with respect to liabilities incurred by the Debtor in the ordinary course of
10 business during the Chapter 11 Case or assumed by the Debtor prior to the Effective Date shall be
11 paid or performed in the ordinary course of business in accordance with the terms and conditions
12 of any controlling agreements, course of dealing, course of business or industry practice, and
13 (2) Allowed Priority Tax Claims, unless otherwise agreed, shall be paid in full in Cash on the
14 Effective Date.

15 **B. Distributions on Account of Claims and Interests Allowed After the Effective
16 Date.**

17 **1. Payments and Distributions on Disputed Claims.** Except as otherwise
18 provided in the Plan, a Final Order, or as agreed to by the relevant parties, distributions under the
19 Plan on account of Disputed Claims that become Allowed after the Effective Date shall be made
20 as soon as the Disputed Claim becomes an Allowed Claim or Interest; provided, however, that
21 (a) Disputed Administrative Expense Claims with respect to liabilities incurred by the Debtor in
22 the ordinary course of business during the Chapter 11 Case or assumed by the Debtor on or before
23 the Effective Date that become Allowed after the Effective Date shall be paid or performed in the
24 ordinary course of business in accordance with the terms and conditions of any controlling
25 agreements, course of dealing, course of business, or industry practice and (b) Disputed Priority
26 Tax Claims that become Allowed Priority Tax Claims after the Effective Date, unless otherwise
27 agreed, shall be paid in full in Cash after the Disputed Claim becomes an Allowed Claim.

28 **2. Special Rules for Distributions to Holders of Disputed Claims.**

Notwithstanding any provision otherwise in the Plan and except as otherwise agreed by the

1
2 relevant parties no partial payments and no partial distributions shall be made with respect to a
3 Disputed Claim until all such disputes in connection with such Disputed Claim have been
4 resolved by settlement or Final Order.

5 **3. Reservation for Disputed Claims.** When any distribution is to be made to
6 holders of Allowed Claims, the Agent for Plan Distributions shall withhold in reserve the amount
7 that would be distributed to the holder of each Disputed Claim if it was treated as an Allowed
8 Claim at the time of the Distribution. Such amount shall be retained and reserved for potential
9 payment to the holder of the Disputed Claim until the dispute is resolved. Following resolution
10 of each Disputed Claim, if allowed, the holders of the Disputed Claim shall receive its
11 distribution. If a Disputed Claim is not allowed, the proceeds held in reserve shall be disbursed to
12 the Reorganized Debtor.

13 **C. Delivery of Distributions.**

14 **1. Record Date for Distributions.** On the Effective Date, the Reorganized
15 Debtor shall recognize those record Holders of Claims as of the close of business on the Effective
16 Date.

17 **2. Agent for Plan Distributions.** The Agent for Plan Distributions shall
18 make all distributions required under the Plan.

19 **3. Compliance Matters.** In connection with the Plan, to the extent applicable,
20 the Reorganized Debtor and the Agent for Plan Distributions shall comply with all tax
21 withholding and reporting requirements imposed on them by any governmental unit, and all
22 distributions pursuant to the Plan shall be subject to such withholding and reporting requirements.
23 The Reorganized Debtor, and the Agent for Plan Distributions, as applicable, shall not incur any
24 liability whatsoever on account of any distributions under the Plan except for gross negligence or
25 willful misconduct.

26 **4. Undeliverable Distributions.** If any distribution to a Holder of an
27 Allowed Claim is returned to the Agent for Plan Distributions as undeliverable, it shall remain in
28 the possession of the Reorganized Debtor until such time as it becomes deliverable, or such

1
2 distribution reverts to the Reorganized Debtor and shall not be supplemented with any interest,
3 dividends or other accruals of any kind.

4 **5. Reversion.** Any distribution under the Plan that is an Unclaimed
5 Distribution for a period of two (2) months after distribution shall be deemed unclaimed property
6 under Section 347(b) of the Bankruptcy Code and such Unclaimed Distribution shall revert in the
7 Reorganized Debtor. Upon such reversion, the Claim of any Holder or its successors with respect
8 to such property shall be cancelled, discharged, and forever barred notwithstanding any
9 applicable federal or state escheat, abandoned or unclaimed property laws to the contrary. The
10 provisions of the Plan regarding undeliverable distributions and Unclaimed Distributions shall
11 apply with equal force to distributions that are issued by the Debtor, notwithstanding any
12 provision in such indenture or Certificate to the contrary and notwithstanding any otherwise
13 applicable federal or state escheat, abandoned or unclaimed property law.

14 **6. Manner of Payment Pursuant to the Plan.** Any payment in Cash to be
15 made pursuant to the Plan shall be made at the election of the Reorganized Debtor by check or by
16 wire transfer. Checks issued by the Agent for Plan Distributions on account of Allowed Claims
17 and Interests shall be null and void if not negotiated within sixty (60) days after issuance.

18 **7. Surrender of Cancelled Instruments or Securities.** On the Effective
19 Date or as soon as reasonably practicable thereafter, each Holder of an Interest evidenced by a
20 written instrument shall be deemed to have surrendered such Interest to the Agent for Plan
21 Distributions or a Servicer (to the extent the relevant Claim or Interest is governed by an
22 agreement and administered by a Servicer). Such surrendered Interest shall be cancelled solely
23 with respect to the Debtor, and such cancellation shall not alter the obligations or rights of any
24 non-Debtor third parties vis-à-vis one another with respect to such Interest.

25 **8. Plan Related Recapitalization Transactions.** All authorized and issued
26 Interests of ECO2, Common and Preferred, as of the Effective Date and all rights to acquire stock
27 of ECO2, including but not limited to options and warrants, as of the Effective Date shall be
28 cancelled, terminated and be of no further force or effect on and after Confirmation.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

9. Authorization of New Common and New Preferred Stock. On or before the Effective Date, the ECO2 Certificate of Incorporation shall be amended and restated to include the issuance of new stock consistent with this Plan.

X. ALLOWANCE AND PAYMENT OF CERTAIN EXPENSES OF ADMINISTRATION

A. Professional Compensation Expenses of Administration.

All final requests for Professional Administrative Expenses though the Effective Date shall be filed no later than thirty (30) days after the Effective Date. After notice and a hearing the allowed amounts of such Professional Compensation Expenses of Administration shall be determined by the Bankruptcy Court and paid by the Reorganized Debtor.

B. Other Administrative Expense Claims.

All requests for payment of an Administrative Expense Claims must be filed with the Court and served upon counsel to the Debtor or Reorganized Debtor, as applicable. The Reorganized Debtor may settle and pay any Administrative Expense Claim in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court. In the event that any party with standing objects to an Administrative Expense Claim, the Bankruptcy Court shall determine the Allowed amount of such Administrative Expense Claim.

XI. EFFECT OF PLAN CONFIRMATION ON LIENS

Except as otherwise provided in the Plan (including as to reinstated debt) or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estate shall be fully released, and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtor.

XII. CONDITIONS PRECEDENT TO EFFECTIVE DATE

A. Conditions Precedent to Effective Date.

The following shall be satisfied or waived as conditions precedent to the Effective Date.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. The final form of the Plan, the Plan Supplement and all of the documents and exhibits contained therein shall have been filed and approved in form and substance reasonably acceptable to the Debtor and the Commitment Party.

2. All governmental, regulatory, and material third party approvals and consents, including Bankruptcy Court approval, necessary in connection with the transactions contemplated in the Plan shall have been obtained and be in full force and effect, and all applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain, prevent or otherwise impose materially adverse conditions on such transactions.

3. The Debtor shall have received the funds contemplated by the Commitment Letter and the Commitment Party shall have fulfilled its obligations under the Commitment Letter.

B. Waiver of Conditions Precedent.

The Debtor or the Reorganized Debtor, as applicable, with the consent of the Commitment Party, may waive any of the conditions to the Effective Date set forth above at any time, without any notice to parties in interest and without any further notice to or action, order or approval of the Bankruptcy Court, and without any formal action other than proceeding to confirm the Plan.

C. Effect of Non-Occurrence of Conditions to the Effective Date.

Each of the conditions to the Effective Date must be satisfied or duly waived, and the Effective Date must occur within thirty (30) days after Confirmation, or by such later date established by Bankruptcy Court order. If the Effective Date has not occurred within thirty (30) days of Confirmation, then upon motion by a party-in-interest made before the Effective Date and a hearing, the Confirmation Order may be vacated by the Bankruptcy Court; provided, however, that notwithstanding the filing of such motion to vacate, the Confirmation Order may not be vacated if the Effective Date occurs before the Bankruptcy Court enters an order granting such motion. If the Confirmation Order is vacated, then except as provided in any order of the Bankruptcy Court vacating the Confirmation Order, the Plan will be null and void in all respects, including the discharge of Claims and termination of Interests pursuant to the Plan and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Section 1141 of the Bankruptcy Code and the assumptions, assignments or rejections of Executory Contracts.

XIII. MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN

Except as otherwise specifically provided in the Plan, and subject to the conditions to the Effective Date, the Debtor reserves the right to modify the Plan and seek Confirmation consistent with the Bankruptcy Code. Subject to certain restrictions and requirements set forth in Section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, the Debtor expressly reserves its rights to revoke or withdraw or to alter, amend or modify materially the Plan, one or more times, after Confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan, subject to the conditions to the Effective Date. Upon its Filing, the Plan Supplement may be inspected in the office of the clerk of the Bankruptcy Court or its website. The documents contained in the Plan Supplement are an integral part of the Plan and shall be approved by the Bankruptcy Court under the Confirmation Order.

XIV. RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Case and the Plan pursuant to Sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

1. Allow, disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim, including the resolution of any request for payment of any Administrative Expense and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims or Interests;
2. Decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Resolve any matters related to: (a) the assumption, assumption and assignment, or rejection of any Executory Contract to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Cure or Claims arising therefrom, including Cure or Claims pursuant to Section 365 of the Bankruptcy Code; (b) any alleged contractual obligation under any Executory Contract that is assumed; and (c) any dispute regarding whether a contract or lease is or was executory or expired;

4. Ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

5. Adjudicate, decide or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

6. Adjudicate, decide or resolve any and all matters related to Section 1141 of the Bankruptcy Code;

7. Enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan or the Disclosure Statement;

8. Enter and enforce any order for the sale of property pursuant to Sections 363, 1123, or 1146(a) of the Bankruptcy Code;

9. Resolve any cases, controversies, suits, disputes or causes of action that may arise in connection with the interpretation or enforcement of the Plan or obligations of any entity incurred in connection with the Plan;

10. Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with enforcement of the Plan;

11. Resolve any cases, controversies, suits, disputes or causes of action with respect to the releases, injunctions, and other provisions contained in the Plan and enter such

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;

12. Resolve any cases, controversies, suits, disputes, or causes of action with respect to the repayment or return of distributions;

13. Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;

14. Determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created in connection with the Plan or the Disclosure Statement;

15. Enter an order or Final Decree concluding or closing the Chapter 11 Case;

16. Adjudicate any and all disputes arising from or relating to distributions under the Plan;

17. Consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

18. Determine requests for the payment of Claims and Interests entitled to priority pursuant to Section 507 of the Bankruptcy Code;

19. Hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, or the Confirmation Order, including disputes arising under agreements, documents or instruments executed in connection with the Plan;

20. Hear and determine matters concerning state, local, and federal taxes in accordance with Sections 346, 505, and 1146 of the Bankruptcy Code;

21. Hear and determine all disputes involving the existence, nature, or scope of the Debtor's discharge, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred prior to or after the Effective Date;

22. Enforce all orders previously entered by the Bankruptcy Court; and

23. Hear any other matter not inconsistent with the Bankruptcy Code.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

XV. MISCELLANEOUS PROVISIONS

A. Immediate Binding Effect.

Notwithstanding Bankruptcy Rules 3020(e) or 6004(h), or otherwise, upon the occurrence of the Effective Date, the terms of the Plan and the Plan Supplement shall be immediately effective and enforceable and deemed binding upon the Debtor, the Reorganized Debtor, and any and all Holders of Claims or Interests (irrespective of whether Holders of such Claims or Interests are deemed to have accepted the Plan), all entities that are parties to or are subject to the settlements, compromises, releases, discharges, and injunctions described in the Plan and all non-Debtor parties to Executory Contracts.

B. Additional Documents.

On or before the Effective Date, the Debtor may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtor or Reorganized Debtor, as applicable, and all Holders of Claims receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

C. Payment of Statutory Fees.

All fees payable pursuant to Section 1930(a) of the Judicial Code, shall be paid for each quarter (including any fraction thereof) until the Chapter 11 Case is converted, dismissed or closed, whichever occurs first.

D. Reservation of Rights.

Except as expressly set forth in the Plan, the Plan shall have no force or effect, unless the Bankruptcy Court shall enter the Confirmation Order. The filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by the Debtor with respect to the Plan, the Disclosure Statement, or the Plan Supplement shall not be and shall not be deemed to be an admission or waiver of any rights of the Debtor with respect to the Holders of Claims or Interests prior to the Effective Date.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

E. Successors and Assigns.

The rights, benefits, and obligations of any entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, affiliate, officer, director, agent, representative, attorney, beneficiaries or guardian, if any, of each entity.

F. Service of Documents.

1. After the Effective Date, any pleading, notice, or other document required by the Plan to be served on or delivered to the Reorganized Debtor shall be served on:

Rodney S. Rougelot
ECO 2 Plastics, Inc.
1143 Crane Street, Suite 203
Menlo Park, CA 94025

and

Tracy Green
Wendel, Rosen, Black & Dean LLP
1111 Broadway, 24th Floor
Oakland, CA 94607

2. After the Effective Date, the Reorganized Debtor shall send notices only to entities that serve a renewed request to receive documents pursuant to Bankruptcy Rule 2002, and the Reorganized Debtor is authorized to limit the list of entities receiving notice pursuant to Bankruptcy Rule 2002 to those entities who have served a renewed request on the Reorganized Debtor.

3. In accordance with Bankruptcy Rules 2002 and 3020(c), within ten (10) Business Days of the date of entry of the Confirmation Order, the Court shall serve the Notice of Confirmation by electronic process on persons registered to receive notice on the ECF system, or by United States mail, first class postage prepaid, to all parties to be served with the Notice of the Confirmation.

G. Term of Injunctions or Stays.

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Case pursuant to Sections 105 or 362 of the Bankruptcy Code or

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

H. Entire Agreement.

On the Effective Date, the Plan and the Plan Supplement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

I. Governing Law.

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of California, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control), and corporate governance matters; provided, however, that corporate governance matters relating to Debtor or Reorganized Debtor, as applicable, shall be governed by the laws of the state of incorporation of the Debtor or Reorganized Debtor, as applicable.

J. Conflicts Among the Plan and Plan Related Pleadings and Documents.

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. Except as otherwise provided in the Plan, such exhibits and documents included in the Plan Supplement shall be filed with the Bankruptcy Court on or before the entry of the Confirmation Order. After the exhibits and documents are filed, copies of such exhibits and documents shall be available upon written request to the counsel for the Debtor at the address above or by downloading such exhibits and documents from the Bankruptcy Court website. To the extent any exhibit or document is inconsistent with the terms of the Plan, unless otherwise ordered by the Bankruptcy Court, the non-exhibit or non-document portion of the Plan shall control. Except as set forth in the Plan, to the extent that any provision

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

of the Disclosure Statement, the Plan Supplement, or any other order (other than the Confirmation Order) referenced in the Plan (or any exhibits, appendices, supplements, or amendments to any of the foregoing), conflict with or are in any way inconsistent with any provision of the Plan, the Plan shall govern and control.

K. Closing of Chapter 11 Case.

The Reorganized Debtor shall, promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

Dated: April 21, 2010

ECO2 PLASTICS, INC., a Delaware corporation

By: /s/ Rodney S. Rougelot
Rodney S. Rougelot
Chief Executive Officer

Dated: April 21, 2010

WENDEL, ROSEN, BLACK & DEAN LLP

By: /s/ Penn Ayers Butler
Penn Ayers Butler
Attorneys for Debtor
ECO2 Plastics, Inc.