

1 Lance A. Loveland
Jason R. Naess
2 PARSONS, SMITH, STONE,
LOVELAND & SHIRLEY, LLP
3 137 West 13th Street
4 P.O. Box 910
Burley, Idaho 83318
5 (208) 878-8382
(208) 878-0146 – fax
6 Idaho State Bar #5787
Idaho State Bar #8407
7 Trustee’s Counsel

8 UNITED STATES BANKRUPTCY COURT
DISTRICT OF IDAHO

9 -----
10 In Re:)
11) Case No. 13-40837-JDP
12) Chapter 7
13 HOKU MATERIALS, INC.,)
14 Debtor.)
15 -----

16 **MOTION TO APPROVE SALE FREE AND CLEAR
OF LIENS, CLAIMS, AND ENCUMBRANCES**

17 COMES NOW Gary L. Rainsdon (“Trustee”), chapter 7 trustee for the Hoku Materials, Inc.,
18 bankruptcy estate (the “Estate”), by and through counsel of record, Jason R. Naess of the firm
19 Parsons, Smith, Stone, Loveland & Shirley, LLP, and hereby moves the Court for an Order
20 approving a Sale of the assets of the Estate located at Debtor’s manufacturing facility in Pocatello,
21 Idaho, free and clear of liens, claims, and encumbrances pursuant to §§ 105, 363(b), 363(f), and
22 363(m) of the Bankruptcy Code. The Assets to be sold are as described in the Notice of Sale
23 enclosed as Exhibit A to this Motion. In support of the Motion, Trustee states as follows:

24 **Introduction**

25 This case was filed by Debtor on July 2, 2013. To maximize recovery for Debtor’s
26 unsecured creditors, Trustee proposes approval of a Sale of the Assets, as identified in Exhibit A.

PARSONS, SMITH, STONE, LOVELAND & SHIRLEY, LLP
LAWYERS
BURLEY, IDAHO

1 Auction

2 The Auction will be held December 17, 2013, at 11:00 a.m., at One Hoku Way, Pocatello,
3 Idaho, as described in Exhibit A.

4 Basis for Requested Relief

5 I. Sale of the Assets

6 Bankruptcy Code § 363(b)(1) authorizes a “trustee, after notice and a hearing, [to] use, sell,
7 or lease, other than in the ordinary course of business, property of the estate.” The decision to sell
8 property of the estate outside of the ordinary course of business must be based on the trustee’s
9 reasonable business judgment. *Institutional Creditors of Continental Air Lines, Inc. v. Continental*
10 *Air Lines, Inc. (In re Continental Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986); *In re Ernst*
11 *Home Ctr., Inc.*, 209 B.R. 974, 979 (Bankr. W.D. Wash. 1997). The Court may approve the
12 proposed sale if the trustee has established some articulable business justification for the transaction.
13 *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d
14 Cir. 1983).

15
16 Trustee’s decision to sell the Assets is justified by the exercise of his business judgment.
17 The Assets are associated with a polysilicon manufacturing facility that was never completed or used
18 for commercial production. As it sits, the facility is not capable of producing any product. Yet,
19 there is substantial value in the Assets for potential future use in a polysilicon manufacturing
20 operation, or in many other non-polysilicon-related industries. The Assets, however, require
21 protection in terms of insurance and security, and must be physically maintained in order to retain
22 their value. Trustee does not have the resources to maintain or protect the Assets. The Court
23 approved a twelve-percent (12%) carve out from sale proceeds that will benefit the Estate’s priority
24 and unsecured creditors.

25 II. Sale Free and Clear of Interests

26 Trustee requests the Court to approve the Sale of the Assets free and clear of all liens,
claims, and encumbrances that may be asserted against the Assets, with any such liens, claims, and

PARSONS, SMITH, STONE, LOVELAND & SHIRLEY, LLP
LAWYERS
BURLEY, IDAHO

1 encumbrances attaching to the proceeds of the Sale. It is anticipated that potential bidders at the
2 Auction will only bid on, or buy, the Assets if they are free and clear of all interests. Section 363(f)
3 of the Code allows a trustee to sell property of a bankruptcy estate free and clear of any interest in
4 the property under certain circumstances, while still protecting the interests of secured creditors.
5 Among the circumstances under which a trustee may sell property free and clear of an entity's
6 interest, include when:

7 ****

8 (2) Such entity consents; [or]

9 ****

(4) Such interest is in bona fide dispute; or

10 § 365(f).

11 Trustee asserts that §§ 363(f)(2) and (f)(4) are applicable here. For the purposes of
12 § 363(f)(2), the absence of an objection by holders of claims and interests in property constitutes
13 consent to a sale free and clear of such claims and interests. *See Futuresource LLC v. Reuters Ltd.*,
14 312 F.3d 281, 285-86 (7th Cir. 2002) ("lack of objection (provided of course there is notice) counts
15 as consent"); *In re Borders Grp., Inc.*, 453 B.R. 477, 484 (Bankr. S.D.N.Y. 2011); *In re Blixseth*,
16 2011 WL 1519914 *14 (Bankr. D. Mont. Apr. 20, 2011). Holders of interests in the Assets will
17 receive notice of the proposed sale free and clear of claims and interests, and have the opportunity to
18 object to the Sale.

19 To the extent any secured creditor objects to Trustee's sale of the Assets free and clear of
20 liens, Trustee asserts that, to the best of his understanding, each of the liens, claims, or encumbrances
21 in this case is subject to a bona fide dispute. In reviewing whether there is a bona fide dispute, a
22 court is not required to determine the underlying dispute or determine the probable outcome; it is
23 only required to determine that there is, in fact, a dispute. *See In re Gulf States Steel, Inc. of*
24 *Alabama*, 285 B.R. 497, 507-08 (Bankr. N.D. Ala. 2002). The purpose for allowing a sale free and
25 clear of disputed interests is to allow the liquidation of an estate's assets without delay while the
26 disputes are being litigated. *Moldo v. Clark (In re Clark)*, 266 B.R. 163, 171-72 (9th Cir. BAP
2001). The procedure preserves all parties' rights by transferring interests from property to dollars

PARSONS, SMITH, STONE, LOVELAND & SHIRLEY, LLP
LAWYERS
BURLEY, IDAHO

1 that represent the property's value. *Id.* The proceeds of the sale are held subject to the disputed
2 interests, and then distributed according to the resolution of the dispute. *Id.*

3
4 Even where a dispute involves third parties, property may be sold free and clear of the
5 disputed interest if the outcome of the dispute over the interest will affect the value of the estate.
6 *Austein v. Schwartz (In re Gerwer)*, 898 F.2d 730, 733 (9th Cir. 1990). The question is whether,
7 looking objectively at the interest, there is a legal or factual dispute as to the validity of the interest.
8 *In re Dewey Ranch Hockey, LLC*, 406 B.R. 30, 39 (Bankr. D. Ariz. 2009).

9
10 Here, each of the secured creditors' liens, with the exception of that held by Bannock
11 County, is the subject of one, or more, state court lawsuits in multiple jurisdictions. The results of
12 those lawsuits will affect the value of the estate as they will, in part, determine which creditors are
13 secured and which are unsecured. Because each of the interests in the Assets is, in one form or
14 another, likely subject to an ongoing bona fide dispute, Trustee should be allowed to sell the property
15 free and clear of those interests, with the interests attaching to the proceeds to be distributed once the
16 disputes are settled amongst the creditors.

17
18 Holders of interests in the Assets will be adequately protected because their interests will
19 attach to the proceeds of the Sale, subject to any claims and defenses that Trustee may have thereto.

20 **Non-Applicability of Stays**

21 To preserve the value of the Assets, and to ensure the Assets' value is not diminished by the
22 uncertainty of delay, Trustee requests the Court specifically find any stays that might otherwise
23 inhibit Trustee's ability to immediately close the Sale of the Assets after the Court enters an order
24 approving the Sale are inapplicable. Included in this request is any stay arising under Rule 6004 or
25 6006.

26 **Conditions to Trustee's Obligation to Close**

1 Formal closing shall not occur until the Court has issued an Order authorizing Trustee to
2 consummate the Sale, and such Order has either become final and not appealable, or the Order
3 contains a waiver of the stay set forth in Rule 6004(h) of the Federal Rules of Bankruptcy Procedure.

4 **Jurisdiction**

5 The Court shall retain jurisdiction as to any matter related to the submission of bids, the sale
6 of the Assets, and any disputes under the Order approving the Sale.

7 **Notice of Time for Written Objections**

8 In the event you object to the proposed Sale, please see the Notice attached as Exhibit A for
9 procedures and deadlines to object to the Sale. Issues regarding the auctioneer's buyer's premium or
10 compensation are specifically reserved and preserved by all parties, and refraining from objecting to
11 the Sale does not preclude or waive a party's right or ability to object to any future application for
12 compensation.

13 **Relief Requested**

14 Trustee has made the strategic decision to sell the Debtor's Assets through an auction
15 process. By this Motion, Trustee seeks entry of an Order:

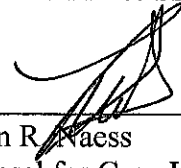
- 16
- 17 1. Approving the results of the December 17, 2013, Sale of the Assets, identifying the
18 successful bidder and two back-up bidders;
 - 19 2. Approving the Sale free and clear of all liens, claims, encumbrances, or other interests,
20 to the successful bidder;
 - 21 3. Providing that the Sale to the successful purchaser is in good faith, and approving the
22 Sale pursuant to §363(m); and
 - 23 4. Waiving the stay set forth in Rule 6004(h) of the Federal Rules of Bankruptcy
24 Procedure.

25 WHEREFORE, for the reasons set forth herein, Trustee requests the Court to grant the relief
26 requested herein, and any other and further relief it deems appropriate.

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

DATED this 19th day of November, 2013.

PARSONS, SMITH, STONE,
LOVELAND & SHIRLEY, LLP



for:

Jason R. Naess
Counsel for Gary L. Rainsdon, Trustee

Cc: U.S. Trustee, ECF, Idaho State Tax Commission, Internal Revenue Service

PARSONS, SMITH, STONE, LOVELAND & SHIRLEY, LLP
LAWYERS
BURLEY, IDAHO

PARSONS, SMITH, STONE, LOVELAND & SHIRLEY, LLP
LAWYERS
BURLEY, IDAHO

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

EXHIBIT A – MOTION TO APPROVE SALE FREE AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES

Lance A. Loveland
Jason R. Naess
PARSONS, SMITH, STONE,
LOVELAND & SHIRLEY, LLP
137 West 13th Street
P.O. Box 910
Burley, Idaho 83318
(208) 878-8382
(208) 878-0146 – fax
Idaho State Bar #5787
Idaho State Bar #8407
Trustee’s Counsel

UNITED STATES BANKRUPTCY COURT
DISTRICT OF IDAHO

In Re:)	Case No. <u>13-40837-JDP</u>
)	
HOKU MATERIALS, INC.,)	Chapter 7
)	
Debtor.)	
)	

NOTICE OF SALE OF ASSETS FREE AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES

TO THE DEBTOR, DEBTOR’S ATTORNEY, CREDITORS, AND OTHER PARTIES IN INTEREST:

PLEASE TAKE NOTICE that the chapter 7 trustee in the above-captioned matter, Gary L. Rainsdon (“Trustee”), will sell, pursuant to 11 U.S.C. 363, Bankruptcy Rule 6004, and Local Bankruptcy Rule 2002.1, the below described property in which the Hoku Materials, Inc., Bankruptcy Estate (the “Estate”) claims an interest.

Property to Be Sold:

Acquired Assets. Trustee shall transfer, assign, and convey to the successful purchaser free and clear of all liens, claims, encumbrances, and interests, the Estate’s right, title, and interest in and to all of the real and personal assets located at the Hoku Materials, Inc., polysilicon manufacturing facility at One Hoku Way, Pocatello, Idaho (the “Acquired Assets”), including, without limitation, the following:

- A. The Estate’s physical assets, including, but not limited to, (i) machinery, (ii) equipment, (iii) computers without hard drives, (iv) software to the extent such

PARSONS, SMITH, STONE, LOVELAND & SHIRLEY, LLP
LAWYERS
BURLEY, IDAHO

1 can be transferred by law, (v) owned vehicles, (vi) furniture and fixtures, (vii)
2 tools, (viii) Inventory, and (ix) other personal property of every kind and
3 description of Debtor located at One Hoku Way, Pocatello, Idaho, together with
all drawings, prints, and instruction manuals relating to same;

- 4 B. Intellectual Property related to the conduct of Debtor's business, to the extent
transferable by law;
5 C. All customer and supplier lists related to the conduct of Debtor's business;
6 D. All purchaser and owner data related to the conduct of Debtor's business;
7 E. All rights of the Estate under the March 22, 2007, Ground Lease between the
City of Pocatello and Hoku Materials, Inc., as amended;
8 F. All rights and remedies of the Estate, to the extent transferrable by law, under
express or implied warranties or licenses from vendors and manufacturers
relating to the Acquired Assets; and
9 G. To the extent transferable by law, all Governmental Authorizations held by Seller
to the extent necessary for and exclusively relating to the Acquired Assets or the
10 operation of Debtor's business.

11 Excluded Assets. Notwithstanding anything to the contrary in this Notice, Trustee is not
selling any interest in:

- 12 A. Hoku Materials, Inc.'s business and accounting records, documentation, and
correspondence;
13 B. A 1,000 gallon storage tank with steel support frame, stenciled number 113121;
14 C. A 1,000 gallon storage tank with steel support frame, stenciled number 113122;
15 D. A 500 gallon storage tank with steel support frame, stenciled number 113123;
16 E. A "TrueSense" monitoring system and peripheral equipment;
17 F. A "PaceSetter" system and peripheral equipment;
18 G. Six chemical pumps, previously identified collectively as Auction Lot No. 1168;
19 H. Any right, recovery amount, or cause of action whatsoever that accrues or may
accrue to the Trustee, including, but not limited to, (i) causes of action pursuant
20 to §§ 544, 545, 547, 548, or 549 of the Bankruptcy Code, or (ii) any and all rights
to receive any tax refunds;
21 I. Any property of the Estate not located at One Hoku Way, Pocatello, Idaho;
J. All cash and bank deposits; or
K. Any and all customer deposits relating to (i) Hoku Materials, Inc., or (ii) the
acquired assets.

22 Time and Place of Sale:

23 The Sale will be by public auction to the highest bidder on Tuesday, December 17, 2013,
beginning at 11:00 a.m., at One Hoku Way, Pocatello, Idaho 83201.

24 Terms of Sale:

- 25 • The property shall be sold to the highest bidder at the December 17, 2013, auction.
26 • The Sale includes all assets identified as "Property to Be Sold," above, and all such property
is offered as a single, consolidated Asset.
• The property is sold "AS IS," "WHERE IS," and without warranty of any nature whatsoever,
either express or implied.

PARSONS, SMITH, STONE, LOVELAND & SHIRLEY, LLP
LAWYERS
BURLEY, IDAHO

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

- Each bidder shall be deemed to acknowledge and represent that it has had a full and complete opportunity to conduct due diligence, examinations, inspections, and analyses of the Assets; and that the bidder is not relying upon any statement, representations or warranties.
- The property offered for sale is subject to change or withdrawal prior to sale.
- The sale shall be free and clear of all liens and claims, with valid liens and claims to attach to the proceeds of the Sale.
- The Auction will include live on-site bidding.
- Only Qualified Bidders, Trustee, and their respective advisors, and other parties in interest shall be permitted to attend the Auction. If a Qualified Bidder is an entity, the entity must be represented at the Sale by the entity's owner, an officer of the entity, or an Idaho licensed attorney representing the entity. Each Qualified Bidder shall be present at the Auction to bid.
- Only Qualified Bidders and their duly authorized representatives shall be entitled to bid at the Auction. All Qualified Bidders shall be entitled to be present for all bidding with the understanding that all material terms of each bid will be fully disclosed to all persons present at the Auction.
- All Qualified Bidders shall be deemed to have consented to the core jurisdiction of the Court, and to have waived any right to jury trial in connection with any disputes relating to the auction and the Sale of the Assets.
- Bidding at the Auction shall begin at \$5,000,000.00. Subsequent bids shall be in minimum increments of \$25,000.00, with the increment amounts at Trustee's and his auctioneer's discretion.
- Each bid is subject to a ten percent (10%) buyer's premium.
- The successful purchaser will be responsible for all applicable taxes.
- Each Qualified Bidder will be informed of the terms of previous bids. All bidding will be open and transparent to all persons permitted to attend the Auction.
- The Auction will be recorded to ensure an accurate record of the bidding.
- Each Qualified Bidder will be required to confirm on the record of the Auction that it has not colluded with any other person with respect to the bidding or the Sale.
- To be deemed a "Qualified Bidder," a party must provide Trustee with the following by no later than noon on December 16, 2013:
 1. The name, title, and contact information of an individual authorized to bid at the auction, and, if applicable, the name and contact information of the entity for whom the person is bidding.
 2. A sale deposit in the amount of \$250,000.00 in the form of either a wire transfer to an account specified by Trustee or via a certified check payable to the order of "The Bankruptcy Estate of Hoku Materials, Inc., Case No. 13-400837." The sale deposit shall be held in escrow in a segregated account of Trustee pending the closing of the Sale. The full amount shall be forfeited as liquidated damages if a party is ultimately the successful bidder and fails to close the transaction because of a breach or failure to perform on the part of the successful purchaser.
 3. Proof of funds satisfactory to Trustee that the bidder has the financial wherewithal to timely consummate the acquisition of the Assets.
 4. A signed contract substantially in the form of the Asset Purchase and Sale Agreement attached as Exhibit A to this Notice, marked to show any changes made to the Purchase Agreement.

PARSONS, SMITH, STONE, LOVELAND & SHIRLEY, LLP
LAWYERS
BURLEY, IDAHO

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

5. If the bidder seeks tax exemption, a copy of a validly executed tax exemption certificate.

- All Qualified Bidders shall be bound by their bids until such time as a definitive sale agreement, acceptable to Trustee in his sole discretion, is executed by the winning bidder, and the Court has entered an Order approving the Sale to the successful bidder.
- Upon conclusion of the auction, Trustee will return the sale deposits for all bidders except the successful bidder and the two next-highest bidders. Trustee will hold the deposit of the successful bidder and the two next-highest bidders until the successful bidder has paid the full purchase price. If the successful bidder does not pay the full purchase price within seventy-two (72) hours of the close of the Auction, the Auction will be awarded to the second-highest bidder. If the second-highest bidder is not able to fund its bid price within seventy-two (72) hours, the auction will be awarded to the third-highest bidder.
- The successful purchaser's sale deposit will be applied to its bid amount.
- Unless the winning bidder works with Trustee to assume and assign the City of Pocatello lease, all purchased property must be removed from One Hoku Way, Pocatello, Idaho, by no later than January 20, 2013. If the purchaser does not wish an assumption and assignment of the lease, but needs additional time to remove the assets from One Hoku Way, Pocatello, Idaho, the purchaser must procure an independent agreement with the City of Pocatello, acceptable to Trustee, allowing the purchaser continued access to the site.
- The Auction will be governed by such other procedures as may be announced by Trustee, after consultation with his advisors, on the record prior to the commencement of the Auction; provided that any such other procures shall not be inconsistent with the procedures identified in this Notice.

Free and Clear of Liens:

The sale will be free and clear of all liens, claims, and other interests, with all valid liens, claims, and interests attaching to the sale proceeds.

Estimated Fair Market Value:

Trustee anticipates the Assets' actual liquidation value will be derived through the Sale. Prior estimates indicate the Assets' value is between \$6,250,000 and \$35,000,000. In selecting an Auctioneer to assist him in the sales process, Trustee received multiple estimates of the Assets' value from nationally recognized auctioneers, and the value presented herein is based on the estimated values attributed to the Assets by those auctioneers.

Liens or Encumbrances Claimed Against the Property:

The amount of each lien or encumbrance claimed against the property to be sold, and the identity of each lienholder, to the extent known to the Trustee, are as follows:

<u>Name:</u>	<u>Balance Owed¹</u>
ABB	\$2,724,500.62

¹ These owed balances reflect the amount included on a proof of claim, if filed. Where an amount is indicated by an "*", no proof of claim has been filed, and the amount is as provided in Debtor's schedules. For amounts with a "+", the proof of claim was filed as an unsecured creditor. All secured debts have been disputed, either by Debtor or other creditors. Trustee has not been able to determine, at this point, whether the identified lienholders hold valid liens against the property, and, if they do, the actual amount of the lien or encumbrance. Based on Trustee's research to date, it appears Shanghai Alex New Energy Co. and Wuxi Suntech Power Co., Ltd., do not have a lien or encumbrance against the Assets to be sold. Those entities are included in this list, out of an abundance of caution, because they were scheduled as Secured Creditors.

PARSONS, SMITH, STONE, LOVELAND & SHIRLEY, LLP
LAWYERS
BURLEY, IDAHO

1	Bannock County	\$5,823.97
2	Carter Chambers, LLC	\$581,509.51*
3	CH2M Hill, Inc.	\$596,567.65
4	Cruzer Industrial Coatings	\$642,349.20
5	Dewall Construction	\$569,247.83
6	Fire Protection of Idaho	Scheduled as "unknown"*
7	GBI Insulation	\$171,243.83*
8	GEA Fes Inc.	\$194,988.00
9	Hanwha SolarOne Corp., Ltd	\$49,000,000.00
10	Harris Thermal Transfer Prod.	\$694,603.56*
11	Hemlock Semiconductor Corp	\$361,858.90
12	Honeywell, Inc.	\$2,598,159.00
13	Industrial Piping, Inc.	\$14,093,677.96
14	Irwin Steel Erectors, Inc.	Not scheduled/No proof of claim
15	JH Kelly LLC	\$30,364,968.99
16	Jinko Solar Co., Ltd.	\$19,120,000.00*
17	JUB Engineers, Inc.	\$50,424.20*
18	Lea Electric	\$3,677,391.00
19	Lexington Group Int'l	\$3,046,224.00*
20	Oregon Electric Construction	\$10,900,088.03
21	Oz Construction, Inc.	\$74,648.20*
22	Performance Contracting, Inc.	\$2,354,017.15
23	Pocatello Ready Mix	\$37,561.49
24	Pro Builders, Inc.	\$73,059.34
25	Pro Rentals & Sales, Inc.	\$34,519.41
26	PSC Industrial Outsourcing	\$169,912.60
27	Qualico Steel Co.	\$2,964,008.75
28	Shanghai Alex New Energy Co.	\$30,000,000.00 ¹
29	Staker Parson Companies	\$1,019,378.15
30	Stone & Webster	\$408,479.00
31	Summit Contracting	\$675,627.76*
32	Teikoku USA, Inc.	\$1,078,569.24
33	Thomas D. Robison Roofing	Not scheduled/No proof of claim
34	Tianwei New Energy Holdings	At least \$201,704,643.75
35	TIC – The Industrial Company	\$5,144,919.93
36	Trane U.S., Inc.	\$24,007.00*
37	Wealthy Rise International	\$20,200,000.00
38	Wesco	\$114,988.73*
39	Western States Equipment	\$47,155.89 ¹
40	Wuxi Suntech Power Co., Ltd.	\$2,000,000.00*

23 Proposed Disposition of the Proceeds of Sale:

24 The Court has approved a carve out for priority and unsecured creditors in the amount of
25 twelve percent (12%) of the sale proceeds.

26 Trustee has employed Heritage Global Partners to assist him in conducting the Sale (the
"Auctioneer"). None the proceeds of the sale shall be compensation for the Auctioneer; the
Auctioneer will be paid a ten-percent (10%) buyer's premium from the purchaser of the Assets. That
Buyer's Premium will be held by Trustee in escrow pending approval of the Auctioneer's
compensation by the Court, and the Buyer's Premium is not proceeds of the Sale of the Assets.

1 Trustee has employed counsel to assist him in administering the estate, including this Sale of
2 the Assets. It is anticipated that certain of Trustee's counsel's compensation will be paid from the
3 proceeds. Trustee will seek a § 506(c) surcharge for the reasonable and necessary costs and
4 expenses spent in disposing of the Assets, including attorneys' fees, to the extent such expenses
5 benefited those claiming an allowed secured claim.

6 All compensation from proceeds of the Sale is subject to approval by the Court.

7 Subdivision of 11 U.S.C. § 363(f) Authorizing the Sale:

8 Trustee has asked for Court approval to sell the Assets free and clear, with all liens or other
9 encumbrances attaching to the proceeds of the Sale. Trustee asserts the Sale free and clear of
10 interests is authorized by § 363(f)(2) and (f)(4).

11 Miscellaneous Provisions:

12 Trustee is filing a motion with the Court for entry of an Order approving the Sale pursuant to
13 the provisions of §§ 105, 363(b), 363(f), and 363(m) of the Bankruptcy Code. A hearing on that
14 motion has been scheduled for December 17, 2013, as identified below.

15 Issues regarding the Auctioneer's buyer's premium or compensation are specifically
16 reserved and preserved by all parties, and refraining from objecting to this Sale does not
17 waive or impair a party's right or ability to object to any future application for Auctioneer's
18 compensation.

19 Issues involving the validity, priority, or extent of liens, claims, and interests are
20 specifically reserved and preserved by all parties.

21 Issues involving whether any specific auctioned asset is deemed to be real property,
22 personal property, fixture, or other characterization are specifically reserved and preserved
23 by all parties, and the parties are not bound by any reference to "real property," "personal
24 property," or any other characterization utilized in preparing for and conducting the Auction.

25 Trustee has asked the Court to waive the stay set forth in Bankruptcy Rule 6004(h),
26 and to authorize any Order approving the Sale to be effective and enforceable immediately
on its entry on the docket.

Unless otherwise specified, all time periods set forth in the Order shall be calculated
in accordance with Bankruptcy Rule 9006(a).

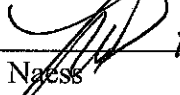
IF YOU WISH TO OBJECT to the Sale, you must file a written objection by December 10,
2013, stating the specific facts upon which the objection is based. Any objecting party must
schedule a hearing on the objection. Any objection must be filed with the Clerk of the Court, United
States Bankruptcy Court for the District of Idaho, 801 E. Sherman, Pocatello, ID, 83201, and a copy
of the objection must be served such that it is actually received by the objection deadline on the
Trustee, POB 506, Twin Falls, ID, 83303, and on all parties receiving notice through the Court's
Electronic Case Filing ("ECF") system.

HEARING. A hearing on Trustee's Motion to Sell Assets Free and Clear of Liens, Claims,
and Encumbrances is scheduled for December 17, 2013, at 1:30 p.m. before the United States
Bankruptcy Court for the District of Idaho, 801 E. Sherman, Pocatello, Idaho, 83201. At the hearing,
Trustee will request the Court to approve the Sale to the successful bidder, with two designated back-
up bidders, pursuant to §§ 105, 363(b), 363(f), and 363(m) of the Bankruptcy Code.

Dated November 19, 2013

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

PARSONS, SMITH, STONE,
LOVELAND & SHIRLEY, LLP

 For:

Jason R. Naess
Counsel for Gary L. Rainsdon, Trustee

cc: U.S. Trustee, ECF, Idaho State Tax Commission, Internal Revenue Service

PARSONS, SMITH, STONE, LOVELAND & SHIRLEY, LLP
LAWYERS
BURLEY, IDAHO

**ASSET PURCHASE AND SALE AGREEMENT
BY AND BETWEEN**

AND

THE BANKRUPTCY ESTATE OF HOKU MATERIALS, INC.

Bankruptcy Case Number 13-40837-JDP

_____, 2013

TABLE OF CONTENTS

	PAGE
ARTICLE I DEFINITIONS	2
ARTICLE II SALE AND PURCHASE	4
2.1 <u>Assets Being Sold and Acquired</u>	5
2.2 <u>As Is, Where Is</u>	5
2.3 <u>Purchase Price</u>	6
2.4 <u>Buyer’s Premium</u>	6
2.5 <u>Assumption of Assumed Agreements</u>	6
ARTICLE III THE CLOSING	7
3.1 <u>Time and Place of Closing</u>	7
3.2 <u>Deliveries</u>	7
3.3 <u>Submission for Bankruptcy Court Approval</u>	7
3.4 <u>Assumed Agreements</u>	8
ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE SELLER	8
4.1 <u>Authority</u>	8
ARTICLE V REPRESENTATIONS AND WARRANTIES OF THE BUYER	8
ARTICLE VI CONDITIONS TO CLOSE	9
6.1 <u>Conditions to Obligations of Buyer</u>	9
6.2 <u>Conditions to Obligations of Seller</u>	9
ARTICLE VII TERMINATION	9
7.1 <u>Termination</u>	10
ARTICLE VIII MISCELLANEOUS	10
8.1 <u>Covenants and Obligations</u>	11
8.2 <u>Notices</u>	10
8.3 <u>Governing Law</u>	11
8.4 <u>Severability</u>	11
8.5 <u>Entire Agreement; Amendments</u>	11
8.6 <u>Interpretation</u>	11
8.7 <u>Counterparts</u>	11
8.8 <u>Order Approving Sale Procedures</u>	11

ASSET PURCHASE AND SALE AGREEMENT

Parties

This Asset Purchase and Sale Agreement, dated _____, 2013 (the "Agreement"), is by and between _____, a _____, or its assignees (the "Buyer") and Gary L. Rainsdon, chapter 7 trustee of the bankruptcy estate of Hoku Materials, Inc. (the "Estate" or "Seller"). Seller and Buyer are sometimes referred to individually as a "Party" and, collectively, as the "Parties."

Recitals

WHEREAS, Hoku Materials, Inc. ("Debtor"), filed for chapter 7 bankruptcy on July 2, 2013, in the U.S. Bankruptcy Court for the District of Idaho, Bankr. No. 13-40837-JDP, and chapter 7 trustee, Gary L. Rainsdon was appointed to administer the assets of the Estate on July 9, 2013; and

WHEREAS, the assets of the Estate consist of, but are not limited to, all assets, including real property, personal property, and intangible property of a polysilicon manufacturing facility located at One Hoku Way, Pocatello, Idaho ; and

WHEREAS, Buyer desires to purchase and assume, and Seller desires to sell and assign, the Purchased Assets as defined herein, according to the terms and conditions set forth in this Agreement, in accordance with Bankruptcy Code §§ 105, 363 and 365, and other applicable provisions, and subject to entry of a Sale Order, as defined below;

WHEREAS, on September 24, 2013, the Court authorized Gary L. Rainsdon, as trustee for the Estate, to Auction and sell the Estate's assets located at the polysilicon manufacturing facility in Pocatello, Idaho, and whereas the Court entered a _____, 2013, Order authorizing the Auction (Order Approving Sale and Assignment and Assumption Procedures; Scheduling an Auction and Hearing to Consider Sale of the Assets Free and Clear of Any Interests; and Establishing Objection Deadline, Dkt. No. ____) (the "Order");

WHEREAS, this Agreement is subject to all of the provisions of the Order, which provides the basis for the execution of the Agreement;

NOW, THEREFORE, in consideration of the respective covenants, representations, warranties and agreements contained herein, and intending to be legally bound hereby, the Parties hereby agree as follows:

Agreement

ARTICLE I DEFINITIONS

1.1 The following terms shall have the following meanings when used in this Agreement. These definitions apply only to this Agreement, and are not applicable to any other document or process associated with the Auction approved by the Order:

"Acquired Assets" shall have the meaning set forth in Section 2.1, below.

"Assumed Agreements" shall mean any executory contract or unexpired lease assumed by Seller and assigned to Buyer pursuant to Bankruptcy Code § 365.

"Bankruptcy Code" means title 11 of the United States Code.

"Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure.

"Bill of Sale" means a duly executed bill of sale, in customary form, for the transfer by Seller of all Personal Property sold to Buyer hereunder.

"Business Day" means any calendar day that is not a Saturday, Sunday or public holiday under the laws of the State of Idaho.

"Claim" shall have the meaning set forth in Section 101(5) of the Bankruptcy Code.

"Demised Premises" means the Leased Real Property upon which substantially all property of Hoku Materials, Inc. is located at One Hoku Way, Pocatello, Idaho.

"Environmental Laws" means all applicable federal, state, and local laws, rules, and regulations relating to pollution or protection of human health or the environment (including ambient air, water, surface water, groundwater, land surface, soil or subsurface) or natural resources, including applicable laws relating to the generation, handling, storage, transfer, transportation, investigation, disposal, cleanup, treatment, or use of, or release or threatened release into the environment of any Hazardous Substances, including without limitation, the Federal Water Pollution Control Act (33 U.S.C. § 1251 et. seq.), Resource Conservation and Recovery Act (42 U.S.C. § 6901 et. seq.), Safe Drinking Water Act (42 U.S.C. § 3000(f) et. seq.), Toxic Substances Control Act (15 U.S.C. § 2601 et. seq.), Clean Air Act (42 U.S.C. § 740 et. seq.), and Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et. seq.).

"Final Order" shall mean an order of the Bankruptcy Court as to which (a) the time to appeal has expired and as to which no appeal, petition for certiorari, or other proceedings for reconsideration shall then be pending; (b) in the event that an appeal, writ of certiorari, or reconsideration thereof has been sought, the effectiveness of such order of the Bankruptcy Court shall not have been stayed pending appeal; or (c) any right to appeal, petition for certiorari, or to any other proceedings for reconsideration shall have been waived in writing.

"GAAP" means United States generally accepted accounting principles as in effect from time to time, consistently applied.

"Governmental Authority" means any federal, state or local government or other political subdivision thereof, including, without limitation, any Person exercising executive, legislative, judicial, regulatory, or administrative governmental powers or functions, in each case to the extent the same has jurisdiction over the Person or property in question.

"Governmental Authorization" means any approval, consent, ratification, waiver, license, permit (including environmental, construction, and operation permits), certificate, clearance, exemption, variance, order, registration or other similar documents and authorizations issued or granted by any Governmental Authority.

"Ground Lease" means the Ground Lease, dated as of March 22, 2007, between the City of Pocatello and Hoku Materials, Inc., as amended.

"Hazardous Substances" means any material, substance, or waste defined or characterized as hazardous, toxic, a pollutant, or a contaminant under Environmental Laws.

"Intellectual Property" shall mean all of the following in any jurisdiction throughout the world: (a) patents, patent applications and patent disclosures, as well as all reissues, divisionals, continuations, and continuation-in-part applications and any patents issuing thereon; (b) trademarks, service marks, trade dress, trade names, trade styles, corporate names, logos and internet domain names, together with all goodwill associated with each of the foregoing, (whether domestic or foreign, registered or unregistered), together with all applications, registration certificates, renewals, investigations, search reports, histories and other documents or files pertaining thereto; (c) copyrights and copyrightable works, and all registrations and applications therefor, both registered and unregistered, foreign and domestic; (d) registrations and applications for any of the foregoing; (e) art work, labels, designs, specifications, designs-in-progress, formulations, know-how, prototypes, inventions, discoveries; (f) all trade secrets, technology or processes, computer software (including documentation and related object and, if

applicable, source codes), and all confidential or proprietary information; and (g) rights under any license agreements for any of the foregoing.

"Inventory" means all new and saleable merchandise, parts, fittings, wherever located, held by or on behalf of the Estate.

"Leased Real Property" means the leasehold estate under the City of Pocatello lease, which lease is expressly identified as an Assumed Agreement.

"Liability" means, as to any Person, any debt, liability, loss, Claim, damage, expense, fine, cost, royalty, deficiency, or obligation of whatever kind or nature (whether direct or indirect, known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due, and whether in contract, tort, strict liability, or otherwise, and whether or not resulting from third party claims, and including all attorney and other professional fees and other costs and expenses relating to the foregoing), including any liability for Taxes.

"Lien" shall have the meaning set forth in Section 101(37) of the Bankruptcy Code, including, without limitation, any mortgage, pledge, lien (as defined in Section 101(37) of the Bankruptcy Code), encumbrance, security interest, or similar interest, Claim, lease (other than the lease relating to the Leased Real Property), charge, put, call, other option, right of first refusal, right of first offer, servitude, right of way, easement, title defect, conditional sale, installment contract, or other title retention agreement, security agreement, and all other limitations or other encumbrances or restrictions of any nature or kind whatsoever on the use, transfer, or ownership of any property of any type (including real property, tangible property, and intangible property, including Intellectual Property).

"Person" means an individual, corporation, partnership, joint venture, limited liability company, association, trust, unincorporated association or other entity.

"Real Property" means the Leased Real Property and all buildings, structures, fixtures, and improvements located thereon and other appurtenances thereto and rights in respect thereof.

"Regulation" means any statute, law, ordinance, rule or regulation of any Governmental Authority or of any other type of regulatory body, including, without limitation, those covering energy, safety, NFPA 58 and 54, Environmental Laws, health, transportation, bribery, record keeping, zoning, antidiscrimination, antitrust, employee benefit, wage and hour, and price and wage control matters.

"Sale Order" means an order of the Bankruptcy Court approving this Agreement, the transfer of the Purchased Assets free and clear of all Liens, Claims, encumbrances and interests, and the assumption and assignment of all Assumed Agreements. A Sale Approval Hearing will be conducted on November 12, 2013, it is anticipated the Sale Order will be the result of that hearing.

"Tax" or "Taxes" means (a) any federal, state, local, foreign or other tax, charge, fee, duty (including customs duty), levy or assessment, including any income, gross receipts, net proceeds, alternative or add-on minimum, corporation, ad valorem, turnover, real property, personal property (tangible or intangible), sales, use, franchise, excise, escheat, abandoned or unclaimed property, VAT, stamp, leasing, lease, user, transfer, fuel, excess profits, profits, occupational, premium, interest equalization, windfall profits, severance, license, registration, payroll, environmental, capital stock, capital duty, disability, estimated, gains, wealth, welfare, employee's income withholding, other withholding, unemployment or social security or other tax of whatever kind (including any fee, assessment or other charges in the nature of or in lieu of any tax) that is imposed by any Governmental Authority, (b) any interest, fines, penalties or additions resulting from, attributable to, or incurred in connection with any items described in this paragraph or any related contest or dispute and (c) any Liability for the Taxes of another Person.

ARTICLE II

SALE AND PURCHASE

2.1 Assets Being Sold and Acquired

Acquired Assets. Seller shall hereby transfer, assign, and convey to Buyer free and clear of all Liens, Claims, encumbrances, and interests, and Buyer shall hereby purchase, assume, and acquire from Seller the Estate's right, title, and interest in and to all of the real and personal assets located at the Hoku Materials, Inc., polysilicon manufacturing facility at One Hoku Way, Pocatello, Idaho (the "Acquired Assets"), including, without limitation, the following:

- A. The Estate's physical assets, including, but not limited to, (i) machinery, (ii) equipment, (iii) computers without hard drives, (iv) software to the extent such can be transferred by law, (v) owned vehicles, (vi) furniture and fixtures, (vii) tools, (viii) Inventory, and (ix) other personal property of every kind and description of Debtor located at One Hoku Way, Pocatello, Idaho, together with all drawings, prints, and instruction manuals relating to same;
- B. Intellectual Property related to the conduct of Debtor's business, to the extent transferable by law;
- C. All customer and supplier lists related to the conduct of Debtor's business;
- D. All purchaser and owner data related to the conduct of Debtor's business;
- E. All rights of the Estate under the Ground Lease;
- F. All rights and remedies of the Estate, to the extent transferrable by law, under express or implied warranties or licenses from vendors and manufacturers relating to the Acquired Assets; and
- G. To the extent transferable by law, all Governmental Authorizations held by Seller to the extent necessary for and exclusively relating to the Acquired Assets or the operation of Debtor's business.

Excluded Assets. Notwithstanding anything to the contrary in this Notice, Trustee is not selling any interest in:

- A. Hoku Materials, Inc.'s business and accounting records, documentation, and correspondence;
- B. A 1,000 gallon storage tank with steel support frame, stenciled number 113121;
- C. A 1,000 gallon storage tank with steel support frame, stenciled number 113122;
- D. A 500 gallon storage tank with steel support frame, stenciled number 113123;
- E. A "TrueSense" monitoring system and peripheral equipment;
- F. A "PaceSetter" system and peripheral equipment;
- G. Six chemical pumps, previously identified collectively as Auction Lot No. 1168;
- H. Any right, recovery amount, or cause of action whatsoever that accrues or may accrue to the Trustee, including, but not limited to, (i) causes of action pursuant to §§ 544, 545, 547, 548, or 549 of the Bankruptcy Code, or (ii) any and all rights to receive any tax refunds;
- I. Any property of the Estate not located at One Hoku Way, Pocatello, Idaho;
- J. All cash and bank deposits; or
- K. Any and all customer deposits relating to (i) Hoku Materials, Inc., or (ii) the acquired assets.

2.2 As Is, Where Is.

Buyer specifically acknowledges and agrees, except as set forth in Article 2.5 of this Agreement, that the Acquired Assets are being sold in an "As Is" condition and "With All Faults" as of the Closing Date. No representations or warranties have been made or are made and no responsibility has been or is assumed by the Seller, or any representative acting or purporting to act on behalf of the Seller, as to any matters concerning Debtor's business, the Acquired Assets, or any condition which has or might affect the Debtor's business or any portion thereof. The Parties agree that all understandings and agreements heretofore made between them or their respective agents or representatives are merged in this Agreement, which alone fully and completely express their agreement, and that this Agreement has been entered into after full investigation, or with the Parties satisfied with the opportunity afforded for full investigation. Buyer and Seller recognize the transactions contemplated pursuant to the terms and conditions of this Agreement are subject to Court approval. Buyer is not relying on any statement or representation by Seller unless such statement, representation, covenant, or warranty is specifically embodied in this Agreement. Seller makes no representations or warranties as to whether the Real Property contains harmful or toxic substances or pertaining to the extent, location, or nature of the same. Buyer relies entirely upon its own inspections or other information obtained or otherwise available to Buyer, rather than any information that may have been provided by Seller to Buyer.

2.3 Purchase Price. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, and in consideration for the Acquired Assets, Buyer will pay or cause to be paid an aggregate amount equal to \$ _____, subject to adjustment pursuant to the provisions of this Agreement (the "Purchase Price"). The Purchase Price shall be payable as follows:

\$250,000.00 (the "Deposit") shall be deposited by Buyer to a designated account of Seller in order to qualify as a Qualified Bidder for the Auction to be held December 17, 2013, at 11:00 a.m. Mountain Standard Time. The Deposit shall be held in escrow and released by Seller as follows:

- (a) If the Closing occurs, the Deposit will be released from escrow and retained by Seller and applied towards the amount payable by Buyer under this Section 2.3;
- (b) If this Agreement is terminated by Buyer, the Deposit will be released from escrow and retained by Seller as Seller's sole and exclusive remedy, at law or in equity, for any breach by Buyer hereunder; and
- (c) If this Agreement is terminated pursuant to Section 7.1 hereof, the Deposit, will be returned to Buyer.

\$ _____ shall be paid by Buyer to Seller at Closing by wire transfer of immediately available funds denominated in U.S. dollars; and,

A Buyer's Premium as described below.

2.4 Buyer's Premium. A Buyer's Premium of 10% of the Purchase Price shall be paid to Heritage Global Partners.

2.5 Assumption of Assumed Agreements. At the Closing, and subject to the entry of a Sale Order authorizing and directing, among other matters, the assumption and assignment of the Assumed Contracts, Seller shall assign to Buyer all rights and interests held by the Estate in the Assumed Agreements. Without limiting the foregoing, to the extent that the assignment of any Assumed Agreement to Buyer is not permitted without the consent of the other party to such Agreement notwithstanding the entry of the Sale Order, this Agreement shall not be construed as an agreement to assign the underlying Agreement but shall constitute an agreement to assign the same, subject only to such consent. Seller shall use its best efforts to obtain any such consent after the Closing and, at Buyer's request, shall cooperate with Buyer in any reasonable arrangement designed to provide Buyer the benefits

under such Agreements (including enforcement for the benefit of Buyer, at Seller's expense, of any and all rights of Seller against any other party thereto, or acting as agent on behalf of Buyer).

ARTICLE III THE CLOSING

3.1 Time and Place of Closing. In accordance with the Sale Order, the closing of the Acquired Assets contemplated by this Agreement (the "Closing") shall take place remotely via the exchange of documents and signatures and satisfaction of other conditions hereunder after the later of the following occurs: (i) the approval of the Sale Order and (ii) the date in which the last of the conditions to Closing set forth in this Agreement have been satisfied or waived (other than those conditions that by their nature can only be satisfied at the Closing), or at such other time and place as Seller and Buyer may mutually agree to in writing. The date on which the Closing actually occurs is referred to in this Agreement as the "Closing Date." Seller and Buyer agree that Buyer may assign Buyer's rights and interests under this Agreement relating to the Acquired Assets to a special purpose or related entity created for the purpose of holding the Acquired Assets after the Closing without the prior written consent of Seller (and may designate such entity to perform Buyer's obligations hereunder); provided, however, that Buyer specifically acknowledges and agrees that such assignment does not, in any manner, relieve Buyer of all of Buyer's obligations under this Agreement. For all purposes under this Agreement, all matters at Closing will be considered to take place simultaneously, no delivery of any document will be deemed complete until all transactions and deliveries of documents are completed.

3.2 Deliveries.

Deliveries by Seller. At the Closing, Seller shall deliver, or cause to be delivered, to Buyer:

A Bill of Sale for the Acquired Assets;

Assignment of Assumed Agreements;

Any files, correspondence, and other documents, instruments, papers, and data belonging to Seller that are in Trustee's possession and that are a part of the Acquired Assets;

Original endorsed certificates of title to any titled property included in the Acquired Assets;

All such other documents, instruments, and writing (either executed counterparts or otherwise) as shall, in the reasonable opinion of Buyer and its counsel, be necessary or desirable for the due transfer of the Acquired Assets to Buyer, free and clear of all Liens, each in form and substance reasonably satisfactory to Buyer; and.

A certified copy of a Final Order from the Bankruptcy Court of the § 363(m) order and Sale Order, as applicable and a copy of the case docket reflecting that the § 363(m) order and Sale Order, as applicable, are in effect.

Deliveries by Buyer. At the Closing, Buyer shall deliver to Seller:

The Purchase Price, less any Deposits provided through the Auction process.

3.3 Submission for Bankruptcy Court Approval.

Seller and Buyer shall each use their commercially reasonable efforts, and shall cooperate, assist and consult with each other, to secure the Bankruptcy Court's approval of: (i) the Sale Order as soon as possible, and to cause the Sale Order to become a Final Order, as defined in this Agreement, and (ii) any other order of the Bankruptcy Court in form and substance acceptable to the Parties relating to this Agreement or the transactions contemplated hereby. Neither Seller nor Buyer will file any pleading or

take any position that is inconsistent with obtaining the Bankruptcy Court's approval of the Sale Order or any other such order.

If the Sale Order or any other orders of the Bankruptcy Court relating to this Agreement or the transactions contemplated hereby shall be appealed by any Person (or if any petition for certiorari or any motion for reconsideration, amendment, clarification, modification, vacation, stay, rehearing or reargument shall be filed with respect to the Sale Order or other such order), Seller and Buyer will cooperate in taking such steps diligently to prosecute such appeal, petition or motion and each of Seller and Buyer shall use its commercially reasonable efforts to obtain an expedited resolution of any such appeal, petition or motion.

3.4 Assumed Agreements. Seller agrees that, Seller shall obtain conditional assumption of agreements hereof at or prior to Closing, subject to any modifications that are negotiated.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE SELLER

Seller hereby represents and warrants to Buyer that all of the statements contained in this Agreement by Seller are true and correct on the date of this Agreement and shall be true and correct as of the Closing as though then made, except to the extent such representations and warranties are specifically made as of a particular date (in which case such representations and warranties will be true and correct as of such date).

4.1 Authority. Upon the entry of the Sale Order and subject to it becoming a Final Order, Seller has all power and authority to execute, deliver and perform its obligations under this Agreement to which it is a party, and Seller has taken all actions necessary to secure all approvals required to be secured by it in connection therewith. Upon the entry of the Sale Order and subject to it becoming a Final Order, this Agreement constitutes or will constitute the legal, valid and binding obligations of Seller, as the case may be, enforceable against it in accordance with its terms.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF THE BUYER

Buyer hereby represents and warrants to Seller that all of the statements contained in this Agreement by Buyer are true and correct on the date of this Agreement and shall be true and correct as of the Closing as though then made, except to the extent such representations and warranties are specifically made as of a particular date (in which case such representations and warranties will be true and correct as of such date).

5.1 Organization and Good Standing. Buyer is a _____ duly organized, validly existing and in good standing under the laws of the State of _____ and has all requisite power and authority to own, lease and operate its properties and to carry on its business as is now being conducted.

5.2 Authority. Buyer has full power and authority to execute and deliver this Agreement to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement to which it is a party and the consummation of the transactions contemplated hereby and thereby by Buyer have been duly and validly authorized by all necessary action on the part of Buyer and no other proceedings on the part of Buyer are necessary to authorize this Agreement to which it is a party or to consummate the transactions contemplated hereby and thereby. This Agreement to which it is a party has been duly and validly executed and delivered by Buyer and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its or their terms.

5.3 Validity of Contemplated Transactions. The execution and delivery by Buyer of this Agreement to which it is a party and the consummation of the transactions contemplated hereby by Buyer will not (i) contravene or violate any agreement of Buyer or (ii) require Buyer to give notice to, make any filing with, or obtain any permit, authorization or approval from, any Governmental Authority, or (iii) result in a Default under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement lease or other instrument or obligation to which Buyer is a party or by which any of its assets may be bound, except for such Defaults as to which requisite waivers or consents have been obtained or which would not, individually or in the aggregate, have a material adverse effect on the ability of Buyer to perform its obligations hereunder, or (iv) violate any Regulation or court order that is applicable to Buyer.

ARTICLE VI CONDITIONS TO CLOSE

6.1 Conditions to Obligations of Buyer. The obligations of Buyer to effect the transactions contemplated by this Agreement are further subject to the following conditions on or before the Closing (any of which may be waived by Buyer, in whole or in part, to the extent permitted by applicable Regulation):

The Bankruptcy Court shall have entered the Sale Order and such Sale Order shall not have been stayed as of the Closing Date;

There must not be in effect any Regulation or Court Order that would prohibit or make illegal the consummation of the transactions contemplated by this Agreement or cause the transactions contemplated by this Agreement to be rescinded following consummation;

The representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date;

The Seller has performed and complied with all of its covenants and obligations hereunder in all material respects through the Closing.

6.2 Conditions to Obligations of Seller. The obligations of Seller to effect the transactions contemplated by this Agreement are further subject to the following conditions on or before the Closing (any of which may be waived by Seller, in whole or in part, to the extent permitted by applicable Regulation):

All of the covenants and obligations that Buyer is required to perform or comply with under this Agreement on or before the Closing must have been duly performed and complied with in all material respects;

The Bankruptcy Court shall have entered the Sale Order and such Sale Order shall not have been stayed as of the Closing Date;

There must not be in effect any Regulation or Court Order that would prohibit or make illegal the consummation of the transactions contemplated by this Agreement or cause the transactions contemplated by this Agreement to be rescinded following consummation; and

The representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date.

ARTICLE VII TERMINATION

7.1 Termination. This Agreement may be terminated at any time prior to the Closing in accordance with any of the following provisions:

By mutual written consent of Seller and Buyer;

By either Party, if the Bankruptcy Court refuses to enter the Sale Order.

ARTICLE VIII MISCELLANEOUS

8.1 Covenants and Obligations. The covenants and obligations of Seller and Buyer set forth in this Agreement, shall survive the Closing indefinitely, and the Parties shall be entitled to the full performance thereof by the other Parties without limitation as to time.

8.2 Notices. Any notice, request, claim, demand, waiver, consent, approval or other communication that is required or permitted hereunder shall be in writing and shall be deemed given (i) upon delivery, when delivered personally to the address set forth below (to the attention of the person identified below); ii) upon delivery, when sent by facsimile or electronic mail transmission (electronic confirmation received), (iii) one (1) Business Day after being sent by overnight courier; and (iv) three (3) Business Days after being sent by registered or certified mail, postage prepaid, as follows:

If to Buyer:

With a copy to (which shall not constitute effective notice):

If to Seller:

Gary L. Rainsdon, Trustee
P. O. Box 506
Twin Falls, ID 83303
Facsimile: (208) 734-2783

Jason R. Naess
PARSON, SMITH, STONE,
LOVELAND & SHIRLEY, LLP
137 West 13th Street
P. O. Box 910
Burley, ID 83318
Facsimile: (208) 878-0146

8.3 Governing Law. Subject to any applicable Bankruptcy Code provision or Rule relating to the Chapter 7 Case and the Sale Order, this Agreement (unless explicitly provided otherwise) and the transactions contemplated hereunder and thereunder shall be governed by, and construed and enforced in accordance with, the substantive laws of the State of Idaho exclusive of any conflict of laws provisions thereof. Subject to the jurisdiction of the Bankruptcy Court, any litigation with respect to any dispute arising from this Agreement and the transactions contemplated hereunder shall take place in the appropriate State or Federal courts located within the State of Idaho.

8.4 Severability. Any provision of this Agreement that is invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.5 Entire Agreement; Amendments. Except as identified in paragraph 8.8, below, this Agreement sets forth the entire agreement of the Parties with respect to the subject matter hereof. Any prior agreements or understandings between the Parties hereto regarding the subject matter hereof, whether written or oral, are superseded by this Agreement. Any item disclosed in a Schedule hereto in response to one Section of this Agreement shall not be deemed disclosed in response to any other Section hereof unless specifically provided otherwise herein. This Agreement may not be amended or modified except by a written instrument duly executed by each of the Parties hereto.

8.6 Interpretation. As used in this Agreement, (a) references to the plural include the singular, the singular the plural, the part the whole, (b) references to any gender, including the neuter gender, shall include all genders, (c) "including" has the inclusive meaning frequently identified with the phrase "but not limited to" or "including, without limitation" and (d) references to "hereunder" or "herein" relate to this Agreement. Each accounting term used herein that is not specifically defined herein shall have the meaning given to it under GAAP.

8.7 Counterparts. This Agreement may be executed via facsimile, e-mail or other electronic means and in any number of counterparts, each of which shall be deemed an original, and all of which taken together shall constitute but one and the same instrument. This Agreement shall become binding only when each Party hereto has executed and delivered to the other Parties one or more counterparts.

8.8 Order Approving Sale Procedures. This Asset Purchase and Sale Agreement incorporates by reference the Order Approving Sale Procedures entered by the U.S. Bankruptcy Court for the District of Idaho on _____, 2013 (Bankr. No. 13-40837-JDP, Docket No. ____). In the event of a difference in the language between this Asset Purchase and Sale Agreement and the Order Approving Sale Procedures, the language of the Order prevails.

IN WITNESS WHEREOF, Buyer and Seller and have duly executed this Agreement on the date first written above.

By: _____
Name:
Its:

ESTATE OF HOKU MATERIALS, INC., CASE NO. 13-40837

By: _____
Name: _____
Title: _____