

SUNPOWER CORP  
Form S-1/A  
October 31, 2005  
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As filed with the Securities and Exchange Commission on October 31, 2005

Registration No. 333-127854

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**Amendment No. 3**

**to**

**Form S-1**

**REGISTRATION STATEMENT**

Under

THE SECURITIES ACT OF 1933

**SunPower Corporation**

(Exact name of registrant as specified in its charter)

**California (prior to reincorporation)**

**Delaware (after reincorporation)**

(State or other jurisdiction of

incorporation or organization)

**3674**

(Primary Standard Industrial

Classification Code Number)

**94-3008969**

(I.R.S. Employer

Identification No.)

**430 Indio Way**

**Sunnyvale, California 94085**

**(408) 991-0900**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**Thomas H. Werner**

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Chief Executive Officer

SunPower Corporation

430 Indio Way

Sunnyvale, California 94085

(408) 991-0900

(Name, address, including zip code, and telephone number, including area code, of agent for service)

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**Approximate date of commencement of proposed sale to the public:** As soon as practicable after this Registration Statement becomes effective.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If delivery of the prospectus is expected to be made pursuant to Rule 434, check the following box.

**CALCULATION OF REGISTRATION FEE**

Title of each class of securities to be registered	Amount to be registered(1)	Proposed maximum offering price per share(2)	Proposed maximum aggregate offering price	Amount of registration fee(3)
Class A Common Stock, par value \$0.001 per share	8,855,000	\$ 14.00	\$ 123,970,000	\$ 14,592

(1) Includes 1,155,000 shares of class A common stock to be sold upon exercise of the underwriters' over-allotment option, if any.

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- (2) Estimate solely for the purpose of calculating the registration fee pursuant to Rule 457(a) under the Securities Act of 1933.
  - (3) Includes \$13,536 previously paid.
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**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**

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The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED OCTOBER 31, 2005

7,700,000 Shares

**Class A Common Stock**

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We are selling 7,700,000 shares of class A common stock. Prior to this offering, there has been no public market for our class A common stock. The initial public offering price of our class A common stock is expected to be between \$12.00 and \$14.00 per share. We have applied to list our class A common stock on The Nasdaq National Market under the symbol SPWR.

Following this offering, we will have two classes of authorized common stock: class A common stock and class B common stock. Cypress Semiconductor Corporation, or Cypress, will own 52,033,287 shares of class B common stock, representing approximately 87% of our total outstanding shares of capital stock and approximately 98% of the total voting power of our outstanding capital stock upon completion of this offering. Only Cypress, its successors in interest and its subsidiaries may hold shares of our class B common stock unless Cypress distributes its shares of class B common stock to its stockholders in a tax-free distribution. The rights of the holders of class A and class B common stock are substantially similar, except with respect to voting, conversion and other protective provisions as set forth in this prospectus. The holders of class B common stock shall be entitled to eight votes per share and the holders of class A common stock shall be entitled to one vote per share. Each share of class B common stock is convertible into one share of class A common stock at any time and will so convert automatically on any transfer unless Cypress distributes its shares of class B common stock to its stockholders in a tax-free distribution. In the event that Cypress, its successors in interest and its subsidiaries collectively own less than 40% of the shares of all classes of our common stock then outstanding and Cypress has not effected a tax-free distribution of our class B common stock to its stockholders prior to such time, each outstanding share of class B common stock will automatically convert into one share of class A common stock.

The underwriters have an over-allotment option to purchase a maximum of 1,155,000 additional shares of class A common stock from us and a selling stockholder on the same terms and conditions as set forth below if the underwriters sell more than 7,700,000 shares in this offering.

**Investing in our class A common stock involves risks. See Risk Factors beginning on page 10.**

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	<u>Price to Public</u>	<u>Underwriting Discounts and Commissions</u>	<u>Proceeds to SunPower</u>
Per Share	\$	\$	\$
Total	\$	\$	\$

Delivery of the shares of class A common stock will be made on or about \_\_\_\_\_, 2005.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

**Credit Suisse First Boston**

**Lehman Brothers**

**SG Cowen & Co.**

**First Albany Capital**

The date of this prospectus is \_\_\_\_\_, 2005

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You should rely only on the information contained in this document or to which we have referred you. We have not authorized anyone to provide you with information that is different. This document may only be used where it is legal to sell these securities. The information in this document may only be accurate on the date of this document.

**Dealer Prospectus Delivery Obligation**

Until \_\_\_\_\_, 2005 (25 days after commencement of the offering), all dealers that effect transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to unsold allotments or subscriptions.

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**PROSPECTUS SUMMARY**

*You should read the following summary together with the entire prospectus, including the more detailed information regarding us and the class A common stock being sold in this offering and our consolidated financial statements and the related notes appearing elsewhere in this prospectus. You should carefully consider, among other things, the matters discussed in the section entitled Risk Factors.*

**Our Company**

We design, manufacture and sell solar electric power products, or solar power products, based on our proprietary processes and technologies. We have spent more than 15 years developing high performance solar cells, which are semiconductor devices that directly convert sunlight into electricity. We believe our solar cells have the highest conversion efficiency, a measurement of the amount of sunlight converted by the solar cell into electricity, available for the mass market. Based on third-party data, we believe our solar cells provide the following benefits compared with conventional solar cells:

Superior performance, including the ability to generate up to 50% more power per unit area;

Superior aesthetics with our uniformly black surface design which eliminates highly visible reflective grid lines and metal interconnect ribbons; and

Efficient use of silicon, a key raw material used in the manufacture of solar cells.

We offer solar power products including solar cells, solar panels and inverters which convert sunlight to electricity compatible with the utility network. Our initial solar sales efforts have been focused on residential and commercial applications where the high performance and superior aesthetics of our solar power products provide compelling customer benefits. We sell our solar power products in many countries, principally in regions where government incentives have accelerated solar power adoption. In addition, we offer high performance imaging detectors based on our solar power technology, primarily for medical imaging applications. We also offer infrared detectors based on our high performance all back contact technology, primarily for use in computing and mobile phone applications.

We commenced commercial production of our solar cells in late 2004. We generated total combined revenue of \$10.9 million in fiscal 2004 and total revenue of \$49.4 million in the nine months ended September 30, 2005. We have incurred net losses since inception, including a net loss of \$15.2 million in the nine months ended September 30, 2005, and as of September 30, 2005, we had an accumulated deficit of approximately \$57.9 million.

**Market Opportunity**

The electric power industry is one of the world's largest industrial segments, with annual revenue of approximately \$1.06 trillion in 2004, according to Datamonitor, an industry consulting firm. Global electricity demand has shown consistent growth over the past decade and is expected to increase from 14.3 trillion kilowatt hours in 2003 to 26.0 trillion kilowatt hours by 2025, according to the United States Department



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of Energy's International Energy Outlook 2005. Investments in generation, transmission and distribution to meet growth in electricity demand, excluding investments in fuel supply, are expected to be roughly \$10 trillion by 2030, according to the International Energy Agency, or IEA. However, fossil fuel supply constraints, infrastructure limitations, the desire for energy security and environmental concerns pose a challenge to meeting this growing worldwide electricity demand. The use of renewable resources, which include solar, biomass, geothermal, hydroelectric and wind power generation, has grown significantly in response to the challenges associated with growing global electricity production. As opposed to fossil fuels which draw on finite resources that may eventually become too expensive to retrieve, renewable resources are generally unlimited in availability.

Solar power has emerged as one of the most rapidly growing renewable energy sources primarily due to multiple advantages it offers over other renewable energy sources, including negligible impact on the environment,

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no fuel price or delivery risk, point-of-use power generation, price competitiveness with peak retail electric rates, maximum generation during peak energy demand periods, modularity and reliability. Since 1985, the market for solar power, as defined by worldwide shipments of solar power systems, has grown at a compound annual growth rate of over 20%, according to Strategies Unlimited, a research firm. Since 2000, the growth of the global solar power market, as defined by solar power system installations, has accelerated to an average rate of 38%, according to SolarBuzz, an industry consulting firm. The global solar power market had an estimated \$6.5 billion in revenue in 2004.

While the cost of solar power has declined steadily over the past 30 years, it still remains more expensive than other power sources in applications without the support of government incentive programs. In addition, the solar market is dependent on polysilicon, an essential raw material. Currently, there is an industry-wide shortage of polysilicon, which has resulted in significant price increases. The aesthetic appearance of solar panels may limit the adoption of solar power products, particularly among residential customers. Historically, residential and commercial customers have resisted solar power products, in part, because most solar panels are perceived as unattractive.

## **Our Strengths**

Solar power is an emerging high-growth power generation technology. Adoption of solar power is accelerating, driven partially by government programs, although solar power's cost competitiveness versus other electricity generation alternatives and aesthetics are challenges to widespread acceptance of solar power. We believe we are a leader in producing high performance solar cells and believe our competitive advantages include:

*Superior Conversion Efficiency.* We believe our solar cells have the highest conversion efficiency available for the mass market. Our proprietary all back contact design results in conversion efficiencies of up to 50% more power per unit area than conventional solar cells. This superior conversion efficiency results in decreased per watt panel packaging and installation costs and provides greater power generation on a given rooftop space.

*Superior Aesthetics.* Because all electrical contacts are located on the back, our solar cells have a uniformly black appearance that allows our solar panels to blend into customers' rooftops, which we believe appeals to customers seeking a solution which is more aesthetically appealing.

*Efficient Silicon Utilization.* We believe our superior conversion efficiency allows us to use less silicon to generate the same amount of electricity as conventional solar cells of the same size. This superior conversion efficiency also provides our solar cells with more efficient utilization of silicon, the primary raw material used in solar cells, as defined by grams of silicon per watt, than that of conventional solar cells. Based on third-party data, the solar industry's rate of silicon consumption is estimated to range from 11.5 grams per watt to 13 grams per watt. Our rate of consumption, as calculated by us, is 9.2 grams per watt.

*Ease of Assembly.* Our proprietary solar cell architecture simplifies panel assembly, allowing for backside connections, versus the traditional interconnect weaving process. We believe our architecture reduces the complexity and cost of assembling solar panels.

*Manufacturing Advantages.* We manufacture our solar cells at our facility in the Philippines, a low-cost production region. In addition, we believe our background and expertise in the semiconductor industry enable us to improve our manufacturing yields, cost, quality and product ramp predictability.

*Strong Management Team.* Our management team has a diverse set of industry skills and global operating experience, including backgrounds spanning the solar, semiconductor and optical media industries, as well as expertise running complex organizations and managing rapid growth. Our executive officers have an average of over 25 years of experience in the solar or high technology

industries.

Our ability to maintain our competitive advantage is dependent on several factors, including the availability of polysilicon and other key components from third-party suppliers, uninterrupted operations at our Philippines

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facility, our ability to expand our customer base, our history in producing and shipping solar cells and solar panels in commercial volumes, our ability to compete, the market for solar power and our ability to retain key personnel and other factors set forth in Risk Factors.

## **Our Strategy**

Our principal objective is to be the leader in high performance solar power products. We plan to achieve this objective by pursuing the following strategies:

*Maintain our Technology Advantage and Reduce Manufacturing Costs.* We intend to maintain our technology advantage by continuing to invest in research and development to improve solar cell efficiency and lower manufacturing costs.

*Continue to Expand Manufacturing Capacity.* Since late 2004, we have been operating a single 25 megawatts per year solar cell production line. This production line is capable of manufacturing over the course of a year solar cells with a cumulative rated capacity of 25 megawatts peak production, which is equivalent to over eight million A-300 solar cells per year. To meet the ongoing demand for our products, we have ordered manufacturing equipment for the second and third 25 megawatts per year production lines, which are expected to increase our manufacturing capacity to 75 megawatts per year in 2006. We are evaluating the timing of a fourth line in our existing facility and of a second production facility.

*Reduce our Dependence on Market Incentives.* Most of our current customers operate in markets that depend on a variety of government incentives to reduce the cost of solar power systems to end customers. In the short term, we intend to diversify our customer and market base to include non-incentivized markets. Over the long term, we plan to reduce our solar power system cost to reduce or eliminate the need for these market incentives.

*Build a Leading Brand.* We believe establishing strong brand name recognition is important to increase product awareness and to address the mass market. We intend to differentiate our brand by emphasizing our combination of high performance and superior product appearance.

*Drive Efficiency Improvements Through Relationships with Suppliers and Customers.* We intend to pursue relationships with, and investments in, our suppliers and customers to increase overall channel efficiency and reduce the cost of our products delivered to end customers.

## **Our Corporate History**

We were incorporated in California in April 1985. We intend to reincorporate in Delaware prior to completion of this offering. Our headquarters are located at 430 Indio Way, Sunnyvale, CA 94085 and our telephone number is (408) 991-0900. Our website is [www.sunpowercorp.com](http://www.sunpowercorp.com). Information contained on, or that can be accessed through, our website does not constitute part of this prospectus. In this prospectus, SunPower, we, us and our refer to SunPower Corporation and its subsidiaries and not to the underwriters or Cypress.

SunPower is our registered trademark. The SunPower logo is our trademark. This prospectus also includes trade names, trademarks and service marks of other companies and organizations.

**Our Relationship with Cypress Semiconductor Corporation**

Cypress made a significant investment in us in 2002. On November 9, 2004, Cypress completed a reverse triangular merger with us in which all of the outstanding minority equity interest of SunPower was retired, effectively giving Cypress 100% ownership of all of our then outstanding shares of capital stock but leaving our unexercised warrants and options outstanding.

After this offering, Cypress will hold in the aggregate 52,033,287 shares of class B common stock, representing approximately 87% of our total outstanding shares of common stock. At that time, Cypress is

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expected to hold 98% of the voting power of our outstanding capital stock. Cypress has advised us that it does not have any current plans to distribute to its stockholders the shares of our class B common stock that it beneficially owns, although it may elect to effect such a distribution in the future.

We design, manufacture and sell solar power products based on our proprietary processes and technologies. We have entered into various separation agreements with Cypress including a master separation agreement, an employee matters agreement, a tax sharing agreement, a master transition services agreement, a wafer manufacturing agreement, a lease for certain manufacturing assets, an investor rights agreement, and an indemnification and insurance matters agreement. These agreements will become effective upon completion of this offering, except for the tax sharing agreement and the lease for manufacturing assets which are currently effective. We also entered into an agreement with Cypress to extend our lease in the Philippines for an additional 15 years with a right to purchase the facility. See Related Party Transactions.

Under the terms of the master transition services agreement, we will pay Cypress for the services provided to us, at Cypress cost or at the rate negotiated with Cypress for a period of three years following this offering or upon a change of control, whichever occurs first. Under the terms of our lease agreement, we will pay Cypress at a rate equal to the cost to Cypress for the lease of our Philippines facility until the earlier of 10 years or a change of control of us. Thereafter, we will pay market rent for the facility for the remainder of the 15-year lease. Under the terms of the wafer manufacturing agreement, we will pay Cypress to make infrared and imaging detector products for us at prices consistent with the then current Cypress transfer pricing, which is equal to the forecasted cost to Cypress to manufacture the wafers for the next three years or until a change of control of us. See Related Party Transactions.

Cypress designs, develops, manufactures and markets a broad line of high-performance digital and mixed-signal integrated circuits for a broad range of markets, including networking, wireless infrastructure and handsets, computation, consumer, automotive and industrial. Cypress product portfolio includes a selection of wired and wireless USB devices, CMOS image sensors, timing solutions, network search engines, specialty memories, high-bandwidth synchronous and micropower memory products, optical solutions and reconfigurable mixed-signal arrays. Cypress stock is traded on the New York Stock Exchange under the symbol CY.

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**THE OFFERING**

Class A common stock offered by us	7,700,000 shares
Class A common stock to be outstanding after this offering	7,776,652 shares
Class B common stock to be outstanding after this offering	52,033,287 <sup>(1)</sup> shares, representing approximately 87% of our total outstanding shares of capital stock and 98% of the voting power of our outstanding capital stock.
Total common stock to be outstanding after this offering	59,809,939 shares

**Voting rights**

Following this offering, we will have two classes of authorized common stock: class A common stock and class B common stock. Only Cypress, its successors in interest and its subsidiaries may hold shares of class B common stock unless Cypress distributes its shares of class B common stock to its stockholders in a tax-free distribution. The rights of the holders of class A and class B common stock are substantially similar, except with respect to voting, conversion and other protective provisions as set forth in this prospectus. The holders of class B common stock shall be entitled to eight votes per share and the holders of class A common stock shall be entitled to one vote per share. Each share of class B common stock is convertible into one share of class A common stock at any time. In the event that Cypress, its successors in interest and its subsidiaries collectively own less than 40% of the shares of all classes of our common stock then outstanding and Cypress has not effected a tax-free distribution of our class B common stock to its stockholders prior to such time, each outstanding share of class B common stock will automatically convert into one share of class A common stock. See Description of Capital Stock.

**Use of proceeds**

We intend to use approximately \$45 million to \$55 million of the net proceeds from this offering for the expansion of our manufacturing capacity and the remainder for general corporate purposes, including working capital. We may use approximately \$10 million of the proceeds to purchase our Philippines manufacturing facility from Cypress, which we have the option to do under our lease. We may also use a portion of the net proceeds to acquire complementary technologies or businesses. See Use of Proceeds.

**Proposed Nasdaq National Market symbol**      SPWR

(1) All shares of class B common stock are currently held by Cypress. Only Cypress, its successors in interest and its subsidiaries may hold shares of our class B common stock unless Cypress distributes its shares of class B common stock to its stockholders in a tax-free distribution.

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The number of shares of class A and class B common stock to be outstanding immediately after this offering is based upon 76,652 shares of class A common stock and 52,033,287 shares of class B common stock outstanding as of September 30, 2005 and excludes:

6,508,193 shares of class A common stock issuable upon the exercise of options outstanding as of September 30, 2005, at a weighted average exercise price of \$2.97 per share; and

283,126 shares of class A common stock reserved for future issuance as of September 30, 2005 under our 2005 Stock Incentive Plan.

As of September 30, 2005, 283,126 shares of class A common stock remained available for future issuance under our 1996 Stock Plan. Upon the completion of this offering, the 1996 Stock Plan will be terminated. No shares of our class A common stock will remain available under the 1996 Stock Plan or our 1988 Stock Incentive Plan other than for satisfying exercises of stock options granted under this plan prior to its termination.

We have also adopted our 2005 Stock Unit Plan, under which our board of directors awards participants the right to receive cash payments from us in an amount equal to the appreciation in our stock between the award date and the date the employee redeems the award. A maximum of 100,000 stock units may be subject to stock unit awards granted under this plan and to date, 11,450 units have been granted.

Unless otherwise stated, all information in this prospectus assumes:

the automatic conversion of all outstanding shares of our series one convertible preferred stock into 6,457,530 shares of class B common stock and all outstanding shares of our series two convertible preferred stock into 16,000,000 shares of class B common stock upon completion of this offering; and

no exercise of the over-allotment option granted to the underwriters; and

a 2-for-1 reverse stock split of our common stock approved by our board of directors and, subject to stockholder approval, to be effected prior to the consummation of this offering.

Upon completion of this offering, each share of series one convertible preferred stock will convert into 0.5 shares of class B common stock and each share of series two convertible preferred stock will convert into 0.5 shares of class B common stock. Except as otherwise stated, all information related to common stock and options and warrants to purchase common stock and earnings per share has been retroactively adjusted to give effect to the reverse stock split.



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**SUMMARY CONSOLIDATED FINANCIAL DATA**

*The following tables present our summary consolidated historical financial information. You should read this information together with the consolidated financial statements and related notes and the information under Management's Discussion and Analysis of Financial Condition and Results of Operations included elsewhere in this prospectus.*

*On November 9, 2004, Cypress completed a reverse triangular merger with us in which each share of our then outstanding capital stock not owned by Cypress was valued at \$3.30 per share on a post-split basis, or \$1.65 per share on a pre-split basis, and exchanged for an equivalent number of shares of Cypress common stock. This merger effectively gave Cypress 100% ownership of all of our then outstanding shares of capital stock but left our unexercised warrants and options outstanding. This transaction resulted in the push down of the effect of the acquisition of SunPower by Cypress and created a new basis of accounting. See note 2 of the notes to our consolidated financial statements. The consolidated balance sheet and statements of operations data in this prospectus prior and up to November 8, 2004 refer to the Predecessor Company and this period is referred to as the pre-merger period, while the consolidated balance sheet and statements of operations data subsequent to November 8, 2004 refer to the Successor Company and this period is referred to as the post-merger period. A black line has been drawn between the accompanying financial statements to distinguish between the pre-merger and post-merger periods.*

*The consolidated statements of operations data for the fiscal years ended December 31, 2002 and 2003, the period from January 1, 2004 to November 8, 2004, and the period from November 9, 2004 to December 31, 2004, have been derived from our audited consolidated financial statements included elsewhere in this prospectus. The consolidated balance sheet at September 30, 2005, and the consolidated statement of operations data for the nine months ended September 30, 2004 and 2005 are derived from our unaudited consolidated financial statements included elsewhere in this prospectus. In 2002, we reported our results of operations on a calendar year-end basis. In fiscal 2003, we began to report our results of operations on the basis of 52 or 53 week periods, ending on the Sunday closest to December 31. Fiscal 2003 ended on December 28, 2003 and included 52 weeks. The combined periods of fiscal 2004 ended on January 2, 2005 and included 53 weeks. Our fiscal quarters end on the Sunday closest to the end of the applicable calendar quarter, except in a 53-week fiscal year in which the additional week falls into the fourth quarter of that fiscal year. For presentation purposes only, the consolidated financial statements and notes refer to the calendar year-end and month-end of each respective period.*

*Our consolidated financial statements include allocations of certain Cypress expenses, including centralized legal, tax, treasury, information technology, employee benefits and other Cypress corporate services and infrastructure costs. The expense allocations have been determined on bases that we and Cypress considered to be reasonable reflections of the utilization of services provided or the benefit received by us. The financial information included in this discussion and in our consolidated financial statements may not be indicative of our consolidated financial position, operating results, changes in equity and cash flows in the future, or what they would have been had we been a separate stand-alone entity during the periods presented. See note 3 of the notes to our consolidated financial statements for additional information on our relationship with Cypress.*

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	Predecessor Company			Successor Company		
	Years Ended December 31,		Nine Months Ended	January 1, 2004 Through November 8,	November 9, 2004 Through December 31,	Nine Months Ended September 30,
	2002	2003	September 30, 2004	2004	2004	2005
<b>Consolidated Statements of Operations Data</b>						
(\$ in thousands, except per share data)						
Revenue:						
Product revenue	\$ 3,722	\$ 4,245	\$ 6,023	\$ 6,708	\$ 3,881	\$ 49,242
Other	333	760	122	122	174	153
<b>Total revenue</b>	<b>4,055</b>	<b>5,005</b>	<b>6,145</b>	<b>6,830</b>	<b>4,055</b>	<b>49,395</b>
Costs and expenses:						
Cost of revenue	3,198	4,987	6,707	9,498	6,079	49,631
Research and development	2,532	9,816	11,035	12,118	1,417	4,508
Sales, general and administrative	1,396	3,238	3,997	4,713	1,111	6,880
<b>Total costs and expenses</b>	<b>7,126</b>	<b>18,041</b>	<b>21,739</b>	<b>26,329</b>	<b>8,607</b>	<b>61,019</b>
Operating loss	(3,071)	(13,036)	(15,594)	(19,499)	(4,552)	(11,624)
Interest expense	(493)	(1,509)	(2,960)	(3,759)	(1,072)	(3,381)
Other income (expense), net	31		(3)	(44)	15	(198)
<b>Net loss</b>	<b>\$ (3,533)</b>	<b>\$ (14,545)</b>	<b>\$ (18,557)</b>	<b>\$ (23,302)</b>	<b>\$ (5,609)</b>	<b>\$ (15,203)</b>
Net loss per share:						
Basic and diluted <sup>(1)</sup>	\$ (1.11)	\$ (3.50)	\$ (4.41)	\$ (5.51)	\$ (2,804.50)	\$ (0.93)
Pro forma basic and diluted <sup>(2)</sup>				\$ (2.05)	\$ (0.86)	\$ (0.40)
Weighted-average shares:						
Basic and diluted <sup>(1)</sup>	3,188	4,156	4,207	4,230	2	16,267
Pro forma basic and diluted <sup>(2)</sup>				11,384	6,542	37,728

(1) The basic and diluted net loss per share computation excludes potential shares of common stock issuable upon conversion of convertible preferred stock and exercise of options and warrants to purchase common stock as their effect would be antidilutive. See note 1 of the notes to our consolidated financial statements for a detailed explanation of the determination of the shares used in computing basic and diluted loss per share.

(2) For information regarding the computation of per share amounts, refer to note 1 of our consolidated financial statements included elsewhere in this prospectus. Pro forma basic and diluted net loss per share is presented for the period from January 1, 2004 through November 8, 2004, the period from November 9, 2004 through December 31, 2004 and the nine months ended September 30, 2005 to reflect per share data assuming the conversion of all our preferred stock into shares of class B common stock, which will occur upon completion of this offering, as if the conversion had taken place at the beginning of fiscal 2004.

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The following table presents a summary of our consolidated balance sheet data as of September 30, 2005.

on an actual basis;

on a pro forma basis to give effect to (a) the automatic conversion of all outstanding shares of our series one convertible preferred stock into 6,457,530 shares of class B common stock and all outstanding shares of our series two convertible preferred stock into 16,000,000 shares of class B common stock and (b) the filing of our restated certificate of incorporation upon completion of this offering; and

on the pro forma basis described above, as adjusted to reflect the sale of shares of 7,700,000 class A common stock by us in this offering at an assumed initial public offering price of \$13.00 per share, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us, as described under "Use of Proceeds."

	As of September 30, 2005		
	Actual	Pro Forma	Pro Forma As Adjusted
(\$ in thousands)			
<b>Consolidated Balance Sheet Data</b>			
Cash and cash equivalents	\$ 20,322	\$ 20,322	\$ 111,315
Working capital	26,443	26,443	117,436
Total assets	164,803	164,803	255,796
Notes payable to Cypress, net of current portion			
Customer advances, net of current portion	27,045	27,045	27,045
Convertible preferred stock	24,552		
Total shareholders' equity	87,868	112,420	203,413

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**RISK FACTORS**

*You should carefully consider the risks described below before making a decision to buy our class A common stock. If any of the following risks actually occur, our business, financial condition and results of operations could be harmed. In that case, the trading price of our class A common stock could decline and you might lose all or part of your investment in our class A common stock. You should also refer to the other information set forth in this prospectus, including Special Note Regarding Forward-Looking Statements and our consolidated financial statements and the related notes.*

**Risks Related to Our Business**

*We are currently experiencing an industry-wide shortage of polysilicon. The prices that we pay for polysilicon have increased recently and we expect these price increases to continue, which may constrain our revenue growth and decrease our gross margins and profitability.*

Polysilicon is an essential raw material in our production of photovoltaic, or solar, cells. Polysilicon is created by refining quartz or sand. Polysilicon is melted and grown into crystalline ingots by companies specializing in ingot growth. We procure silicon ingots from these suppliers on a contractual basis and then slice these ingots into wafers. We also purchase wafers from third-party vendors. The ingots are sliced and the wafers are processed into solar cells in our Philippines manufacturing facility.

There is currently an industry-wide shortage of polysilicon, which has resulted in significant price increases. For example, according to SolarBuzz, an industry consulting firm, the average price of polysilicon increased from \$25 per kilogram in 2004 to between \$35 and \$45 per kilogram for the first quarter of 2005. Based on our experience, we believe that the average price of polysilicon has continued to increase. Increases in polysilicon prices have in the past increased our manufacturing costs and may impact our manufacturing costs and net income in the future. As demand for solar cells has increased, many of our principal competitors have announced plans to add additional manufacturing capacity. As this manufacturing capacity becomes operational, it will increase the demand for polysilicon and further exacerbate the current shortage. Polysilicon is also used in the semiconductor industry generally and any increase in demand from that sector will compound the shortage. The production of polysilicon is capital intensive and adding additional capacity requires significant lead time. While we are aware that several new facilities for the manufacture of polysilicon are under construction, we do not believe that the supply imbalance will be remedied in the near term. We expect that polysilicon demand will continue to outstrip supply for the foreseeable future.

Although we have purchase orders and contracts for what we believe will be an adequate supply of silicon ingots through 2006, our estimates regarding our supply needs may not be correct and our purchase orders may be cancelled by our suppliers. The volume and pricing associated with these purchase orders and contracts may be changed by our suppliers based on market conditions. Our purchase orders are generally non-binding in nature. If our suppliers were to cancel our purchase orders or change the volume or pricing associated with these purchase orders, we may be unable to meet customer demand for our products, which could cause us to lose customers, market share and revenue. This would have a material negative impact on our business and operating results. If our manufacturing yields decrease significantly, our second manufacturing line becomes available earlier than anticipated or our suppliers cancel or fail to deliver, we may not have made adequate provision for our polysilicon needs for the balance of the year.

In addition, since some of these arrangements are with suppliers who do not themselves manufacture polysilicon but instead purchase their requirements from other vendors, it is possible that these suppliers will not be able to obtain sufficient polysilicon to satisfy their contractual obligations to us.

There are a limited number of polysilicon suppliers. Many of our competitors also purchase polysilicon from our suppliers. Since we have only been purchasing polysilicon in bulk for less than a year, these other competitors have longer and perhaps stronger relationships with our suppliers than we do. Many of them also have greater buying power than we do. Some of our competitors also have inter-locking board members with their polysilicon suppliers. Since we have committed to significantly increase our manufacturing output, an inadequate allocation of polysilicon would harm us more than it would harm our competitors.

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The inability to obtain sufficient polysilicon at commercially reasonable prices or at all would adversely affect our ability to meet existing and future customer demand for our products and could cause us to make fewer shipments, lose customers and market share and generate lower than anticipated revenue, thereby seriously harming our business, financial condition and results of operations.

*We currently depend on four customers for a high percentage of our total revenue and the loss of, or a significant reduction in orders from, any of these customers, if not immediately replaced, would significantly reduce our revenue and harm our operating results.*

Conergy AG, or Conergy, accounted for approximately 7% of our total combined revenue in fiscal 2004 and 47% of our total revenue in the nine months ended September 30, 2005. Solon AG, or Solon, accounted for approximately 19% of our total combined revenue in fiscal 2004 and 16% of our total revenue in the nine months ended September 30, 2005. General Electric Company, or GE, and its subcontracting partner, Plexus Corp., or Plexus, accounted for approximately 9% of our total combined revenue in fiscal 2004, and accounted for approximately 13% of our total revenue in the nine months ended September 30, 2005. Integration Associates accounted for 31% of our total combined revenue in fiscal 2004 and 5% of our total revenue in the nine months ended September 30, 2005. Currently, our largest customers for our solar power products are Conergy and Solon, our largest customers for our imaging detector products are GE and Plexus and our largest customer for our infrared detector products is Integration Associates. The loss of sales to any of these customers would have a significant negative impact on our business. Our agreements with these customers may be cancelled if we fail to meet certain product specifications or materially breach the agreement or in the event of bankruptcy, and our customers may seek to renegotiate the terms of current agreements or renewals. Most of the solar panels we sell to the European market are sold through our agreement with Conergy and we may enter into similar agreements in the future.

We currently sell to a relatively small number of customers, and we expect our operating results will likely continue to depend on sales to a relatively small number of customers for the foreseeable future, as well as the ability of these customers to sell solar power products that incorporate our solar cells. Our customer relationships have been developed over a short period of time and are generally in their preliminary stages. We cannot be certain that these customers will generate significant revenue for us in the future or if these customer relationships will continue to develop. If our relationships with our other customers do not continue to develop, we may not be able to expand our customer base or maintain or increase our revenue. This is exacerbated by our current manufacturing constraints for solar cells which limit our ability to sell to other customers and our contractual arrangements which require us to sell part of our future output to Conergy and Solon. In addition, our business is affected by competition in the market for the end products that each of Solon, Conergy and Plexus sell, and any decline in their business could harm our business and cause our revenue to decline.

*The reduction or elimination of government and economic incentives could cause our revenue to decline.*

We believe that the near-term growth of the market for on-grid applications, where solar power is used to supplement a customer's electricity purchased from the utility network, depends in large part on the availability and size of government and economic incentives. Because a majority of our sales are in the on-grid market, the reduction or elimination of government and economic incentives may adversely affect the growth of this market or result in increased price competition, which could cause our revenue to decline.

Today, the cost of solar power exceeds the cost of power furnished by the electric utility grid in many locations. As a result, federal, state and local government bodies in many countries, most notably Germany, Japan and the United States, have provided incentives in the form of rebates, tax credits and other incentives to end users, distributors, system integrators and manufacturers of solar power products to promote the use of solar energy in on-grid applications and to reduce dependency on other forms of energy. These government economic incentives could be reduced or eliminated altogether. For example, Germany has been a strong supporter of solar power products and systems, and political changes in Germany could result in significant reductions or eliminations of incentives, including the reduction of feed-in tariffs over time. In addition, the federal incentive program in Japan is scheduled to expire at the end of 2005. Some solar program incentives expire, decline over time, are

limited in total funding or require renewal of authority. For example, in California, the Emerging Renewables Program has finite funds that

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may not last through the current program period and the incentive levels are scheduled to decline on January 1, 2006 from \$2.80 to \$2.60 per alternating current, or AC, watt. Net metering policies in Japan and California could limit the amount of solar power installed in these locations. Reductions in, or eliminations or expirations of, incentives could result in decreased demand for our products and lower revenue.

*Our quarterly revenue and operating results are difficult to predict, and if we do not meet quarterly financial expectations, our stock price will likely decline.*

Our quarterly revenue and operating results are difficult to predict and have in the past, and may in the future, fluctuate from quarter to quarter. It is possible that our operating results in some quarters will be below market expectations. Our quarterly operating results are affected by a number of factors, including:

the availability and pricing of raw materials, particularly polysilicon;

the rate and cost at which we are able to expand our manufacturing capacity to meet customer demand, including costs and timing of adding personnel;

timing, availability and changes in government incentive programs;

unplanned additional expenses such as manufacturing failures, defects or downtime;

unpredictable volume and timing of customer orders, some of which are not fixed by contract but vary on a purchase order basis;

the loss of one or more key customers or the significant reduction or postponement of orders from these customers;

foreign currency fluctuations, particularly in the Euro or Philippine peso;

our currency hedging activities;

our ability to establish and expand customer relationships;

changes in our manufacturing costs;

changes in the relative sales mix of our solar cells, solar panels and imaging detectors;

the availability, pricing and timeliness of delivery of other products, such as inverters, necessary for our solar power products to function;



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our ability to successfully develop, introduce and sell new or enhanced solar power products in a timely manner, and the amount and timing of related research and development costs;

the timing of new product or technology announcements or introductions by our competitors and other developments in the competitive environment;

decreases in the overall average selling prices of our solar power products and imaging detectors;

increases or decreases in electric rates due to fossil fuel prices; and

shipping delays.

We base our planned operating expenses in part on our expectations of future revenue, and a significant portion of our expenses is relatively fixed in the short term. If revenue for a particular quarter is lower than we expect, we likely will be unable to proportionately reduce our operating expenses for that quarter, which would harm our operating results for that quarter. This may cause us to miss analysts' guidance or any future guidance announced by us. If we fail to meet or exceed analyst or investor expectations or our own future guidance, even by a small amount, our stock price could decline, perhaps substantially.

***We have incurred losses since inception and may not be able to generate sufficient revenue in the future to achieve or sustain profitability.***

We have incurred net losses since inception and, at September 30, 2005, we had an accumulated deficit of approximately \$57.9 million. To achieve profitability, we will need to generate and sustain higher revenue while

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maintaining reasonable cost and expense levels. We do not know if our revenue will grow, or if so whether it will grow sufficiently to outpace our expenses, which we expect to increase as we expand our manufacturing capacity. We may not be able to achieve or increase profitability on a quarterly or an annual basis. If we do not achieve or sustain profitability or otherwise meet the expectations of securities analysts or investors, the market price of our common stock will likely decline.

***Our dependence on a limited number of third-party suppliers for key components for our solar power products could prevent us from delivering our products to our customers within required timeframes, which could result in order cancellations and loss of market share.***

In North America, where we intend to increase our sales and marketing efforts, systems incorporating our solar cells and solar panels currently require a specialized inverter. We currently obtain the inverters we sell with our solar panels from a single supplier and expect to continue to obtain inverters from a single supplier for at least the next six months. We believe there are only a few suppliers of inverters which are compatible with our solar cells and solar panels, and our supplier is the only one that is currently in commercial production. We have no long-term commitments regarding supply or price from our supplier, which leaves us vulnerable to the risk that our supplier may stop supplying inverters to us for any reason, including its financial viability. If we or our customers cannot obtain substitute sources of inverters on a timely basis or on acceptable terms, these supply problems may cause our revenue to decline, increase our costs, delay solar power system installations, result in loss of market share or otherwise harm our business.

We manufacture all of our solar power products using components procured from a limited number of third-party suppliers. For example, we currently purchase glass from two suppliers and aluminum frames and plastic backsheet materials which we use in our products from a limited number of suppliers. If we fail to develop or maintain our relationships with these or our other suppliers, we may be unable to manufacture our products or our products may be available only at a higher cost or after a long delay, which could prevent us from delivering our products to our customers within required timeframes and we may experience order cancellation and loss of market share. To the extent the processes that our suppliers use to manufacture components are proprietary, we may be unable to obtain comparable components from alternative suppliers. The failure of a supplier to supply components in a timely manner, or to supply components that meet our quality, quantity and cost requirements, could impair our ability to manufacture our products or decrease their costs, particularly if we are unable to obtain substitute sources of these components on a timely basis or on terms acceptable to us.

***The steps we have taken to increase the efficiency of our polysilicon utilization are unproven at volume production levels and may not enable us to realize the cost reductions we anticipate.***

Given the polysilicon shortage, we believe the efficient use of polysilicon will be critical to our ability to reduce our manufacturing costs. We are considering several measures to increase the efficient use of polysilicon in our manufacturing process. For example, we are considering the use of thinner wafers which requires less polysilicon and improved wafer-slicing technology to reduce the amount of material lost while slicing wafers, otherwise known as kerf loss. Although we have tested some of these measures in laboratory conditions, we have not implemented them at commercial production levels. These methods may have unforeseen negative consequences on our yields or our solar cell efficiency or reliability once they are put into commercial production or they may not enable us to realize the cost reductions we hope to achieve.

***We depend on a combination of our own wafer-slicing operations and those of other vendors for the wafer-slicing stage of our manufacturing, and any technical problems, breakdowns, delays or cost increases could significantly delay our manufacturing operations, decrease our output and increase our costs.***

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We have historically depended on the wafer-slicing operations of third-party vendors to slice ingots into wafers. We recently established our own wafer-slicing operations, and in the third quarter of 2005, we sliced approximately 71% of our wafers. If our third-party vendors increase their prices or decrease or discontinue their shipments to us, as a result of equipment malfunctions, competing purchasers or otherwise, and we are unable to obtain substitute wafer-slicing from another vendor on acceptable terms, or increase our own wafer-slicing

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operations on a timely basis, our sales will decrease, our costs may increase or our business will otherwise be harmed.

***We obtain capital equipment used in our manufacturing process from sole suppliers and if this equipment is damaged or otherwise unavailable, our ability to deliver products on time will suffer, which in turn could result in order cancellations and loss of revenue.***

Some of the capital equipment used in the manufacture of our solar power products and in our wafer-slicing operations has been developed and made specifically for us, is not readily available from multiple vendors and would be difficult to repair or replace if it were to become damaged or stop working. In addition, we currently obtain the equipment for many of our manufacturing processes from sole suppliers and we obtain our wafer-slicing equipment from one supplier. If any of these suppliers were to experience financial difficulties or go out of business, or if there was any damage to or a breakdown of our manufacturing or wafer-slicing equipment at a time we are manufacturing commercial quantities of our products, our business would suffer. In addition, a supplier's failure to supply this equipment in a timely manner, with adequate quality and on terms acceptable to us, could delay our capacity expansion of our manufacturing facility and otherwise disrupt our production schedule or increase our costs of production.

***We have one solar cell production line which is located in our manufacturing facility in the Philippines and if we experience interruptions in the operation of this production line or are unable to add additional production lines, it would likely result in lower revenue and earnings than anticipated.***

We currently have only one solar cell production line in operation, which is located at our manufacturing facility in the Philippines. If our current production line were to experience any problems or downtime, including those caused by intermittent electricity supply at our Philippines facility, we would be unable to meet our production targets and our business would suffer. If any piece of equipment were to break down or experience down-time, it would cause our entire production line to go down. We have ordered equipment for a second and third 25 megawatts per year production line to decrease per unit operating costs and increase production output, and are evaluating the timing for a fourth line in our existing facility and for a second production facility. This expansion has required and will continue to require significant management attention and a significant investment of capital and substantial engineering expenditures and is subject to significant risks including:

we may experience cost overruns, delays, equipment problems and other operating difficulties;

we may experience difficulties expanding our processes to larger production capacity;

our custom-built equipment may take longer and cost more to engineer than planned and may never operate as designed; and

we are incorporating first-time equipment designs and technology improvements, which we expect to lower unit capital and operating costs, but this new technology may not be successful.

If we experience any of these or similar difficulties, we may be unable to complete the addition of new production lines or expand our manufacturing facility and our manufacturing capacity could be substantially constrained. If this were to occur, our per unit manufacturing costs would increase, we would be unable to increase sales as planned and our earnings would likely be materially impaired.

*We expect to continue to make significant capital expenditures, particularly in our manufacturing facility, and if adequate funds are not available or if the covenants in our credit agreements impair our ability to raise capital when needed, our ability to expand our manufacturing capacity and our business will suffer.*

We expect to continue to make significant capital expenditures, particularly in our manufacturing facility, and anticipate that our expenses will increase substantially in the foreseeable future as we expand our manufacturing operations, hire additional personnel, pay more or make advance payments for raw material, especially polysilicon, increase our sales and marketing efforts and continue our research and development efforts with respect to our products and manufacturing technologies. We expect capital expenditures of

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approximately \$26.0 million for the remainder of 2005 and approximately \$55.0 million in 2006 as we continue to increase our manufacturing capacity. We believe that our current cash and cash equivalents and funds available under our credit facility with Cypress will be sufficient to fund our capital and operating expenditures over the next 12 months. We have retained the capacity to borrow up to \$30.0 million from Cypress, which capacity will terminate upon the earlier of the completion of this offering or December 31, 2006. We are in negotiations with Credit Suisse First Boston and Lehman Brothers regarding a new credit facility to be effective upon completion of this offering. However, if our financial results or operating plans change from our current assumptions, we may not have sufficient resources to support our business plan. If our capital resources are insufficient to satisfy our liquidity requirements, we may seek to sell additional equity securities or debt securities or obtain other debt financing. The sale of additional equity securities or convertible debt securities would result in additional dilution to our stockholders. Additional debt would result in increased expenses and could require us to abide by covenants that would restrict our operations. The terms of our new credit agreement with Credit Suisse First Boston and Lehman Brothers are expected to contain covenants which may restrict our ability to raise capital when we need it and may restrict our ability to pay dividends. If adequate funds are not available or not available on acceptable terms or terms consistent with any new our credit agreement we may enter into, our ability to fund our operations, develop and expand our manufacturing operations and distribution network, maintain our research and development efforts or otherwise respond to competitive pressures would be significantly impaired.

***Because we have fixed-price agreements with two of our largest customers and operate on a purchase order basis with our third largest customer, our financial results, including gross margin, may suffer if our manufacturing costs were to increase or purchase orders were changed or cancelled.***

Our agreements with Conergy and Solon provide that they will purchase our products from us on a fixed-price basis. Our agreement with Conergy expires at the end of this year and we are currently in negotiations with them regarding a new agreement. Our agreement with Solon provides for a fixed-price basis for the first two years of the agreement, which expires in 2010. However, our manufacturing costs, including the cost of polysilicon, are variable. If our manufacturing costs increase, we would be unable to raise our prices to these customers, which in turn would negatively impact our margins and profits.

We do not have a long-term agreement with Plexus but instead operate on a purchase order basis. Although we believe that cancellations to date have been insignificant, our customers may cancel or reschedule purchase orders with us on relatively short notice. Cancellations or rescheduling of customer orders could result in the delay or loss of anticipated sales without allowing us sufficient time to reduce, or delay the incurrence of, our corresponding inventory and operating expenses. In addition, changes in forecasts or the timing of orders from these or other customers expose us to the risks of inventory shortages or excess inventory. This in turn could cause our operating results to fluctuate.

***Technological changes in the solar power industry could render our solar power products uncompetitive or obsolete, which could reduce our market share and cause our sales to decline.***

The solar power markets are characterized by continually changing technology requiring improved features, such as more efficient and higher power output, improved aesthetics and smaller size. This requires us to continuously develop new solar power products and enhancements for existing solar power products to keep pace with evolving industry standards and changing customer requirements. Technologies developed by others may prove more advantageous than ours for the commercialization of solar power products and may render our technology obsolete. Our failure to further refine our technology and develop and introduce new solar power products could cause our products to become uncompetitive or obsolete, which could reduce our market share and cause our sales to decline. Our research and development expense was \$2.5 million in fiscal 2002, \$9.8 million in fiscal 2003, \$13.5 million combined in fiscal 2004 and \$4.5 million for the nine months ended September 30, 2005. We will need to invest significant financial resources in research and development to maintain our market position, keep pace with technological advances in the solar power industry and to effectively compete in the future.



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If our future innovations fail to enable us to maintain or improve our competitive position, especially with respect to solar cell efficiency, we may lose market share. Some solar cells designed by our competitors in laboratory conditions have demonstrated higher efficiency than our solar cells which are currently available for the mass market, and other companies have competing products in development. If we are unable to successfully design, develop and introduce or bring to market competitive new solar cells or other products, or enhance our existing solar cells, we may not be able to compete successfully. Competing solar power technologies may result in lower manufacturing costs or higher product performance than those expected from our solar cells. In addition, if we, or our customers, are unable to manage product transitions, our business and results of operations would be negatively affected.

*Evaluating our business and future prospects may be difficult due to our limited history in producing and shipping solar cells and solar panels in commercial volumes.*

There is limited historical information available about our company upon which you can base your evaluation of our business and prospects. Although we began to develop and commercialize high-efficiency solar cell technology for use in solar concentrators in 1988 and began shipping product from our pilot manufacturing facility in 2003, we shipped our first commercial A-300 solar cells from our Philippines manufacturing facility in late 2004. Relative to the entire solar industry, we have shipped only a limited number of solar cells and solar panels and have recognized limited revenue. Our future success will require us to continue to scale our manufacturing capacity in our Philippines facility significantly beyond its current capacity. In addition, our business model, technology and ability to achieve satisfactory manufacturing yields at higher volumes are unproven at significant scale. As a result, you should consider our business and prospects in light of the risks, expenses and challenges that we will face as an early-stage company seeking to develop and manufacture new products in a rapidly growing market.

*Our reliance on government contracts to partially fund our research and development programs could impair our ability to develop and incorporate new technologies into our solar power products and could decrease our revenue.*

Our government contracts enable us to develop new technologies more rapidly than we would have pursued otherwise. Funding from government contracts is recorded as an offset to our research and development expense. We recently entered into a cost-sharing research and development project with the National Renewable Energy Laboratory to fund the design of our next generation solar panels. Payments received under this contract help offset our research and development expense. This contract is expected to fund approximately \$1.0 million per year of our research and development expense through May 2008. In the nine months ended September 30, 2005, funding from government contracts offset our research and development expense by approximately 8%. A reduction or discontinuance of these programs or of our participation in these programs would increase our expenses, which could affect our profitability and impair our ability to develop our solar power technologies.

In addition, contracts involving government agencies may be terminated or modified at the convenience of the agency. Other risks include potential disclosure of our confidential information to third parties and the exercise of march-in rights by the government. March-in rights refer to the right of the United States government or government agency to require us to grant a license to the technology to a responsible applicant or, if we refuse, the government may grant the license itself. The government can exercise its march-in rights if it determines that action is necessary because we fail to achieve practical application of the technology or because action is necessary to alleviate health or safety needs, to meet requirements of federal regulations or to give the United States industry preference. Our government-sponsored research contracts are subject to audit and require that we provide regular written technical updates on a monthly, quarterly or annual basis, and, at the conclusion of the research contract, a final report on the results of our technical research. Because these reports are generally available to the public, third parties may obtain some aspects of our sensitive confidential information. Moreover, the failure to provide these reports or to provide inaccurate or incomplete reports may provide the government with rights to any intellectual property arising from the related research. Funding from government contracts also may limit when and how we can deploy our technology developed under those contracts.





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***Problems with product quality or product performance, including defects, in our solar cells could result in a decrease in customers and revenue, unexpected expenses and loss of market share.***

Our solar cells are complex and must meet stringent quality requirements. Products as complex as ours may contain undetected errors or defects, especially when first introduced. For example, our solar cells and solar panels may contain defects that are not detected until after they are shipped or are installed because we cannot test for all possible scenarios. These defects could cause us to incur significant re-engineering costs, divert the attention of our engineering personnel from product development efforts and significantly affect our customer relations and business reputation. If we deliver solar cells or solar panels with errors or defects, or if there is a perception that our solar cells or solar panels contain errors or defects, our credibility and the market acceptance and sales of our solar power products could be harmed.

The possibility of future product failures could cause us to incur substantial expense to repair or replace defective products. Furthermore, widespread product failures may damage our market reputation and reduce our market share and cause sales to decline. We have agreed to indemnify our customers and our distributors in some circumstances against liability from defects in our solar cells. A successful indemnification claim against us could require us to make significant damage payments, which would negatively affect our financial results.

***Product liability claims against us could result in adverse publicity and potentially significant monetary damages.***

Like other retailers, distributors and manufacturers of products that are used by consumers, we face an inherent risk of exposure to product liability claims in the event that the use of the solar power products into which our solar cells and solar panels are incorporated results in injury. Since our solar power products are electricity producing devices, it is possible that our products could result in injury, whether by product malfunctions, defects, improper installation or other causes. In addition, since we only began selling our solar cells and solar panels in late 2004 and the products we are developing incorporate new technologies and use new installation methods, we cannot predict whether or not product liability claims will be brought against us in the future or the effect of any resulting negative publicity on our business. Moreover, we may not have adequate resources in the event of a successful claim against us. We have evaluated the potential risks we face and believe that we have appropriate levels of insurance for product liability claims. We rely on our general liability insurance to cover product liability claims and have not obtained separate product liability insurance. The successful assertion of product liability claims against us could result in potentially significant monetary damages and if our insurance protection is inadequate to cover these claims, they could require us to make significant payments.

***Since we cannot test our solar panels for the duration of our standard 25-year warranty period, we may be subject to unexpected warranty expense.***

Our current standard product warranty for our solar panels includes a 10-year warranty period for defects in material and workmanship and a 25-year warranty period for declines in power performance as well as a one-year warranty on the functionality of our solar cells. We believe our warranty periods are consistent with industry practice. Due to the long warranty period and our proprietary technology, we bear the risk of extensive warranty claims long after we have shipped product and recognized revenue. We have sold solar cells only since late 2004. Any increase in the defect rate of our products would cause us to increase the amount of warranty reserves and have a corresponding negative impact on our financial statement. Although we conduct accelerated testing of our solar cells and have several years of experience with our all back contact cell architecture, our solar panels have not and cannot be tested in an environment simulating the 25-year warranty period. As a result, we may be subject to unexpected warranty expense, which in turn would harm our financial results.

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***Existing regulations and policies and changes to these regulations and policies may present technical, regulatory and economic barriers to the purchase and use of solar power products, which may significantly reduce demand for our products.***

The market for electricity generation products is heavily influenced by foreign, federal, state and local government regulations and policies concerning the electric utility industry, as well as policies promulgated by electric utilities. These regulations and policies often relate to electricity pricing and technical interconnection of customer-owned electricity generation. In the United States and in a number of other countries, these regulations and policies are being modified and may continue to be modified. Customer purchases of, or further investment in the research and development of, alternative energy sources, including solar power technology, could be deterred by these regulations and policies, which could result in a significant reduction in the potential demand for our solar power products. For example, without a regulatory mandated exception for solar power systems, utility customers are often charged interconnection or standby fees for putting distributed power generation on the electric utility grid. These fees could increase the cost to our customers of using our solar power products and make them less desirable, thereby harming our business, prospects, results of operations and financial condition.

We anticipate that our solar power products and their installation will be subject to oversight and regulation in accordance with national and local ordinances relating to building codes, safety, environmental protection, utility interconnection and metering and related matters. It is difficult to track the requirements of individual states and design equipment to comply with the varying standards. Any new government regulations or utility policies pertaining to our solar power products may result in significant additional expenses to us and our resellers and their customers and, as a result, could cause a significant reduction in demand for our solar power products.

***Because the markets in which we compete are highly competitive and many of our competitors have greater resources than us, we may not be able to compete successfully and we may lose or be unable to gain market share.***

We compete with a large number of competitors in the solar power market, including BP Solar International Inc., Evergreen Solar, Inc., Mitsubishi Electric Corporation, Q-Cells AG, Sanyo Corporation and Sharp Corporation. In addition, universities, research institutions and other companies are developing alternative technologies such as thin films and concentrators, which may compete with our technology. We expect to face increased competition in the future. Further, many of our competitors are developing and are currently producing products based on new solar power technologies that may ultimately have costs similar to, or lower than, our projected costs.

Many of our current and potential competitors have longer operating histories, greater name recognition, access to larger customer bases and significantly greater financial, sales and marketing, manufacturing, distribution, technical and other resources than us. As a result, they may be able to respond more quickly to changing customer demands or to devote greater resources to the development, promotion and sales of their products than we can. Our business relies on sales of our solar power products and our competitors with more diversified product offerings may be better positioned to withstand a decline in the demand for solar power products. Some of our competitors own, partner with, have longer term or stronger relationships with polysilicon providers which could result in them being able to obtain raw materials on a more favorable basis than us. It is possible that new competitors or alliances among existing competitors could emerge and rapidly acquire significant market share, which would harm our business. If we fail to compete successfully, our business would suffer and we may lose or be unable to gain market share.

In addition, the solar power market in general competes with other sources of renewable energy and conventional power generation. If prices for conventional and other renewable energy resources decline, or if these resources enjoy greater policy support than solar power, the solar power market could suffer.

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*We face competition in the market for our imaging detectors and infrared detectors, and if we fail to compete effectively, we will lose or fail to gain market share.*

We compete with companies such as Hamamatsu Photonics K.K. and UDT Sensors, Inc. in the market for high performance imaging detectors. In addition we compete with companies such as Vishay Intertechnology, Inc., Rohm Co., Ltd. and Agilent Technologies, Inc. in the market for infrared detectors. We may face competition in the future from other manufacturers of high performance imaging detectors, infrared detectors or alternative devices. The use of alternative devices, including low power, high data rate wireless protocols, may replace existing detectors and limit our market opportunity. Our current and future competitors may have longer operating histories, greater name recognition and greater financial, sales and marketing, technical and other resources than us or may develop technologies superior to those incorporated in our imaging detectors and infrared detectors. If we fail to compete successfully, we may be unable to expand our customer base for our imaging detectors and our business would suffer.

*The demand for products requiring significant initial capital expenditures such as our solar power products is affected by general economic conditions.*

The United States and international economies have recently experienced a period of slow economic growth. A sustained economic recovery is uncertain. In particular, terrorist acts and similar events, continued turmoil in the Middle East or war in general could contribute to a slowdown of the market demand for products that require significant initial capital expenditures, including demand for solar cells and solar power systems and new residential and commercial buildings. In addition, increases in interest rates may increase financing costs to customers, which in turn may decrease demand for our solar power products. If the economic recovery slows down as a result of the recent economic, political and social turmoil, or if there are further terrorist attacks in the United States or elsewhere, we may experience decreases in the demand for our solar power products, which may harm our operating results.

*Because of the lengthy sales cycles for our imaging detectors and the relatively fixed nature of a significant portion of our expenses, we may incur substantial expenses before we earn associated revenue and may not ultimately achieve our forecasted sales for our imaging detectors.*

Our sales cycles from design to manufacture of our imaging detectors can typically take 12 to 18 months. Sales cycles for our imaging detectors are lengthy for a number of reasons, including:

our customers usually complete an in-depth technical evaluation of our imaging detectors before they place a purchase order;

the commercial adoption of our imaging detectors is typically limited during the initial release of their products to evaluate performance and consumer demand;

failure to deliver a product in a timely manner can seriously delay or cancel introduction; and

the development and commercial introduction of products incorporating complex technology frequently are delayed or canceled.

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As a result of our lengthy sales cycles, we may incur substantial expenses before we earn associated revenue because a significant portion of our operating expenses is relatively fixed and based on expected revenue. If customer cancellations or product changes occur, this could result in the loss of anticipated sales without allowing us sufficient time to reduce our operating expenses.

***We depend on third-party subcontractors in China to assemble our solar cells into solar panels and any failure to obtain sufficient assembly and test capacity could significantly delay our ability to ship our solar panels and damage our customer relationships.***

We rely on Jiawei SolarChina and Jumao Photonic, Co., Ltd., third-party subcontractors in China, to assemble our solar cells into solar panels and perform panel testing and to manage test, packaging, warehousing and shipping of our solar panels. We do not have a long-term agreement with our subcontractors. We typically

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obtain services from these suppliers on a purchase order basis, and we place our orders on the basis of our customers' purchase orders and sales forecasts. If the operations of our subcontractors were disrupted or their financial stability impaired, or if they should choose not to devote capacity to our solar panels in a timely manner, our business would suffer as we would be unable to produce finished solar panels on a timely basis. In addition, we supply inventory to our third-party subcontractors, and we bear the risk of loss, theft or damage to our inventory while it is held at their facilities.

As a result of outsourcing this final step in our production, we face several significant risks, including:

lack of assembly and testing capacity and higher prices;

limited control over delivery schedules, quality assurance and control, manufacturing yields and production costs; and

delays resulting from an inability to move production to an alternate provider.

The ability of our subcontractors to perform assembly and test is limited by their available capacity. We do not have a guaranteed level of production capacity with our subcontractors, and it is difficult to accurately forecast our capacity needs because of the shifting mix between sales of solar cells and solar panels and the timing of expanding our manufacturing capacity. Other customers of our subcontractors that are larger and better financed than we are, or that have long-term agreements with these subcontractors, may induce these subcontractors to reallocate capacity to them. Any reallocation could impair our ability to secure the supply of solar panels that we need for our customers. In addition, interruptions to the panel manufacturing processes caused by a natural or man-made disaster could result in partial or complete disruption in supply until we are able to shift manufacturing to another facility. It may not be possible to obtain sufficient capacity or comparable production costs at another facility. Migrating our design methodology to a new third-party subcontractor could involve increased costs, resources and development time and expose us to further risk of losing control over our intellectual property and the quality of our solar panels. Any reduction in the supply of solar panels could significantly delay our ability to ship and potentially damage our relationships with existing customers.

***If we do not achieve satisfactory yields or quality in manufacturing our solar cells, our sales could decrease and our relationships with our customers and our reputation may be harmed.***

The manufacture of solar cells is a highly complex process. Minor deviations in the manufacturing process can cause substantial decreases in yield and in some cases, cause production to be suspended or yield no output. We have from time to time experienced lower than anticipated manufacturing yields. This often occurs during the production of new products or the installation and start-up of new process technologies or equipment. For example, we have ordered equipment for the second and third 25 megawatts per year production lines and are evaluating the timing for both a fourth line and a second production facility. As we expand our manufacturing capacity and bring additional lines or facilities into production, we may experience lower yields initially as is typical with any new equipment or process. We also expect to experience lower yields initially as we migrate our manufacturing processes to thinner wafers. If we do not achieve planned yields, our product costs could increase, and product availability would decrease.

***Our ability to continue to manufacture our imaging detectors and our solar cells in our current facilities with our current and planned manufacturing capacities, and therefore to maintain and increase revenue and achieve profitability, depends to a large extent upon the success of our continued relationship with Cypress.***

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Our imaging detectors are manufactured for us by Cypress and are processed and tested in our Sunnyvale, California facility. We do not have a long-term agreement with Cypress for the manufacturing of our imaging detectors, but instead operate on a purchase order basis. The processes for manufacturing our imaging detectors are highly complex, specialized and proprietary. If Cypress determines to cancel its arrangement with us, our manufacturing output would be interrupted and delayed, and we would incur increased expenses in establishing relationships with alternative manufacturers at market prices. We may not be able to find alternative manufacturers on terms acceptable to us, and we may be unable to establish our own operations in a timely or cost-effective manner, if at all.

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We manufacture our solar cells in our Philippines manufacturing facility which we lease from Cypress. On October 6, 2005, we entered into an agreement with Cypress that will be effective upon the completion of this offering to extend this lease for an additional 15 years with a right to buy the facility. If we are unable to expand in our current facility or are required to move our manufacturing facility, we would incur significant expenses as well as lost sales. Furthermore, we may not be able to locate a facility that meets our needs on terms acceptable to us. Any of these circumstances would increase our expenses and decrease our total revenue and could prevent us from achieving profitability.

*We have significant international activities and customers, and plan to continue these efforts, which subject us to additional business risks, including logistical complexity, political instability and currency fluctuations.*

For the nine months ended September 30, 2005, approximately 70% of our sales have been made to customers outside of the United States. We currently have only one solar cell production line in operation, which is located at our manufacturing facility in the Philippines. In addition, our assembly functions are conducted by third-party subcontractors in China. Risks we face in conducting business internationally include:

multiple, conflicting and changing laws and regulations, export and import restrictions, employment laws, regulatory requirements and other government approvals, permits and licenses;

difficulties and costs in staffing and managing foreign operations such as our manufacturing facility in the Philippines, as well as cultural differences;

difficulties and costs in recruiting and retaining individuals skilled in international business operations;

increased costs associated with maintaining international marketing efforts;

potentially adverse tax consequences;

inadequate local infrastructure;

financial risks, such as longer sales and payment cycles and greater difficulty collecting accounts receivable; and

political and economic instability, including wars, acts of terrorism, political unrest, boycotts, curtailments of trade and other business restrictions.

Specifically, we face risks associated with political and economic instability and civil unrest in the Philippines. In addition, in the Asia/Pacific region generally, we face risks associated with a recurrence of SARS, tensions between countries in that region, such as political tensions between China and Taiwan, the ongoing discussions with North Korea regarding its nuclear weapons program, potentially reduced protection for intellectual property rights, government-fixed foreign exchange rates, relatively uncertain legal systems and developing telecommunications infrastructures. In addition, some countries in this region, such as China, have adopted laws, regulations and policies which impose additional restrictions on the ability of foreign companies to conduct business in that country or otherwise place them at a competitive disadvantage in relation to domestic companies.



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In addition, although base wages are lower in the Philippines, wages for our employees in the Philippines are increasing, which could result in increased costs to employ our manufacturing engineers. As of September 30, 2005, approximately 90% of our employees were located in the Philippines. We also are faced with competition in the Philippines for employees, and we expect this competition to increase as additional solar companies enter the market and expand their operations. In particular, there may be limited availability of qualified manufacturing engineers. We have benefited from an excess of supply over demand for college graduates in the field of engineering in the Philippines. If this favorable imbalance changes due to increased competition, it could affect the availability or cost of qualified employees, who are critical to our performance. This could increase our costs and turnover rates.

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*Currency fluctuations in the Euro or the Philippine peso relative to the U.S. dollar could decrease our revenue or increase our expenses.*

In fiscal 2004, on a combined basis, and the nine months ended September 30, 2005, approximately 44% and 70%, respectively, of our total revenue was generated outside the United States. We presently have currency exposure arising from both sales and purchases denominated in foreign currencies. A majority of our total revenue is denominated in Euros, including our fixed price agreements with Conergy and Solon, and a significant portion is denominated in U.S. dollars while a portion of our costs are incurred and paid in Euros and a smaller portion of our expenses are paid in Philippine pesos and Japanese yen.

We are exposed to the risk of a decrease in the value of the Euro relative to the U.S. dollar, which would decrease our total revenue. Changes in exchange rates between foreign currencies and the U.S. dollar may adversely affect our operating margins. For example, if these foreign currencies appreciate against the U.S. dollar, it will make it more expensive in terms of U.S. dollars to purchase inventory or pay expenses with foreign currencies. In addition, currency devaluation can result in a loss to us if we hold deposits of that currency as well as make our products, which are usually purchased with U.S. dollars, relatively more expensive than products manufactured locally. An increase in the value of the U.S. dollar relative to foreign currencies could make our solar cells more expensive for our international customers, thus potentially leading to a reduction in our sales and profitability. Furthermore, many of our competitors are foreign companies that could benefit from such a currency fluctuation, making it more difficult for us to compete with those companies. We currently conduct hedging activities, which involve the use of currency forward contracts. We cannot predict the impact of future exchange rate fluctuations on our business and operating results. In the past, we have experienced an adverse impact on our total revenue and profitability as a result of foreign currency fluctuations.

*We may not be able to prevent others from using the SunPower name or similar mark in connection with their solar power products which could adversely affect the market recognition of our name and our revenue.*

SunPower is our registered trademark in the United States for use with solar cells and solar panels. We are seeking similar registration of the SunPower trademark in foreign countries but we may not be successful in some of these jurisdictions. For example, we have received initial rejection of our application to register the SunPower trademark in Canada and Japan based on prior registration by other people. In the foreign jurisdictions where we are unable to obtain this registration or have not tried, others may be able to sell their products using the SunPower trademark which could lead to customer confusion. In addition, if there are jurisdictions where someone else has already established trademark rights in the SunPower name, we may face trademark disputes and may have to market our products with other trademarks, which also could hurt our marketing efforts. We may encounter trademark disputes with companies using marks which are confusingly similar to SunPower which if not resolved favorably could cause our branding efforts to suffer. For example, on August 9, 2005, we filed a lawsuit in the United States District Court for the Northern District of California alleging trademark infringement, unfair competition and related claims against Sun Power & Geothermal Energy Company, Inc. for its use of the name Sun Power in connection with its photovoltaic products and services and seeking an injunction and damages. Trademark litigation carries an inherent risk and we cannot guarantee that we will be successful in this litigation. In addition, we may have difficulty in establishing strong brand recognition with consumers if others use similar marks for similar products.

*We rely primarily upon copyright and trade secret laws and contractual restrictions to protect our proprietary rights, and, if these rights are not sufficiently protected, our ability to compete and generate revenue could suffer.*

We seek to protect our proprietary manufacturing processes, documentation and other written materials primarily under trade secret and copyright laws. We also typically require employees and consultants with access to our proprietary information to execute confidentiality agreements. The steps taken by us to protect our proprietary information may not be adequate to prevent misappropriation of our technology. In addition, our proprietary rights may not be adequately protected because:

people may not be deterred from misappropriating our technologies despite the existence of laws or contracts prohibiting it;

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policing unauthorized use of our intellectual property may be difficult, expensive and time-consuming, and we may be unable to determine the extent of any unauthorized use; and

the laws of other countries in which we market our solar cells, such as some countries in the Asia/Pacific region, may offer little or no protection for our proprietary technologies.

Reverse engineering, unauthorized copying or other misappropriation of our proprietary technologies could enable third parties to benefit from our technologies without paying us for doing so. Any inability to adequately protect our proprietary rights could harm our ability to compete, to generate revenue and to grow our business.

***We may not obtain sufficient patent protection on the technology embodied in the solar cells we currently manufacture and market, which could harm our competitive position and increase our expenses.***

Although we rely primarily on trade secret laws and contractual restrictions to protect the technology in the solar cells we currently manufacture and market, our success and ability to compete in the future may also depend to a significant degree upon obtaining patent protection for our proprietary technology. As of September 30, 2005, we had 12 patent applications pending in the United States and eight applications pending in foreign jurisdictions which cover aspects of the technology in the solar cells we currently manufacture and market. Patents that we currently own or license-in do not cover the solar cells that we presently manufacture and market. Our patent applications may not result in issued patents, and even if they result in issued patents, the patents may not have claims of the scope we seek. In addition, any issued patents may be challenged, invalidated or declared unenforceable. The term of any issued patents would be 20 years from their filing date and if our applications are pending for a long time period, we may have a correspondingly shorter term for any patent that may issue. Our present and future patents may provide only limited protection for our technology and may not be sufficient to provide competitive advantages to us. For example, competitors could be successful in challenging any issued patents or, alternatively, could develop similar or more advantageous technologies on their own or design around our patents. Also, patent protection in certain foreign countries may not be available or may be limited in scope and any patents obtained may not be as readily enforceable as in the United States, making it difficult for us to effectively protect our intellectual property from misuse or infringement by other companies in these countries. Our inability to obtain and enforce our intellectual property rights in some countries may harm our business. In addition, given the costs of obtaining patent protection, we may choose not to protect certain innovations that later turn out to be important.

***If the effective term of our patents is decreased due to changes in patent laws or if we need to refile some of our patent applications, the value of our patent portfolio and the revenue we derive from products protected by the patents may be decreased.***

The value of our patents depends in part on their duration. A shorter period of patent protection means less value of a patent. For example, the United States patent laws were amended in 1995 to change the term of patent protection from 17 years after the date of the patent's issuance to 20 years after the earliest effective filing date of the application for a patent, unless the application was pending on June 8, 1995, in which case the term of a patent's protection expires either 17 years after its issuance or 20 years after its filing, whichever is later. Because the time required from the filing of patent application to issuance of a patent is often longer than three years, a 20-year patent term from the filing date may result in substantially shorter patent protection. Also, we may need to refile some of our patent applications and, in these situations, the patent term will be measured from the date of the earliest priority application to which benefit is claimed in such a patent application. This would also shorten our period of patent exclusivity. A shortened period of patent exclusivity may negatively impact our revenue protected by our patents.

***Our intellectual property indemnification practices may adversely impact our business.***

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We are required by contract to indemnify some of our customers and our third-party intellectual property providers for certain costs and damages of patent infringement in circumstances where our solar cells are a factor creating the customer's or these third-party providers' infringement liability. This practice may subject us to significant indemnification claims by our customers and our third-party providers. We cannot assure you that

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indemnification claims will not be made or that these claims will not harm our business, operating results or financial condition.

***We may face intellectual property infringement claims that could be time-consuming and costly to defend and could result in our loss of significant rights.***

From time to time, we, our customers or third-parties with whom we work may receive letters, including letters from various industry participants, alleging infringement of their patents. Although we are not currently aware of any parties pursuing or intending to pursue infringement claims against us, we cannot assure you that we will not be subject to such claims in the future. Also, because patent applications in the United States and many other jurisdictions are kept confidential for 18 months before they are published, we may be unaware of pending patent applications that relate to our solar cells. Our third-party suppliers may also become subject to infringement claims, which in turn could negatively impact our business. We may also initiate claims to defend our intellectual property. We recently terminated a license as to which we have not paid royalties since the second quarter of 2004 because our current products do not use the licensed technology. However, the licensor could challenge our actions and litigate against us. Intellectual property litigation is expensive and time-consuming and could divert management's attention from our business and could have a material adverse effect on our business, operating results or financial condition. If there is a successful claim of infringement against us, our customers or our third-party intellectual property providers, we may be required to pay substantial damages to the party claiming infringement, stop selling products or using technology that contains the allegedly infringing intellectual property, or enter into royalty or license agreements that may not be available on acceptable terms, if at all. Parties making infringement claims may also be able to bring an action before the International Trade Commission that could result in an order stopping the importation into the United States of our solar cells. All these judgments could materially damage our business. We may have to develop non-infringing technology, and our failure in doing so or obtaining licenses to the proprietary rights on a timely basis could have a material adverse effect on our business.

***We may file claims against other parties for infringing our intellectual property that may be very costly and may not be resolved in our favor.***

Although we are not aware of infringement of our intellectual property by other parties except potential trademark infringement, we cannot guarantee that such infringement does not exist now or that it will not occur in the future. To protect our intellectual property rights and to maintain our competitive advantage, we may file suits against parties who we believe infringe our intellectual property. For example, on August 9, 2005 we filed a lawsuit in the United States District Court for the Northern District of California alleging trademark infringement, unfair competition and related claims against Sun Power & Geothermal Energy Company, Inc. for its use of the name "Sun Power" in connection with its photovoltaic products and services. Intellectual property litigation is expensive and time consuming and could divert management's attention from our business and could have a material adverse effect on our business, operating results or financial condition, and our enforcement effort may not be successful. In certain situations, we may have to bring such suit in foreign jurisdictions, in which case we are subject to additional risk as to the result of the proceedings and the amount of damage that we can recover. Certain foreign jurisdictions may not provide protection to intellectual property comparable to that in the United States. Our engagement in intellectual property enforcement actions may negatively impact our financial results.

***The current tax holidays in the Philippines will expire within the next several years.***

We currently benefit from income tax holiday incentives in the Philippines pursuant to our Philippine subsidiary's registrations with the Board of Investments and Philippine Economic Zone Authority, which provide that we pay no income tax in the Philippines for four years pursuant to our Board of Investments non-pioneer status and Philippine Economic Zone Authority registrations, and six years pursuant to our Board of Investments pioneer status registration. Our current income tax holidays expire in 2010, and we intend to apply for extensions. However, these tax holidays may or may not be extended. We believe that as our Philippine tax holidays expire, (a) gross income attributable to activities covered by our Philippine Economic Zone Authority



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registrations will be taxed at a 5% preferential rate, and (b) our Philippine net income attributable to all other activities will be taxed at the statutory Philippine corporate income tax rate of 32%. As of yet no tax benefit has been realized from the income tax holiday due to operating losses in the Philippines.

*Future transactions may limit our ability to use our net operating loss carryforwards.*

As of September 30, 2005, we had U.S. federal tax net operating loss carryforwards of approximately \$36.4 million. These net operating loss carryforwards may be used to offset future taxable income and thereby reduce our U.S. federal income taxes otherwise payable. Section 382 of the Internal Revenue Code of 1986, as amended, or the Code, imposes an annual limit on the ability of a corporation that undergoes an ownership change to use its net operating loss carry forwards to reduce its tax liability. Due in part to equity financings, we experienced ownership changes as defined in Section 382 of the Code. Accordingly, our use of the net operating loss carryforwards and credit carryforwards may be limited by the annual limitations described in Sections 382 and 383 of the Code.

*We may not be able to increase or sustain our recent growth rate, and we may not be able to manage our future growth effectively.*

We may be unable to continue to expand our business or manage future growth. Our recent expansion has placed, and our planned expansion and any other future expansion will continue to place, a significant strain on our management, personnel, systems and resources. We plan to purchase additional equipment to significantly expand our manufacturing capacity and to hire additional employees to support an increase in manufacturing, research and development and our sales and marketing efforts. To successfully manage our growth and handle the responsibilities of being a public company, we believe we must effectively:

hire, train, integrate and manage additional qualified engineers for research and development activities, sales and marketing personnel, and financial and information technology personnel;

retain key management and augment our management team, particularly if we lose key members;

continue to enhance our customer resource management and manufacturing management systems;

implement and improve additional and existing administrative, financial and operations systems, procedures and controls, including the need to integrate our financial internal control systems in our Philippines facility with those of our Sunnyvale, California headquarters;

expand and upgrade our technological capabilities; and

manage multiple relationships with our customers, suppliers and other third parties.

We may encounter difficulties in effectively managing the budgeting, forecasting and other process control issues presented by rapid growth. If we are unable to manage our growth effectively, we may not be able to take advantage of market opportunities, develop new solar cells and other products, satisfy customer requirements, execute our business plan or respond to competitive pressures.



We had approximately 762 full-time employees as of September 30, 2005, and we anticipate that we will need to hire a significant number of highly skilled technical, manufacturing, sales, marketing, administrative and accounting personnel if we are to successfully develop and market our products and expand and operate our expanded manufacturing facility. The competition for qualified personnel is intense in our industry. We may not be successful in attracting and retaining sufficient numbers of qualified personnel to support our anticipated growth. We may have more difficulty attracting personnel after we become a public company because of the perception that the stock option component of our compensation package may not be as valuable.

*The success of our business depends on the continuing contributions of our key personnel.*

We rely heavily on the services of our key executive officers, including Thomas H. Werner, our Chief Executive Officer, Emmanuel T. Hernandez, our Chief Financial Officer, Dr. Richard Swanson, our President and Chief Technology Officer, and PM Pai, our Chief Operating Officer. The loss of services of any principal

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member of our management team, particularly Thomas H. Werner, Emmanuel T. Hernandez, Dr. Richard Swanson and PM Pai, could adversely impact our operations. In addition, our technical personnel represent a significant asset and serve as the source of our technological and product innovations. We believe our future success will depend upon our ability to retain these key employees and our ability to attract and retain other skilled managerial, engineering and sales and marketing personnel. However, we cannot guarantee that any employee will remain employed at the Company for any definite period of time since all of our employees, including Messrs. Werner, Hernandez, Swanson and Pai, serve at-will and may terminate their employment at any time for any reason.

***Our headquarters, research and development and manufacturing facilities, the facilities of our subcontractors upon which we rely to assemble and test our solar panels and facilities of our suppliers of silicon ingots, are located in regions that are subject to earthquakes and other natural disasters.***

Our headquarters, including research and development operations, our manufacturing facility and the subcontractor upon which we rely to assemble and test our solar panels are located in countries that are subject to earthquakes and other natural disasters. Our headquarters and research and development operations are located in the United States, our manufacturing facility is located in the Philippines, and our subcontractor for assembly and test of solar panels is located in China. Since we do not have redundant facilities, any earthquake, tsunami or other natural disaster in these countries could materially disrupt our production capabilities and could result in our experiencing a significant delay in delivery, or substantial shortage, of our solar cells.

***Changes to financial accounting standards may affect our results of operations and cause us to change our business practices.***

We prepare our financial statements to conform with generally accepted accounting principles, or GAAP, in the United States. These accounting principles are subject to interpretation by the American Institute of Certified Public Accountants, the SEC and various bodies formed to interpret and create appropriate accounting policies. A change in those policies can have a significant effect on our reported results and may affect our reporting of transactions completed before a change is announced. Changes to those rules or the questioning of current practices may adversely affect our reported financial results or the way we conduct our business. For example, accounting policies affecting many aspects of our business, including rules relating to employee stock option grants, have recently been revised. The Financial Accounting Standards Board, or the FASB, and other agencies have made changes to U.S. generally accepted accounting principles, or GAAP, that will require us, starting in our first quarter of fiscal 2006, to record a charge to earnings for employee stock option grants and other equity incentives. We may have significant and ongoing accounting charges resulting from option grant and other equity incentive expensing that could reduce our overall net income or increase our net loss. In addition, since we historically have used equity-related compensation as a component of our total employee compensation program, the accounting change could make the use of equity-related compensation less attractive to us and therefore make it more difficult to attract and retain employees.

***If we fail to maintain an effective system of internal controls, we may not be able to accurately report our financial results or prevent fraud. As a result, current and potential stockholders could lose confidence in our financial reporting, which could harm our business and the trading price of our common stock.***

Effective internal controls are necessary for us to provide reliable financial reports and effectively prevent fraud. We have in the past discovered, and may in the future discover, areas of our internal controls that need improvement. In addition, Section 404 of the Sarbanes-Oxley Act of 2002 requires us to evaluate and report on our internal controls over financial reporting and have our independent registered public accounting firm annually attest to our evaluation, as well as issue their own opinion on our internal control over financial reporting, which may be required for the first time in connection with our Annual Report on Form 10-K for the fiscal year ending December 31, 2006. Although Cypress completed its Section 404 compliance for its Annual Report on Form 10-K for the fiscal year-ended December 31, 2004, the review of our internal controls as part of this process was limited in scope and you should not conclude from this Cypress process that our internal controls were adequate to the

extent required of an independent public company at that time. We are preparing

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for compliance with Section 404 by strengthening, assessing and testing our system of internal controls to provide the basis for our report. However, the continuous process of strengthening our internal controls and complying with Section 404 is expensive and time consuming, and requires significant management attention. We cannot be certain that these measures will ensure that we will maintain adequate control over our financial processes and reporting. Furthermore, as we rapidly grow our business, our internal controls will become more complex and will require significantly more resources to ensure our internal controls overall remain effective. Failure to implement required new or improved controls, or difficulties encountered in their implementation, could harm our operating results or cause us to fail to meet our reporting obligations. If we or our independent registered public accounting firm discover a material weakness, the disclosure of that fact, even if quickly remedied, could reduce the market's confidence in our financial statements and harm our stock price. In addition, future non-compliance with Section 404 could subject us to a variety of administrative sanctions, including the suspension or delisting of our common stock from The Nasdaq National Market and the inability of registered broker-dealers to make a market in our common stock, which would further reduce our stock price.

***Compliance with environmental regulations can be expensive, and noncompliance with these regulations may result in adverse publicity and potentially significant monetary damages and fines.***

We are required to comply with all foreign, federal, state and local laws and regulations regarding pollution control and protection of the environment. In addition, under some statutes and regulations, a government agency, or other parties, may seek recovery and response costs from operators of property where releases of hazardous substances have occurred or are ongoing, even if the operator was not responsible for such release or otherwise at fault. We use, generate and discharge toxic, volatile and otherwise hazardous chemicals and wastes in our research and development and manufacturing activities. Any failure by us to control the use of, or to restrict adequately the discharge of, hazardous substances could subject us to potentially significant monetary damages and fines or suspensions in our business operations. In addition, if more stringent laws and regulations are adopted in the future, the costs of compliance with these new laws and regulations could be substantial. To date such laws and regulations have not had a significant impact on our business and we believe that we have all necessary permits to conduct our business as it is presently conducted. If we fail to comply with present or future environmental laws and regulations, however, we may be required to pay substantial fines, suspend production or cease operations. Under our separation agreement with Cypress, we will indemnify Cypress from any environmental liabilities associated with our operations and facilities in Sunnyvale, California and the Philippines, whether prior to or after the separation.

***We may engage in acquisitions that could adversely affect our operating results, dilute our stockholders' equity, or cause us to incur additional debt or assume contingent liabilities.***

To increase our business and maintain our competitive position, we may acquire other companies. Acquisitions involve a number of risks that could harm our business and result in the acquired business not performing as expected, including:

insufficient experience with technologies and markets in which the acquired business is involved, which may be necessary to successfully operate and integrate the business;

problems integrating the acquired operations, personnel, technologies or products with the existing business and products;

diversion of management time and attention from our core business to the acquired business;

potential failure to retain key technical, management, sales and other personnel of the acquired business;

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difficulties in retaining relationships with suppliers and customers of the acquired business; and

subsequent impairment of the acquired assets, including intangible assets.

In addition, acquisitions could require investment of significant financial resources and may require us to obtain additional equity financing, which may dilute our stockholders' equity, or to incur additional indebtedness.

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*We maintain self-insurance for certain indemnities we have made to our officers and directors.*

Our certificate of incorporation, by-laws and indemnification agreements require us to indemnify our officers and directors for certain liabilities that may arise in the course of their service to us. We self-insure with respect to potential indemnifiable claims. Although we have insured our officers and directors against certain potential third-party claims for which we are legally or financially unable to indemnify them, we intend to self-insure with respect to potential third-party claims which give rise to direct liability to such third-party or an indemnification duty on our part. If we were required to pay a significant amount on account of these liabilities for which we self-insure, our business, financial condition and results of operations could be seriously harmed.

## **Risks Related to Our Relationship with Cypress Semiconductor Corporation**

*As long as Cypress controls us, your ability to influence matters requiring stockholder approval will be limited.*

After this offering, Cypress will own all 52,033,287 shares of class B common stock, representing approximately 87% of the total outstanding shares of common stock or 98% of the voting power of outstanding capital stock. The holders of our class A common stock and our class B common stock have substantially similar rights, preferences, and privileges except with respect to voting and conversion rights and other protective provisions as set forth in this prospectus. Holders of our class B common stock will be entitled to eight votes per share of class B common stock, and the holders of our class A common stock will be entitled to one vote per share of class A common stock. If Cypress transfers shares of our class B common stock to any party other than a successor in interest or a subsidiary of Cypress prior to a tax-free distribution to its stockholders, those shares would automatically convert into class A common stock. Other than through such transfers or voluntary conversions by Cypress of class B common stock to class A common stock, only at such time, if at all, as Cypress, its successors in interest and its subsidiaries collectively own less than 40% of the shares of all classes of our common stock then outstanding and Cypress has not effected a tax-free distribution of our class B common stock to its stockholders prior to such time will all shares of our class B common stock automatically convert into shares of our class A common stock on a one-for-one basis. For so long as Cypress, its successors in interest and its subsidiaries hold shares of our class B common stock, Cypress will be able to elect all of the members of our board of directors.

In addition, until such time as Cypress, its successors in interest and its subsidiaries collectively own less than 40% of the shares of all classes of our common stock then outstanding and Cypress is no longer consolidating us for accounting purposes, Cypress will have the ability to take stockholder action without the vote of any other stockholder, and investors in this offering will not be able to affect the outcome of any stockholder vote during this period. As a result, Cypress will have the ability to control all matters affecting us, including:

the composition of our board of directors and, through our board of directors, any determination with respect to our business plans and policies, including the appointment and removal of our officers;

any determinations with respect to mergers and other business combinations;

our acquisition or disposition of assets;

our financing activities;

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changes to the agreements providing for our separation from Cypress;

the allocation of business opportunities that may be suitable for us and Cypress;

the payment of dividends on our common stock; and

the number of shares available for issuance under our stock plans.

Cypress voting control may discourage transactions involving a change of control of us, including transactions in which you as a holder of our class A common stock might otherwise receive a premium for your shares over the then current market price. Cypress is not prohibited from selling a controlling interest in us to a

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third party and may do so without your approval and without providing for a purchase of your shares of class A common stock. Accordingly, your shares of class A common stock may be worth less than they would be if Cypress did not maintain voting control over us.

***Our historical financial information as a business segment of Cypress may not be representative of our results as an independent public company.***

The historical financial information we have included in this prospectus does not necessarily reflect what our financial position, results of operations or cash flows would have been had we been an independent entity during the historical periods presented. The historical costs and expenses reflected in our consolidated financial statements include an allocation for certain corporate functions historically provided by Cypress, including centralized legal, tax, treasury, information technology, employee benefits and other Cypress corporate services and infrastructure costs. These expense allocations were based on what we and Cypress considered to be reasonable reflections of the utilization of services provided or the benefit received by us. The historical financial information is not necessarily indicative of what our results of operations, financial position, cash flows or costs and expenses will be in the future. We have not made adjustments to reflect many significant changes that will occur in our cost structure, funding and operations as a result of our separation from Cypress, including changes in our employee base, changes in our tax structure, potential increased costs associated with reduced economies of scale and increased costs associated with being a publicly traded, stand-alone company. For additional information, see Selected Consolidated Financial Data, Management's Discussion and Analysis of Financial Condition and Results of Operations and our historical consolidated financial statements and notes thereto.

***Our ability to operate our business effectively may suffer if we are unable to cost-effectively establish our own administrative and other support functions in order to operate as a stand-alone company after the expiration of our services agreements with Cypress.***

As a subsidiary of Cypress, we have relied on administrative and other resources of Cypress to operate our business. In connection with our separation from Cypress, we have entered into various service agreements to retain the ability for specified periods to use these Cypress resources. See Related Party Transactions. Thereafter, we will need to create our own administrative and other support systems or contract with third parties to replace Cypress systems. In addition, we must also establish disclosure controls and procedures and internal controls over financial reporting as part of our becoming a separate public company. These services may not be provided at the same level as when we were a wholly owned subsidiary of Cypress, and we may not be able to obtain the same benefits that we received prior to the separation. These services may not be sufficient to meet our needs, and after our agreements with Cypress expire, we may not be able to replace these services at all or obtain these services at prices and on terms as favorable as we currently have with Cypress. Any failure or significant downtime in our own administrative systems or in Cypress administrative systems during the transitional period could result in unexpected costs, impact our results and/or prevent us from paying our suppliers or employees and performing other administrative services on a timely basis. See Related Party Transactions Relationship with Cypress Semiconductor Corporation Services Agreements for a description of these services.

***After this offering, we may experience increased costs resulting from a decrease in our purchasing power and we may have difficulty obtaining new customers due to our relatively small size after our separation from Cypress.***

Prior to this offering, we were able to take advantage of Cypress size and purchasing power in procuring goods, technology and services, including insurance, employee benefit support and audit services. As a result of this offering and the transactions described in Related Party Transactions Relationship with Cypress Semiconductor Corporation, we will be a smaller company than Cypress, and we cannot assure you that we will have access to financial and other resources comparable to those available to us prior to the offering. As an independent company, we may be unable to obtain goods, technology and services at prices or on terms as favorable as those available to us prior to our separation from Cypress, which could increase our costs and reduce our profitability. In addition, as a smaller, separate, stand-alone company, we may encounter more customer concerns about our viability as a separate entity, which could harm our business, financial condition and results





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of operations. Our future success depends on our ability to maintain our current relationships with existing customers, and we may have difficulty attracting new customers.

***Our agreements with Cypress require us to indemnify Cypress for certain tax liabilities, including liabilities that may arise in connection with actions we take after a distribution of our class B common stock by Cypress. These indemnification obligations may limit our ability to obtain additional financing or participate in future acquisitions for up to two years.***

We have entered into a tax sharing agreement with Cypress, under which we and Cypress agree to indemnify one another for certain taxes and similar obligations that the other party could incur under certain circumstances. In general, we will be responsible for taxes relating to our business. Furthermore, we may be held jointly and severally liable for taxes determined on a consolidated basis even though Cypress is required to indemnify us for its taxes pursuant to the tax sharing agreement. After the date we cease to be a member of Cypress consolidated, combined or unitary group for federal or state income tax purposes, as and to the extent that we become entitled to utilize on our separate tax returns portions of those credit or loss carryforwards existing as of such date, we will distribute to Cypress the tax effect (estimated to be 40%) of the amount of such tax loss carryforwards so utilized and the amount of any credit carryforwards so utilized. We shall distribute these amounts to Cypress in cash or in our shares, at our option. As of September 30, 2005, we had approximately \$36.4 million of federal net operating loss carryforwards and approximately \$4.8 million of California net operating loss carryforwards, meaning that such potential future payments to Cypress, which would be made over a period of several years, would therefore aggregate between \$15 million and \$16 million. For a more complete description of the tax sharing agreement, please see Related Party Transactions Relationship with Cypress Semiconductor Corporation Tax Sharing Agreement.

If Cypress distributes our class B common stock to Cypress stockholders in a transaction intended to qualify as a tax-free distribution under Section 355 of the Code, Cypress intends to obtain an opinion of counsel and/or a ruling from the Internal Revenue Service to the effect that such distribution qualifies under Section 355 of the Code. Despite such an opinion or ruling, however, the distribution may nonetheless be taxable to Cypress under Section 355(e) of the Code if 50% or more of our voting power or economic value is acquired as part of a plan or series of related transactions that includes the distribution of our stock. The tax sharing agreement includes our obligation to indemnify Cypress for any liability incurred as a result of issuances or dispositions of our stock after the distribution, other than liability attributable to certain dispositions of our stock by Cypress, that cause Cypress distribution of shares of our stock to its stockholders to be taxable to Cypress under Section 355(e) of the Code. Under current law, following a distribution by Cypress and up to two years thereafter, our obligation to indemnify Cypress will be triggered only if we issue stock or participate in a transaction in which 50% or more of our voting power or economic value is acquired in a financing or acquisition transaction that is part of a plan or series of related transactions that includes the distribution. If such an indemnification obligation is triggered, the extent of our liability to Cypress will generally equal the product of (a) Cypress top marginal federal and state income tax rate for the year of the distribution, and (b) the difference between the fair market value of our class B common stock distributed to Cypress stockholders and Cypress tax basis in such stock as determined on the date of the distribution. Our ability to use our equity to obtain additional financing or to engage in acquisition transactions for a period of time after a distribution will be restricted if we can only sell or issue a limited amount of our stock before triggering our obligation to indemnify Cypress for taxes it incurs under Section 355(e) of the Code.

For example, under the current tax rules, if after the completion of this offering Cypress were to make a complete distribution of its class B common stock and our total outstanding capital stock at the time of such distribution was 67,000,000, unless we qualified for one of several safe harbor exemptions available under the Treasury Regulations, in order to avoid our indemnification obligation to Cypress, we could not, for up to two years from Cypress distribution, issue 67,000,000 or more shares of class A common stock, nor could we participate in a transaction in which 33,500,000 or more shares of our then existing class A common stock is to be acquired in connection with a plan or series of related transactions that includes the distribution. If we were to participate in such a transaction, assuming Cypress held 52,000,000 shares at the time of their distribution, Cypress top marginal income tax rate is 40%, the fair market value of our class

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B common stock is \$15.00 per share and Cypress tax basis in such stock is \$10.00 per share on the date of their distribution, then our liability under our indemnification obligation to Cypress would be approximately \$104,000,000.

*Third parties may seek to hold us responsible for liabilities of Cypress.*

Third parties may seek to hold us responsible for Cypress liabilities. Under our separation agreements with Cypress, Cypress will indemnify us for claims and losses relating to liabilities related to Cypress business and not related to our business. However, if those liabilities are significant and we are ultimately held liable for them, we cannot assure you that we will be able to recover the full amount of our losses from Cypress.

*Our inability to resolve any disputes that arise between us and Cypress with respect to our past and ongoing relationships may result in a significant reduction of our revenue.*

Disputes may arise between Cypress and us in a number of areas relating to our past and ongoing relationships, including:

labor, tax, employee benefit, indemnification and other matters arising from our separation from Cypress;

the cost of wafers for our imaging detectors;

employee retention and recruiting;

business combinations involving us;

pricing for transitional services;

sales or distributions by Cypress of all or any portion of its ownership interest in us;

the nature, quality and pricing of services Cypress has agreed to provide us; and

business opportunities that may be attractive to both Cypress and us.

We may not be able to resolve any potential conflicts, and even if we do, the resolution may be less favorable than if we were dealing with an unaffiliated party.

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The agreements we entered into with Cypress may be amended upon agreement between the parties. While we are controlled by Cypress, we may not have the leverage to negotiate amendments to these agreements if required on terms as favorable to us as those we would negotiate with an unaffiliated third party.

*Some of our directors and executive officers may have conflicts of interest because of their ownership of Cypress common stock, options to acquire Cypress common stock and positions with Cypress.*

Some of our directors and executive officers own Cypress common stock and options to purchase Cypress common stock. For information regarding the ownership of Cypress common stock and options to purchase Cypress common stock, see Management Stock Ownership of Directors and Executive Officers. In addition, some of our directors are executive officers and/or directors of Cypress. Ownership of Cypress common stock and options to purchase Cypress common stock by our directors and officers after this offering and the presence of executive officers or directors of Cypress on our board of directors could create, or appear to create, conflicts of interest with respect to matters involving both us and Cypress. For example, corporate opportunities may arise that concern both of our businesses, such as the potential acquisition of a particular business or technology that is complementary to both of our businesses. In these situations, our amended and restated certificate of incorporation provides that directors and officers who are also directors or officers of Cypress have no duty to communicate or present such corporate opportunity to us unless it is specifically and primarily applicable to converting solar energy into electrical energy and using the resulting electrical energy other than in applications for consumers where photodiode technology is combined with micro-controllers and other integrated circuits made by Cypress, have the right to deal with such corporate opportunity in their sole discretion and shall not be liable to us or our stockholders for breach of fiduciary duty by reason of the fact that such director or officer pursues or acquires such corporate opportunity for itself or for Cypress. In addition, we have not established at

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this time any procedural mechanisms to address actual or perceived conflicts of interest of these directors and officers and expect that our board of directors, in the exercise of its fiduciary duties, will determine how to address any actual or perceived conflicts of interest on a case-by-case basis. If any corporate opportunity arises and if our directors and officers do not pursue it on our behalf pursuant to the provisions in our amended and restated certificate of incorporation, we may not become aware of, and may potentially lose, a significant business opportunity.

*Because Cypress is not obligated to distribute our common stock that it owns to its stockholders, we will continue to be subject to the risks described above relating to Cypress' control of us if Cypress does not complete such a distribution.*

Cypress has advised us that it does not have any current plans to distribute to its stockholders the shares of our class B common stock that it beneficially owns. Completion of any such distribution in the future would be contingent upon, among other things, the receipt of a favorable tax ruling from the Internal Revenue Service and/ or a favorable opinion of Cypress' tax advisor as to the tax-free nature of the distribution for U.S. federal income tax purposes. However, Cypress is not obligated to undertake the distribution, and the distribution may not occur for the foreseeable future or at all.

Unless and until such a distribution occurs or Cypress otherwise disposes of shares so that it, its successors in interest and its subsidiaries collectively own less than 40% of the shares of all classes of our common stock then outstanding, we will continue to face the risks described above relating to Cypress' control of us and potential conflicts of interest between Cypress and us. We may be unable to realize potential benefits that could result from such a distribution by Cypress, such as greater strategic focus, greater access to capital markets, better incentives for employees and more accountable management, although we cannot guarantee that we would realize any of these potential benefits if such a distribution did occur. In addition, speculation by the press, investment community, our customers, our competitors or others regarding whether Cypress intends to complete such a distribution or otherwise dispose of its controlling interest in us could harm our business.

So long as Cypress continues to hold a controlling interest in us or is otherwise a significant stockholder, the liquidity and market price of our class A common stock may be adversely impacted.

*Through potential control of our board of directors, Cypress may cause our board to act in Cypress' best interests which may diverge from the best interests of other stockholders and make it difficult for us to recruit quality independent directors.*

Cypress may at any time replace our entire board of directors. Furthermore, some actions of our board of directors require the approval of 75% of our directors except to the extent this condition is waived by Cypress. As a result, unless and until Cypress, its successors in interest and its subsidiaries collectively own less than 40% of the shares of all classes of our common stock then outstanding and Cypress is no longer consolidating us for accounting purposes, Cypress could effectively control and direct our board of directors, which means that to the extent the interests of Cypress and we diverge, Cypress can cause us to act in Cypress' best interest to the detriment of the value of our class A common stock. Under these circumstances, persons who might otherwise accept our invitation to join our board of directors may decline.

## **Risks Related to this Offering**

*Our stock price may be volatile, and you may not be able to resell shares of our class A common stock at or above the price you paid, or at all.*

Prior to this offering, our class A common stock has not been traded in a public market. We cannot predict the extent to which a trading market will develop or how liquid that market might become. The estimated initial public offering price for the shares was determined by negotiations between us and the representatives of the underwriters and may not be indicative of prices that will prevail in the trading market. The trading price of our class A common stock could be subject to wide fluctuations due to the factors discussed in this risk factors

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section and elsewhere in this prospectus. In addition, the stock market in general and The Nasdaq National Market and technology companies in particular have experienced extreme price and volume fluctuations. These trading prices and valuations may not be sustainable. These broad market and industry factors may decrease the market price of our class A common stock, regardless of our actual operating performance. In addition, in the past, following periods of volatility in the overall market and the market price of a company's securities, securities class action litigation has often been instituted against these companies. This litigation, if instituted against us, could result in substantial costs and a diversion of our management's attention and resources.

***If securities or industry analysts do not publish research or reports about us, our business or our market, or if they change their recommendations regarding our stock adversely, our stock price and trading volume could decline.***

The trading market for our class A common stock will be influenced by the research and reports that industry or securities analysts publish about us, our business or our market. If one or more of the analysts who cover us change their recommendation regarding our stock adversely, our stock price would likely decline. If one or more of these analysts cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline.

***Substantial future sales of our class A common stock in the public market could cause our stock price to fall.***

Additional sales of our class A common stock in the public market after this offering, or the perception that these sales could occur, could cause the market price of our class A common stock to decline. Upon completion of this offering, we will have 7,776,652 shares of class A common stock outstanding and Cypress will own 52,033,287 outstanding shares of our class B common stock, representing approximately 87% of the outstanding shares of our common stock which Cypress may convert into class A common stock at any time. Cypress has no contractual obligation to retain its shares of our common stock, except that it has agreed not to sell or distribute any of its shares of our common stock without the consent of Credit Suisse First Boston LLC and Lehman Brothers Inc. on behalf of the underwriters of this offering until 270 days after the date of this prospectus, subject to certain exceptions, as described under "Underwriting." Subject to applicable U.S. federal and state securities laws, Cypress may sell or distribute to its stockholders any or all of the shares of our common stock that it owns, which may or may not include the sale of a controlling interest in us, either (1) after the expiration of this 270-day period or (2) before the expiration of this 270-day period with the consent of Credit Suisse First Boston LLC and Lehman Brothers Inc. on behalf of the underwriters.

Our directors and officers and all of our existing stockholders have entered into a 180-day lock-up agreements with us or with Credit Suisse First Boston LLC and Lehman Brothers Inc., subject to certain exceptions, as described in "Underwriting," except that Cypress has agreed to a 270-day lock-up period. We have agreed to stop our optionholders from engaging in similar transactions for a period of 180 days after the date of this prospectus. All shares sold in this offering will be freely transferable without restriction or additional registration under the Securities Act of 1933, or the Securities Act. Subject to the lock-up arrangements described in "Underwriting" and volume and other restrictions as applicable under Rule 144 and 701 under the Securities Act and assuming no exercise by the underwriters of their over-allotment option to purchase additional shares of common stock from us or the selling stockholder, 76,652 of the remaining shares of class A common stock outstanding after this offering will be available for sale immediately upon expiration of the 180-day lock-up agreement, subject to volume and other restrictions as applicable under Rule 144 and 701 of the Securities Act. If Cypress elects to convert its shares of class B common stock into class A common stock, an additional 52,033,287 shares of class A common stock will be available for sale 270 days following the date of this prospectus, subject to volume and other restrictions as applicable under Rule 144 and 701 of the Securities Act.

Any or all of these shares may be released prior to expiration of the lock-up period at the discretion of both Credit Suisse First Boston LLC and Lehman Brothers Inc. without prior notice. To the extent shares are released before the expiration of the lock-up period and these shares are sold into the market, the market price of our common stock could decline. The remaining shares of our common stock will become available for sale at various times thereafter upon the expiration of one-year holding periods.





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Immediately after this offering, we intend to file a registration statement on Form S-8 under the Securities Act covering 6,508,193 shares of class A common stock issuable under outstanding options under our 1988 Incentive Stock Plan, under our 1996 Stock Plan and under non-plan options granted to employees and consultants and 283,126 shares reserved for future issuance as of September 30, 2005 under our 2005 Stock Incentive Plan. This registration statement will automatically become effective upon filing. Shares registered under this registration statement will be available for sale in the open market, subject to the lock-up arrangements described above, although sales of shares held by our affiliates will be limited by Rule 144 volume limitations.

In addition, Cypress has the right to cause us to register the sale of its shares of our common stock under the Securities Act. Registration of these shares under the Securities Act would result in these shares, other than shares purchased by our affiliates, becoming freely tradable without restriction under the Securities Act immediately upon the effectiveness of the registration.

If Cypress distributes shares of our common stock that it owns to its stockholders, which it has agreed not to do for at least 270 days after the date of this prospectus, substantially all of these shares would be eligible for immediate resale in the public market. We are unable to predict whether significant amounts of our common stock would be sold in the open market in anticipation of, or after, any such distribution. We also are unable to predict whether a sufficient number of buyers for shares of our class A common stock would be in the market at that time.

***Purchasers in this offering will immediately experience substantial dilution in net tangible book value.***

Because our common stock has in the past been sold at prices substantially lower than the estimated initial public offering price that you will pay, you will suffer immediate dilution of \$9.98 per share in net tangible book value, based on an estimated initial public offering price of \$13.00 per share of common stock. The exercise of outstanding options and warrants may result in further dilution.

***Our management will have broad discretion in using the net proceeds of this offering, and you will not have the opportunity, as part of your investment decision, to assess whether the proceeds are being used appropriately.***

We intend to use the net proceeds from this offering to expand our manufacturing capacity and for general corporate purposes, including working capital. We may use approximately \$10 million of the proceeds to purchase our Philippines manufacturing facility from Cypress, which we have the option to do under our lease. We may also use a portion of the net proceeds to acquire or invest in businesses, products and technologies that we believe will complement our business. However, depending on future developments and circumstances, we may use some of the proceeds for other purposes. We do not have more specific plans for the net proceeds from this offering. Therefore, our management will have broad discretion in applying the net proceeds of this offering. The net proceeds could be applied in ways that do not improve our operating results. The actual amounts and timing of these expenditures will vary significantly depending on a number of factors, including the amount of cash used in or generated by our operations and the market response to the introduction of any new product offerings.

***The difference in the voting rights of our class A and our class B common stock may harm the value and liquidity of our class A common stock.***

The rights of the holders of class A and class B common stock are substantially similar, except with respect to voting, conversion and other protective provisions as set forth in this prospectus. The holders of class B common stock shall be entitled to eight votes per share and the holders of our class A common stock shall be entitled to one vote per share. The difference in the voting rights of our class A and class B

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common stock both before and after any distribution of our class B common stock by Cypress to its stockholders could harm the value of the class A common stock to the extent that any investor or potential future purchaser of our common stock ascribes value to the right of the holders of our class B common stock to eight votes per share. The existence of two classes of common stock could result in less liquidity for either class of common stock than if there were only one class of our common stock. See [Description of Capital Stock](#) for a description of our common stock and rights associated with it.

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*Delaware law and our corporate charter and bylaws contain anti-takeover provisions that could delay or discourage takeover attempts that stockholders may consider favorable.*

Provisions in our restated certificate of incorporation, as amended and restated upon the closing of this offering, may have the effect of delaying or preventing a change of control or changes in our management. These provisions include the following:

the right of the board of directors to elect a director to fill a vacancy created by the expansion of the board of directors;

the prohibition of cumulative voting in the election of directors, which would otherwise allow less than a majority of stockholders to elect director candidates;

the requirement for advance notice for nominations for election to the board of directors or for proposing matters that can be acted upon at a stockholders meeting;

the ability of the board of directors to issue, without stockholder approval, up to 10,042,490 shares of preferred stock with terms set by the board of directors, which rights could be senior to those of common stock; and

in the event that Cypress, its successors in interest and its subsidiaries no longer collectively own shares of our common stock equal to at least 40% of the shares of all classes of our common stock then outstanding and Cypress is no longer consolidating us for accounting purposes:

our board of directors will be divided into three classes of directors, with the classes to be as nearly equal in number as possible;

no action can be taken by stockholders except at an annual or special meeting of the stockholders called in accordance with our bylaws, and stockholders may not act by written consent;

stockholders may not call special meetings of the stockholders; and

our board of directors will be able to alter our bylaws without obtaining stockholder approval.

Until such time as Cypress, its successors in interest and its subsidiaries collectively own less than 40% of the shares of all classes of our common stock then outstanding and Cypress is no longer consolidating us for accounting purposes, the affirmative vote of at least 75% of the then-authorized number of members of our board of directors will be required to: (a) adopt, amend or repeal our bylaws or certificate of incorporation; (b) appoint or remove our chief executive officer; (c) designate, appoint or allow for the nomination or recommendation for election by our stockholders of an individual to our board of directors; (d) change the size of our board of directors to be other than five members; (e) form a committee of our board of directors or establish or change a charter, committee responsibilities or committee membership of any committee of our board of directors; (f) adopt any stockholder rights plan, poison pill or other similar arrangement; or (g) approve any transactions that would involve a merger, consolidation, restructuring, sale of substantially all of our assets or any of our subsidiaries or otherwise result in any person or entity obtaining control of us or any of our subsidiaries. Cypress may at any time in its sole discretion waive this requirement to obtain such a supermajority vote of our board of directors.

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In addition, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law. These provisions may prohibit large stockholders, in particular those owning 15% or more of our outstanding voting stock, from merging or combining with us. These provisions in our restated certificate of incorporation, bylaws and under Delaware law could discourage potential takeover attempts and could reduce the price that investors might be willing to pay for shares of our common stock in the future and result in the market price being lower than they would without these provisions.

*We will incur increased costs as a result of being a public company.*

As a public company, we will incur significant legal, accounting and other expenses that we did not incur as a private company. In addition, the Sarbanes-Oxley Act of 2002, as well as new rules subsequently implemented

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by the SEC and The Nasdaq Stock Market, have required changes in corporate governance practices of public companies. We expect these new rules and regulations to increase our legal and financial compliance costs and to make some activities more time-consuming and costly. For example, as a result of becoming a public company, we intend to add independent directors, create additional board committees and adopt policies regarding internal controls and disclosure controls and procedures. In addition, we will incur additional costs associated with our public company reporting requirements. We also expect these new rules and regulations to make it more difficult and more expensive for us to obtain director and officer liability insurance and we may be required to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. As a result, it may be more difficult for us to attract and retain qualified persons to serve on our board of directors or as executive officers. We are currently evaluating and monitoring developments with respect to these new rules, and we cannot predict or estimate the amount of additional costs we may incur or the timing of such costs.

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**SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS**

This prospectus contains forward-looking statements that involve risks and uncertainties. The forward-looking statements are contained principally in the sections entitled Prospectus Summary, Risk Factors, Management's Discussion and Analysis of Financial Condition and Results of Operations and Business. These statements involve known and unknown risks, uncertainties and other factors which may cause our actual results, performance or achievements to be materially different from any future results, performances or achievements expressed or implied by the forward-looking statements. Forward-looking statements include, but are not limited to, statements about:

our expectations regarding our expenses, sources of revenues and international sales and operations;

our anticipated cash needs and our estimates regarding our capital expenditures, capital requirements and our needs for additional financing;

the performance, features and benefits of our products, plans for future products and for enhancements of existing products and product shipment dates;

the supply and price of components and raw materials, including polysilicon;

future pricing of our products and systems in which they are incorporated;

plans for and timing of expanding our manufacturing capacity;

our ability to attract customers and develop and maintain customer and supplier relationships;

our ability to retain our current key executives and to attract and retain other skilled managerial, engineering and sales and marketing personnel;

our competitive position and our expectation regarding key competitive factors;

elements of our marketing, growth and diversification strategies including our strategy to reduce our dependence on market incentives;

use of the proceeds of this offering;

our intellectual property and our continued investment in research and development;

anticipated trends and challenges in our business and the markets in which we operate; and

statements regarding our potential legal proceedings.

In some cases, you can identify forward-looking statements by such terms as may, might, will, objective, intend, should, could, can, expect, believe, estimate, predict, potential, plan, is designed to or the negative of these terms, and similar expressions intended to identify forward-looking statements. These statements reflect our current views with respect to future events and are based on assumptions and subject to risks and uncertainties. Given these uncertainties, you should not place undue reliance on these forward-looking statements. Also, these forward-looking statements represent our estimates and assumptions only as of the date of this prospectus. We do not intend to update any of these forward-looking statements to reflect circumstances or events that occur after the statement is made.

You should read this prospectus and the documents that we reference in this prospectus and have filed as exhibits to the registration statement, of which this prospectus is a part, completely and with the understanding that our actual future results may be materially different from what we expect. We qualify all of our forward-looking statements by these cautionary statements.

This prospectus also contains statistical data that we obtained from government and industry publications and reports generated by SolarBuzz, Datamonitor, Strategies Unlimited, the Energy Information Administration of the United States Department of Energy and other Department of Energy sources, the International Energy Administration, the National Hydropower Association and the World Bank. These government and industry publications generally indicate that they have obtained their information from sources believed to be reliable, but do not guarantee the accuracy and completeness of their information. Although we believe that the publications are reliable, we have not independently verified their data.

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**USE OF PROCEEDS**

We estimate that we will receive net proceeds of \$91.0 million from our sale of the shares of class A common stock offered by us in this offering, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. If the underwriters over-allotment option is exercised in full, we estimate that our net proceeds will be approximately \$105.0 million. We will not receive any proceeds from the sales of the shares being sold by the selling stockholder if the over-allotment option is exercised.

The principal purposes for this offering are to increase our working capital, create a public market for our class A common stock, facilitate our future access to the public capital markets and increase our visibility in our markets. We intend to use approximately \$45 million to \$55 million of the net proceeds for the expansion of our manufacturing capacity and the remainder of the net proceeds for general corporate purposes, including working capital. We may use approximately \$10 million of the proceeds to purchase our Philippines manufacturing facility from Cypress, which we will have the option to do under our lease agreement. We may also use a portion of the net proceeds to acquire businesses, products and technologies that we believe will complement our business. We do not have more specific plans for the net proceeds from this offering.

We have not yet determined all of our anticipated expenditures and therefore cannot estimate the amounts to be used for all of the purposes discussed above. The amounts and timing of any expenditures will vary depending on the amount of cash generated by our operations, competitive and technological developments and the rate of growth, if any, of our business. Accordingly, our management will have broad discretion in applying the net proceeds from this offering. Pending the uses described above, we intend to invest the net proceeds from this offering in short-term, interest-bearing, investment-grade securities.

**DIVIDEND POLICY**

We have never declared or paid any cash dividends on our capital stock, and we do not currently intend to pay any cash dividends on our common stock in the foreseeable future. We expect to retain future earnings, if any, to fund the development and growth of our business. Our board of directors will determine future dividends, if any.



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**CAPITALIZATION**

The following table describes our capitalization as of September 30, 2005:

on an actual basis;

on a pro forma basis to give effect to: (a) the automatic conversion of all outstanding shares of series one convertible preferred stock into 6,457,530 shares of class B common stock and all outstanding shares of series two convertible preferred stock into 16,000,000 shares of class B common stock and (b) the filing of our restated certificate of incorporation upon completion of this offering; and

on the pro forma basis described above, as adjusted to reflect the sale of 7,700,000 shares of class A common stock by us in this offering at an assumed initial public offering price of \$13.00 per share, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us, as described under Use of Proceeds.

You should read this table together with Management's Discussion and Analysis of Financial Condition and Results of Operations and our consolidated financial statements and the related notes appearing elsewhere in this prospectus.

**As of September 30, 2005**

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**Pro Forma**

**As Adjusted**

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**(\$ in thousands except share and per share data)**



The roles included general management as Area Manager in Texas; Regional Manager in Chicago; sales management as Vice President and executed strong growth strategies, managed high-performing teams and spearheaded Ritchie Bros. expansion into new markets and and a Bachelor of Arts degree from the University of Victoria (Canada). He speaks English, Japanese and French.

Marck was Senior Vice President, Retail and Digital Technology at Starbucks Coffee Company from 2011 to 2016. Ms. Marck has over

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**TODD WOHLER**

Chief Human Resources Officer

Age: 60

...e across multiple regions and industries. Over the course of his career Mr. Wohler has been instrumental in building global teams and on...  
...rved as Chief Human Resources Officer at Quintiles Transnational from 2011 to 2012 as Senior Vice President of Human Resources at...  
...chlumberger, a global oil and gas technology company, where he began as a field engineer and worked in many different branches of th...

...Bachelor of Science degree in Mechanical Engineering from Virginia Polytechnic Institute and State University and a Master of Busin...

**DOUG FEICK**

SVP, Corporate Development and Integration Optimization

Age: 54

...acquisitions and strategic development for Ritchie Bros. and also is driving the integration of IronPlanet with the Company. From 2011 w...  
...l legal matters and was responsible for business and corporate development activities, including strategic partner negotiations and deal s...  
...n Yahoo! s international legal group and then co-ran Yahoo! s domestic and international corporate development activities. Mr. Feick...

...th a B.S. in Business Administration from Miami University and a J.D. from the University of Southern California School of Law. Mr.

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**DARREN WATT**

SVP, General Counsel & Corporate Secretary

Age: 47

al Affairs, and in 2013 was appointed General Counsel and Corporate Secretary, and also assumed the role of VP Corporate Development  
to Senior Vice President and General Counsel in 2016. Prior to joining the Company Mr. Watt practiced with McCarthy Tétrault LLP fr  
society of British Columbia and holds a Law Degree from the University of British Columbia, as well as an Honours Bachelor of Arts de

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## **Corporate Governance**

### **Overview**

prudent operation of the Company and for enhancing shareholder value. The Board's Nominating and Corporate Governance Committee

### **Structure and Members of the Board**

ard to have at least three and no more than ten directors and provide that the Board is authorized to determine the actual number of directors

Amy

Ch

### **Independence of the Directors**

al Instruments 58-101 ( NI 58-101 ) and 52-110 ( NI 52-110 ) adopted by the Canadian Securities Administrators. The NYSE listing rules prohibit any director from having a direct material relationship with the Company (defined to mean a relationship which could in the view of the Board, be reasonably expected to interfere with the director's independent judgment) or any of the relationships that disqualify a director from being independent.

with the Company. As a result of this review, the Board affirmatively determined that Beverley Briscoe, Robert G. Elton, Erik Olsson, J. Michael McQuinn, and Robert G. Elton are independent given his employment as CEO of the Company. The Board's independence determination was based on information provided to the Board and, therefore, ceased to be a director of the Company on May 8, 2018, was independent during the portion of fiscal 2018 during which

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**Meetings of the Board and Board Member Attendance at Annual M**

s as well as a number of supplemental meetings. Agenda and materials in relation to Board and Board committee meetings are generally  
ber 31, 2018. Each of our incumbent directors attended 100% of the meetings of the Board of Directors. All directors are invited to atte

5

4

5\*

5

5

2

5

Indicates Directo

Mr. Saligram routinely attends Audit, Compensation and Nominating and Corporat

Ms. Briscoe routinely attends Audit and Compensation

Member

Member of th

Member of the Nominating and

Mr. Patel served as a director of the company for the period from May 1, 2017 until May 8, 2018, but did not stand

Ms. Guggenheim Shenkan became a member of the Nominating and

ing seven meetings and several information sessions in 2018 without management present. These meetings were chaired by the Board C

ctors serving at such time attended the 2018 annual and special meeting of shareholders.

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## Independent Chair

Ms. Briscoe is responsible for overseeing the management, development and effective performance of the Board, and taking all reasonable steps to ensure the Board and management's responsibilities. See also Board Leadership Structure on page 37.

## Board Mandate

The Board is to supervise management of the Company and to act in the best interests of the Company and its shareholders. The Board acts in accordance with the Company's Article of Incorporation, the Company's Code of Ethics, the charters of the Board committees, including the Audit Committee, the Compensation Committee, the Company's Corporate Governance Policy, and other applicable laws and regulations.

The Board reviews and approves all significant decisions that affect the Company and its subsidiaries before they are implemented. The Board or a designated committee reviews and approves all other executive officers of the Company from time to time to discuss and review internal measures and systems adopted by the management. The Board also reviews and approves strategic initiatives, taking into account the risks and opportunities of the business. Management updates the Board on the Company's progress against the resulting strategic plan. During fiscal 2018, there were seven meetings of the Board. The frequency of meetings and the nature of the agenda items vary from time to time. Management systems are implemented. The principal risks of the Company include those related to the Company's underwritten business, the Company's comprehensive enterprise risk management program, and the Board regularly reviews and provides input on the same. See also the discussion on page 20 of the Company's 2018 Annual Report. The Compensation Committee is responsible for developing guidelines and procedures for selection and long-range succession planning. The Board communicates with its stakeholders through a number of channels including its website. The Board oversees the Company's disclosure of material information.



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with management and the external auditors. The Board, through the Audit Committee, oversees the effectiveness and integrity of the Co  
ernal auditors. The Company's Disclosure Committee reports to the Audit Committee on a quarterly basis on the quality of the Compa  
pany, recommending any changes to these principles, and monitoring their disclosure. This committee is responsible for the report on c  
Company continues to carry out high standards of corporate governance. The Board has adopted Corporate Governance Guidelines, whi  
Corporate Governance Committee, determines from time to time the number of directors on the Board, within a range specified in the Com  
appropriate number of unrelated and independent directors, and permits the Board to operate in an efficient manner. As described below

## Position Descriptions

r management or a Board committee remains with the entire Board. The Board has adopted position descriptions for the CEO and the B  
was reviewed and revised in connection with the process of hiring Mr. Saligram. The CEO has overall responsibility for all Company o  
l approves the corporate objectives for which the CEO is responsible and such corporate objectives form a key reference point for the re

The Board has defined the limits to management's authority. The Board expects management, among other things

set the appropriate tone at the top  
implement effective succession planning strategies and p  
pany's strategies and their implementation in all key areas of the Company's activities, provide relevant reports to the Board related th  
carry out a comprehensive planning process and monitor the Company's financial per  
identify opportunities and risks affecting the Company's business, develop and provide relevant reports to the Board related thereto



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**Code of Business Conduct and Ethics**

...t of which can be found on our website at [www.rbauction.com/investors](http://www.rbauction.com/investors). Any shareholder may request a paper copy, free of charge, of  
9500 Glenlyon Parkway, Burnaby, British Columbia, V5J 0C6, Canada.

...ics and any areas or systems that may be further improved. The Company performs a Code of Business Conduct and Ethics compliance  
...pany, through directors and officers questionnaires and other systems, gathers and monitors relevant information in relation to poten

No material change report has been filed that pertains to any conduct of a director or executive officer that constitutes a departu

...reements or transactions, and the Code of Business Conduct and Ethics sets out additional guidelines in relation to conflict of interest s  
...th family members, accepting outside employment, using corporate opportunities for personal benefit, holding interests in outside organ  
...of directors or officers.

...ent to ethical conduct and doing what is right. Employees are regularly reminded about their obligations in this regard and senior manag

...regarding accounting, internal accounting controls or auditing matters, and for the confidential, anonymous submission by employees o

...management and/or the Audit Committee. The Company will publish any waivers of the Code of Code of Conduct and Business Ethics fo  
...where the policies and procedures summarized above required review, approval, or ratification, or where such policies and procedu

**Shareholder and Other Interested Party Communications to the E**

...Company adopted a formal Shareholder Engagement Policy in order to promote open and sustained dialogue with shareholders and othe  
...erns to the independent directors through the Board Chair c/o the Corporate Secretary, Ritchie Bros. Auctioneers Incorporated, 9500 Gl

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similar types of correspondence, will be forwarded to the Chair. Purely for administrative purposes, correspondence to the Chair may be sent to the Chair's email address or to the Investor Relations website at [www.rbauktion.com/investors](http://www.rbauktion.com/investors).

## **Executive and Chief Executive Officer Succession Planning**

and other key executives who have the skills and expertise to ensure the effective management of the Company. The Board is supportive of executive succession planning.

and a talent review process building on the Company's annual performance management process. This process, in addition to identifying key executives to develop in the coming years with the aim of ensuring that the Company has the appropriate level of executive bench strength necessary to ensure a smooth and orderly course CEO succession planning, the Company's Nominating & Corporate Governance Committee has, in consultation with the Board,

implemented a new organizational structure for the Company. This structure was subsequently augmented by the addition of further key executives to the Company. At the same time, the Company has engaged external consultants to assist with pre-hire assessments as well as integration planning.

to participate in professional and personal development activities, courses and programs, and supports management's commitment to the Company's long-term success.

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## **Board Committees**

### **Audit Committee and Audit Committee Financial Expert**

financial statements. The members of our Audit Committee are Robert G. Elton, Erik Olsson and Amy Guggenheim Shenkan. Mr. Elton was elected to the 2018 Annual and Special Meeting of the Shareholders, at which he did not stand for re-election and Mr. Pitoniak, who was a member of the Audit Committee at the time that Mr. Elton qualifies as an audit committee financial expert, as defined in the applicable rules of the SEC. The Audit Committee members were appointed at the time of their appointment to the committee.

and experience of the members of the Audit Committee, as required under NI 52-110, is disclosed, under Proposal One: Election of Directors.

The Audit Committee reviews and reassesses the adequacy of the Audit Committee Charter on an annual basis and, if appropriate, proposes changes to the Charter. For further information on our Audit Committee and related matters, including the Report on Audited Financial Statements, see Proposal One: Election of Directors.

The Audit Committee is responsible for the annual audit and to review and discuss our financial statements and related reporting matters prior to the submission of the financial statements for an annual audit or quarterly review of our financial statements.

### **Compensation Committee**

The Compensation Committee consists of three members: Mr. Tim Fennell and Sarah Raiss. Ms. Raiss is Chair of the Compensation Committee. The Board has determined that the current committee members qualify as independent directors for compensation committee purposes under the applicable NYSE standards, SEC rules and NI 58-101 and a non-employee director.

The Compensation Committee reviews and updates the Compensation Committee Charter at least annually and, if appropriate, proposes changes to the Board. The charter was most recently updated in August 2017. A copy of the Charter is available on our website.

The Compensation Committee, acting pursuant to its charter is responsible for, among other matters:

• recommending to the Board the Company's compensation philosophy for the Company's executive officers, and

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at to the CEO's compensation, evaluating the CEO's performance in light of those goals and objectives and determining, or recommending, reviewing and approving the CEO's recommendations regarding annual compensation, considering the implications of the risks associated with the Company's compensation policies, practices and programs required, submission to the Company's shareholders, annual and long-term incentive and equity-based compensation plans for the Company, and the delegation of authority to one or more designated members of the Board or Company officers, provided that any such delegation complies with applicable laws and the process and procedures of the Compensation Committee with respect to compensation.

## **Nominating and Corporate Governance Committee**

Mr. Pitoniak, Beverley A. Briscoe, Amy Guggenheim Shenkan and Christopher Zimmerman. Mr. Pitoniak is Chair of the committee. The committee's purposes under the applicable NYSE standards and NI 58-101. The committee held four meetings during 2018.

The committee reviews and assesses its charter at least annually and, if appropriate, proposes changes to the Board. The charter was most recently updated in 2018.

The Nominating and Corporate Governance Committee, acting pursuant to its charter, serves the following purposes:

- to address Board succession issues and identify individuals qualified to become members of the Board;
- to select and recommend to the Board directors;
- as necessary and recommend to the Board corporate governance principles and policies applicable to the Company, including the Corporate Governance Guidelines, to oversee the Company's compliance with applicable laws and regulations;
- to facilitate and encourage director nominations;
- to review and recommend to the Board the Company's director nominees;
- to review and recommend for the Board's approval annual and long-term incentive and equity-based compensation plans;
- to ensure the adoption and maintenance of a short-term incentive plan.

The committee follows a process designed to consider the election of directors, in accordance with the guidelines articulated in its charter and the Company's Bylaws.

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n to the Board to fill any vacancies. In assessing the qualification of a candidate, the committee adheres to the director selection guideli

the candidate's personal and pro  
the candidate's training, experience and ability at making and overseeing  
vote the required time and effort to fulfill effectively the duties and responsibilities related to Board and committee membership, the ca  
the candidate's independence under SEC, Canadian securities laws  
t professional experience, industry knowledge, functional skills and expertise, geographic experience and exposure, leadership qualities  
the committee monitors the mix of skills and experience of directors and committee members to assess whether the Board has the appro  
r, taking into consideration any other engagements they may have, including any other public boards on which they serve. The committe  
ves set forth in the Diversity Policy and Directors Selection Guidelines discussed below in addition to the relevant skills and experience

orate Governance Committee identifies candidates based upon the criteria set forth above and in its charter. The committee reviews sele  
identifying candidates.

lines and overseeing the evaluation and effectiveness of the Board as a whole, as well as the committees of the Board and the contributi  
assessment of Board composition, to ensure that desired skills and attributes are considered as new Board members are being assessed a

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director candidates pursuant to and in accordance with the provisions of the Company's by-laws, which includes advance notice provisions

for candidates to the Board from registered shareholders. The Nominating and Corporate Governance Committee believes the evaluation process. The Nominating and Corporate Governance Committee would consider any such recommendations on a case-by-case basis in their discretion, and, if accepted for

and recommends to the Board the form and amount of compensation and benefits for directors. The committee from time to time retains

ed by the Nominating and Corporate Governance Committee. The process considers Board and committee performance relative to the Company's performance. In addition, the directors will provide their assessments of the effectiveness of the Board, the Board Chair, themselves as individual Board members, and the Board as a whole will review the individual committee assessments, and the Chair will review individual members' self evaluations and peer



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discretion, engage an independent corporate governance expert to gather, organize and/or summarize the individual assessments for di

## **Director Term Limits and Board Renewal**

ment age of 72 as set out in the Company's Corporate Governance Guidelines), but generally views a term of 10 – 15 years as an ap  
guideline is set forth in the Company's Corporate Governance Guidelines.

rnance Committee reviews the composition of the Board on a regular basis in relation to approved director criteria and skill requiremen

## **Representation of Women on the Board and in the Director Identification and**

ting and Corporate Governance Committee Charter (the Director Selection Guidelines ) to implement the provisions of such Diversity  
diversity brings to the Board. The Company believes diversity is an important element of corporate governance and is good f

e Company's corporate objectives. It enables the Company to attract people with the best skills and attributes, and to develop a workfo

nder diversity, that by 2016 at least 25% of the Board be comprised of women. In addition to a candidate's independence, industry kn  
objectives set forth in the Diversity Policy and Director Selection Guidelines in selecting candidates for filling nomination and appo

achieved this target and currently has three female directors on the Board, including the Board Chair, representing 33.3% of the Board, y

## **Representation of Women in Executive Officer Appointments**

ppointments. The Company currently has two female executive officers: Sharon Driscoll, our Chief Financial Officer, and Marianne M  
the appointment of Mr. Saligram as CEO in July of 2014.

a balanced approach in its executive selection process and has given emphasis to gender representation in its executive search program  
ves. In addition, management has embarked on a process to assess and improve diversity within the organization and will continue to fo  
initiatives including the Women's Go Networking and Mentoring program and

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open to all female employees aspiring to leadership roles. In addition, we have sponsored high-potential women to attend external leadership programs. The percentage of female employees at the executive officer level has increased from 0% to 22%. Mr. Saligram also recognizes that it is equally important to increase female representation of high-potential women in our organization and, as a result, female representation at the Company's mid-management level and above has increased. The Company established a global diversity and inclusion function supported by executive officers to anchor diversity and inclusion initiatives relating to women. These initiatives provide networking, training, development and mentoring opportunities for employees at director level and above to identify conscious and unconscious biases, with the aim of enhancing their appreciation of the value of a diverse workforce which demonstrates our commitment to diversity and inclusiveness. The talent acquisition team was trained on diversity and inclusion integration into every aspect of its programs including succession planning, leadership development, learning, and development. The Company has implemented a program, a global initiative to support women within the Company and further strengthen our core value of being a diverse and inclusive global organization. Female representation of women to be considered when making leadership and executive officer appointments. The Company is committed to promoting diversity, equity and inclusion in all our business operations, and to ensuring that all our employees have the opportunity to develop their skills and aptitude.

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## **Corporate Governance Guidelines**

things, Board and management roles, Board functions and responsibilities, director qualifications, director independence, Board structure

### **Board Leadership Structure**

The Board believes that separating the Board Chair and CEO positions is the most effective leadership structure for the Company. This structure supports the Company's operations and performance.

Non-executive directors without management present. Additional executive sessions may be held from time to time as required. Ms. Brisson, a member of the Board, holding five meetings and several information sessions in 2018 without management present.

### **Board's Role in Risk Oversight**

The Board is responsible for the identification and mitigation of risks associated with achievement of the Company's strategic objectives. Principal risks are identified and evaluated relative to those associated with major business decisions, key initiatives and external factors. The Company's enterprise risk management program and risk mitigation strategies are reviewed by the Company's executive officers, the Audit Committee and the Board.

The Board has primary responsibility for oversight of the enterprise risk management program. Each of the Company's principal risks is the responsibility of the Board, including with management and the Company's independent auditor, if appropriate, the guidelines and policies for compensation risk and accordingly, has considered the implications of the risks associated with the Company's compensation policies.

### **Compensation Committee Interlocks and Insider Participation**

There were no compensation committee or board interlocks among the directors during 2018.

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**Other Matters**

**Legal Proceedings**

us involving our directors, executive officers, affiliates of record or beneficial owners of more than 5% of our common shares or any of

**Section 16(a) Beneficial Ownership Reporting Compliance**

our common shares, to file reports of ownership and changes in ownership on Forms 3, 4 and 5 with the SEC. Such persons are required to file reports if the company is not aware of any failure by any of our executive officers, directors and greater than 10% holders to timely file any report required

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## Certain Relationships and Related Person Transactions

subsidiaries, nor any proposed nominee for election as a director of the Company, nor any associate of any director, executive officer or similar arrangement or understanding provided by the Company or any of its subsidiaries either for a purchase of securities or otherwise

for director or beneficial owners of more than 5% of our common shares or any of their immediate family members was indebted to the Company as of the date of the Meeting or is currently proposed.

body corporate that is itself an insider or a subsidiary of the Company, no person or company who beneficially owns, directly or indirectly, any of our common shares in connection with any matters being proposed for consideration at the Meeting, no proposed director or nominee for election as a director of the Company, and no proposed transaction since January 1, 2018 that has materially affected or would or could materially affect the Company or any of its subsidiaries.

current or proposed transactions in which the Company was or is to be a participant, the amount involved exceeds \$120,000 and a related person, such as: (i) the nature of the related person's interest in the transaction; (ii) the terms of the transaction; (iii) the relative importance of the transaction to the Company. Based on its consideration of all of the relevant facts and circumstances, the Audit Committee decides whether or not to approve such transactions.

director, the director is expected to promptly inform the Board Chair and the CEO. If a significant conflict exists and cannot be resolved, the director is expected to promptly disclose his or her interests.

election as a director of the Company, none of the persons who have been directors or officers of the Company at any time since January 1, 2018.

by blood, marriage, or adoption, not more remote than first cousin) between any director, executive officer, or person nominated or chosen to become a director of the Company.

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## Non-Executive Director Compensation

es and recommends to the Board the form and amount of compensation and benefits for directors. For 2018, the annual retainer paid to  
nmittee, Compensation Committee and Nominating and Corporate Governance Committee received an additional fee of \$20,000, \$15,0  
e of Canada are further entitled to reimbursement by the Company for expenses related to obtaining tax advice in connection with their  
to the Board Chair (but excluding fees for chairmanship of Board committees) is paid in the form of DSUs. Executive directors receive

### Non-Executive Director Compensation Table

The table below sets out the compensation of the Company's non-executive directors for the year ended December 31, 2018.

168,375

92,250

92,250

92,250

92,250

92,250

92,250

92,250

Represents total fees earned or paid in cash for service on the Board, including annual Board retainer, t

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utilizing the assumptions discussed in Note 2(f) and Note 25 to our financial statements for the fiscal year ended December 31, 2018, with

43,125	1,299	43,125
25,000	753	25,000
25,000	753	25,000
25,000	753	25,000
25,000	753	25,000
25,000	753	25,000
25,000	753	25,000
25,000	753	25,000
25,000	753	25,000

ing to dividends declared and paid by the Company on common shares during 2018 and reimbursement of expenses for tax advice. The

reholders, at which Mr. Patel did not stand for re-election. The amount reflected in All Other Compensation includes a \$251,046 cash s

17 compensation practices that were in place in the fourth quarter of 2017. The remaining DSU grants are based on the 2018 compensa

believes that share ownership aligns the interests of its directors with the interests of the Company's shareholders, promotes sound corpo  
ned value of not less than five times the cash portion of the annual fixed retainer paid to such directors. Since the value of DSUs increas

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The following table sets out the applicable equity ownership guideline and equity ownership for each current non-executive director.

862,500	22,288
500,000	
500,000	
500,000	
500,000	
500,000	7,121
500,000	
500,000	6,856

Represents the number of common shares owned.

Represents the number of DSUs and dividend equivalents credited to the director.

The total value of equity ownership is based on the closing price of the Company's common shares on the NYSE on March 31, 2017.

The share ownership guidelines were implemented in July 2017.

Mr. Fennell joined the Board in July 2017 and is anticipated to receive a cash payment only if the share ownership guidelines are not met.

Ms. Guggenheim Shenkan joined the Board in July 2017 and is anticipated to receive a cash payment only if the share ownership guidelines are not met.

Mr. Olsson joined the board in June 2013 and is anticipated to receive a cash payment only if the share ownership guidelines are not met.

Ms. Raiss joined the Board in July 2016 and is anticipated to receive a cash payment only if the share ownership guidelines are not met.

after January 1, 2018, 50% of the annual Board retainer paid to non-executive directors, including the annual fee paid to the Board Chairman, shall be payable in cash. If the share ownership guidelines are not met, the Board Chairman and non-executive directors could elect to receive a cash payment only if the share ownership guidelines are not met.



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The annual Board retainer which is payable in the form of DSUs as contemplated in the plan is payable, calculated and credited quarterly. The annual Board retainer to be paid in the form of DSUs by the fair market value of a common share on the date the DSUs are credited, being the volume of common shares in relation to the portion of the annual Board retainer payable for any fourth calendar quarter and DSUs are credited on the 45<sup>th</sup> day (or next business day) after the end of the quarter. For holding the DSUs until the director ceases to be a director, following which the director will be entitled to receive a lump sum cash payment. The Board of Directors and management's discussion and analysis for the fiscal quarter of the Company next ending following the director ceasing to hold office shall be used as common shares for purposes of determining whether a director is complying with or satisfying share ownership guidelines.

## **Non-Executive Directors Long-term Incentive Plan**

9. Under the Non-Executive Director LTIP, part of the annual retainer of non-executive directors was used prior to 2012 to purchase common shares from the plan administrator on behalf of the participants.

The Company would cease to pay contributions for participants under such plan to the plan administrator in respect of annual fees earned after January 1, 2012, if certain conditions are satisfied (e.g. the termination, retirement or resignation of the participant as a director of the Company).

The Non-Executive Director LTIP was discontinued. The shares were distributed and continue to be held directly by those Non-Executive Directors.

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Proposal Two: Appointment of Ernst & Young LLP

**Overview**

the Audit Committee be authorized to fix their remuneration. Ernst & Young LLP has been our auditor since April 25, 2013. The Audit Committee will ensure their objectivity in conducting an audit of the Company.

In any event, to the best of our knowledge, a representative from Ernst & Young LLP will be present at the Meeting to take questions, and the firm will be permitted to do so.

**Fees Billed by Independent Auditors**

The fees billed by Ernst & Young LLP, our independent auditor, in each of the last two fiscal years are set forth in the following table. All services and fees, including those for non-audit services, are reported in U.S. dollars.

1,607,078

15,316

**1,622,394**

The fees for our annual financial statements and review of our quarterly financial statements and for services that are normally provided in connection with the audit of our financial statements are reported in the following table.

**Audit-Related Fees** represents fees for assurance and related services that are reasonably related to the performance of the audit or review of our financial statements.

**Tax Fees** include fees for tax compliance, tax advisory and tax dispute resolution services.

**All Other Fees** include fees for non-audit services.

The amounts reported are converted from Canadian dollars to U.S. dollars based on the average Canadian and U.S. dollar exchange rate for the period.

The fees for non-audit services are subject to annual shareholder approval, and evaluation and, where appropriate, replacement of the independent auditor to provide the Company and approve the fees for such services, other than any *de minimis* non-audit services allowed by applicable law.



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Proposal Three: Advisory Vote on Executive Compensation

**Overview**

g success and shareholder value depend to a large extent on the ability of the Company's leadership. Accordingly, our executive comp  
attract and retain the talent needed to lead a strategic tra  
provide a strong incentive for executives and key employees to work toward the achievement of the Company's go  
ensure that the interests of management and the Company's shareholders are aligned and that the compensation packages are  
er Protection Act, the following resolution, commonly known as a "Say on Pay" proposal, gives our shareholders the opportunity to vo  
NEOs and our compensation philosophy, policies and practices, as disclosed in this "Compensation Discussion and Analysis" beginnin  
and therefore not binding on us, or our Directors, we value the opinions of all our shareholders and will carefully consider the outcome of  
holders to read this "Compensation Discussion and Analysis", which explains specifically how, what and why we pay our executives,  
ve pay to achievement of corporate goals, properly aligns management and shareholder interests, and is fair, reasonable and competitive  
ers, as disclosed in the Compensation Discussion and Analysis, the Executive Compensation Tables and the accompanying narra

**Recommendation of the Board**

The Board recommends a vote **FOR** the adoption of the above resolution indicating approval of the compensation of the

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Compensation Discussion and Analysis

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## Letter from our Compensation Committee Chair

**Dear Fellow Shareholders,**

customer-centric, multi-channel provider of disposition services for the industrial equipment industry. We were encouraged by the acceleration from the year:

Net income attributable to stockholders of \$121.5 million in 2018 versus \$75.5 million in 2017, while diluted earnings per share (EPS) attributable to stockholders increased 61% to \$1.11 versus \$0.69 in 2017, while diluted adjusted EPS increased 61% to \$1.11 versus \$0.69 in 2017. Total revenues of \$1,000.0 million versus \$900.0 million in 2017. Total Company agency proceeds (non-GAAP) of \$144.3 million versus \$100.0 million in 2017. Cash provided by operating activities of \$144.3 million versus \$76.0 million in 2017. Returned \$76 million to shareholders through share repurchases. We are committed to strategically diversify its offerings and create a pathway for broader network effects with additional sales channels and value-added services. We are also committed to invest in growth and innovation programs that are strongly linked to our strategy and business model and to the creation of long-term sustainable value. Shareholders

The following decisions were made by the Committee in 2018 with some future changes for 2019.

### Performance Share Unit Plan Changes

Performance as the company continues its transformational journey. After a full review of the performance metrics, the Committee concluded that it was appropriate to change the performance metrics for the Operating Free Cash Flow (OFCF) Per Share, to reflect the importance to our shareholders of cash generation. OFCF is a strong indicator

For 2019 we will have three equally weighted metrics:

- i. ROIC
- ii. Earnings CAGR
- iii. OFCF Per Share

meets annually with the assistance of our external compensation consultant including assessing payout curves, the ratio of value shared



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d in shares, rather than cash, to encourage executive share ownership. We also adjusted the CEO Sign-On Grant ( SOG ) following the 2016 and 2017 PSU grants awarded to other employees and executives. This resulted in performance of 118.8% for the most recent year. Our 2016 PSUs vested at 142.5% (consisting of the first 18 months prior to Iron Planet vesting at 100% and the second 18 months post Iron Planet vesting at 142.5%). We believe this comparator group that is effective to measure industry out, or under, performance as there are few companies in similar businesses or subject to similar performance factors and payouts.

**2019 Share Request**

Provide equity-based awards is critical to attracting, motivating and retaining high quality employees, driving performance aligned with our strategy. The value of annual grants as a percent of market capitalization has been at the lower end of our peers. If approved, we will continue to use equity-based awards.

We believe our actions continue to provide strong pay for performance linkage and thank our shareholders for their support.

Sincerely,

Sarah Raiss  
Chair, Compensation Committee  
(On behalf of the entire board)

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# Executive Compensation Program Philosophy

Our executive compensation program is to provide attractive, flexible and market-based total compensation that is tied to performance.

We achieve this by linking compensation to business objectives and performance and to attract and retain talented executives. In general, our executive compensation program is administered by the Compensation Committee of our Board of Directors, which is composed solely of independent directors. Compensation includes base salary, bonus and long-term equity awards under our Long-Term Incentive Plan ( LTI ).

Compensation is also paid to our Chief Executive Officers ( NEOs ) and our other executive officers. The Compensation Committee targets compensation levels that take into account current market conditions and our executive team.

Our policies communicate both our goals and our standards of conduct, and they motivate and reward employees based on their performance. We

Attract, motivate

Reward long-ter

Align compensati

Promote accountability; no incentive fo



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# Executive Compensation Principles and Framework

Our compensation principles and practices are summarized below.

## Attract, Motivate and Retain Top-caliber Talent

Our compensation principles and framework are designed to attract and retain the superior leadership we need to lead and grow the Company. We benchmark executive compensation against the compensation offered by companies in our Peer Group. We engage an independent compensation consulting firm, Compensation Partners (Meridian), to evaluate our Peer Group given the multichannel evolution and enhanced digital capabilities of our market.

## Pay for Performance

Our compensation policy supports the Company's strategy and business goals. We pay for performance.

The CEO's target compensation is payable based on achievement of performance targets linked directly to the Company's strategy. The CEO target compensation is 100% of the target compensation of the CEO of the Company's largest peer company. Other NEO's target compensation: 60% of the target compensation of the CEO of the Company's largest peer company. Compensation is based on the achievement of Company goals, corporate and business unit financial performance and the creation of long-term sustainable value. The Compensation Committee establishes appropriate company performance expectations to ensure that our executives are accountable for our continued growth and success. We maintain a well-balanced compensation program to focus our executives on increasing long-term shareholder value. Stock options have a ten-year vesting period.

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## **Reward Long-Term Growth and Profitability Shareholder-Oriented Long-Term Incentives**

...e up a significant portion of total direct compensation (58% for our CEO and between 38% and 46% for our other NEOs), and, like sho...  
...We occasionally award RSUs on a very targeted basis, primarily to new hires to compensate for equity awards forfeited at a former emp...  
...hat the use of equity-based compensation, combined with share ownership guidelines, aligns the interests of executives with those of sh...  
...toward long-term incentives ensures that pay outcomes are fully aligned with shareholders over the longer term while keeping our com...  
...e significant share ownership required to be maintained by our executives create a direct link between share price performance and the p...

### **Align Compensation with Shareholder Interests**

...h equity ownership requirements, at-risk pay elements, and long-term incentive compensation. As well, we actively seek our sharehold...

### **Equity Ownership Requirements and Hold Until Met**

...alue from any exercise of options or redemption of share units under the LTI plan and from his sign-on grant until the share ownership...  
...gram is required to hold common shares with a value equal to the sum of his annual base salary and short-term incentive bonus for a peri...  
...Company. Executives must hold equity with a minimum value equal to a multiple of their base salary, with the multiple increasing in pr...

5,000,000  
1,342,584  
1,230,000  
1,192,500  
1,200,000

Qualifying owner

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## Shareholder Feedback

Our shareholders' views on a number of topics. We hold non-binding advisory shareholder votes on the compensation program for our NEOs. Our Compensation Committee has considered and will continue to consider the outcome of our say on pay votes and our shareholders' views at our Annual and Special Meeting.

## Promote Accountability; Discourage Excessive Risk-Taking

Our equity ownership requirements described above, as well as hedging and trading restrictions and a clawback policy described below. Moreover, each of our NEOs is prohibited from taking on inappropriate risks.

## Hedging and Trading Restrictions

Our NEOs are prohibited from hedging their share price with respect to their ownership of common shares or awards of stock options or other equity-based compensation. Prohibited hedging includes the purchase or sale of derivative securities that are designed to hedge or offset a decrease in market value of the Company's equity securities.

## Clawback Policy

Our Incentive Compensation Clawback Policy, which permits recovery of both short and long-term equity incentive compensation from any NEO who is determined to be responsible for the Company restating financial results, for any reason other than a change in accounting principles, if the amount of the performance-based compensation paid or awarded to an executive officer would have been a lower amount had the Company's financial statements been restated. The Company may seek to recover for the benefit of the Company the excess performance-based compensation, both short- and long-term, paid or awarded to any NEO who is determined to be responsible for the Company restating financial results, for any reason other than a change in accounting principles, if the amount of the performance-based compensation paid or awarded to an executive officer would have been a lower amount had the Company's financial statements been restated.

## Compensation Risk and Governance Review

Each of the Company's principal risks is the responsibility of either a specific committee or the entire Board, as appropriate. The Compensation Committee reviews the Company's compensation policies and practices to ensure they do not encourage inappropriate risk-taking by the Company's executives and the Board. The Committee uses a multi-step review process for all compensation matters, first adopting goals and metrics of performance and then reviewing the Company's compensation policies and practices to ensure they do not encourage inappropriate risk-taking by the Company's executives and the Board. The Committee uses a multi-step review process for all compensation matters, first adopting goals and metrics of performance and then reviewing the Company's compensation policies and practices to ensure they do not encourage inappropriate risk-taking by the Company's executives and the Board.

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multiple distinct metrics for each component that are aligned with the Company's overall strategic objectives. The program ensures that the Compensation Committee is independent, and one member is also the chair of the Audit Committee, ensuring that the Compensation Committee has an in-depth knowledge of the Company's compensation programs. The Compensation Committee has been advised by Meridian, our independent compensation consultants, and concluded that our compensation programs are not reasonably likely to result in compensation programs that avoid exposing the Company to unwarranted risk.

## The Compensation Committee

The Compensation Committee consists of three independent directors, with Ms. Raiss serving as the Chair. Details of the Compensation Committee's duties are summarized under Item 10 of our prospectus, which can be found on our website at [www.rbauction.com/investors](http://www.rbauction.com/investors). The Compensation Committee held eight meetings during the period.

## Advisors to the Compensation Committee

Meridian is an independent advisor to the Compensation Committee on all matters. However, the Compensation Committee is ultimately responsible for its decisions and, in making its decisions or recommendations, it may consult with Meridian. The Compensation Committee has retained Meridian to review and provide oversight and advice related to executive compensation programs. Meridian is fully independent of the Company and its management.

The aggregate fees billed to the Company for consultation over the past two years are set out below.

115,833

**115,833**

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## Compensation Framework

believes that the mix of base salary, performance-based short-term incentive, and long-term incentive plans creates a balanced approach that remains consistent with the compensation principles. In addition, the Compensation Committee annually assesses the competitiveness

based on market competitiveness among the Peer Group, individual performance, experience, scope of the role and internal equity.

**Short-term incentive. STI is subject to clawback.**

Focuses on specific annual objectives.

Target award based on market competitiveness among the Peer Group and other factors.

Actual award based on corporate and business unit performance, and, if applicable, for some executives, individual goals.

**Long-term incentive. Payout is tied to both corporate performance and share-price appreciation.**

Focuses on longer-term objectives.

Target award based on market competitiveness of the LTI package among the Peer Group and other factors.

Actual payout based on our overall performance measured against pre-established performance targets.

Target award based on market competitiveness among the Peer Group and other factors.

The final realized value is based on the appreciation of the Company's common share price.





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## **2018 Business Performance**

year and over a sustained period of time. In 2018, this performance resulted in short-term incentive performance factors for NEOs ranging from 100% to 150%.

## **2018 Strategic Achievements**

and growing earnings. These results reflect the efforts of our global workforce, led by Mr. Saligram and our other executive officers, in executing our strategy.

Delivered GTV growth across all channels with notable contributions from our services businesses. Record-breaking 2018 Orlando event. Robust services businesses growth. Substantially completed the integration of our services businesses. Successfully delivering on debt covenants.

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The Company's management team has actively been executing the Company's Grow, Drive, Optimize strategy

IronPlanet weekly featured auction performance  
Internationally; asset lite entry to gain international penetration  
attract  
end users  
e-E; our premium listing service  
businesses with RBFS revenue growing 44% and Mascus revenue growing 21%.  
me in North America and Internationally

ional market potentials  
\$20 million in run-rate IronPlanet acquisition synergies by the end of fiscal 2018  
overall operating leverage  
drove record performance of \$278 million  
and created an integrated sales support function  
known as MARS.  
scorecard and evergreen model targets; absent non-recurring and adjusting items, 2018 performance was impacted primarily due to macro

operating activities in excess of net income  
while returning cash to shareholders via ongoing dividends  
at significantly less than 8.5% of revenues; which is our current Evergreen target max for capital spend as a percentage of agency production  
quarter of 2018

re projects, high equipment utilization rates, and an overall equipment shortage principally in the United States and Canada. In 2018, the

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**2018 Key Financial Highlights**

...r than 2017. Diluted EPS attributable to stockholders increased 61% to \$1.11, and diluted adjusted EPS attributable to stockholders (no

GTV o  
Total revenue  
Agency proceeds  
Cash provided by operat  
Other services segment rev  
Cash dividends of \$75.7 million paid to our stockholders in 2018, purs  
\$102 million of total debt reduction including 5

**Long-Term Financial Performance**

...ance. Since December 31, 2013, the Company has delivered a 59.3%<sup>(1)</sup> return to shareholders when taking stock price appreciation plus

	2015	2016
9.62	\$ 107.76	\$ 151.16
3.53	\$ 97.62	\$ 116.63
7.42	\$ 95.51	\$ 112.23
7.52	\$ 105.12	\$ 119.22

TSR assumes dividends were reinves



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per share (given how important cash generation is to our shareholders; OFCF is a strong indicator of the financial health and value of our company). We do not have enough true business competitors to properly measure industry out-performance or under-performance, which is the primary purpose of our LTI program. We will award LTI to all full-time employees who were not otherwise LTI eligible to commemorate the 60<sup>th</sup> Anniversary of the founding of the Company.

## **CEO Compensation Summary**

### **Ravi Saligram, Chief Executive Officer**

the following table shows the value of our CEO's realizable pay for 2016, 2017 and 2018, as measured using our performance metrics. The chart below demonstrates that our CEO's compensation is, as intended, largely at risk and closely and appropriately linked to performance, including the achievement of our financial and operational goals.

The above graph demonstrates the effectiveness of our philosophy of tying a significant portion of total direct compensation to the attainment of our performance goals.

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The table below provides a breakdown of elements used to calculate total compensation for our CEO in terms of target pay and realizable pay.

ed

December 31, 2018 of the actual payout for awards for which the performance period has been completed and the target number of PSUs for awards based on our closing stock price on December 31, 2018, of \$32.72 per share.

as of December 31, 2018 of outstanding stock options granted in 2016, 2017 and 2018. The realizable value is based on our closing stock price as of December 31, 2018.

Under these rules, we are required to show the grant date value of equity and equity-based awards, even though the value from these awards is calculated based on the closing stock price on the date of grant. As a result, total compensation as defined by the SEC differs substantially from the compensation actually realized by our CEO (and other NEOs).

The primary reason for this difference is how long-term equity awards are valued. A substantial portion of our CEO's total compensation is in the form of long-term equity awards.

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## **CEO Realizable Pay Analysis**

Company's performance relative to our Peer Group. Specifically, the Compensation Committee analyzed the relationship between the r  
2017 – the most recent fiscal year-end in which peer company compensation data is available.

cluding All Other Compensation (as reported in the Summary Compensation Table) and our Company's performance relative to our Pe  
e shaded diagonal area (i.e., "zone of alignment") are generally considered to be aligned from a pay and performance perspective. As d

Performance was assessed for the following six measures: revenue growth, EPS growth, EBITDA growth,

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## Pay-for-Performance Design

Company's earnings performance. To align executive pay with both the Company's financial performance and the creation of sustainable value, the Company's compensation is dependent on the Company's performance over the short and long-term. The portion of total compensation at risk increases in line with the Company's performance. Appropriate, measures tied to individual performance. The Compensation Committee then selects the measures it believes most closely align with the Company's performance metrics.

Measures may include, among other measures, revenue, revenue growth, operating profit, net income, GTV, safety metrics, synergies and T

Adj  
Adjusted

Earn

Diluted adjusted EF

For a description of these non-GAAP measures, refer to Annex: Selected Definitions of Operational and Financial Performance

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**Elements of Executive Compensation**

ion Framework section on page 57: base salary; a short-term cash incentive bonus; PSUs that vest at the end of a three-year performance at-target incentive values.

1,000,000	1,000,000
447,528	335,646
410,000	246,000
397,500	238,500
400,000	200,000

ogy Services

Ms. Driscoll is paid in Canadian dollars. Amounts reported are converted based on the average Canadian dollar exchange rate for the year.

Mr. Barr ceased to be employed by the Company on March 31, 2018.

performance measures upon which the awards were based, and the longer-term performance targets that determine the vesting and value of the awards.

use in similar positions within our selected Peer Group companies.

base salary effective March 1, 2018, from \$385,000 to \$410,000; Mr. Werner's base salary effective March 1, 2018 from \$385,000 to \$390,000.

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**Short-term Performance-Based Non-Equity Incentive Compensation**

of corporate performance targets. For those executives who lead a business unit, a portion of the short-term cash incentive award is tied

100	%
85	%
30	%
30	%
70	%

Mr. Jeter's business unit measure  
 Mr. Werner's business unit measure  
 Mr. Barr ceased to be employed by

financial results: agency proceeds, diluted adjusted EPS attributable to stockholders and OFCF. The Company must meet a minimum threshold

1.01	1.12
656	735
122	132

OCF is targeted to be equal or greater than net income, and as such the minimum threshold for the 2011 items for potential adjustment in calculating operating financial results and determining incentive payouts. The Committee bases any adjustments on the financial results of the Company and is not inadvertently discouraged from doing so. As part of this process, we will consider unbudgeted items, and

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ve-mentioned targets, and the resulting STI payouts, the Compensation Committee made certain adjustments to the Company's operati

Adjustments to all results for the difference in a  
Adjustment to agency proceeds for the impact of our partial harmonization of buyer fees on revenue (only including  
Adjustments to diluted adjusted  
proceeds on dispositio  
the effect of variou  
Adjustments  
the effect of the deemed permanent increase in inventory related to the non-rolling stock contra  
proceeds on dispos  
the effect of variou  
the unplanned positive impact of the adoption of ASU 2016-15 *Statement of Cash Flows (Topic 23*  
ceeds decreased from \$729.1 million to \$719.2 million; (ii) diluted adjusted EPS attributable to stockholders increased from \$1.08 to \$1

Based on the performance shown above, the following cash incentive awards were approved for 2018:

1,000,000  
335,646  
246,000  
238,500  
200,000

Ms. Driscoll is paid in Canadian dollars. Amounts reported are converted based on the average Cana  
Mr. Barr ceased to be employed by

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## Long-term Equity-Based Incentive Compensation

s of long-term equity-based awards to NEOs: PSUs and stock options. Our equity-based incentive plan is market competitive, 100% per  
es with the outcomes for our shareholders. We occasionally award RSUs to executives on a very targeted basis, primarily to new hires,  
retention risk.

e performance goals and set as target percentages of participants' base salaries. Grants of stock options are set as target percentages of  
tely 58% of the CEO's direct compensation and between 38% and 46% of NEOs' direct compensation mix in 2018, the value derived

### Target Equity Grant Values

1,400,000

335,646

205,000

198,750

200,000

Ms. Driscoll is paid in Canadian dollars. Amounts reported are converted based on the average Canadian dollar to U.S. dollar exchange rate for the year.  
Mr. Barr ceased to be employed by the Company on 12/31/2018.

e of the grant, contingent on achievement of performance targets measured over three years. These performance and market factors are  
target and maximum thresholds depending on actual performance.

gy, drive long-term performance and promote retention of key talent. In particular, we added a cash flow measure as cash generation is  
at are aligned with long term shareholder value creation.

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business competitors to properly measure industry out-performance or under-performance, which is the primary role of a relative TSR metric. The award is based on share price at the end of a three year period. The Compensation Committee will retain discretion to modify payouts based on

## 2018 PSU Awards

est based on performance factors related to ROIC and Earnings CAGR, as well as a TSR market factor modifier, over the three-year period.

50  
50

Following definitions and targets.

Less than 10.0%

10.0%

12.0%

Greater than or equal to 14.0%

Less than 7.00%

7.00%

12.00%

Greater than or equal to 16.00%

December 31, 2020<sup>(1)</sup>

At or equal to the bottom quartile

Above the bottom quartile

Top quartile<sup>(1)</sup>



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The TSR comparison group comprises the companies listed below:

43,777

10,600

6,410

6,215

6,254

**73,256**

Excludes dividend equivalent rights accrued after the date of the grant, which are subject to forfeiture if  
Mr. Barr ceased to be employed by

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**2017 PSU Awards**

on the same performance factors and TSR peer group as the 2018 PSU awards, as well as a TSR market factor modifier, over the three

The percentage of PSUs that will vest at the end of the three-year vesting period will be determined in accordance with the following

Less than 8.3%

8.3%

10.5%

Greater than or equal to 12.8%

Less than 10.00%

10.00%

20.00%

Greater than or equal to 32.00%

At or equal to the bottom quartile

Above the bottom quartile

Top quartile<sup>(1)</sup>

ember 31, 2019<sup>(1)</sup>

Although the number of vested PSUs could be in

ed in March 2016, were modified to reflect to the IronPlanet acquisition and the resulting change in the debt structure of the Company. S  
In addition, the performance factor applied in the second half of the performance period was modified from the original performance factor



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ified performance factor divided the original 36-month performance period into two, 18-month periods, each with equal 50% weighting

The first performance period was based on:

RONA calculate

Earnings CAGR over an 18-month per

The second performance period was based on:

ROIC calculate

Earnings CAGR over an 18-month perform

The market factor, which is based on relative TSR over the three-year period ending December 31, 2018, remained un

31, 2018!)

At or equal to the bottom quartile

Above the bottom quartile

ne 30, 2017:

The TSR comparison group comprise

50

50

Target for the 18-mon

ing definitions and targets. With respect to the RONA and earnings targets for the first 18-month performance period, the number of PS

Less than 25.30%

25.30%

25.80%

Greater than or equal to 26.80%



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Less than 7.00%

7.00%

12.00%

Greater than or equal to 16.00%

ate weighting to the above-mentioned performance measures, the first half performance factor achievement was 100% of target (RONA

December 31, 2018:

50

50

esting were calculated by interpolating between the minimum, target and maximum thresholds depending on actual performance.

Less than 7.0%

7.0%

8.3%

Greater than or equal to 11.0%

Less than 10.00%

10.00%

25.00%

Greater than or equal to 35.00%

appropriate weighting to the above-mentioned performance measures, the second half performance factor achievement was 185.2% of target.

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AGR of 39.00%). This second half performance period achievement was weighted at 50% when the 2016 PSU awards that vested in March 2019 were weighted to the above-mentioned performance measures in both performance periods, the 2016 PSU awards vested in March 2019 at an adjusted rate. An adjustment was applied to the number of awards that vested in March 2019.

## Special Equity Awards

awards to a small number of key employees, including one NEO. These were one-time awards of cliff-vested RSUs, made in recognition of their contributions to become an element of our ongoing executive compensation philosophy. The special retention awards to our NEOs consisted of 42,857 RSUs, which were forfeited upon an earlier termination of employment, other than for retirement, involuntary termination in connection with a change of control. The Special Compensation Plan that was terminated in December 2017, including three NEOs. These were one-time awards, of cliff-vested RSUs, which were not, and are not, intended to become an element of our ongoing executive compensation philosophy. These RSU awards to our NEOs were made under the Special Compensation Plan.

## 2018 Stock Option Awards

as discussed under Executive Compensation Tables Stock Option Plan on page 87. Stock options have an exercise price equal to the fair market value of the common stock on the date of the grant and are subject to a term of 10 years. The NEOs were awarded the following stock options:

176,992  
42,857  
25,917  
25,127  
25,285  
  
**296,178**

Mr. Barr ceased to be employed by

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Total shares awarded to NEOs in 2018 under the LTI Plan as a percentage of total shares outstanding at December 31, 2018

## **New-Hire Awards Granted**

In connection with the hiring of Mr. Saligram as CEO in July 2014 and of Ms. Driscoll as CFO in July 2015, the Company granted sign-on grants to Mr. Saligram and Ms. Driscoll.

### **CEO 2014 sign-on grant**

The Company made a one-time grant of 338,249 stock options ( "SOG Options" ) and 102,376 PSUs ( "SOG PSUs" ) to Mr. Saligram in 2014.

The SOG Options:

have a  
vest at

All of the SOG Options granted to Mr. Saligram in connection with his hiring:

will vest over a period of 90 days after termination in the event of termination without cause after the first 36 months of employment, subject to the terms and conditions of the LTI Plan.

will be cancelled in the event of resignation (other than retirement) if unvested, and, if vested, must be exercised within 30 days of termination.

will be exercisable until the earlier of the original expiry date or the third anniversary of retirement in the event of retirement, after July 7, 2014.

in the event of termination for cause, will be cancelled, if unvested, and, if vested, must be exercised within 30 days of termination.

will vest and be exercisable

with the actual number of units to vest to be determined based on achievement of pre-established performance criteria. The number of SOG Options

five-year periods.

performance periods used for the 2016 and 2017 PSU grants awarded to other employees and executives, which were similarly adjusted for

tranches with the stock price performance and increased market capitalization since Mr. Saligram's appointment and his contributions to the Company.

consider adjustments based on TSR performance and to adjust the performance periods used for determining the TSR compound annual growth rate

for vesting periods following the grant date, with these performance periods now commencing on July 1, 2017 and ending on the fourth anniversary of the grant date.

third tranche of Mr. Saligram's sign on grant PSUs vested on August 11, 2018 on the four-year anniversary of the grant date. The number of PSUs



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TSR performance over the adjusted period from July 1, 2017 through the vest date. The amended absolute TSR performance for this p

## **CFO 2015 sign on grant**

l to with Ms. Driscoll, to compensate for equity awards from her previous employer that she forfeited upon joining the Company, Ms. D

\$75,000 in the form of 10,654 stock options, with the number of options calculated as of t  
RSUs, with the number of PSUs calculated by reference to the volume-weighted average trading price of the Company s common shares  
, with the number of RSUs calculated by reference to the volume weighted average trading price of the Company s common shares in

## **Deferred Compensation**

ry 1, 2018. It provides certain executives in the United States the opportunity to defer a portion of their base salary and/or a portion of th

on-Qualified Deferred Compensation for 2018 U.S. Deferred Compensation Plan on page 95 for a summary of the material terms of

## **Other Compensation**

Employees can contribute up to 4% of their base salary and will receive an employer match that ranges from 50% 100% based on the

tates, the Company also offers a tax-qualified 401(k) plan to all employees. The 401(k) plan provides for an employer match of 50% (u

Canada, we offer a RRSP to all full-time employees. The RRSP provides for an employer matching contribution of 50% (up to C\$3,500

vance to Mr. Saligram, Ms. Driscoll, Mr. Wohler, and Mr. Barr. We reimburse, subject to an annual limit, professional advice concernin

ied and quantified under All Other Compensation in the Summary Compensation Table on page 83. The Compensation Committe

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## Compensation Peer Group

Compensation program is designed to recruit and retain the caliber of executive officers and other key employees necessary to deliver sustainable

Our teams manage the acquisition, transportation, maintenance, financing, sale, and delivery of this equipment in a global marketplace. We focus on driving growth in the relevant geographic markets, drive cash flow and execute our transformation roadmap to invigorate earnings growth, expect and

Compensation Committee has been working with its independent consultant, Meridian, to identify and select fair and appropriate market

changes to our Peer Group for 2017. These changes included: (i) using multiple financial metrics, in addition to revenue, to identify a

the Company to a multi-channel platform, using the same rigorous analysis and the same independent consulting firm, we added four dig

compensation of companies in the selected Peer Group as a starting point, then we use judgment to set compensation, also taking into account

quantitative criteria, and in consultation with independent advisers as well as the CEO and the CHRO, the Compensation Committee has

industries Diversified Support Services; Trading and Distribution; Construction and Engineering; Oil & Gas Equipment Services; Specialty  
the removal of Swift Transportation Company, which was acquired by Knight Transportation, Inc.

determining our choice of peers. In the non-financial columns, bullets indicate companies that share our non-financial considerations; in the

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**Our current Peer Group is as follows:**

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## Fair and Appropriate Criteria for Peer-Company Selection

The Company has faced two primary issues in establishing its Peer Group:

There are no directly comparable, publicly traded companies. Our reported revenue is only a percent commission of the total value of the assets we market, transact and sell through our sales channels — our revenue is reported as a percent of a broker (commission only). Thus, our revenue does not reflect our scope, complexity and size relative to other companies. Our support of transactions through our sales channels — not simply the percent commission we retain as revenue. Our distributors, who sell from inventory. For this reason, when building an appropriate peer group, the Compensation Committee working with the Board of Directors and the Executive Compensation Committee, focused on companies in the Engineering and Diversified Support Services. Because revenue understates our size and complexity from an operational and management perspective, the result of reporting our commission as revenue, we also evaluated our placement in the peer group by comparing our peers' reported revenue to our revenue as a percent of their total revenue group for the Company.

On the qualitative level, we favor growth companies with the following characteristics:

global auctioneering  
serving a similar customer base or customer base  
competing for the same market  
To reflect our shareholders' primary source of financial value, we focus on the following quantitative metrics:  
revenue — which we compare against the Company's

Updated financial statements, it is highly relevant in measuring the health, size and growth of the business, and, for our business, is a strong indicator of performance. Comparing our revenue and net income over different financial periods provides useful comparative information about our revenue and net income.

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appropriateness of our peer group: with the Company's results shown as the baseline (1.0x), the majority of peers fall within the target range.

We believe these selected companies comprise a reasonable and useful Peer Group for purposes of evaluating the competitiveness and performance of the Company.

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# Compensation Committee Report

Analysis included herein. Based on such review and discussions, the Compensation Committee has recommended to the Board that the  
Report on Form 10-K for the year ended December 31, 2018.

Submitted by the members of the Compensation Committee of the Board of Directors:

Sarah Raiss, Chair  
Robert G. Elton  
J. Kim Fennell  
Erik Olsson

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# Executive Compensation Tables

## Summary Compensation Table

l years is set forth below. Additional information on the components of the total compensation package, including a discussion of the pr

1,000,000	1,372,420
1,000,000	1,208,422
1,000,000	1,474,774
447,528	457,416
423,720	239,842
414,920	239,542
405,833	200,962
224,583	1,337,132
394,895	303,585
428,479	305,560
395,000	233,014
77,705	
550,000	372,194
550,000	454,230

Amounts reported reflect th

Amounts paid under the Company's short-term incentive plan are reported during each of the years presented, measured in accordance with ASC 718 utilizing the assumptions discussed in Note 2(f) and Note 2





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...es the at target vesting of 100% of the PSUs and RSUs awarded. Assuming the highest level of performance is achieved, which would  
 Compensation Table would be:

2,416,845

479,684

1,519,263

744,388

...uted upon the vesting, if any, of the PSUs and RSUs under the terms of the respective plans.

...esented. The grant date fair value of a stock option award is measured in accordance with ASC 718 utilizing the assumptions discussed  
 ...ive discussion that follows.

Reflects amounts earned under the Company's short-term incentive plan in the re

5) Reflects

Mr. Saligram representing a car allowance (\$24,000), tax preparation reimbursement (\$16,300)

Ms. Driscoll representing a car allowance (\$18,518), the Company's matching contribution to the ESPP (\$8,951), and  
 ...er representing the Company's matching contribution to the ESPP (\$8,117), the Company's matching contribution to the 401(k) plan (\$  
 ...er representing the Company's matching contribution to the ESPP (\$15,817), the Company's matching contribution to the 401(k) plan  
 ...tribution to the ESPP (\$7,983), the Company's matching contribution to the 401(k) plan (\$3,500), the Company's contribution to the U.

(\$1,143), the Company's matching contribution to the ESPP (\$438), the Company's matching contribution to the 401(k) plan (\$2,000)  
 ...nt.

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Ms. Driscoll is paid in Canadian dollars. Amounts reported converted based on the average Canadian and U.S. dollar exchange rate of C  
Mr. Jeter's and Mr. Werner's 2016 compensation has b  
Mr. Werner's and Mr. Wohler's 2017 compensation has  
Mr. Barr ceased to be employed by

## CEO Pay Ratio

ation S-K, we are providing the following information about the relationship of the median of the annual total compensation of our em

For 2018, our last completed fiscal year:

the median of the annual total compensation of all employees of  
the annual total compensation  
of the median of the annual total compensation of all employees to the annual total compensation of our CEO was 1 to 118. This ratio  
identify the median employee as of December 31, 2018, to determine the median of the annual total compensation of all our employees oth  
on consisted of approximately 4,402 individuals working at our parent company and consolidated subsidiaries. This population consiste  
or approximately 4.6% of the employee population), including all employees from the following foreign jurisdictions: Belgium (2), Chi  
m (33). Following these exclusions, our adjusted employee population was 4,168, of which 2,231 were part-time or temporary employe  
our Summary Compensation Table in accordance with the requirements of Item 402(c)(2)(x) of Regulation S-K if the employee had bee  
ified as the median employee.  
e median employee and our CEO, we included the estimated aggregate value of the employee's compensation under the following non

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**2018 Grants of Plan-Based Awards**

The following table provides information related to grants of plan-based awards to our NEOs during the 2018 fiscal

2,000,000	1,372,420	2,744,841
646,119	332,317	664,635
467,500	200,962	401,923
453,150	194,835	389,669
370,000	196,060	392,120

Represents the possible payout under our short-term incentive plan for 2018. For amounts actually paid  
izing the assumptions discussed in Note 2(f) and Note 25 to our financial statements for the fiscal year ended December 31, 2018, with

Represents PSUs granted in 2018 under the Executive

Represents stock options granted

Ms. Driscoll is paid in Canadian dollars. Amounts reported to Ms. Driscoll are converted based on the average

Represents Special Equity Award RSUs granted in 2018 under the Ex

Mr. Barr ceased to be employed by

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**Stock Option Plan**

exercisable to purchase common shares of the Company at a specified exercise price. Up to 13,700,000 common shares may be issued in 2018 were made in accordance with the Company's current Stock Option Policy, which provides that:

The exercise price of each option will be equal to the closing price of the Company's common stock on the date of grant. Vesting of options will occur over three years from the date of grant, with 1/3 vesting of options on the first anniversary of the grant. The Stock Option Plan that provides, subject to certain exceptions, that if the tenth anniversary of the grant falls within, or within five business days after, the date that the optionee provides services to the Company or one of its subsidiaries are set forth in the option agreement, which may be waived or modified by the Compensation Committee, and such terms were incorporated into the 2018 option grants to NEOs:

Termination without cause, excluding voluntary termination, immediate vesting of all unvested options, and the optionee has 90 days from the date of termination in the case of voluntary termination, other than retirement, immediate cancellation of all unvested options and all options already vested. Unvested options continue to vest after retirement in accordance with the existing vesting schedule for those particular options and all options already vested. A representative has 365 days from the date of death to exercise the options if the optionee's employment or eligibility ceases by reason of death. In the case of termination with cause, all options already vested. The terms specified in such option agreement for the exercise of the option granted thereunder, allow the optionee to elect to purchase all or any portion of the shares in respect of such shares; provided, that the Stock Option Plan imposes restrictions on the acceleration of vesting of options in connection with the termination of options to our non-executive directors. With respect to continuing employees that are to receive options, the Company's policy is to

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**IronPlanet Stock Plans**

Planet Options ) granted under the IronPlanet, Inc. 1999 Stock Plan (the 1999 IronPlanet Stock Plan ) and IronPlanet Holdings, Inc. 2015 Stock Plan (the 2015 IronPlanet Stock Plan ) were automatically converted into options to acquire an aggregate of 737,358 common shares of the Company, with exercise prices per common share equal to the exercise price of the original options (including vesting and vesting acceleration provisions) as applicable prior to the effective time of the merger. The Company does not intend to modify the terms of the options in connection with the grant of each option and set forth in each option agreement. Nonetheless, the option term may not exceed (i) 10 years from the date of grant, or (ii) the term set forth in the option agreement, which provisions may be waived or modified by the Board of Directors or any of its committees:

Upon termination of employment or service other than as provided below, the optionee has up to 3 months after the date of such termination to exercise the option. If the optionee is terminated from employment or service or within 30 days following termination of employment or service, the option may be exercised at any time with a payment in cash or common shares of the Company any option previously granted under the IronPlanet Stock Plans on such terms and conditions as the administrator determines and the administrator need not treat all outstanding options (or portions thereof) in an identical manner to a successor corporation, unless such successor corporation does not agree to assume the outstanding options or to substitute equivalent options.

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the Executive PSU Plan, a change of control, unless otherwise defined in the applicable grant agreement or grant letter, means the occurrence of any of the following events:

(1) a person or group of persons acting jointly or in concert, acquiring or accumulating beneficial ownership of at least 25% of the Company's common shares and being able to change the composition of the Board of Directors; or

(2) the arm's length sale, transfer, liquidation or other disposition of all or substantially all of the assets of the Company.

## **2013 PSU Plan**

At the Annual and Special Meeting of Shareholders held in May 2017. The 2013 PSU Plan, as amended, now permits the Company to pay Stock Options in cash, as opposed to requiring payment only in cash, and sets the aggregate maximum number of the Company's common shares reserved for the 2013 PSU Plan at 150,000.

Mr. Saligram holds a 2013 PSU award. The Company does not anticipate making any future awards under the 2013 PSU Plan. Following the 2017 Annual Meeting, the maximum number of shares available for the 2013 PSU Plan is 150,000 common shares of the Company. In addition, the 2013 PSU Plan provides that in the event of a change of control, the Company will pay the PSU award to Mr. Saligram. Notwithstanding the foregoing, as discussed further under Executive Employment Agreements - Change of control, the Company will pay the PSU award to Mr. Saligram in the event of a double trigger change of control event.

## **Restricted Share Unit Plans**

The Company has amended and restated its Restricted Share Unit (RSU) Plan. For a description of the RSU Plans as amended and restated, see Proposal Seven: Approval of the Amended and Restated Employee RSU Plan.

Such terms differ from the terms set forth in the RSU Plans as amended and restated including, without limitation, by providing for the acceleration of vesting of all vested RSUs, net of all applicable tax withholdings, within 30 days of the date of change of control. Notwithstanding the foregoing, the Company has entered into employment agreements with the company for the purpose of providing for acceleration of vesting only in connection with a double trigger change of control event.



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**Outstanding Equity Awards as of December 31, 2018**

The following table provides information related to the outstanding stock option awards and share-based awards held by each of our NEOs.

176,992	32.16	1-Mar-28
109,362	32.16	2-Mar-27
89,799	24.07	2-Mar-26
	24.84	10-Mar-25
67,650	24.43	11-Aug-24
42,857	32.16	1-Mar-28
21,706	32.16	2-Mar-27
14,586	24.07	2-Mar-26
	30.17	12-Aug-25

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25,917	32.16	1-Mar-28
22,164	27.10	11-Aug-27
18,925	14.04	4-Feb-26
2,952	14.04	3-Feb-26
253	8.22	12-Mar-25
	11.73	27-Feb-24

25,127	32.16	1-Mar-28
16,842	32.16	2-Mar-27
13,110	24.07	2-Mar-26

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25,285	32.16	1-Mar-28
17,278	32.16	2-Mar-27
14,188	24.07	2-Mar-26
	24.84	10-Mar-25

All stock option awards reported in the table were granted under our Stock Option Plan.

Represents PSUs granted under the Executive PSU Plan at target performance for earned PSUs. Market value is based on the closing price of our common stock on the date of grant. Represents PSUs granted under the Executive PSU Plan at target performance for unearned PSUs except for the SOG PSUs granted under the 2013 PSU Plan that vest on August 11, 2019, that are at target performance.

Represents PSUs granted under the Executive PSU Plan for the three-year performance period.

Represents PSUs granted under the Executive PSU Plan for the three-year performance period.

Represents PSUs granted under the Executive PSU Plan for the three-year performance period.

Represents SOG PSUs granted under the 2013 PSU Plan that vest on August 11, 2019.

Represents RSUs granted under the Executive PSU Plan.

Represents assumed IronPlanet Options granted under the IronPlanet 1999 Stock Plan that vested ratably on a monthly basis.

Represents assumed IronPlanet Options granted under the IronPlanet 1999 Stock Plan that vest ratably on a monthly basis.

Represents assumed IronPlanet Options granted under the IronPlanet 2015 Stock Plan that vest ratably on a monthly basis.

Represents assumed IronPlanet Options granted under the IronPlanet 2015 Stock Plan that vest ratably on a monthly basis.



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**Stock Option Exercises and Shares Vested in 2018**

The following table provides information regarding the vesting of RSUs and PSUs during 2018 for each NEO under the RSU Plans a

33,507	(5)
34,941	(6)
115,003	(7)
192,924	(8)
212,387	(9)
211,813	(10)
299,717	(11)
52,985	(12)
92,902	(13)
51,202	(14)
322,276	(15)
84,347	(16)
293,322	(17)
86,769	(18)
84,857	(19)
73,800	(20)
65,964	(21)
80,774	(22)
107,830	(23)

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82,600	(24)
166,800	(25)
87,600	(26)
102,396	(27)
104,654	(28)

The value was calculated by multiplying the prior 20-day volume weighted average closing price of the common shares

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March 9, 2018, by the number of shares acquired on vesting. These PSU  
the NYSE on the date the stock award vested, or \$33.90 per share on August 11, 2018, by the number of shares acquired on vesting. Th  
ghted average closing price of the common shares on the NYSE on the date the stock award vested, or \$33.90 per share on August 11, 2  
by the broker at the time of exercise on the date the stock option was exercised by the number of shares exercised less the option exerc  
Based on a sales price of \$35.40 per share on June 7, 2018 a  
Based on a sales price of \$35.40 per share on June 7, 2018 a  
Based on a sales price of \$35.55 per share on June 8, 2018 a  
Based on a sales price of \$35.53 per share on June 8, 2018 a  
Based on a sales price of \$35.50 per share on June 8, 2018 a  
Based on a sales price of \$35.51 per share on June 8, 2018  
Based on a sales price of \$35.50 per share on June 8, 2018  
Based on a sales price of \$35.67 per share on June 8, 2018  
Based on a sales price of \$35.59 per share on June 8, 2018  
Based on a sales price of \$35.60 per share on June 11, 2018  
Based on a weighted average sales price of \$32.13 per share on March 1,  
Based on a sales price of \$32.50 per share on March 2, 2018,  
Based on a weighted average sales price of \$32.97 per share on March 7,  
Based on a sales price of \$33.41 per share on March 12, 2018  
Based on a sales price of \$33.33 per share on March 12, 2018  
Based on a sales price of \$32.11 per share on April 4, 2018  
Based on a sales price of \$32.03 per share on April 4, 2018  
Based on a sales price of \$32.81 per share on April 9, 2018  
Based on a sales price of \$33.01 per share on April 10, 2018

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Based on a sales price of \$33.10 per share on April 12, 2018

Based on a sales price of \$33.18 per share on April 16, 2018

Based on a sales price of \$33.60 per share on April 18, 2018

Based on a sales price of \$33.54 per share on May 7, 2018

Based on a sales price of \$34.23 per share on May 10, 2018

## Non-Qualified Deferred Compensation

Provides information regarding contributions, earnings and balances for our NEOs under our U.S. Deferred Compensation Plan, which w

1,646	(11,880	)
2,292	17,842	

Mr. Saligram, Ms. Driscoll, Mr. Jeter and Mr. Werner did not p

Amounts are reflected in the Summ

Program. Effective September 2016, the U.S. 10-10 Program was no longer offered to newly hired or promoted executives in the comp  
United States are able to defer compensation (a portion of base salary and/or bonuses) into the U.S. Deferred Compensation Plan in 20

ion and retirement benefits for a select group of executives. Through the program participating executives were able to elect to defer rec



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-based bonus, and 100% of their service bonus or any combination of the foregoing in accordance with the terms of the plan, if they submit a written election, which specifies the time at which a participant's deferred compensation account will be distributed and the qualifying distribution event(s). The payments will be made in accordance with the election(s) selected by the participant and commence as soon as practicable (but no more than 60 days after) the distribution date elected or for the qualifying event(s). Payments may be made: (i) as previously elected by the participant, either immediately in a lump sum, or in annual installments up to fifteen years following the distribution date; (ii) as previously elected by the participant for education expenses in a specified year while still employed, and (v) if specifically elected by the participant, in a specified year following the distribution date. Participants are always fully vested in their deferrals under the U.S. Deferred Compensation Plan. Upon termination of the U.S. Deferred Compensation Plan, the participant may elect to receive the account balance immediately in a lump sum.

## **Executive Employment Agreements**

The Company has entered into employment agreements with each of the NEOs. The employment agreements continue for an indefinite term period of time until terminated in accordance with the terms of the agreement.

## **Compensation and benefits**

The compensation of the NEOs is based on a percentage of base salary. In addition, the NEOs may participate in the Company's other long-term plans, including the U.S. Deferred Compensation Plan. For more information, see "2018 Compensation for NEOs" on page 61. The NEOs are eligible to participate in the Company's group benefit plans.

## **Confidentiality, non-solicitation and non-competition**

The Company's employment agreements with the NEOs contain provisions related to confidentiality, non-solicitation and non-competition. Each NEO, with the exception of Mr. Saligram and Ms. Driscoll, is subject to provisions prohibiting competition with the Company during the term of his or her employment agreement and for a period following termination of his employment and for either (i) the greater of 12 months or the period for which base salary is paid following his termination by the Company, or (ii) the period for which base salary is paid following his termination by the Company.



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incentive bonus based at target, plus an additional one month's base salary and 12% of the short-term incentive bonus based at target per  
a pro rata short-term incentive bonus for the year of termination, up to and including the  
exercise such options, subject to the terms of the Company's Stock Option Plan and the IronPlanet 1999 Stock Plan and 2015 Stock Plan and  
continuation of PSUs and RSUs awarded, in accordance with applicable PSU and RSU grant agreements and the terms and conditions of  
health and dental benefits coverage under existing cost sharing arrangements (or the cash equivalent) for up to one year after termination  
the employments with the Company for good reason, as defined in the employment agreements, and, in the event of good reason, will  
Saligram may terminate their employments for good reason by delivery of written notice, including the basis for such good reason, to the  
event the Company fails or is unable to cure such good reason within that period.

**Resignation**

to the Company to that effect, except with respect to Mr. Jeter, who may resign by providing one month's written notice to the Company  
such NEO's employment will terminate on the earlier date specified by the Company without any further compensation. The employee  
date and such NEO will have 90 days from such date to exercise any vested stock options. Under the Company's Stock Option Plan, un  
ment in accordance with the normal retirement policy of the Company (or its affiliates), RSUs and PSUs that had not vested prior to the

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## Retirement

de that in the event of retirement, which, for such purpose, means retirement in accordance with the normal retirement policy of the Co

the Company will pay a pro-rated short-term incentive bonus, at target, for the year of termination, up to and including th  
unvested stock options will continue to vest according to their initial grant schedules and will remain exercisable up to the earlier of the

RSUs and PSUs will continue to vest and be paid in accordance v

Notwithstanding the foregoing, Mr. Saligram will not be entitled to exercise or receive any retirement-related benefits or rights if he re

## Change of control

l arrangements are necessary to attract and retain the talent necessary for the Company's long-term success. The Company has entered

For purposes of the Change of Control Agreements, a change of control means:

the acquisition or accumulation of beneficial ownership of more than 50% of the Company's voting s  
, or a group of persons acting jointly or in concert, holding at least 25% of the Company's voting shares and being able to change the c  
liquidation or other disposition of all or substantially all of the assets of the Company, over a period of one year or less, in any manner wha  
consolidation or sale or other disposition of substantially all the assets of the Company, unless the Company beneficially owns all or subst  
change of control and either (i) termination by the Company without cause or within two years following a change of control; or (ii)

NEO will be entitled to a lump-sum cash amount equal to the aggregate of:

target plus pro rata target bonus for year of termination, and two times the annual premium cost that would be incurred by the Company to  
at target plus *pro rata* target bonus for year of termination and two times the annual premium cost that would be incurred by the Comp

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times the short-term incentive bonus at target plus pro rata target bonus for year of termination, and one and one-half times the annual p

Each of the NEOs is entitled, following a double-trigger event, to:

accelerated vesting  
immediate vesting of all unvested stock  
y accelerated vesting of annual long-term incentive awards upon a change of control, as defined in the Change of Control Agreements,  
agreements.

that no such payments will be made unless the NEO signs within 60 days and does not revoke a full and general release of any and all c

## **Indemnity agreements**

suant to which the Company agrees to indemnify each NEO in connection with claims or proceedings involving the officer (by reason

## **Terminations**

6, 2018. His termination pay and benefits are based on his employment agreement, which is 1.5 times his base salary and 1.5 times his  
k options were exercisable for 90 days from March 1, 2018. Mr. Barr's PSUs will continue to vest and be releasable in accordance with

## **Potential Payments Upon Termination or Change in Control**

fit plans and contractual agreements to which the NEOs would have been entitled if a termination of employment or change in control o  
ried employees upon termination of employment and do not discriminate in scope, terms or operation in favor of the NEOs or include d  
previously earned and unpaid salary, vacation pay and short- and long-term incentive awards.

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2,000,000

2,000,000

1,497,940

18,400

**5,516,340**

671,292

503,469

162,324

18,186

**1,355,271**

615,000

369,000

139,076

26,086

**1,149,162**

596,250

357,750

136,904

26,086

**1,116,990**

600,000  
300,000  
146,561  
16,827  
**1,063,388**

Represents the occurrence of a double-trigger event  
Represents cash payments of the short-term incentive plan  
Represents cash payments of the short-term incentive plan

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Includes cash payments for accelerated vesting of RSUs and PSUs upon a double-trigger event. Amounts are calculated based on

Ms. Driscoll is paid in Canadian dollars. Amounts reported are converted based on the average Canadian dollar exchange rate as of December 31, 2018.

exercise price of the stock option from the closing share price on the NYSE of \$32.72 as of December 31, 2018 and multiplying the result by the number of shares.

The value of the PSUs assumes achieving target performance levels and is based on the closing share price of the Company on December 31, 2018.

Mr. Barr ceased to be employed by the Company on February 16, 2018. See Terminations on page 168.

**Equity Compensation Plan Information as of December 31, 2018**

The following table sets forth information about the Company's equity compensation plans as of December 31, 2018.

4,892,137	(1)	\$	26.41
<b>4,892,137</b>		<b>\$</b>	<b>26.41</b>

(1) Includes cash payments for accelerated vesting of RSUs and PSUs upon a double-trigger event. This amount reflects 100% of target numbers of PSUs granted and includes dividends paid on shares of our share price in comparison to the performance of a pre-determined portfolio of other companies' share prices. The non-market vesting condition for the SOG PSUs is based on the relative performance of our share price and can result in a number of shares. The SOG PSUs are subject to service and market vesting conditions based on the relative performance of our share price and can result in a number of shares.

Weighted average exercise price does not include the effect of our outstanding shares that are not available for issuance under the IronPlanet Stock Plans; (c) 197,962 common shares that we may elect to issue upon settlement of our PSUs.



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**Burn Rate**

The following table sets forth the burn rate of the Company's equity compensation plans as at December 31, 20

1.20	%	970,947	0.9
		81,533	0.1
0.20	%	136,073	0.1
		737,358	0.6
<b>1.40</b>	<b>%</b>	<b>1,925,911</b>	<b>1.8</b>
<b>106,630,323</b>			<b>10</b>

rate for each plan is calculated by dividing the number of shares or units granted under the plan during the applicable fiscal year by the  
 Represents SOG PSUs reclassified from  
 Includes 257,934 grants reclassified from

3,601,694  
 412,169  
 28,219  
 642,069  
 207,986  
**4,892,137**

for each plan is calculated by dividing the number of shares available for issuance and outstanding under each respective plan on a per

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# Ownership of Certain Beneficial Owners and Management and Related Matters

The following table sets forth certain information regarding the beneficial ownership of our common shares as of March 1, 2014.

The following table shows the beneficial ownership of our common shares by all of our executive officers, directors, and each person who is known by us to beneficially own more than 5% of our common shares. Each individual has or shares voting and/or investment power as well as shares that may be acquired within 60 days (such as by exercising vested options) that are outstanding for the purpose of computing the percentage ownership of such individual or group, but are not deemed to be outstanding if the individual does not have sole voting and investment power with respect to all common shares shown as beneficially owned by them. Except as otherwise indicated, the beneficial owners are the sole owners of the shares.

1,098,988

140,507

51,179

75,875

120,856

22,288

7,121

6,856

1,729,230

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11,089,983

7,804,800

8,718,774

6,245,544

6,766,250

\*

As of March 13, 2019, there were 100,000,000 common shares and 968,978 stock options outstanding.  
 Represents 130,010 common shares and 968,978 stock options.  
 Represents 19,992 common shares and 120,515 stock options.  
 Represents 776 common shares and 50,403 stock options.  
 Represents 37,546 common shares and 38,329 stock options.  
 Represents 15,621 common shares and 105,235 stock options.  
 Mr. Barr ceased to be employed by the Company on February 16, 2018. Mr. Barr exercised 22,288 stock options.  
 Represents 22,288 common shares.  
 Represents 7,121 common shares.  
 Represents 6,856 common shares.

As of December 31, 2018, Baillie Gifford & Co. represents 265,243 common shares and 1,463,987 stock options.  
 Baillie Gifford & Co.'s Schedule 13G/A as of December 31, 2018, Baillie Gifford & Co. had sole voting power with respect to 8,718,774 common shares.  
 As reported on Caisse de dépôt et placement du Québec's Schedule 13G/A as of December 31, 2016, Caisse de dépôt et placement du Québec had sole voting power with respect to 7,804,800 common shares.  
 As reported on Massachusetts Financial Services Company's Schedule 13G as of December 31, 2018, Massachusetts Financial Services Company had sole voting power with respect to 6,245,544 common shares.  
 As reported on Janus Henderson Group PLC's Schedule 13G as of December 31, 2018, Janus Henderson Group PLC had sole voting power with respect to 6,766,250 common shares.

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ment Partners, LLC's Schedule 13G as of December 31, 2018, Champlain Investment Partners, LLC had sole voting power with respect to the securities of SunPower Corporation. In the absence of any other arrangements, including any pledge by any person of our securities, the operation of which may at a subsequent date result in a change of control of SunPower Corporation.

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Proposal Four: Approval of Amendment No. 1 to the Amended and Restated Stock Option Plan

**Overview**

on approving an amendment to our Amended and Restated Stock Option Plan that increases the number of common shares reserved for

Our Board approved this amendment on February 27, 2019, based on the recommendation of the Compensation Committee, subject to

was amended and restated in both 2007 and 2016. The Board considers stock options to be an important element of the Company's compensation strategy, including stock ownership and increasing the proprietary interest of eligible persons in the success of the Company and assisting the Company

Amended and Restated Stock Option Plan is desirable in order to permit the Company to continue to accomplish the purpose of our Amended

Amended and Restated Stock Option Plan, before giving effect to the amendment, is 13,700,000 common shares of which, as of March 13, 2019, 2,110,642 common shares (approximately 1.9% of the Company's total issued and outstanding shares). As a result, as of March 13, 2019, 2,110,642 common shares (approximately 1.9% of

Restated Stock Option Plan from and after the date of the Meeting will be 18,900,000 common shares (approximately 17.3% of the Company's total issued and outstanding shares) as of March 13, 2019 and prior to the date of the resolution in respect of the proposed amendment being approved by

under our Amended and Restated Stock Option Plan. If the amendment is approved by shareholders, the Board intends to cause the additional common shares to be issued and the Statement on Form S-8 to be filed with the SEC at the Company's expense prior to the issuance of any such additional common shares.

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## Summary of the Stock Option Plan

### Overview

proposed amendment. The following does not purport to be a complete description of our Amended and Restated Stock Option Plan and its operation under our Amended and Restated Stock Option Plan. The following should be read in conjunction with the discussion of our Stock Option Plan.

### Administration

The Compensation Committee (or in the case of any proposed option grant to a member of the Compensation Committee, the Board of Directors) may grant options to non-employee directors within the meaning of Rule 16b-3 and outside directors within the meaning of Section 162(m) of the Code.

### Types of stock options

The Company has two types of stock options: (1) Incentive Stock Options (ISOs) intended to meet all the requirements of an Incentive Stock Option as defined in Section 422 of the Code; and nonqualified stock options (NQSOs) which do not qualify for the special tax benefits to United States taxpayers if the shares acquired upon exercise of the option are held for the time periods required by the Code. S

### Number of shares and exercise price

The number of shares and the exercise price of each option shall be determined, by reference to the fair market price(s) of common shares on the primary Stock Exchange for which most trading of the common shares takes place at the time of exercise of each option and the price per share at which such option is exercisable are set forth in the Option Agreement.

### Eligibility

Options may be granted to any individual employed by a person providing management services to the Company or to any other person as determined and selected by the Compensation Committee.

### Section 162(m) limitation for options

The maximum number of shares of common stock that may be granted under the Plan in any one year shall not exceed 500,000 common shares (approximately 0.5% of the Company's total issued and outstanding shares as of the end of the year).

### Vesting

Options granted under the Plan are subject to vesting conditions imposed by the Compensation Committee as set out in the relevant option agreements. The options granted under the Plan are subject to vesting conditions imposed by the Compensation Committee as set out in the relevant option agreements. The options granted under the Plan are subject to vesting conditions imposed by the Compensation Committee as set out in the relevant option agreements.

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any will achieve the purpose and receive the benefits contemplated in the Amended and Restated Stock Option Plan, the Compensation

## **Grant date and expiration of options**

Committee adopted the granting resolution, or such later date provided in such resolution designated as the grant date. Each option will anniversary falls within, or within five business days after, the end of a blackout period, in which case the relevant date will be extended. Options providing services to the Company remain exercisable after the termination of employment with or provision of services to the Company. Options will remain exercisable by such deceased optionee's legal representative for 180 days following the optionee's death, but in no event for reasons other than death, except that, in the case of termination of employment due to total disability, such option must be exercised

## **Exercise of options**

in part in accordance with its terms. The Compensation Committee may in its discretion incorporate into any option agreement terms which the Committee determines to permit the optionholder to exercise the option in respect of such shares; provided, that, after giving effect to the proposed change of control, only accelerate the vesting of any unvested options as discussed under "Effect of Proposed Change of Control." The exercise price will be paid in full upon such exercise by payment in cash or by check. The Compensation Committee may also permit payment of the exercise price

Stock Option Plan are personal to the optionee and are exercisable solely by the optionee or, in the event the optionee becomes incapable

## **Termination of employment**

es to be employed by or to provide services to the Company or one of its subsidiaries are determined by the Compensation Committee and

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**Transferability**

able laws of descent and distribution. During the optionee's lifetime, an option may be exercised only by the optionee (or, in the event

Plan also contains certain provisions that may restrict the transferability of any common shares acquired on the exercise of any option

**Effect of stock splits and distributions of securities**

stock dividend, stock split or similar change in our common shares, the number and price per share of common shares covered by unexerc

curities to all or substantially all the holders of our common shares, the number and price per share of shares covered by unexercised opti

**Effect of mergers, amalgamations, arrangements and similar transa**

n, arrangement or other form of corporate reorganization or combination of the Company with another corporation, or a sale, lease or ex  
upon exercise of an option, the kind and amount of shares or other securities or assets that one common share is exchanged for, reorgan

as necessary or equitable in its sole discretion, determine in the event of a proposed change of control that the vesting of any option g

e Company or its subsidiaries, other than for cause, upon the proposed change of control or within two years following the change of

as required by the terms of any agreement between the Company and any optionholder dated on or prior to Feb

Change of control means:

sh Columbia)), whether directly or indirectly, of voting securities of the Company that, together with all other voting securities of the C  
the holders of voting securities of that other corporation holding, in the aggregate, more than 50% of all outstanding voting securities o



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the sale, lease or exchange of all or substantially all of the property of the Company to another person, other than in  
between the Company or a subsidiary and any optionholder, unless otherwise defined in the applicable option agreement in respect of any Op  
lawful policies, procedures, instructions or directions of the Company or any applicable subsidiary (other than any such failure resulting  
which is materially injurious to the Company or a subsidiary, or which may have the effect of materially injuring the reputation, business or  
of an optionholder will be considered willful unless done, or omitted to be done, by the optionholder in bad faith and without reason

Company or a subsidiary to an optionholder's position, authority, duties, responsibilities or compensation, excluding an isolated or inadve

## **Shares subject to our Amended and Restated Stock Option Plan**

Restated Stock Option Plan, subject to adjustment from time to time as provided in our Amended and Restated Stock Option Plan, is 1  
d Stock Option Plan. The number of common shares issuable to insiders at anytime and issued to insiders in any one-year period pu  
outstanding common shares.

## **Termination**

r terminate the Amended and Restated Stock Option Plan without approval of optionees or shareholders (provided that no such suspens  
consent of such optionee), including, without limitation:

to avoid any additional tax on optionees under Section 409A

to change the eligibility for and limitations on participation in the Amended and Restated Stock Option Plan (other than participati  
in addition to, deletion from or alteration of the provisions of the Amended and Restated Stock Option Plan that are necessary to comply

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amendment of a typographical, grammatical, administrative or clerical nature, or clarification correcting or rectifying any ambiguity, definition of the options, including (i) changing or adding any form of financial assistance provided by the Company to the participants that will be used for the Amended and Restated Stock Option Plan for issuance).

**Amendments to the Amended and Restated Stock Option Plan**

The following amendments to our Amended and Restated Stock Option Plan can only be made with shareholder approval:

any increase in the maximum number of common shares that may be issued pursuant to the exercise of options, or any reduction in exercise price or vesting schedule;

any amendment that extends the term of the Amended and Restated Stock Option Plan;

any amendment that increases limits previously imposed on the number of options that may be issued;

any amendment that would permit equity-based awards granted under the Amended and Restated Stock Option Plan to be exercisable over a longer period or issuable to insiders of the Company at any time under the Amended and Restated Stock Option Plan, or when combined with any other amendment;

any amendment to change the maximum limit on the number of options that may be issued that does not provide for a full deduction of the underlying common shares from the Company's taxable income upon exercise (other than a surrender of options for cash) that does not provide for a full deduction of the underlying common shares from the Company's taxable income upon exercise;

any amendment to the amending provisions of the Amended and Restated Stock Option Plan.

**United States Federal Income Tax Consequences**

*Amended and Restated Stock Option Plan who are either residents of the United States, as defined in the Code and the Canada-United States Income Tax Treaty, are provided merely to provide basic information with respect to the United States federal income tax consequences of the receipt, holding and exercise of the options.*

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*nces, reduce the United States federal income tax liability of a U.S. Participant, and U.S. Participants should consult with their own tax advisor regarding the federal income tax under complex provisions of the Code and the Convention, and such individuals should consult with their own tax advisor regarding the federal income tax under complex provisions of the Code and the Convention. However, the Company cannot guarantee that options will be treated as ISOs (or as different tax treatment would result, the participant could be subject to adverse tax consequences, and the Company cannot*

**Option grants**

Under present law and regulations, it is expected that no income will be recognized by an optionee upon the grant or vesting of an option.

**Exercise of nonqualified stock options**

Upon exercise of a nonqualified stock option, the optionee will recognize ordinary income equal to the fair market value of the shares acquired over the exercise price. Upon a later sale of those shares, the optionee will have gain or loss in an amount equal to the difference between the amount realized on the sale and the tax basis of the shares. If the common stock is held for more than 12 months. If payment of the exercise price is made entirely in cash, the tax basis of the shares will be the exercise price paid after the exercise date.

These rules also apply to an ISO that is exercised more than three months after the optionee's termination of employment (or more than 12 months after the date of the optionee's death).

**Exercise of Incentive Stock Options**

For exercise of an Incentive Stock Option (ISO), the optionee will recognize no income upon exercise. If the shares are sold within one year of exercise or within two years of the optionee's termination of employment (or more than 12 months after the date of the optionee's death), the difference between the amount realized by the optionee on that sale or exchange and the exercise price will be taxed as ordinary income. If the shares are sold after the one-year period and after the two-year period, the difference between (i) the amount realized by the optionee upon that disposition of the shares and (ii) the exercise price increased by the amount of the option will be taxed as long-term capital gain.

**United States tax withholding**

The Company may require an optionee who is subject to United States taxation to pay to the Company any applicable United States withholding tax with respect to the exercise of an option.

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optionee to satisfy such obligations in some other manner. The Company may withhold from any common shares issuable pursuant to a

## **Income tax deduction**

recognizes ordinary income, to the extent such amount satisfies the rules concerning deductibility of compensation, including Section 162, of the Company for United States federal income tax purposes with respect to compensation paid to certain officers of the

## **Special rules for executive officers subject to Section 16 of the Exchange Act**

exempt from Section 16(b) (*i.e.*, the short-swing profit provision) within six months prior to the exercise of the option, in certain circumstances, if the option is exercised on the date six months after the non-exempt acquisition of shares outside the Amended and Restated Stock Option Plan, and the shares are received pursuant to the exercise of the option, without regard to Section 16(b) restrictions, by filing a time

### **General**

*and should not be relied upon as a complete statement of such laws and regulations. It does not address all possible tax aspects of transactions, circumstances particular to certain individuals may change the usual income tax results. State and local income taxes may also be applicable in addition to or in lieu of United States federal income taxes. For the foregoing reasons, it is important that a participant consult a*

## **New Plan Benefits**

Committee, are made at the discretion of the Compensation Committee. Accordingly, the benefits and amounts that will be received on

## **Shareholder Approval and Board Recommendation**

the following ordinary resolution approving the amendment and restatement of our Amended and Restated Stock Option Plan that increases

BE IT RESOLVED THAT:

The amendment to the amended and restated

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ption Plan ), be and is hereby approved in the form set forth on Appendix A to the Proxy Statement to increase the maximum number of  
do or to cause to be done all such acts and things as in such person's opinion may be necessary or desirable in order to carry out the intent  
, list the increase in the number of shares as necessary, and executing and delivering such other documents as may be necessary or desirable.  
The Board recommends that shareholders vote **FOR** the amendment and restatement of our Amended and Restated Stock

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Proposal Five: Approval of Amendment No. 2 to the Executive PSU Plan

## Overview

PSU Plan in 2018, including an amendment which did not require shareholder approval to provide that the amounts payable pursuant to the PSU Plan shall be paid within the month in which the PSUs vested.

which an aggregate maximum of 2,300,000 of our common shares will be available for issuance or delivery under the PSU Plans collectively, and the total number of shares available under the PSU Plans, collectively.

Our Board approved this amendment on February 27, 2019, based on the recommendation of the Compensation Committee, subject to the issuance of additional common shares during an applicable performance period based upon the performance of the Company against certain criteria during the applicable performance period under the PSU Plans and 500,000 common shares deliverable pursuant to open market purchases under such plans. If the amendment is approved, the Company will be required to file a registration statement with the SEC at the Company's expense prior to the issuance or delivery of any such additional common shares. The closing date of the registration statement will be the date of the Company's next public offering of common shares.

## Summary of the Executive Performance Share Unit Plan

The description of the Executive PSU Plan and is qualified in its entirety by reference to the full text of the Executive PSU Plan, and the description of the Executive PSU Plan is contained under the PSU Plans under Executive Compensation Tables Performance Share Unit Plans on page 89, including the description of the Executive PSU Plan.

## Eligibility

Participants, following vesting of the PSUs, to payment either in the form of common shares or cash to any person designated by the Board of Directors.

## Number of authorized shares

The total number of shares available under the Executive PSU Plan and the Employee PSU Plan is 2,300,000 common shares (representing approximately 2.1% of the issued and outstanding common shares of the Company) to open market purchases under the plan.

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**Administration**

Unless otherwise determined by the Board, the Executive PSU Plan will be administered by the Compensation Com

**Type of award**

Compensation Committee, following vesting, entitle the recipient to: (i) a specified amount of cash, net of all applicable withholding ta  
d that this method of settlement is not available for any officer or director subject to Section 16 of the Exchange Act. The payment to be  
sting. Where the payment, net of applicable withholding taxes, is to be applied to the issuance of common shares, the common shares to  
ormation, or the ability to trade in securities of the Company may be restricted under any insider or securities trading policy, in the fair r  
t the Compensation Committee has elected to satisfy, through open market purchases of common shares, the calculation of the amount  
aterial information and no person was restricted from trading in securities. Each award or grant of PSUs will be evidenced by a written

The number of such additional PSUs will be calculated by dividing the dividend that would have been paid to the participant if the part  
the date on which the dividend is paid, with fractional PSUs calculated and rounded to two decimal places.

The Executive PSU Plan does not contemplate any financial assistance being provided to participants.

**Terms of PSU grants**

Us granted to a participant will vest at the time and in the manner determined by the Board or the Compensation Committee at the time

ciaries entitled to receive benefits under the Executive PSU Plan following the death of the participant, PSUs are not assignable or trans

ordance with the Executive PSU Plan will be cancelled as of the date of the failure to vest. Upon failure to vest, the participant will hav

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**Adjustment of common shares subject to the Executive PSU P**

version of the Company's common shares, or any combination or exchange of securities, merger, consolidation, recapitalization, amalgamation or other corporate reorganization, the Company shall adjust the number of shares subject to participants' rights under the Executive PSU Plan, then, subject to any relevant resolutions of the Board, the Compensation Committee or the

**Limitations with respect to grants**

and the Employee PSU Plan, the number of common shares issuable to insiders pursuant to the plan and any of the Company's other securities compensation arrangements (including the Employee PSU Plan) may not exceed 10% of the Company's issued and outstanding common shares, excluding shares held by directors, officers, significant shareholders, associates and affiliates. The plan does not provide for a maximum number of shares that may be issued or delivered

**Cessation**

Unless the Board or Compensation Committee otherwise determines, in the event of termination of a participant's employment by the Company, the participant shall be entitled to receive payment in respect of PSUs recorded in the participant's account as at the last day of active employment that subject to the following: (i) for cause, unvested PSUs shall vest as a result of voluntary resignation by the participant (other than retirement); (ii) if the participant is a retiree (when the participant is at least 55 years old), the participant will be entitled to receive payment in respect of PSUs recorded in the participant's account as at the date of death of the participant; (iii) if the participant dies, the participant will be entitled to receive payment in respect of PSUs recorded in the participant's account as at the date of death that

**Consequences of a change of control**

other than for cause, upon a change of control or within two years following a change of control or (ii) by the participant for good cause. Upon termination of a participant's employment, all vested PSUs shall vest, and the participant will be entitled to receive a cash payment in respect of all vested PSUs, net of all applicable taxes.



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the Executive PSU Plan, a change of control, unless otherwise defined in the applicable grant agreement or grant letter, means the occurrence of any of the following events:

a person or group of persons acting jointly or in concert, acquiring or accumulating beneficial ownership of the Company's common shares and being able to change the composition of the board of directors, holding or beneficially owning at least 25% of the Company's common shares and being able to change the composition of the board of directors, or the arm's length sale, transfer, liquidation or other disposition of all or substantially all of the assets of the Company.

**Amendment and termination of the plan**

terminate the Executive PSU Plan without the consent or approval of any participant and, except as described below, without the consent of the participant to have the amount of the award credited to such participant's PSU account without the consent of the participant. Upon shareholder approval of the Executive PSU Plan, the Company may:

- reduce the issue or purchase price of any PSU held under the plan;
- extend the term of any PSU held under the plan where the PSUs entitle or potentially entitle the holder to receive awards;
- amend or remove the limits on the amount of awards that may be granted under the plan;
- increase the maximum number of awards that may be granted under the plan;
- permit non-employee directors to participate in the plan and be entitled or potentially entitled to awards;
- permit assignment or transfer of rights or interests under the plan to be entitled or potentially entitled to awards;
- amend the provisions specifying which awards are subject to the plan;
- amend other matters that require shareholder approval under the rules or policies of any stock exchange.

**New Plan Benefits**

benefits and amounts that will be payable under the plan, are made at the discretion of the Compensation Committee. Accordingly, the benefits and amounts that will be payable under the plan, are made at the discretion of the Compensation Committee.

**Shareholder Approval and Board Recommendation**

Shareholders will be asked to consider and, if deemed advisable, pass the following ordinary resolution ratifying, confirming and approving the plan as amended and restated as of August 27, 2019, as described in the Proxy Statement and in the form set forth on Appendix B thereto, including to increase the maximum number of awards that may be granted under the plan to 1,000,000.

RESOLVED, as an ordinary resolution, that:

the plan as amended and restated as of August 27, 2019, as described in the Proxy Statement and in the form set forth on Appendix B thereto, including to increase the maximum number of awards that may be granted under the plan to 1,000,000.

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Any director or officer of the Company is authorized to take such actions as such director or officer may determine are in the best interests of the Company. The Board recommends a vote **FOR** the ordinary resolution ratifying, confirming and approving the amendment to the Ex

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Proposal Six: Approval of Amendment No. 2 to the Employee PSU Plan

**Overview**

PSU Plan in 2018, including an amendment which did not require shareholder approval to provide that the amounts payable pursuant to the PSU Plans will be paid in the month in which the PSUs vested.

which an aggregate maximum of 2,300,000 of our common shares will be available for issuance or delivery under the PSU Plans collectively, and 500,000 common shares under the PSU Plans, collectively.

Our Board approved this amendment on February 27, 2019, based on the recommendation of the Compensation Committee, subject to the terms and conditions set forth in the amendment.

our common shares during an applicable performance period based upon the performance of the Company against certain criteria during the applicable performance period.

under the PSU Plans and 500,000 common shares deliverable pursuant to open market purchases under such plans. If the amendment is approved, the Company will file Form S-8 to be filed with the SEC at the Company's expense prior to the issuance of any such additional common shares. The closing price of the Company's common shares as of February 27, 2019, was \$14.50 per share.

**Summary of the Employee PSU Plan**

Approval of Amendment No. 2 to the Executive PSU Plan Summary of the Executive RSU Plan on page 116, except the Employee PSU Plan, which is set forth in Appendix C to this Proxy Statement, by reference to the full text of the Employee PSU Plan, including the proposed amendment thereto set forth on Appendix C to this Proxy Statement.

**New Plan Benefits**

The benefits and amounts payable under the new plans, which are made at the discretion of the Compensation Committee. Accordingly, the benefits and amounts that will be payable under the new plans will be determined by the Compensation Committee.

**Shareholder Approval and Board Recommendation**

Shareholders will be asked to consider and, if deemed advisable, pass the following ordinary resolution ratifying, confirming and approving the proposed amendment to the Employee PSU Plan.

RESOLVED, as an ordinary resolution, that:

the proposed amendment to the Employee PSU Plan of the Company adopted by the Board of Directors of the Company on February 27, 2019, as described in the Proxy Statement.

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common shares available for issuance under the PSU Plans by 1,300,000 common shares such that the Company can issue or deliv

Any director or officer of the Company is authorized to take such actions as such director or officer may determine are n

The Board recommends a vote **FOR** the ordinary resolution ratifying, confirming and approving the amendment to the En

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Proposal Seven: Approval of Amendment No. 1 to the Executive RSU Plan

## **Overview**

On November 8, 2017 (the Effective Date ), the Board approved and adopted the Executive RSU Plan and the Employment Agreement, which an aggregate maximum of 800,000 of our common shares will be available for issuance or delivery under the RSU Plans collectively, and the Plans, collectively.

Our Board approved this amendment on February 27, 2019, based on the recommendation of the Compensation Committee, subject to the terms and conditions of the Plan, which entitles eligible employees to earn a cash payment or a specified number of our common shares following an applicable vesting period based on the terms of the Plan. No awards other than RSUs will be available for issuance or delivery under the RSU Plans or deliverable pursuant to open market purchases under such plans. If the amendment is approved by shareholders, the Company will incur the expense of the amendment with the SEC at the Company's expense prior to the issuance or delivery of any such additional common shares. The closing price for the common shares of the Company on the date of the amendment is \$10.00 per share.

## **Summary of the Executive RSU Plan**

This summary does not purport to be a complete description of the Executive RSU Plan and is qualified in its entirety by reference to the full text of the Executive RSU Plan.

## **RSUs**

Under the Executive RSU Plan, the recipient is entitled to a payment following vesting of the RSU. No awards other than RSUs will be available for issuance or delivery under the Executive RSU Plan.

## **Eligibility**

Employees of the Company, following vesting of the RSUs, to payment either in the form of common shares of the Company or cash to any person designated by the Company.

## **Number of authorized shares**

The total number of common shares that may be issued or delivered pursuant to open market purchases under the RSU Plans is 800,000 common shares, representing 10% of the total number of common shares of the Company.

## **Administration**

Unless otherwise determined by the Board, the Executive RSU Plan will be administered by the Compensation Committee.

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**Type of award**

Compensation Committee, following vesting, entitle the recipient to: (i) a specified amount of cash, net of all applicable withholding taxes, on behalf of participants; provided that this method of settlement is not available for any officer or director subject to Section 16 of the Exchange Act, net of applicable withholding taxes, is to be applied to the issuance of common shares of the Company, the common shares of the Company on the date of vesting. The foregoing is subject to provisions of the Executive RSU Plan which may result, if the participant or the Company determine that it is being determined as at a subsequent date where that is no longer the case. Each award or grant of RSUs will be evidenced by a written award agreement.

The number of such additional RSUs will be calculated by dividing the dividend that would have been paid to the participant if the participant had owned one common share of the Company on the date on which the dividend is paid, with fractional RSUs calculated and rounded to two decimal places.

The Executive RSU Plan does not contemplate any financial assistance being provided to participants.

**Terms of RSU grants**

RSUs granted to a participant will vest at the time and in the manner determined by the Board or the Compensation Committee at the time of the grant.

Beneficiaries entitled to receive benefits under the Executive RSU Plan following the death of the participant, RSUs are not assignable or transferable.

Any award under the Executive RSU Plan will be cancelled as of the date of the failure to vest. Upon failure to vest, the participant will have no claim against the Company.

**Adjustment of common shares subject to the Executive RSU Plan**

In the event of a reorganization of the Company's common shares, or any combination or exchange of securities, merger, consolidation, recapitalization, amalgamation, or other corporate transaction, the rights under the Executive RSU Plan, then, subject to any relevant resolutions of the Board, the Compensation Committee will be adjusted to reflect the change.

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## Limitations with respect to grants

ant to open market purchases under the Executive RSU Plan, the number of common shares of the Company issuable to insiders pursuant to the Executive RSU Plan within any one year period under the Executive RSU Plan and any of the Company's other securities compensation arrangements (including the Executive RSU Plan) and includes directors and certain officers of the Company, significant shareholders, associates and affiliates. The Executive RSU Plan shall not apply to any individual pursuant to the Executive RSU Plan or any other share compensation arrangement (expressed as a percentage of the Company's common shares).

## Cessation

Unless the Board or Compensation Committee otherwise determines, in the event of termination of a participant's employment by the Company, the participant shall be entitled to receive payment in respect of RSUs recorded in the participant's account as at the last day of active employment that such participant was employed for cause, unvested RSUs will be forfeited. If a participant terminates employment as a result of voluntary resignation by the participant (other than retirement), the participant will be entitled to receive payment in respect of RSUs recorded in the participant's account as at the date of death of the participant will be entitled to receive payment in respect of RSUs recorded in the participant's account as at the date of death that such participant was employed.

## Consequences of a change of control

RSUs shall vest, other than for cause, upon a change of control or within two years following a change of control or (ii) by the participant for good cause. Upon the date of termination shall vest, and the participant will be entitled to receive a cash payment in respect of all vested RSUs, net of all applicable taxes. For purposes of the Executive RSU Plan, a change of control, unless otherwise defined in the applicable grant agreement or grant letter, means the occurrence of any of the following:

(i) the acquisition of beneficial ownership in concert, holding or beneficially owning at least 25% of the Company's common shares and being able to change the composition of the Board of Directors; or (ii) the arm's length sale, transfer, liquidation or other disposition of all or substantially all of the assets of the Company.

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Participants in the Executive RSU Plan are generally limited to those employees at the Senior Vice President level or

## **Amendment and termination of the Senior Executive RSU Plan**

terminate the Executive RSU Plan without the consent or approval of any participant and, except as described below, without the consent of the participant to terminate the Executive RSU Plan without the consent of the participant. Upon shareholder approval of the Executive RSU Plan

- reduce the issue or purchase price of common shares of the Company
- extend the term of any RSU held under the Executive RSU Plan where the RSUs entitle or potentially entitle the holder to receive common shares of the Company
- amend or remove the limits on the amount of grants to be made under the Executive RSU Plan
- increase the maximum number of common shares of the Company that may be issued under the Executive RSU Plan
- permit non-employee directors to participate in the plan and be entitled or potentially entitled to be issued common shares of the Company
- permit assignment or transfer of rights or interests under the plan to be entitled or potentially entitled to be issued common shares of the Company
- amend the provisions specifying which amendments require shareholder approval
- amend other matters that require shareholder approval under the rules or policies of any stock exchange on which the Company's common shares are listed

## **New Plan Benefits**

Compensation Committee, are made at the discretion of the Compensation Committee. Accordingly, the benefits and amounts that will be

## **Shareholder Approval and Board Recommendation**

Shareholders will be asked to consider and, if deemed advisable, pass the following ordinary resolution ratifying, confirming and approving

RESOLVED, as an ordinary resolution, that:

on May 27, 2019, as described in the Proxy Statement and in the form set forth on Appendix D thereto, including to increase the maximum number of common shares of the Company that may be issued under the Executive RSU Plan

Any director or officer of the Company is authorized to take such actions as such director or officer may determine are necessary to carry out the Board's recommendation. The Board recommends a vote **FOR** the ordinary resolution ratifying, confirming and approving the amendment to the Executive RSU Plan



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Proposal Eight: Approval of Amendment No. 1 to the Employee RSU Plan

## Overview

On November 8, 2017, the Board approved and adopted the Employee RSU Plan.

which an aggregate maximum of 800,000 of our common shares will be available for issuance or delivery under the RSU Plans collectively. Plans, collectively.

Our Board approved this amendment on February 27, 2019, based on the recommendation of the Compensation Committee, subject to the following conditions: (i) the award is not eligible to earn a cash payment or a specified number of our common shares following an applicable vesting period based. No awards will be made under the RSU Plans or deliverable pursuant to open market purchases under such plans. If the amendment is approved by shareholders, the Company will incur the expense of the amendment with the SEC at the Company's expense prior to the issuance or delivery of any such additional common shares. The closing price for the common shares of the Company on the date of the amendment shall be used to determine the number of shares to be delivered.

## Summary of the Employee RSU Plan

Approval of Amendment No. 1 to the Executive RSU Plan Summary of the Executive RSU Plan on page 123, except the Employee RSU Plan, is incorporated in its entirety by reference to the full text of the Employee RSU Plan.

## New Plan Benefits

The benefits and amounts that will be made by the Compensation Committee, are made at the discretion of the Compensation Committee. Accordingly, the benefits and amounts that will be made by the Compensation Committee, are made at the discretion of the Compensation Committee.

## Shareholder Approval and Board Recommendation

Shareholders will be asked to consider and, if deemed advisable, pass the following ordinary resolution ratifying, confirming and approving the amendment to the Employee RSU Plan:

RESOLVED, as an ordinary resolution, that:

the Board approve and adopt the amendment to the Employee RSU Plan, as described in the Proxy Statement and in the form set forth on Appendix E thereto, including to increase the maximum number of shares available for issuance or delivery under the Employee RSU Plan to 800,000, effective as of February 27, 2019.

Any director or officer of the Company is authorized to take such actions as such director or officer may determine are necessary to carry out the purposes of this resolution. The Board recommends a vote **FOR** the ordinary resolution ratifying, confirming and approving the amendment to the Employee RSU Plan.

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Proposal Nine: Confirmation and Approval of the Amended and Restated Shareholder Rights Plan

**Overview**

confirming and approving the amended and restated shareholder rights plan agreement (the Amended and Restated Rights Plan ) between the Company and its shareholders (the Prior Rights Plan ) (the 2007), (the Prior Rights Plan ). The Prior Rights Plan was approved by the Company's shareholders at the annual and special meeting of the Company. If the Amended and Restated Rights Plan is not ratified, confirmed and approved by shareholders at the Meeting, it will terminate and the Rights issued under the Prior Rights Plan will remain in effect.

The Amended and Restated Rights Plan has three main fundamental objectives:

- to provide the Board time to consider value-enhancing alternatives to a takeover bid;
- to ensure that shareholders of the Company are provided with adequate notice of a takeover bid;
- to give adequate time for shareholders to properly assess takeover bids in Canada. The Canadian Securities Administrators (the CSA ) adopted amendments to that framework in 2016 that, among other things, provide for a 15-day extension after the minimum tender requirement is met. Regarding the minimum bid period, a target issuer will have the ability to voluntarily extend the bid period in takeover bids or alternative change in control transactions.

Notwithstanding the amendments, not apply to exempt takeover bids, there continues to be a role for rights plans in protecting issuers and preventing the unequal treatment of shareholders.

The Amended and Restated Rights Plan is designed to ensure that all shareholders are treated equally under Canadian take-over bid rules, such as (i) purchases from a small group of shareholders under private agreements at a premium to the market price, (ii) purchases through lock-up agreements with existing shareholders, or (iv) through other transactions outside of Canada not subject to Canadian take-over bid rules), and requiring the bid to be made to all shareholders. The Amended and Restated Rights Plan is designed to ensure that all shareholders are treated equally by preventing a potential acquirer from entering into lock-up agreements with existing shareholders prior to launching a take-over bid, except for Permitted Bids (as defined in the Amended and Restated Rights Plan), the Amended and Restated Rights Plan is designed to ensure that all shareholders are treated equally.

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take-over bid, even if they consider such bid to be inadequate, out of a concern that failing to do so may result in a shareholder being left  
proceed either by way of a Permitted Bid, which requires a take-over bid to satisfy certain minimum standards designed to promote fair  
that holders of common shares, other than the acquiror, will be able to purchase additional common shares at a significant discount to m  
and the experience of other Canadian public companies in the context of an actual take-over bid where a shareholder rights agreement wa  
acquisition that may result in a change of control. The Amended and Restated Rights Plan is not intended to prevent take-over bids that tre  
Company.

## **Summary of the Principal Terms of the Amended and Restated Rights**

by reference to the full text of the Amended and Restated Shareholder Rights Plan, which is attached to this Proxy Statement as Appen  
thereto in the Amended and Restated Rights Plan.

the Prior Rights Plan are to reflect the above-noted changes to the take-over bid regime made by the CSA. The Amended and Restated R  
to provide that it must be outstanding for a minimum period of 105 days or such shorter period (determined in accordance with specific  
the definition of "Competing Permitted Bid" to reflect the amendments to the definition of "Permitted Bid" and provide that it must be c  
certain additional inconsequential, non-sub

## **Issue of rights**

22, 2007 (the "Record Time") but prior to the earliest of the Separation Time (as defined below) and the redemption of the Rights pur

## **Rights certificates, trading and transferability**

transferable separate from the common shares. Accordingly, the surrender for transfer of any certificate representing common shares wil  
evidenced by separate Rights certificates.

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## Acquiring person

common shares. An Acquiring Person does not, however, include the Company or any Subsidiary of the Company, or any person that becomes an Acquiring Person through certain exempt transactions. These exempt transactions include where any person becomes the Beneficial Owner of 20% or more of the common shares as a result of:

specified acquisitions of common shares;  
acquisitions pursuant to a Permitted Bid or Competing Bid;  
specified distributions of common shares;  
certain other specified transactions.

Record Time; provided, however, that this exception shall cease to be applicable if that Person increases its percentage interest in the common shares to 20% or more of the outstanding common shares at any time after the Record Time.

## Separation time

are not exercisable before the Separation Time. Separation Time means, subject to certain exceptions, the close of business on the tenth business day after the date of the first date of public announcement that a person has become an Acquiring Person (including its subsidiaries) to commence a Take-over Bid, as defined in the Amended and Restated Rights Plan (other than a Permitted Bid or a Competing Bid).

the first date of public announcement that a person has become an Acquiring Person (including its subsidiaries) to commence a Take-over Bid, as defined in the Amended and Restated Rights Plan (other than a Permitted Bid or a Competing Bid).

the date on which a Permitted Bid or Competing Bid is accepted by the Board, in good faith, provided that if any bid referred to above expires or is cancelled, terminated or otherwise withdrawn, the date of the Separation Time shall be the date of the first date of public announcement that a person has become an Acquiring Person (including its subsidiaries) to commence a Take-over Bid, as defined in the Amended and Restated Rights Plan. In the event of a Take-over Bid, the date of the Separation Time shall be the date on which the Bid is accepted by the Board, in good faith, provided that if any bid referred to above expires or is cancelled, terminated or otherwise withdrawn, the date of the Separation Time shall be the date of the first date of public announcement that a person has become an Acquiring Person (including its subsidiaries) to commence a Take-over Bid, as defined in the Amended and Restated Rights Plan.

## Exercise of rights

entirety, which is a transaction or event pursuant to which any person becomes an Acquiring Person, each Right will entitle the holder thereof, including its affiliates, associates and joint actors, or the transferee of any such person, will become null and void. Accordingly, such person shall not be entitled to exercise any Right.

Until a Right is exercised, the holder of the Right will have no rights as a Company shareholder solely with respect to the Company's common shares.

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the market price of such shares in amounts exceeding \$10.00. Acquisitions that require shareholder approval or for which the Board has  
Bid are among the transactions that do not constitute Flip-in Events .

**Permitted bids**

l shareholders are deemed to be Permitted Bids . Permitted Bids are offers to acquire common shares made by way of a take-over cir  
or more of the outstanding common shares, and which also comply with the following conditions:

the bid is made to all registered holders of common shares (ot  
ares will be taken up or paid for unless at such date more than 50% of the outstanding common shares held by shareholders other than t  
e that is not less than 105 days following the date of the take-over bid or such shorter period that a take-over bid that is not exempt from

the bid provides that any common shares may be deposited to and withdrawn from the take-over bid at a  
drawn as described in the second bullet point above, the offeror will make a public announcement of that fact and the bid shall remain o  
en made and prior to the expiration of such prior bid, and that satisfies the definition of Permitted Bid except that common shares un  
of securities thereunder pursuant to applicable Canadian securities laws after the commencement of the Competing Perr

**Protection against dilution**

er and nature of the securities that may be purchased upon exercise of Rights and the number of Rights outstanding to prevent dilution i  
securities or rights) in respect of or in lieu of or in exchange for existing common shares or other changes in the comm

**Redemption**

rd may (subject to the prior consent of shareholders by a majority vote), at its option, elect to redeem all but not less than all of the then

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**Waiver**

an Event which would occur by reason of a take-over bid made by a take-over bid circular to all registered holders of common shares. Holders of common shares before the expiry of the first bid. If the Board proposes such a waiver, the Board may extend the Separation Time. It is determined that the Acquiring Person became an Acquiring Person through inadvertence, conditional upon such person reducing its beneficial ownership of common shares.

**Amendments**

The Amended and Restated Rights Plan as a result of a change of law or regulatory requirements, majority shareholder approval is required.

**Term**

The Rights Plan under it will become void. If the Amended and Restated Rights Plan is approved at the Meeting, it will expire at the termination of the Meeting unless reconfirmed by a resolution passed by a majority of the votes cast by all holders of common shares who vote in respect of such reconfirmation.

**Canadian Federal Income Tax Consequences**

tax considerations under the Income Tax Act (Canada) (the Tax Act ) and the regulations thereunder (the Regulations ) generally apply to the proposed transactions. Tax proposals to amend the Tax Act and the Regulations (the Tax Proposals ) which have been publicly announced by or on behalf of the Government of Canada, including the practices of the Canada Revenue Agency.

do not represent or purport to represent any other changes in law, whether by way of judicial, legislative or governmental decision or action, or any changes in administrative or provincial, territorial or foreign income tax legislation or considerations, which may differ from the Canadian federal income tax considerations set forth herein. **This document is of general informational nature only and is not intended to be, nor should it be construed to be, legal or income tax advice to any particular Holder. Holders should consult their own tax advisors.**

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**them of acquiring, holding, exercising or otherwise disposing of Rights based on their own particular circumstances and any ap**

The Company will not be required to include any amount in income for purposes of the Tax Act as a result of the issuance of Rights. The issuance of Rights will not be subject to withholding tax, provided that identical rights have been conferred on all other owners of common shares at that time. The issuance of Rights could give rise to a taxable event for purposes of the Tax Act. In any case, however, provided that the Rights do not have any monetary value at the time of issuance of Rights. The Company considers the Rights, at the time of issuance, will have no monetary value given that there is only a remote possibility that the Rights will give rise to taxable income or be subject to withholding tax pursuant to the Tax Act if the Rights become exercisable or are exercised. A Holder of Rights will not be subject to withholding tax pursuant to the Tax Act if the Rights become exercisable or are exercised. A Holder of Rights will not be subject to withholding tax pursuant to the Tax Act if the Rights become exercisable or are exercised. A Holder of Rights will not be subject to withholding tax pursuant to the Tax Act if the Rights become exercisable or are exercised.

**Eligibility for Investment**

if the holder of the Right is an individual who is a beneficiary, an employer or a subscriber under a particular plan deals at arm's length with the Company for purposes of the Tax Act; and (ii) is not a registered retirement savings plan (RRSP), registered retirement income fund (RRIF), tax-free savings account (TFSA) or a Registered Plan, if the Right is a prohibited investment within the meaning of the Tax Act for a Registered Plan, the holder, annuitant or beneficiary of the plan, and (iii) does not have a significant interest (as defined in the Tax Act) in the Company.

**United States Federal Income Tax Consequences**

*Rights. This discussion is not intended to be, nor should it be construed to be, legal or tax advice. This summary is not exhaustive of all possible tax consequences, local or foreign income tax considerations. This summary is of a general nature only and holders of common shares should consult their tax advisor.*

The Amended and Restated Rights Plan will not give rise to the realization of gross income by any holder of common shares for United States federal income tax purposes.

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disposition of the common shares to which they are attached, holders thereof may be subject to tax in respect of the proceeds, if any, and the Rights from the common shares, the occurrence of a Flip-in Event or the redemption of Rights. Shareholders may recognize gross income if they have questions with respect to such tax consequences and their personal circumstances.

## Shareholder Approval and Board Recommendation

Shareholders will be asked to consider and, if deemed advisable, pass the following ordinary resolution ratifying, confirming and approving:

RESOLVED, as an ordinary resolution that:

the Shareholder rights plan agreement made between the Company and Computershare Investor Services Inc., as rights agent, dated February 2011, to execute or cause to be executed, under the seal of the Company or otherwise, and to deliver or to cause to be delivered, all such documents, and a determination to be conclusively evidenced by the execution and delivery of such document or the doing of such act or thing by such person.

The Board recommends that shareholders vote **FOR** the ordinary resolution adopting the Amended and Restated Rights Plan.

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## Shareholder Proposals and Director Nominations

ant to the mechanism provided by the Exchange Act, a shareholder proposal (other than in respect of the nomination of directors) must  
Rule 14a-8 of the Exchange Act. If the date of our annual meeting in 2020 is changed by more than 30 calendar days from the anniversary  
reasonable time before we begin to print and mail proxy materials.

at the Company's annual meeting in 2020 under the provisions of the CBCA. In order to make a proposal under the CBCA (other than  
2,000 and such shares must have been held for at least six months. A shareholder proposal to nominate a director must be signed by one  
for the Company's annual meeting in 2020. Upon receipt of a proposal in compliance with the requirements of the CBCA, the Company

ns of persons for election to the Board in circumstances where nominations are made by shareholders other than pursuant to a shareholder  
tion to nominate directors for election to the Board prior to any annual or special meeting of shareholders and sets forth the information  
meeting is called for a date that is less than 50 days after the date on which the first public announcement of the date of the annual meeting

visions of the Exchange Act, the CBCA and our amended and restated by-laws. Our by-laws, including the advance notice provisions,  
lable on request from the Corporate Secretary of the Company and the information circular for our annual and special meeting in 2015

Shareholders must submit written proposals, in accordance with the foregoing procedures, to the following address:

Ritchie Bros. Auctioneers Incorporated  
9500 Glenlyon Parkway  
Burnaby, British Columbia V5J 0C6 Canada  
Attention: Corporate Secretary

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## Other Business

re the Meeting. However, the proxy in the accompanying form, when properly completed and delivered and not revoked, will confer dis  
cial Meeting of Shareholders and any other matter which may properly come before the meeting in respect of which such proxy has been

The contents and sending of this Proxy Statement have been approved by the Board of Directors of the Company

By Order of the Board of Directors,

/s/ Darren Watt

Darren Watt  
Corporate Secretary  
Vancouver, British Columbia

March 27, 2019

If you are a non-registered/beneficial owner, please follow the instructions on your voting instruction form. If you decide to attend the M

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## Annex: Selected Definitions of Operational and Financial Performance

The following defines select measures of operational and financial performance used in this Proxy Statement.

### Measures of operational performance

total proceeds from all items sold at our auctions and online marketplaces. GTV is not a measure of financial performance, liquidity,

### Non-GAAP financial measures

inventory sold and ancillary and logistical service expenses from total revenues, excluding the pre-tax effects of items that the Compensation

tax effects of items that the Compensation Committee or the Board determines, for this purpose, to be non-recurring or unusual, divided by the number of shares outstanding at the end of the period, plus average stockholders' equity excluding items that the Compensation Committee or the Board determines, for this purpose, to

earnings EBITDA excluding the pre-tax effects of significant items that the Company does not consider to be part of normal operating results and items that the Company refers to as adjusting items, as well as items that the Compensation Committee or the Board determines, for this purpose,

( ) **attributable to stockholders** is calculated by dividing net income attributable to stockholders excluding the after-tax effects of adjusting items

( ) over the applicable period of the Company's net income attributable to stockholders excluding after-tax adjusting items and items that the Compensation Committee or the Board determines, for this purpose,

( NOPAT ) excluding after-tax adjusting items and items that the Compensation Committee or the Board determines, for this purpose, to be non-recurring or unusual, divided by an estimated cash tax rate. The ROIC performance measure used to determine long-term incentive compensation is calculated as NOPAT divided by average stockholders' equity rather than net income attributable to stockholders.

operating activities minus net capital spending. Net capital spending is a GAAP measure that is calculated as property, plant and equipment

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**OFCF per share** is calculated as OFCF divided by the weighted average diluted number of shares outstanding

adjusting items, plus net finance costs, less the income tax effect of net finance costs, and excluding items that the Compensation Comm  
and cash equivalents, restricted cash, and current liabilities, and excluding items that the Compensation Committee or the Board determin

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Appendix A: First Amendment to the Amended and Restated Stock Option Plan

**AMENDMENT NO. 1  
TO THE  
AMENDED AND RESTATED STOCK OPTION PLAN  
RITCHIE BROS. AUCTIONEERS INCORPORATED**

**Corporation** ) hereby adopts this Amendment No. 1 (this **Amendment** ) to the Amended and Restated Stock Option Plan (the **Plan**

Section 7.1 of the Plan is hereby deleted. The number of Common Shares that may be issued from and after April 13, 2007 pursuant to exercise of Options granted under the Plan is 18,900,000.

Remaining Provisions. All other provisions of the Plan remain in full force and effect.  
Miscellaneous. Capitalized terms used herein without definitions have the meanings given to them in the Plan.

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Appendix B: Second Amendment to the Executive PSU Plan

**AMENDMENT NO. 2  
TO THE  
RITCHIE BROS. AUCTIONEERS INCORPORATED  
SENIOR EXECUTIVE PERFORMANCE SHARE UNIT PLAN  
(MARCH 2015)**

ion ), hereby adopts this Amendment No. 2 (this **Amendment** ) to the Senior Executive Performance Share Unit Plan, as amended (

Section 6.3(i) of the Plan is hereby deleted from the Senior Executive Performance Share Unit Plan and the Employee Performance Share Unit Plan (including pursuant to section 6.2 of this Plan and section 6.2 of the Employee Performance Share Unit Plan).

Remaining Provisions. All other provisions of the Plan remain in full force and effect. Miscellaneous. Capitalized terms used herein without definitions have the meanings given to them in the Plan.



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Appendix D: First Amendment to the Executive RSU Plan

**AMENDMENT NO. 1  
TO THE  
RITCHIE BROS. AUCTIONEERS INCORPORATED  
AMENDED AND RESTATED SENIOR EXECUTIVE RESTRICTED SHARE UNIT PLAN**

Company hereby adopts this Amendment No. 1 (this **Amendment**) to the Amended and Restated Senior Executive Restricted Share Unit Plan, as amended by the Board of Directors of Ritchie Bros. Auctioneers Incorporated.

Section 6.3(i) of the Plan is hereby deleted in its entirety. Section 6.2 of this Plan and section 6.2 of the Employee Restricted Share Unit Plan and the Employee Restricted Share Unit Plan (including pursuant to section 6.2 of this Plan and section 6.2 of the Employee Restricted Share Unit Plan) are hereby amended to read as follows:

**Remaining Provisions.** All other provisions of the Plan remain in full force and effect. **Miscellaneous.** Capitalized terms used herein without definitions have the meanings given to them in the Plan.

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Appendix E: First Amendment to the Employee RSU Plan

**AMENDMENT NO. 1  
TO THE  
RITCHIE BROS. AUCTIONEERS INCORPORATED  
AMENDED AND RESTATED EMPLOYEE RESTRICTED SHARE**

hereby adopts this Amendment No. 1 (this **Amendment** ) to the Amended and Restated Employee Restricted Share Unit Plan, as am

Section 6.3(i) of the Plan is hereby deleted and the Senior Executive Restricted Share Unit Plan (including pursuant to section 6.2 of this Plan and section 6.2 of the Senior Executive

Remaining Provisions. All other provisions of the Plan remain in full force and effect. Miscellaneous. Capitalized terms used herein without definitions have the meanings given to

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Appendix F: Amended and Restated  
Shareholder Rights Plan Agreement

DATED AS OF February 22, February 27, 2019 (AMENDING AND RESTATING THE  
*SHAREHOLDER RIGHTS PLAN AGREEMENT* DATED AS OF FEBRUARY 22, 2007, AS  
AMENDED APRIL 5, 2007)

BETWEEN

**RITCHIE BROS. AUCTIONEERS INCORPORATED**

AND

**COMPUTERSHARE INVESTOR SERVICES INC.**

AS RIGHTS AGENT

(including amendment dated April 5, 2007)

McCarthy Tétrault LLP  
Suite 1300, 777 Dunsmuir 2400, 745 Thurlow Street  
Vancouver, British Columbia  
Canada V7Y 1K2 6E 0C5

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*SHAREHOLDER RIGHTS PLAN AGREEMENT* TABLE OF CONTENTS





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**AMENDED AND RESTATED SHAREHOLDER RIGHTS PLAN AGREEMENT**

February 27, 2019, between Ritchie Bros. Auctioneers Incorporated, a corporation incorporated under the *Canada Business Corporations Act*, and the Company, as amended by the Shareholder Rights Plan Agreement dated as of February 22, 2007 (as amended by amending agreement between the Company and Ritchie Bros. Auctioneers Incorporated on February 27, 2019).

**WHEREAS:**

in the best interests of the Company to adopt continue to have a shareholder rights plan (the **Rights Plan**) to ensure, to the extent possible, that the Company is governed, on terms and conditions and in the form of this Agreement, to be approved, ratified and confirmed by the shareholders of the Company. Pursuant to the Shareholder rights plan Rights Plan as established by the Original Agreement, the Board of Directors has authorized and declared a distribution of one Right (as hereinafter defined) in respect of each Common Share outstanding at (as hereinafter defined) the Record Time (as hereinafter defined), of one Right (as hereinafter defined) in respect of each Common Share outstanding at (as hereinafter defined) the issuance of one Right in respect of each Common Share issued after the Record Time and prior to the earlier of the Separation Time and the Closing Time. Each Right entitles the holder thereof, after the Separation Time, to purchase securities of the Company on the terms and conditions set forth in the Rights Plan, and the Rights Agent is willing to so act, in connection with the issuance, transfer, exchange or redemption of such securities, in consideration of the premises and the respective covenants and agreements set forth herein, and subject to such covenants and agreements.

**ARTICLE 1 INTERPRETATION**

1.1

For purposes of this Agreement, the following terms have the meanings indicated:

**Acquiring Person** means any Person who is the Beneficial Owner of 20% or more of the outstanding Voting Shares of the Company or any Person who becomes the Beneficial Owner of 20% or more of the outstanding Voting Shares of the Company.

(A)

a V



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(B) a Pe  
(C) a  
(D) a P  
(E) a Conver  
on of one or any combination of a Voting Share Reduction, a Permitted Bid Acquisition, an Exempt Acquisition, a Pro Rata Acquisition  
on of a Voting Share Reduction, a Permitted Bid Acquisition, an Exempt Acquisition, a Pro Rata Acquisition or a Convertible Security  
of 20% or more of the outstanding Voting Shares as a result of such Person becoming disqualified from relying on Subsection 1.1(f)(v  
e means the first date of public announcement that such Person is making or has announced an intention to make a Take-over Bid along  
er of a banking or selling group that becomes the Beneficial Owner of 20% or more of the Voting Shares in connection with a distribut  
the Company determined as at the Record Time, provided, however, that this exception shall not be, and shall cease to be, applicable to  
g Shares outstanding as at the Record Time (other than pursuant to one or any combination of a Voting Share Reduction, a Permitted Bi  
Record Time;  
**iliate** , when used to indicate a relationship with a Person means a Person that directly, or indirectly through one or more intermediarie  
er rights plan agreement dated February 27, 2019, between the Company and the Rights Agent, which amends and restates the Original

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hereto and similar expressions mean and refer to this Agreement as a

**annual cash dividend** means cash dividends paid in any fiscal year of the Company to the extent that

200 per cent of the aggregate amount of cash dividends declared payable by the Company or

300 per cent of the arithmetic mean of the aggregate amounts of the annual cash dividends declared payable by the Company or

100 per cent of the aggregate consolidated net income of the Company, before expenses

of any Person of either sex with whom such specified Person is living in a conjugal relationship outside marriage or (iii) any relative of such Person

A Person shall be deemed the **Beneficial Owner** of, and to have

beneficial ownership of, any securities as to which such Person or any of such Person's Affiliates or Associates or Associates

has a right to acquire (whether or not exercisable within a period of 60 days whether or not on condition or the happening of any contingency) or

at law or in equity (where such right is exercisable within a period of 60 days whether or not on condition or the happening of any contingency) or

under any customary agreements with and between underwriters and banking group members and selling group members (or any of the foregoing) or

any securities which are Beneficially Owned within the meaning of Subsections (i) or (ii) of this definition by any other Person or

provided, however, that a Person shall be deemed not to be the **Beneficial Owner** of, or to have **Beneficial Ownership** of, or to

be deposited to any Take-over Bid made by such Person, made by any of such Person's Affiliates or Associates or made by any other Person

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where such Person, any of such Person's Affiliates or Associates or any other Person acting jointly with such Person (which others, for greater certainty, may include or be limited to one or more employee benefit plans or pension plans) and such Person's dealer registered under applicable law laws;

such, acts as trustee or administrator or in a similar capacity in relation to the estates of deceased or incompetent Persons (each an "Estate")

activity of such Person (the "Statutory Body") includes, the management of investment funds for employee benefit plans, pension plans or plans (a "Plan"), or is a Plan, registered or qualified under the laws of Canada or any Province province or territory thereof or

such Person (the "Crown Agent")

the Plan or the Crown Agent, as the case may be, is not then making a Take-over Bid or has not then announced an intention to make a Take-over Bid or is not then making ordinary market transactions (including prearranged trades entered into in the ordinary course of business of such Person) executed through such Person

such Person is (A) a Client of the same Investment Manager as another Person on whose account the Investment Manager holds such securities;

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ity by the Investment Manager, (B) an Estate Account or an Other Account of a Trust Company and such security is owned at law or in  
where such Person is a registered holder of such security as a result of carrying on the b

**Board of Directors** means the board of directors of the Company or

**Business Day** means any day other than a Saturday, Sunday or a day on which banking institutions in V

**Canada Business Corporations Act** means the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended, and the reg

**Canadian U.S. Exchange Rate** means, on any date, the inverse of  
(next succeeding Business Day) at which the principal transfer office in Vancouver, British Columbia of the transfer agent for the Comm

**Common Shares** means the comm

**Competing Permitted**

is made after a Permitted Bid or another Competing Permitted Bid has been made and prior to  
satisfies all components of the definition of a Permitted Bid other than the requirements set out

alified conditions that no Voting Shares will be taken up or paid for pursuant to the Competing Take-over Bid prior to the close of busin

nd (B) 35 days minimum number of days such Take-over Bid must remain open for deposits of securities thereunder pursuant to applic

ime when such bid ceases to meet any of the provisions of this definition and provided that, at such time, any acquisition of Voting Sha

Acquisition;

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**controlled** :a Person is controlled by another Person or two or more Persons if more than 50% of the votes for the election of directors are held, directly or indirectly, by or for the benefit of the other Person or Persons and in the case of a Person which is not a body corporate, more than 50% of the voting or equity interests of such entity are held, directly or indirectly, by or for the benefit of the other Person or Persons and controls, controlling and under common control with shall be interpreted accordingly;

**Convertible Securities** means any securities issued by the Company (including rights, warrants and options but not including the Rights of First Refusal Securities) which are convertible into or exercisable or exchangeable for Voting Shares (in each case, whether such right is exercisable immediately or at the discretion of the holder of such securities) and any right (contractual or otherwise, regardless of whether such right is exercisable immediately or at the discretion of the holder of such securities) to acquire Voting Shares from the Company upon the exercise or pursuant to the terms and conditions of any Convertible Securities according to their terms;

**Co-Rights Agents** has the meaning set forth in Section 1.10 of the Charter of the Company;

**Disposition Date** has the meaning set forth in Section 1.10 of the Charter of the Company;

**Dividend Reinvestment Acquisition** means an acquisition of Voting Shares by the Company pursuant to a dividend reinvestment plan or other plan of the Company made available by the Company to holders of its securities or holders of its securities who are entitled to dividends paid in respect of shares of any class of the Company's securities and the proceeds of redemption of shares of any class of the Company's securities and interest paid on evidences of indebtedness of the Company;

(iv)

shall be applied to the purchase from the Company of Voting Shares;

**Effective Date** means the date on which the Charter of the Company becomes effective;

**Election to Exercise** has the meaning set forth in Section 1.10 of the Charter of the Company;

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ard of Directors has waived the application of Section 3.1 pursuant to the provisions of Subsection 5.1(a) or (h); or (ii) pursuant to an ar

ay purchase the securities issuable upon exercise of one whole Right which, until adjustment thereof in accordance with the terms here

**Expansion Factor** has the meani

**Termination Time** means (i) the earlier of the Termination Time, and (ii) the termination of any meeting of holders of Voting Shares at which th

**Flip-in Event** means a transaction or other event in or pursu

**holder** has the me

**Independent Shareholders** n

(i)

any Offeror (other than any Person who, by virtue of Subsection 1.1(f)(v), is not deemed

any Affiliate or Associate o

any Person acting jointly or in concert wi

st for the benefit of employees of the Company or a Subsidiary unless the beneficiaries of the plan or trust direct the manner in which th

es per security of the securities (determined as described below) on each of the 20 consecutive Trading Days through and including the

parable with the closing price on the date of determination (or, if the date of determination is not a Trading Day, on the immediately pr

te of determination is not a Trading Day, on the immediately preceding Trading Day).The closing price per security of any securities on

the last sale price, regular way, or



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an acceptance of an offer to sell Voting Shares, whether or any combination thereof, and the Person accepting an offer to sell shall be deemed to be making an Offer to Acquire to the Person that has announced, and has not withdrawn, an intention to make or who has made, and has not withdrawn, a Take-over Bid, other than a **Offeror's Securities** means Voting Shares Beneficially Owned by the Offeror.

**Permitted Bid** means a Take-over Bid made by a Person by way of take-over bid circular if the Take-over Bid is made to all holders of Voting Shares as registered on the books of the Company, other than the Offeror, and unless more than 50% of the Voting Shares held by Independent Shareholders are taken up or paid for pursuant to the Take-over Bid unless more than 50% of the Voting Shares held by Independent Shareholders are taken up or paid for pursuant to the Take-over Bid: *prior to the close of business* and unqualified provisions that no Voting Shares will be taken up or paid for pursuant to the Take-over Bid: *prior to the close of business* securities thereunder, in the applicable circumstances at such time;

*prior to the close of business on the date which is not less than 60 days following the date the Take-over Bid is made* unless at such date more than 50% of the then outstanding *Voting Shares held by Independent Shareholders shall have been taken up or paid for* that, *unless the Take-over Bid is withdrawn*, Voting Shares may be deposited pursuant to such Take-over Bid at any time during the period of the Take-over Bid; and

unqualified provision that, unless the Take-over Bid is withdrawn, in the event that the deposit condition set forth in Subsection (ii)(B) is satisfied



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deposits and tenders of Voting Shares for not less than ten Business  
ses to meet any of the provisions of this definition and provided that, at such time, any acquisition of Voting Shares made pursuant to s

**Permitted Bid Acquisition** means an acquisition of Voting Shares made  
ther Person acting jointly or in concert with the Offeror and a Person (the **Locked-up Person** ) who is not an Affiliate or Associate o  
nounced or if the Lock-up Bid has been made prior to the date on which such agreement is entered into, forthwith, and in any event not  
ssociates or made by any other Person acting jointly or in concert with the Offeror (the **Lock-up Bid** ) provided such agreement:

shares to another Take-over Bid or to support another transaction (whether by way of merger, amalgamation, arrangement, reorganization  
**Lock-up Bid Consideration** ). Notwithstanding the above, the Permitted Lock-Up up Agreement may require that the Superior Offer Co

opportunity to match a higher price in another Take-over Bid or transaction and may provide for any other similar limitation on a Lock  
the right to withdraw Voting Shares during the period of the other Take-over Bid or other transaction); and

does not provide for any break-up fees, top-up fees, penalties, expense  
the cash equivalent of 2.5% of the price or value payable un

0% of the amount by which the price or value payable under another Take-over Bid or transaction exceeds the price or value of the cons

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to the agreement in the event a Locked-up Person fails to deposit or tender Voting Shares to the Lock-up Bid, withdraws Voting Shares  
any individual, firm, partnership, association, trust, trustee, executor, administrator, legal personal representative, body corporate, joint  
**Pro Rata Acquisition** means an acquisition by a Person of  
a Dividend  
curities of the Company of one or more particular classes or series pursuant to which such Person becomes the Beneficial Owner of Voting  
curities, distributed by the Company to that Person in the course of a distribution (other than Rights) to all holders of securities of the Com  
ble for Voting Shares or Convertible Securities, so offered than the Person's percentage of Voting Shares Beneficially Owned immedia  
curities (and the conversion or exchange of such convertible or exchangeable securities), by the Company, Convertible Securities), by th  
exchangeable for Voting Shares Convertible Securities, so offered in the distribution than the Person's percentage of Voting Shares Be  
by the Company made pursuant to a securities exchange take-over bid circular issued by the Company or in a management proxy circu  
Convertible Securities) on terms approved by the Board of Directors in good faith, provided that in the case of such acquisition transact

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... transaction or private placement and in making this determination, the Voting Shares (or Convertible Securities) to be issued to s

**Record Time** means the close of business on

**Redemption Price** has the meaning ascribed the

**Right** means a right to purchase a Common Share upon the terms a

**Right Certificate** means the certificates representing the Rights after the Separation Time, which shall be substantially in the form attached he

**Rights Register** has the meani

**Rights Registrar** has the mean

*Securities Act* (British Columbia) means the *Securities Act*, R.S.B.C. 1996 Chapter 418, as amended, and the regulations and rule

**Separation Time** means the close of busines

(i) the s

... commencement of or first public announcement of the intent of any Person (other than the Company or any Subsidiary of the Company) to c

... the date on which a Permitted Bid or Cor

... Bid referred to in Subsection (ii) or Permitted Bid or Competing Permitted Bid referred to in Subsection (iii) is not made, expires, is can

... shall be deemed, for the purposes of this definition, never to have been made;

... include, without limitation, a report filed pursuant to section 111 of the *Securities Act* (British Columbia) 5.2 of NI 62-104 or Section 13(d)

**Subsidiary** : a corporation is

(i)

(A)

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that other and one or more corporations, each of which is a Subsidiary of a corporation or two or more corporations, each of which is a Subsidiary of a corporation;  
s or Convertible Securities subject to the Offer to Acquire are acquired and are Beneficially Owned at the date of such Offer to Acquire and constitute in the aggregate 20% or more of the outstanding Voting Shares at the date of the Offer to Acquire;

**Termination Time** means the time at which the right to exercise the Offer to Acquire is terminated and the exchange in the United States of America on which such securities are listed or admitted to trading is open for the transaction of business;

**U.S.-Canadian Exchange Rate** means, if on such date the Bank of Canada sets an average noon spot rate of exchange for the conversion of one United States dollar into Canadian dollars in any other case, the rate for such date for the conversion of one United States dollar into Canadian dollars calculated in such manner as may be determined by the Company;

**Equivalent** of any amount which is expressed in Canadian dollars means, on any date, the United States dollar equivalent of the amount determined by the Company of Voting Shares which, by reducing the number of Voting Shares outstanding, increases the proportionate number of Voting Shares to the number of Voting Shares outstanding;

**Voting Shares** means the Common Shares and any other shares in the capital of the Company which are entitled to vote at the meeting of the Company;

**1.2**

All sums of money which are referred to in this Agreement are expressed in lawful money of the United States of America, unless otherwise specified.

**1.3**

Headings, Sections, Clauses, Paragraphs, Subparagraphs or other portions hereof and the insertion of headings, subheadings and a table of contents are for convenience only and shall not be construed to limit or modify the meaning of the provisions of this Agreement.

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Agreement, where the context so admits, words importing the singular include the plural and vice versa and words importing gender in

Calculation of Number and Percentage of Beneficially Owned

is Agreement, the percentage of Voting Shares Beneficially Owned by any Person, shall be and be deemed to be the product (expressed as a

$$100 \times A/B$$

where:

=

the number of votes for the election of all directors generally attaching to the shares of the Corporation

=

the number of votes for the election of all directors generally attaching to the shares of the Corporation

Shares shall be deemed to be outstanding for the purpose of calculating the percentage of Voting Shares Beneficially Owned by such Person

**1.5**

Acting

ent, commitment or understanding (whether formal or informal and whether or not in writing) with the first Person (the **First Person**) or any group members or selling group members with respect to a public offering or private placement of securities or pledges of securities in the

Generally Accepted Accounting Principles

be the recommendations at the relevant time of the Canadian Institute of Chartered Accountants, or any successor institute, applicable to the amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other accounting or otherwise specified herein or as otherwise agreed in writing by the parties, be made in accordance with generally accepted accounting principles

**ARTICLE 2 THE RIGHTS**

Issue of Rights: Legend

Date in respect of each Common Share outstanding at the Record Time and one Right shall be issued in respect of each Common Share representing Common Shares which are issued after the Record Time, but prior to the earlier of the Separation Time and the Expiration

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time but prior to the earlier of the Separation Time and the Expiration Time shall have impressed on, printed on, written on or otherwise evidenced in a the Amended and Restated Shareholder Rights Plan Agreement dated as of February 22, 2007 (the Agreement February 27, 2007) and a copy of which is available upon request without charge. Under certain circumstances set out in the Agreement, the Rights may be evidenced by separate certificates and no longer evidenced by the legend set out in the Original Agreement. Under certain circumstances set out in the Agreement, the Rights may be evidenced by separate certificates and no longer evidenced by the legend set out in the Original Agreement. On the earlier of the Separation Time and Expiration Time shall be entitled to Rights as if such certificates had been issued and such Rights shall be exercisable on the earlier of the Separation Time and prior to the Expiration Time, to purchase one Common Share for the Exercise Price (and the Exercise Price and Initial Exercise Price; Exercise Price) (b) Un the Rights shall not be exercisable associated Common Share registered in the name of the holder thereof (which certificate shall also be deemed to represent a Rights Certificate) From and after the Separation Time (i) the registration and transfer of Rights shall be separate Agent will mail to each holder of record of Common Shares as of the Separation Time (other than an Acquiring Person and, in respect

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uch Rights (a **Nominee** )), at such holder's address as shown by the records of the Company (the Company hereby agreeing to furnish  
e and having such marks of identification or designation and such legends, summaries or endorsements printed thereon as the Company  
the Rights may from time to time be listed or traded, or to conform to standard usage; and  
a disclosure statement prepared by  
d of record by it which are not Beneficially Owned by an Acquiring Person. In order for the Company to determine whether any Person  
documentation and information as the Company deems necessary.

Rights may be exercised, in whole or in part, on any Business Day after the Separation Time and  
the Rights Certif  
ificate appropriately completed and duly executed by the holder or his executors or administrators or other personal representatives or his  
exercise Price multiplied by the number of Rights being exercised and a sum sufficient to cover any transfer tax or governmental charge  
n 2.2(d)(ii), which does not indicate that such Right is null and void as provided by Subsection 3.1(b), and payment as set forth in Subs  
isition from the Company's transfer agent certificates representing the number of such Common Shares to be purchased (the Company  
when appropriate, requisition from the Company the amount of cash to be paid in lieu of issuing

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t of the certificates referred to in Clause Subsection 2.2(e)(i), deliver the same to or upon the order of the registered holder of such Rights  
when appropriate, after receipt, deliver the cash referred to in Subsection 2.2(e)(ii) to or to t  
tender to the Company all paym  
nced by such holder s Rights Certificate, a new Rights Certificate evidencing the Rights remaining unexercised (subject to the provisio  
The Company cov  
on Shares delivered upon exercise of Rights shall, at the time of delivery of the certificates for such Common Shares (subject to payment  
*Corporations Act*, the *Securities Act* (British Columbia), the securities laws or comparable legislation of each of the provinces and territories  
upon exercise of Rights;  
e reasonable efforts to cause all Common Shares issued upon exercise of Rights to be listed on the principal stock exchanges on which  
d kept available out of the authorized and unissued Common Shares, the number of Common Shares that, as provided in this Agreement  
sfer taxes and charges (not including any income or capital taxes of the holder or exercising holder or any liability of the Company to w  
rge which may be payable in respect of any transfer involved in the transfer or delivery of Rights Certificates or the issuance or delivery  
after the Separation Time, except as permitted by Section 5.1, not take (or permit an

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taken it is reasonably foreseeable that such action will diminish substantially or otherwise

**Adjustments to Exercise**

number and kind of securities subject to purchase upon exercise of each Right and the number of Rights outstanding are subject to adjustment

In the event the Company shall at any time pay a dividend in Cash or Common Shares payable in Common Shares (or other securities exchangeable for or convertible into or giving a right to acquire Common Shares) or shall at any time subdivide or change the then outstanding Common Shares or shall at any time consolidate or change the then outstanding Common Shares (or other securities exchangeable for or convertible into or giving a right to acquire Common Shares or other securities of the Company) in respect of, in whole or in part, or, if the payment or effective date therefor shall occur after the Separation Time, the securities purchasable upon exercise of Rights shall be adjusted

If the Exercise Price and number of Rights outstanding are to be adjusted:

the Exercise Price shall be the Exercise Price divided by the number of Common Shares (or other capital stock) that a holder of one Common Share immediately prior to such adjustment would hold immediately prior to such dividend, subdivision, change, consolidation or issuance would hold immediately thereafter as a result thereof. The number of Rights shall be the number of Rights held immediately prior to such adjustment divided by the number of Common Shares (or other capital stock) which the original Rights were associated (if they remain outstanding) and the shares issued in respect of such dividend, subdivision, change, consolidation or issuance. If the Exercise Price is adjusted, the securities purchasable upon exercise of each Right immediately after such adjustment will be the securities that a holder of one Right immediately prior to such adjustment would be entitled to purchase upon exercise of one Right immediately after such adjustment.

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consolidation or issuance would hold immediately thereafter, including as a result of such dividend, subdivision, change, consol

Common Shares in a transaction of a type described in Subsection 2.3(a)(i) or (iv), shares of such capital stock shall be treated herein as  
s Section 2.3 and Subsection 3.1(a) hereof, the adjustment provided for in this Section 2.3 shall be in addition to and shall be made prior  
an event referred to in this Subsection 2.3(a) occurs.

Common Shares otherwise than in a transaction referred to in this Subsection 2.3(a), each such Common Share so issued shall automatica

issuance of rights, options or warrants to all holders of Common Shares entitling them (for a period expiring within 45 calendar days a  
purchase or subscribe for Common Shares, having a conversion, exchange or exercise price, including the price required to be paid to p  
ately prior to such record date by a fraction:

on Shares that the aggregate offering price of the total number of Common Shares so to be offered (and/or the aggregate initial convers  
nd

ding on such record date, plus the number of additional Common Shares to be offered for subscription or purchase (or into which the co  
cash, the value of such consideration shall be as determined in good faith by the Board of Directors, whose determination shall be desc  
successively whenever such a record date is fixed, and in the event that such rights, options or warrants are not so issued, or if issued,

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...date had not been fixed, or to the Exercise Price which would be in effect based upon the number of Common Shares (or securities con  
...be.

...erwise) pursuant to any Dividend Reinvestment Plan or any employee benefit, stock option or similar plans shall be deemed not to con  
...price per share of not less than 90% of the current Market Price per share (determined as provided in such plans) of the Com

...making of a distribution to all holders of Common Shares (including any such distribution made in connection with a merger or amalga  
...on Shares), assets or rights, options or warrants (excluding those referred to in Subsection 2.3(b)), the Exercise Price to be in effect after  
...etermined in good faith by the Board of Directors, whose determination shall be described in a statement filed with the Rights Agent and

...the denominator of which shall be s  
...r such a record date is fixed, and in the event that such a distribution is not so made, the Exercise Price shall be adjusted to be the Exerc

...ent would require an increase or decrease of at least one per cent in the Exercise Price; provided, however, that any adjustments which b  
...g the first sentence of this Subsection 2.3(d), any adjustment required by Section 2.3 shall be made no later than the earlier of:

...three years from the date of the transaction

(ii)

In the event the Company shall at any time after the Record Time and prior to the Separation Time

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a transaction referred to in Subsections 2.3(a)(i) or (a)(iv), if the Board of Directors acting in good faith determines that the adjustment is purchasable upon exercise of Rights would be appropriate and, notwithstanding Subsections 2.3(a), (b), (c) and (d), such adjustments,

price hereunder shall evidence the right to purchase, at the adjusted Exercise Price, the number of Common Shares purchasable from time to time upon the exercise of the Rights, the Rights Certificates theretofore and thereafter issued may continue to express the Exercise Price in effect as of the date for a specified event, the Company may elect to defer until the occurrence of such event the issuance to the holder of any Right exercisable at the Exercise Price in effect prior to such adjustment; provided, however, that the Company shall deliver to such holder an appropriate instrument

if such adjustment occurs before the Separation Time. anything contained in this Section 2.3 to the contrary, the Company shall be entitled to

consolidation or su

issuance (wholly or in part for cash) of Common Shares or securities that by their terms

(iii)

issuance of rights, options or wa

Company to holders of its Common Shares, subject to applicable taxation laws, shall not be taxable to such shareholders or shall subj

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Whenever an adjustment to the Exercise Price is made promptly prepare a certificate setting forth such adjustment and a brief statement promptly file with the Rights Agent and with each transfer agent for the Common Shares a copy of such certificate and a copy of such notice. Failure to file such certificate or to cause such notice to be given as aforesaid, or any defect therein, shall not affect the validity of any such exercise.

4 Date on Which  
Each holder of Rights shall for all purposes be deemed to have become the holder of record of the Common Shares or other securities, if applicable, for such Rights (and any applicable transfer taxes and other governmental charges payable by the exercising holder hereunder) was made. The holder shall be deemed to have become the record holder of such shares on, and such certificate shall be dated, the next succeeding Business Day on which the Company is open for business.

Execution, Authentication, Delivery  
The Company shall be bound by the signature of its President, Chief Financial Officer or any Vice-President and by its Corporate Secretary or any Assistant Secretary under the corporate seal of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices either before or after the date of execution hereof. The Company shall execute and deliver Rights Certificates at any time and will deliver Rights Certificates executed by the Company to the Rights Agent for countersignature, and the Rights Agent shall execute and deliver Rights Certificates to the holder of the Rights.

6 Registration  
Each Rights Certificate shall be dated as of the date of its execution. If the Rights Agent, in its sole discretion, may prescribe, the Company will provide for the registration and transfer of Rights. The Rights Agent is hereby appointed registrar for the Rights.

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appointment. In the event that the Rights Agent shall cease to be the Rights Registrar, the Rights Agent will  
Rights Certificate, and subject to the provisions of Subsection 2.6(c), the Company will execute, and the Rights Agent will manually cou  
new Rights Certificates evidencing the same aggregate number of Rights as did the Rights Certificates so surrende

transfer or exchange of Rights Certificates shall be the valid obligations of the Company, and such Rights shall be entitled to the same b  
a written instrument of transfer satisfactory in form to the Company or the Rights Agent, as the case may be, duly executed by the hold  
in relation thereto and any other expenses (including the reasonable fees and expenses of the Rights Agent) connected therewith.

Mutilated, Destroyed, L

s Agent prior to the Expiration Time, the Company shall execute and the Rights Agent shall countersign and deliver in exchange theref

If there shall be delivered to the Company and the  
evidence to their reasonable satisfaction of the destruct

such security or and indemnity as may be reasonably required by them t

*vide* purchaser, the Company shall execute and upon the Company s request the Rights Agent shall countersign and deliver, in lieu of a  
Rights Certificate.

the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relatio  
Certificate issued pursuant to this Section 2.7 in lieu of any destroyed, lost or stolen Rights Certificate shall evidence the contractual obl

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be at any time enforceable by anyone, and shall be entitled to all the benefits of this Agreement equally and

Persons

8  
e name a Rights Certificate (or, prior to the Separation Time, the associated Common Share certificate) is registered as the absolute own  
**holder** of any Rights shall mean the registered holder of such Rights (or, prior to the Separation Time, of the associated C

Delivery and

ed to any Person other than the Rights Agent, be delivered to the Rights Agent and, in any case, shall be promptly cancelled by the Right  
e promptly cancelled by the Rights Agent. No Rights Certificate shall be countersigned in lieu of or in exchange for any Rights Certific  
its ordinary business practices, destroy all cancelled Rights Certificates and deliver a certificate of destruction to the C

2.10

Agre

Every holder of Rights, by accepting the same, consents and agrees with the Company and the Rights Agent and with every other

to be bound by and subject to the provisions of this Agreement, as amended from time to time in  
that prior to the Separation Time, each Right will be transferable only together with, and will be transferred by a tran

that after the Separation Time, the Rights Certificates will be transfe

(ate) for registration of transfer, the Company, the Rights Agent and any agent of the Company or the Rights Agent may deem and treat  
h Rights Certificate or the associated Common Share certificate made by anyone other than the Company or the Rights Agent) for all pu

that such holder of Rights has waived his right to receive any fractional Rights or any fractional shares or  
holder of Rights or Voting Shares and upon the sole authority of the Board of Directors, acting in good faith, this Agreement may be supp

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herein which may be inconsistent with the intent of this Agreement  
liability to any holder of a Right or any other Person as a result of its inability to perform any of its obligations under this Agreement by rea  
ed by any governmental authority, prohibiting or otherwise restraining performance of such obligation.

Holder of Right

pose whatsoever the holder of any Common Share or any other share or security of the Company which may at any time be issuable on  
securities of the Company or any right to vote at any meeting of shareholders of the Company whether for the election of directors or o  
shares or any other shares of the Company except as expressly provided herein, or to receive dividends, distributions or subscription righ  
hereof.

**ARTICLE 3 ADJUSTMENTS TO THE RIGHTS IN THE EVENT OF A**

**3.1**

ute, effective at the close of business on the tenth Trading Day after the Stock Acquisition Date, the right to purchase from the Compar  
ercise Price (such right to be appropriately adjusted in a manner analogous to the applicable adjustment provided for in Section 2.3 in th  
standing anything in this Agreement to the contrary, upon the occurrence of any Flip-in Event, any Rights that are or were Beneficially  
an Acquiring Person (or any Affiliate or Associate of an Acquiring Person or any Person acting jointly or in concert with an  
Person (or any Affiliate or Associate of an Acquiring Person or any Person acting jointly or in concert with an Acquiring Person or any



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son (or any Affiliate or Associate of an Acquiring Person or any Person acting jointly or in concert with an Acquiring Person or any Affiliated Person) shall have no right to exercise or transfer such Rights under any provision of this Agreement and further shall thereafter not have any other right or interest in such Rights if the holder fails to certify upon the transfer or exchange in the place set forth in the Rights Certificate establishing that such holder is not a Person or an Associate of an Acquiring Person.

Subsection 3.1(b) and such rights shall be null and void.

er to ensure compliance with the provisions of this Section 3.1, including without limitation, all such acts and things as may be required by applicable laws, rules and regulations thereunder and any other applicable law, rule or regulation in respect of the issue of Common Shares upon the exercise of such Rights under Subsection 3.1(b)(i) or (ii) or transferred to any nominee of any such Person, and any Rights Certificate issued upon transfer, exchange or otherwise to an Associate of an Acquiring Person (as such terms are defined in the Amended and Restated Shareholder Rights Plan Agreement) or a Person or an Associate of an Acquiring Person represented hereby are void or shall become void in the circumstances specified in Subsection 3.1(b) of the Amended and Restated Shareholder Rights Plan Agreement.

would require the imposition of such legend but shall impose such legend only if instructed to do so by the Company in writing or if a legend is required by law. Notwithstanding the foregoing, the issuance of a Rights Certificate which does not bear the legend referred to in this Subsection 3.1(d) shall not invalidate or affect the validity of such Rights Certificate.

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## ARTICLE 4 THE RIGHTS AGENT

### 4.1

accordance with the terms and conditions hereof, and the Rights Agent hereby accepts confirms such appointment. The Company may  
-Rights Agents shall be as the Company may determine, with the approval of the Rights Agent and the Co-Rights Agent. The Company  
y loss, liability, or expense, incurred without gross negligence, bad faith or wilful misconduct on the part of the Rights Agent, for anyth  
e resignation or removal of the Rights Agent.

it in connection with its administration of this Agreement in reliance upon any certificate for Common Shares, Rights Certificate, certifi  
ed, executed and, where necessary, verified or acknowledged, by the proper Person or Persons.

ministration of this Agreement by the Rights Agent and, at any time upon request, shall provide to the Rights Agent an incumbency certifi

ble, the Rights Agent shall not be liable under any circumstances whatsoever for any (i) breach by any other party of securities law or o

ity of the Rights Agent shall be limited, in the aggregate, to the amount of fees paid by the Company to the Rights Agent under this Ag

Merger, Amalgamation or Consolidati

corporation resulting from any merger, amalgamation, statutory arrangement or consolidation to which the Rights Agent is a party, or

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such corporation would be eligible for appointment as a successor Rights Agent under the provisions of Section 4.4 hereof. If, at the time the Rights Certificates are so countersigned; and if, at that time, any of the Rights have not been countersigned, any successor Rights Agent may countersign and deliver Rights Certificates so countersigned but not delivered, the Rights Agent may adopt the countersignature under its prior name and deliver Rights Certificates so countersigned in the Rights Certificates and in this Agreement.

**4.3**

The obligations imposed by this Agreement upon the following terms and conditions, all of which the Company and the holders of Rights Certificates (including the Company) and such other experts as it reasonably considers necessary to perform its duties hereunder, and the opinion of such court or arbitrator shall be conclusive and binding on the Company and the holders of Rights Certificates. No fact or matter shall be proved or established by the Company prior to taking or suffering any action hereunder, such fact or matter (unless otherwise stated) shall be proved or established by any Vice-President, Treasurer, Corporate Secretary, or any Assistant Secretary of the Company and delivered to the Rights Agent; and

the Company) and such other experts as it reasonably considers necessary to perform its duties hereunder, and the opinion of such court or arbitrator shall be conclusive and binding on the Company and the holders of Rights Certificates. No fact or matter shall be proved or established by the Company prior to taking or suffering any action hereunder, such fact or matter (unless otherwise stated) shall be proved or established by any Vice-President, Treasurer, Corporate Secretary, or any Assistant Secretary of the Company and delivered to the Rights Agent; and

fact or matter be proved or established by the Company prior to taking or suffering any action hereunder, such fact or matter (unless otherwise stated) shall be proved or established by any Vice-President, Treasurer, Corporate Secretary, or any Assistant Secretary of the Company and delivered to the Rights Agent; and

notwithstanding anything to the contrary, the Rights Agent will be liable hereunder for any action taken by it in accordance with the provisions of this Agreement or in the certificates for Common Shares or the Rights Certificates (except its countersignature thereof) or be required to indemnify the Company and the holders of Rights Certificates. The Rights Agent will not have any responsibility in respect of the validity of this Agreement or

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Share or Rights Certificate (except its countersignature thereof); nor will it be responsible for any breach by the Company of any covenants, conditions or provisions of Section 2.3 hereof or responsible for the manner, method or amount of any such adjustment or the ascertaining of the existence of any such adjustment to the authorization of any Common Shares to be issued pursuant to this Agreement or any Rights or as to whether any Common Shares are or should be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required to carry out the duties hereunder from any individual believed by the Rights Agent to be the Chairman of the Board, President, Chief Executive Officer, or any other officer in accordance with instructions of any such individual; nor will it be responsible for any loss or damage to any Common Shares, Rights or other securities of the Company or become pecuniarily interested in any transaction in which the Company or any other legal entity; and the Rights Agent will not be answerable or accountable for any act, default, negligence or omission of the Company or its agents, whether itself or by or through its attorneys or agents, and the Rights Agent will not be answerable or accountable for any act, default, negligence or omission of the Company or its agents, whether itself or by or through its attorneys or agents.

**4.4**

(which may be given in writing or by electronic mail (as is acceptable to the Company) in writing mailed to the Company and to each transfer agent of Common Shares by registered or certified mail, return receipt requested, or otherwise become incapable of acting, the Company will appoint a successor to the Rights Agent. If the Company fails to make such appointment within 60 days of the date of the appointment of the Rights Agent, the Rights Agent may, at its option, resign its office and the Company shall be deemed to have appointed the Rights Agent as its successor to the Rights Agent.

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holder of any Rights (which holder shall, with such notice, submit such holder's Rights Certificate, if any, for inspection by the Company in the Province thereof authorized to carry on the business of a trust company in the Province of British Columbia. After appointment, the successor Rights Agent shall execute and transfer to the successor Rights Agent any property at the time held by it hereunder, and execute and deliver any further assurances to the holders of the Rights in accordance with Section 5.9. Failure to give any notice provided for in this Section 4.4, however, or any other notice to the Rights Agent, as the case may be.

Compliance with applicable laws. For any other reason whatsoever, the Rights Agent reasonably determines that such an act might cause it to be in non-compliance with applicable laws, including anti-terrorism or anti-terrorist legislation, regulation or guideline, then it shall have the right to resign on 30 days' written notice to the Company, which resignation shall be rectified to the Rights Agent's satisfaction (acting reasonably) within such 30-day period, then such resignation shall not be effective.

**4.6**

Privacy Laws. This section (collectively, **Privacy Laws**) applies to obligations and activities under this Agreement. Despite any other provision of this Agreement, the Company shall use commercially reasonable efforts to ensure that its services hereunder comply with Privacy Laws. The Company shall also obtain the required consents of the relevant individuals to the collection, use and disclosure of their personal information, or will have determined that such consents are not required.

Fiduciary Duties. The Board of Directors shall ensure that shareholders of the Company reject or accept any Take-over Bid or take any other action including the commencement, prosecution or defense of any legal action that the Board of Directors believe are necessary or appropriate in the exercise of their fiduciary duties.

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**4.8**

the Rights Agent shall not be liable under any circumstances whatsoever for any (a) breach by any other party of securities law or other or damages.

**ARTICLE 5 MISCELLANEOUS**

**5.1**

delivered to the Rights Agent, waive the application of Section 3.1 to that particular Flip-in Event provided that the particular Flip-in Event waives the application of Section 3.1 to a particular Flip-in Event pursuant to this Subsection 5.1(a), the Board of Directors shall be the same may be extended from time to time) in respect of which a waiver is, or is deemed to have been, granted under this Subsection 5.1(a). In any case may be, the Board of Directors of the Company acting in good faith may, at its option, at any time prior to the provisions of Section 2.3 if an event of the type analogous to any of the events described in Section 2.3 shall have occurred (such redemption has been granted under Subsection 5.1(a), a Person acquires outstanding Voting Shares, other than Voting Shares Beneficially Owned by such acquisition without further formality and without any approval under Subsection 5.4(b) 5.4(c) or (c) be deemed to have elected to accept the Permitted Bid expires, is withdrawn or otherwise terminates after the Separation Time has occurred and prior to the occurrence of a

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ner of Subsection 5.1(b) or (d), to redeem the Rights, the right to exercise the Rights will thereupon, without further action and without  
5.1(b) or (d), to redeem the Rights, the Company shall give notice of redemption to the holders of the then outstanding Rights by publica  
the transfer agent for the Voting Shares. Any notice which is mailed in the manner provided herein shall be deemed given, whether or n  
o or down) to the nearest cent.

distributed new Rights to the holders of Voting Shares as of such date and in respect of each additional Voting Share issued thereafter, o  
his Agreement shall be deemed not to have occurred and the new Rights shall be outstanding and attached to the outstanding Common  
t if the Board of Directors has determined within ten Trading Days following a Stock Acquisition Date that a Person became an Acquir  
not to have occurred. Any such waiver pursuant to this Subsection 5.1(h) must be on the condition that such Person, within 14 days af  
e Person remains an Acquiring Person at the close of business on the Disposition Date, the Disposition Date shall be deemed to be the d

The Company shall give prompt written notice to the Rights Agent of any waiver of the application of

**5.2**

e any rights whatsoever pursuant to this Agreement or in respect of any Right after the Expiration Time, except the Rights Agent as spe

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3 Issuance  
Issue new Rights Certificates evidencing Rights in such form as may be approved by the Board of Directors to reflect any adjustment or

5.4 Suppl  
nt to correct any clerical or typographical error or, subject to Subsection 5.4(e), which supplements or amendments are required to main  
ts shareholders meeting referred to in Section 5.15, supplement or amend this Agreement without the approval of any holders of Right  
in this Section 5.4 to the contrary, no such supplement or amendment shall be made to the provisions of Article 4 except with the writt  
n below, at any time prior to the Separation Time, amend, vary or rescind any of the provisions of this Agreement and the Rights (wheth  
pendent Shareholders present or represented at and entitled to be voted at a meeting of the holders of Voting Shares duly called and hel  
the Expiration Time, amend, vary or delete any of the provisions of this Agreement and the Rights (whether or not such action would m  
ave been given if such amendment, variation or deletion is authorized by the affirmative votes of a simple majority of the votes cast by  
he Articles and By-laws of the Company.  
be entitled to one vote, and the procedures for the calling, holding and conduct of the meeting shall be those, as nearly as may be, which

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ursuant to Subsection 5.4(a) which are required to maintain the validity of this Agreement as a result of any change in any applicable le  
efore the Separation Time, be submitted to the shareholders of the Company at the next meeting of shareholders and the shareholders m  
a date not later than immediately following the next meeting of shareholders of the Company called after the Separation Time and the  
until it is confirmed or rejected or until it ceases to be effective (as described in the next sentence) and, where such amendment is confir  
ion of the meeting at which it was rejected or to which it should have been but was not submitted or from and after the date of the meet  
substantially the same effect shall be effective until confirmed by the shareholders or holders of Rights referred to Subsection 5.4(b) or  
etion to this Agreement as referred to in this Section 5.4 within five Business Days of effecting such amendment, variation or deletion,  
Fractional R  
l Rights. After the Separation Time, in lieu of issuing fractional Rights, the Company shall pay to the holders of record of the Rights Ce  
ght that the fraction of a Right that would otherwise be issuable is of one whole Right, provided that the Company shall not be required  
s which evidence fractional Common Shares. In lieu of issuing fractional Common Shares, the Company shall pay to the registered hol

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Common Share that the fraction of a Common Share that would otherwise be issuable upon the exercise of su

**5.6**

olely in the Rights Agent, are vested in the respective holders of the Rights. Any holder of Rights, without the consent of the Rights Ag  
o exercise such holder's Rights, or Rights to which such holder is entitled, in the manner provided in such holder's Rights Certificate a  
ny breach of this Agreement and will be entitled to specific performance of the obligations under, and injunctive relief against actual or

**5.7**

approval or consent from any governmental or regulatory authority having jurisdiction, and without limiting the generality of the forego  
Exchange and other exchanges shall be obtained, in relation to the issuance of the Rights and the Common Shares upon the exercise of

**5.8**

s Agreement would require compliance by the Company with the securities laws or comparable legislation of a jurisdiction outside Can  
curities issuable on exercise of Rights to persons who are citizens, residents or nationals of any jurisdiction other than Canada or the Un

**5.9**

any Rights to or on the Company shall be sufficiently given or made if delivered, sent by registered or certified mail, postage prepaid (u

Ritchie Bros. Auctioneers Incorporated  
9500 Glenlyon Parkway  
6500 River Road Richmond, BC V6X 4G5 Burnaby, BC, Canada  
V5J 0C6

Attention:

ax No.

(604

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Rights to or on the Rights Agent shall be sufficiently given or made if delivered, sent by registered or certified mail, postage prepaid (u

Computershare Investor Services Inc.  
3<sup>rd</sup> Floor 510 Burrard Street  
Vancouver, British Columbia V6C 3B9

ention: Gener

Fax No.:

by the Company or the Rights Agent to or on the holder of any Rights shall be sufficiently given or made if delivered or sent by first cl  
herein provided shall be deemed given, whether or not the holder receives the notice.

and on the day of delivery, if so delivered, on the third Business Day (excluding each day during which there exists any general interrupti  
the addressee on a Business Day and if not, on the first Business Day thereafter).Each of the Company and the Rights Agent may from

**5.10**

as pursuant to this Agreement, then the Company will reimburse the holder of any Rights for the costs and expenses (including legal fee

**5.11**

and provisions of this Agreement by or for the benefit of the Company or the Rights Agent shall bind and enure to the benefit of their r

**5.12**

any, the Rights Agent and the holders of the Rights any legal or equitable right, remedy or claim under this Agreement; further, this Agre Be

**5.13**

ct made under the laws of the Province of British Columbia and for all purposes shall be governed by and construed in accordance with

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**5.14**

invalid or unenforceable, such term or provision shall be ineffective only as to such jurisdiction and to the extent of such invalidity or termination or the application of such term or provision in any other jurisdiction or to circumstances other than those as to which it is specifically

**5.15**

Effecti

st annual or special meeting of holders of Voting Shares following the date hereof, the Company shall request confirmation of this Agreement to be held on or prior to June 30, 2007, not later than six months from February 27, 2019, then this Agreement and all outstanding Resolutions called to consider the confirmation of this Agreement under this Section 5.15 and (b) June 30, 2007. six months from February

**5.16**

who vote in respect of such reconfirmation at the annual meeting of the Company held in 2010 2022 and at every third annual meeting of the Company shall be null and of no further force and effect on and from the date of termination of any such annual meeting; provided, however, that termination of this Agreement shall be effective as of the date upon which this Agreement would otherwise terminate pursuant to this Section 5.16.

Determinations and A

(with respect to the foregoing) which are done or made by the Board of Directors, in good faith, for the purposes hereof shall not subject the Company to any liability

**5.18**

performance or observance of any provision contained herein by reason of act of God, riots, terrorism, acts of war, epidemics, governmental actions or other causes beyond the control of the Company (including but not limited to natural disasters, strikes, and other failures). Performance times under this Agreement shall be extended for a period of time equivalent to the time lost because of any delay

**5.19 5.18**

Time shall be of the essence in this Agreement.

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**5.20 5.19**

ed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterp

*[Remainder of page left intentionally blank]*

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above

**RITCHIE BROS. AUCTIONEERS INCORPORATED**

By:  
By:

*c/s*

**COMPUTERSHARE INVESTOR SERVICES INC.**

By:  
By:

*c/s*

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ATTACHMENT 1

RITCHIE BROS. AUCTIONEERS INCORPORATED

AMENDED AND RESTATED SHAREHOLDER RIGHTS PLAN AGREEMENT

[Form of Rights Certificate]

Certificate No. \_\_\_\_\_

\_\_\_\_\_ Rights

**RESTATED SHAREHOLDER RIGHTS PLAN AGREEMENT. UNDER CERTAIN CIRCUMSTANCES (SPECIFIED IN SUB  
N RELATED PARTIES, OR TRANSFEREES OF AN ACQUIRING PERSON OR CERTAIN RELATED PARTIES AND THE**

## **Rights Certificate**

entitles the registered holder thereof, subject to the terms, provisions and conditions of the Amended and Restated Shareholder Rights I  
Company ) and Computershare Investor Services Inc., a trust company incorporated under the laws of Canada (the Rights Age  
Agreement ), to purchase from the Company at any time after the Separation Time (as such term is defined in the Amended and Resta  
n presentation and surrender of this Rights Certificate with the Form of Election to Exercise (in the form provided hereinafter) duly exe  
shall be an amount equal to three times the Market Price (as such term is defined in the Amended and Restated Shareholder Rights Plan  
and Restated Shareholder Rights Plan Agreement.

areholder Rights Plan Agreement, the number of Common Shares which each Right entitles the registered holder thereof to purchase sh

Agreement, which terms and provisions are incorporated herein by reference and made a part hereof and to which Shareholder Rights P  
nt, the Company and the holders of the Rights. Copies of the Amended and Restated Shareholder Rights Plan Agreement are on file at t

on surrender at any of the offices of the Rights Agent designated for such purpose, may be exchanged for another Rights Certificate or R

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ificates surrendered. If this Rights Certificate shall be exercised in part, the registered holder shall be entitled to receive, upon surrende  
r Rights Plan Agreement, the Rights evidenced by this Certificate may be redeemed by the Company at a redemption price of \$0.00000  
will be issued upon the exercise of any Rights evidenced hereby, but in lieu thereof a cash payment will be made, as provided in the Am  
holder of Common Shares or of any other securities which may at any time be issuable upon the exercise hereof, nor shall anything cor  
eholders at any meeting thereof, or to give or withhold consent to any corporate action, or to receive notice of meetings or other actions  
r otherwise, until the Rights evidenced by this Rights Certificate shall have been exercised as provided in the Amended and Restated SH

This Rights Certificate shall not be valid or obligatory for any purpose until it shall have been countersigned by the Rig

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WITNESS the facsimile signature of the proper officers of the Company and its corporate seal.

Date:

**RITCHIE BROS. AUCTIONEERS  
INCORPORATED**

By:

By:

Countersigned:

**COMPUTERSHARE INVESTOR SERVICES INC.**

By:

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FORM OF ASSIGNMENT

(To be executed by the registered holder if such holder desires to transfer the Rights evidenced by this Rights Certificate)

FOR VALUE RECEIVED hereby sells, assigns and transfers unto

(Please print name and address of transferee.)

together with all right, title and interest therein, and does hereby irrevocably constitute and appoint , as attorney, to transfer the within

Dated:

Signature

(Signature must correspond to name as written upon the face of this Rights Certificate in order to be eligible for the Securities Transfer Association Medallion (STAMP) Program.

Shares, that the Rights evidenced by this Rights Certificate are not, and, to the knowledge of the undersigned, have never been, Beneficially Owned by any person who is a participant in the Rights Plan Agreement of Ritchie Bros. Auctioneers Incorporated.

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FORM OF ELECTION TO EXERCISE

(To be executed by the registered holder if such holder desires to exercise the Rights Certificate.)

RITCHIE BROS. AU  
COMPUTERSHA

rights represented by the attached Rights Certificate to purchase the Common Shares or other securities, if applicable, issuable upon the exercise

Exercise of such Rights shall be registered in the name of and delivered to:

Signature

(Signature must correspond to name as written upon the face of this Rights Certificate in order to be eligible for the Securities Transfer Association Medallion (STAMP) Program.

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CERTIFICATE

(To be completed if true.)

shares, that the Rights evidenced by this Rights Certificate are not, and, to the knowledge of the undersigned, have never been, Beneficial Owners thereof. Capitalized terms shall have the meaning ascribed thereto in the Amended and Restated Shareholder Rights Plan Agreement of

Signature

(To be attached to each Rights Certificate)

**NOTICE**

Not completed, the Company will deem the Beneficial Owner of the Rights evidenced by this Rights Certificate to be an Acquiring Person or an Affiliate or Associate thereof, or by a Person acting jointly or in concert with an Acquiring Person or an Affiliate or Associate thereof.

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