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 BYLIN HEATING SYSTEMS, INC. and ROOF
 8 ICE MELT SYSTEMS, INC.

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UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF CALIFORNIA
 SACRAMENTO DIVISION

BYLIN HEATING SYSTEMS, INC., a
 California corporation, doing business as
 BYLIN ENGINEERED SYSTEMS, and
 ROOF ICE MELT SYSTEMS,
 INCORPORATED, an Oregon corporation,

Plaintiffs,

v.

THERMAL TECHNOLOGIES, INC., a
 Utah corporation; and DOES 1 through 10,
 inclusive,

Defendants.

Case No. 2:11-cv-01402-KJM-KJN

STIPULATED PROTECTIVE ORDER

AND RELATED COUNTER-CLAIMS

Pursuant to Local Rule 141.1, Defendant THERMAL TECHNOLOGIES, INC., a Utah
 corporation (“THERMAL”) and Plaintiffs BYLIN HEATING SYSTEMS, INC., a California
 corporation, doing business as BYLIN ENGINEERED SYSTEMS (“BYLIN”) and ROOF ICE
 MELT SYSTEMS, INC., an Oregon Corporation (“RIMS”) (collectively referred to as the

1 “Parties”), by and through their respective attorneys of record, stipulate to entry of the following
2 Stipulated Protective Order (“Protective Order”) for the production of confidential information
3 and records requested in discovery in this action.

4 **1. PURPOSES AND LIMITATIONS**

5 Disclosure and discovery activity in this action are likely to involve production of
6 confidential, proprietary, or private information for which special protection from public
7 disclosure and from use for any purpose other than prosecuting this litigation would be warranted.
8 Pursuant to Local Rule 141.1(c)(3), the need for protection should be addressed by Court order,
9 rather than by private agreement, in order to protect the parties’ legitimate interest in the
10 protection of confidential information from disclosure to third parties, disclosure of extremely
11 sensitive information to the parties, and also to avoid the substantially increased costs and
12 burdens of discovery that would result in the absence of an order, including potential discovery
13 disputes and motions that would certainly result in the absence of such an order as the case moves
14 forward. Accordingly, the parties hereby stipulate to and petition the Court to enter the following
15 Stipulated Protective Order.

16 The parties acknowledge that this Order does not confer blanket protections on all
17 disclosures or responses to discovery and that the protection it affords extends only to the limited
18 information or items that are entitled under the applicable legal principles to treatment as
19 confidential. The parties further acknowledge, as set forth in Section 5 below, that this Stipulated
20 Protective Order creates no entitlement to file confidential information under seal; Civil Local
21 Rule 141 sets forth the procedures that must be followed and reflects the standards that will be
22 applied when a party seeks permission from the court to file material under seal.

23 **2. DEFINITIONS**

24 (a) “Party” and/or “Parties” means BYLIN, RIMS and THERMAL, including all of their
25 respective officers, directors, employees, consultants, retained experts, and outside counsel (and
26 their support staff).

27 (b) “Counsel” means an attorney retained to represent any Party in this action, and the
28 legal, paralegal, secretarial, technical and/or other assistants that are employed by such Counsel.

1 (c) "Discovery Material" means any information, document, tangible thing, response to
2 discovery requests, deposition testimony or transcript, and any other similar materials, or portions
3 thereof. **Caveat:** Discovery Material produced prior to the date of this Stipulated Protective
4 Order and Non-Disclosure Agreement is not subject to the instant Protective Order.

5 (d) "Designating Party" means a Party or Non-Party that designates Discovery Material
6 produced in this action as "CONFIDENTIAL INFORMATION" or "ATTORNEYS' EYES
7 ONLY INFORMATION."

8 (e) "Producing Party" means a Party or Non-Party that produces or otherwise makes
9 available Discovery Material in this action.

10 (f) "Receiving Party" means a Party that receives Discovery Material from a Producing
11 Party.

12 (g) "CONFIDENTIAL INFORMATION" is defined as information that is confidential
13 and/or implicates common law and statutory privacy, proprietary business, commercial, and/or
14 trade secret interests of the Parties as determined in good faith by the attorneys representing the
15 designating Party.

16 (h) "ATTORNEYS' EYES ONLY INFORMATION" is defined herein as information
17 that is extremely sensitive "CONFIDENTIAL INFORMATION," the disclosure of which to
18 another Party or Non-Party would create a substantial risk of serious harm that cannot be avoided
19 by less restrictive means.

20 (i) "Protected Material" means any Discovery Material and any copies, abstracts,
21 summaries, or information derived from such Discovery Material, and any notes or other records
22 embodying or disclosing the contents of such Discovery Material, that is designated as
23 "Confidential Information" or "Attorneys' Eyes Only" as set forth herein.

24 (j) "Expert" or "Experts" means an expert and/or independent consultant actually
25 consulted, retained and/or employed to advise or to assist Counsel in the preparation and/or trial
26 of this action and who is not a Party, or employed by any Party or affiliate of any Party, and its
27 technical, secretarial, and other clerical assistants who are not employed by a Party, to whom it is
28 necessary or useful to disclose Protected Material for the purpose of this action. "Expert" or

1 “Experts” shall not include any individuals who were, currently are, or may become an employee
2 of any Party or affiliate of any Party.

3 (k) “Qualified Recipient” means Party, Counsel, Receiving Party, Expert, Court and its
4 employees, Stenographic Reporters who are engaged in proceedings necessarily incident to the
5 conduct of this action, Mediators and/or Arbitrators, and Professional Vendors.

6 (l) “Non-Party” or “Non-Parties” means any natural person, partnership, corporation,
7 association, or other legal entity not named as a Party to this action.

8 (m) “Professional Vendors” means persons or entities that provide litigation support
9 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
10 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
11 subcontractors.

12 **3. DESIGNATION OF PROTECTED MATERIAL**

13 (a) Any Discovery Material in this action that is asserted by a Designating Party to
14 contain or constitute CONFIDENTIAL INFORMATION shall be so designated by such
15 Designating Party as follows:

- 16 1. Each page of each document, the front of each disk, and each object that contains
17 CONFIDENTIAL INFORMATION shall be marked on its face or otherwise
18 marked with the legend “CONFIDENTIAL-SUBJECT TO PROTECTIVE
19 ORDER.”
- 20 2. In the case of testimony given in deposition, hearing, or in other pretrial or trial
21 proceedings, the Designating Party must identify on the record, before the close of
22 the deposition, hearing or other proceeding, all protected testimony. Transcript
23 pages containing or constituting CONFIDENTIAL INFORMATION shall be
24 separately bound by the certified court reporter and marked “CONFIDENTIAL”
25 on each page.
- 26 3. If a Receiving Party wishes to show non-CONFIDENTIAL portions of a document
27 or transcript or thing containing CONFIDENTIAL INFORMATION to a person or
28 party not described below in Section 4(a), it shall first redact all pages designated

1 CONFIDENTIAL.

2 (b) Any Discovery Material in this action that is asserted by a Designating Party to
3 contain or constitute ATTORNEYS' EYES ONLY INFORMATION shall be so designated by
4 such Designating Party as follows:

- 5 1. Each page of each document, the front of each disk, and each object that contains
6 ATTORNEYS' EYES ONLY information shall be marked on its face or otherwise
7 marked with the legend "CONFIDENTIAL – ATTORNEYS' EYES ONLY –
8 SUBJECT TO PROTECTIVE ORDER."
- 9 2. In the case of testimony given in deposition, hearing, or in other pretrial or trial
10 proceedings, the Designating Party must identify on the record, before the close of
11 the deposition, hearing or other proceeding, all protected testimony. Transcript
12 pages containing or constituting ATTORNEYS' EYES ONLY information shall
13 be separately bound by the certified court reporter and marked "CONFIDENTIAL
14 – FOR ATTORNEYS' EYES ONLY" on each page.
- 15 3. If a Receiving Party wishes to show non-ATTORNEYS' EYES ONLY portions of
16 a document or transcript or thing containing ATTORNEYS' EYES ONLY
17 information to a person or party not described below in Section 4(b), it shall first
18 redact all pages designated ATTORNEYS' EYES ONLY.

19 (d) If timely corrected, an inadvertent failure to designate qualified information does
20 not, standing alone, waive the Designating Party's right to secure protection under this Protective
21 Order for such material. Upon timely correction of a designation, the Receiving Party must make
22 reasonable efforts to ensure that such designated information is treated in accordance with the
23 provisions of this Protective Order.

24 **4. ACCESS TO PROTECTED MATERIAL**

25 (a) CONFIDENTIAL INFORMATION: Any CONFIDENTIAL INFORMATION
26 produced in accordance with the provisions of Section 3 above shall be used solely for purposes
27 of the prosecution and defense of this action. Unless otherwise ordered by the Court or permitted
28 in writing by the Designating Party, a Receiving Party may disclose any information or item

1 designated CONFIDENTIAL only to:

2 (1) the Receiving Party's Counsel in this action, as well as employees of said
3 Counsel to whom it is reasonably necessary to disclose the information for this action;

4 (2) the officers, directors, and employees (including in-house Counsel) of the
5 Receiving Party to whom disclosure is reasonably necessary for this action;

6 (3) Experts (as defined in this Order) of the Receiving Party to whom
7 disclosure is reasonably necessary for this action and who have signed the
8 Acknowledgement and Agreement (Exhibit A);

9 (4) the Court and its personnel;

10 (5) court reporters, their staffs, and Professional Vendors to whom disclosure
11 is reasonably necessary for this action;

12 (6) during their depositions, witnesses in the action to whom disclosure is
13 reasonably necessary and who have signed the "Agreement to Be Bound by Protective
14 Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions
15 that reveal Protected Material must be separately bound by the court reporter and may not
16 be disclosed to anyone except as permitted under this Stipulated Protective Order; and

17 (7) the author of the document or the original source of the information.

18 (b) ATTORNEYS' EYES ONLY Information: Any ATTORNEYS' EYES ONLY
19 information produced in accordance with the provisions of Section 3 above shall be used solely
20 for purposes of the prosecution and defense of the above-entitled litigation. Unless otherwise
21 ordered by the Court or permitted in writing by the Designating Party, ATTORNEYS' EYES
22 ONLY information may only be disclosed to:

23 (1) the Receiving Party's Counsel in this action, as well as employees of said
24 Counsel to whom it is reasonably necessary to disclose the information for this action;

25 (2) Experts (as defined in this Order) of the Receiving Party to whom
26 disclosure is reasonably necessary for this action and who have signed the
27 Acknowledgement and Agreement (Exhibit A);

28 (3) the Court and its personnel;

1 (4) court reporters, their staffs, and Professional Vendors to whom disclosure
2 is reasonably necessary for this action;

3 (5) during their depositions, witnesses in the action to whom disclosure is
4 reasonably necessary and who have signed the “Agreement to Be Bound by Protective
5 Order” (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions
6 that reveal Protected Material must be separately bound by the court reporter and may not
7 be disclosed to anyone except as permitted under this Stipulated Protective Order; and

8 (6) the author of the document or the original source of the information.

9 (c) Experts. Subject to the provisions of this Protective Order, all Protected Material may
10 be disclosed to any Expert who has agreed to be bound by this Protective Order after the Expert
11 executes the Acknowledgement and Agreement attached as Appendix A. Counsel or the Parties
12 need not identify any of their respective Experts, except pursuant to the exchange of information
13 concerning expert witnesses as required by the Federal Rules of Civil Procedure, Local Rules,
14 and/or the Court’s orders. When an Expert is disclosed in accordance with the above-referenced
15 rules, such disclosure shall also include the production of that Expert’s signed Acknowledgement
16 and Agreement.

17 (d) Disclosure Pursuant to Consent. Protected Material also may be disclosed to anyone
18 so authorized by prior written consent of the Designating Party.

19 (e) Witnesses. If a document or thing designated as CONFIDENTIAL or ATTORNEYS’
20 EYES ONLY refers to the conduct or affairs of a potential witness, Counsel and/or the Parties
21 may discuss such conduct or affairs with the witness, but must do so without revealing the
22 existence, author or source of such document or thing, except as otherwise permitted in Sections
23 4(a) and 4(b).

24 **5. HANDLING OF PROTECTED MATERIAL**

25 (a) Protected Material must be stored and maintained by a Receiving Party at a
26 location and in a secure manner that ensures that access is limited to the persons authorized under
27 this Order.

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1 (b) Without written permission from the Designating Party or a court order secured
2 after appropriate notice to all interested persons, a Party may not file in the public record in this
3 action any Protected Material. A Party that seeks to file under seal any Protected Material must
4 comply with Local Rule 141. All Protected Material, and any recitations, compilations,
5 summaries or abstracts of Protected Material, may only be filed under seal pursuant to a court
6 order authorizing the sealing of the specific Protected Material at issue. The Court may, upon a
7 properly noticed motion, make any order necessary for the orderly administration of justice
8 including ordering that the record or portions of the record be unsealed.

9 (c) Hearings. The Parties, if acting in *pro se*, and/or Counsel shall attempt to agree upon
10 procedures to protect at any hearing or arbitration the confidentiality of Protected Material and
11 shall, prior to such hearing or arbitration, submit such proposed procedures, including any
12 disputes relating thereto, to the arbitrator or the Court for approval or modification.

13 (d) Copies and/or Reproductions. Subject to Section 4, above, nothing herein shall restrict
14 a Qualified Recipient from making working copies, abstracts, digests and analyses of Protected
15 Material for use in connection with this action and such working copies, abstracts, digests and
16 analyses shall be deemed to have the same level of protection under the terms of this Protective
17 Order. Further, nothing herein shall restrict a Qualified Recipient from converting or translating
18 such information into machine-readable form for incorporation in a data retrieval system used in
19 connection with this action, provided that access to such information, in whatever form stored or
20 reproduced, shall be limited to Qualified Recipients.

21 (e) Inadvertent Disclosure. If a Party through inadvertence produces any
22 CONFIDENTIAL INFORMATION or ATTORNEYS' EYES ONLY information without
23 labeling or marking or otherwise designating it as such in accordance with the provisions of this
24 Protective Order, the Producing Party may give written notice to the Receiving Party that the
25 document or thing produced is deemed CONFIDENTIAL INFORMATION or ATTORNEYS'
26 EYES ONLY and should be treated as such in accordance with the provisions of this Protective
27 Order. The Receiving Party must treat such documents or things with the noticed level of
28 protection from the date such notice is received. Promptly upon providing such notice to the

1 Receiving Party, the Producing Party shall provide the Receiving Party with another copy of the
2 documents or things that bear the new designation under this Protective Order, at which time the
3 Receiving Party shall return the originally-produced documents and things to the Producing Party.
4 The Receiving Party's disclosure, prior to the receipt of notice from the Producing Party of a new
5 designation, to persons not authorized to receive such information shall not be deemed a violation
6 of this Protective Order. However, the Receiving Party shall make a good faith effort to
7 immediately retrieve such information from such persons not authorized to receive such
8 information and to obtain an Acknowledgement and Agreement executed by the person to whom
9 the disclosure was made. If such efforts are unsuccessful, the Receiving Party shall notify the
10 Producing Party of the disclosure and the identity of the person or entity to whom the disclosure
11 was made.

12 (f) **This Protective Order shall apply to any Non-Party from whom discovery may be**
13 **sought and allows such a Non-Party to designate Discovery Material and any other**
14 **information as CONFIDENTIAL INFORMATION or ATTORNEYS' EYES ONLY.** A
15 copy of this Stipulated Protective Order and Non-Disclosure Agreement shall be served with any
16 discovery requests propounded to a Non-Party and/or deposition subpoenas (document, personal
17 appearance or both). A signed Acknowledgement and Agreement (Appendix A) shall be returned
18 with any documents or information produced from any Non-Party.

19 (g) Deposition Transcripts. If such designation is not made at the time of the deposition,
20 any transcript containing CONFIDENTIAL INFORMATION or ATTORNEYS' EYES ONLY
21 information shall be designated as containing such information by no later than twenty (20) days
22 after receiving the deposition transcript. Until this twenty (20) day period lapses, the entirety of
23 the deposition transcript shall be treated by all Parties as ATTORNEYS' EYES ONLY.

24 **6. DESIGNATION NOT DETERMINATIVE OF STATUS**

25 A Party shall not be obligated to challenge the propriety of a confidentiality designation at
26 the time made, and a failure to do so shall not preclude a subsequent challenge thereto. The
27 designation or failure to designate material as CONFIDENTIAL or ATTORNEYS' EYES ONLY
28 shall not be determinative of that material's status as Protected Material. All challenges to the

1 propriety of a confidentiality designation shall first be made in writing by letter or other document
2 identifying the specific material challenged and served on all Parties. Within twenty (20) days
3 following the receipt of a written challenge, the Designating Party shall serve on all Parties a
4 written explanation of the basis for such designation. Thereafter, the Designating Party and the
5 Party challenging the designation shall attempt to resolve such challenge in good faith on an
6 informal basis.

7 If the dispute cannot be informally resolved, the Party challenging the designation may
8 file and serve a motion that identifies the challenged material and sets forth in detail the basis for
9 the challenge. Each such motion must be accompanied by a competent declaration that affirms
10 that the movant has complied with the meet and confer requirements imposed in the preceding
11 paragraph and that sets forth with specificity the justification for the confidentiality designation
12 that was given by the Designating Party in the meet and confer dialogue. The burden of
13 persuasion in any such challenge proceeding shall be on the Designating Party. Any document or
14 thing designated CONFIDENTIAL or ATTORNEYS' EYES ONLY shall enjoy the protection of
15 such designation until the issue relating to the propriety of the designation has been resolved.

16 **7. RIGHT TO FURTHER RELIEF**

17 Nothing in this Protective Order shall abridge the right of any person to seek judicial
18 modification or amendment of this Protective Order.

19 **8. RIGHT TO ASSERT OTHER OBJECTIONS**

20 This Protective Order shall not be construed as waiving any right to assert a claim of
21 privilege, relevance, or other grounds for not producing Discovery Material.

22 **9. FINAL DISPOSITION**

23 Within ninety (90) days after final termination of this action, each Party shall assemble all
24 documents and things furnished and designated by any other Party or Non-Party as containing
25 CONFIDENTIAL INFORMATION or ATTORNEYS' EYES ONLY information, and all copies,
26 summaries and abstracts thereof, and shall either (a) return such documents and things to the
27 Producing Party, or (b) destroy the documents and things. Notwithstanding the foregoing,
28 Counsel shall be entitled to retain a single archival copy of documents that include or are derived

1 from Protected Material and Counsel and Parties may retain copies of any document containing
2 information designated as "CONFIDENTIAL" that is referred to in any settlement agreement
3 between the Parties. If a Party elects to destroy any documents or things, a Certificate of
4 Destruction shall be served on all Counsel within ninety (90) days of final termination of the
5 action.

6 **IT IS SO STIPULATED.**

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8 Dated: November 13, 2012

LOCKE LORD LLP

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10 By: /s/ Krista J. Dunzweiler
11 M. Taylor Florence
12 Kristin J. Dunzweiler
Attorneys for THERMAL TECHNOLOGIES,
INC.

13 Dated: November 12, 2012

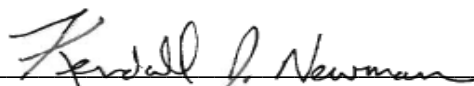
DOWNEY BRAND LLP

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15 By: /s/ Elizabeth B. Stallard
16 Dale A. Stern
17 John C. McCarron
18 Elizabeth B. Stallard
Attorneys for BYLIN HEATING SYSTEMS,
INC. and ROOF ICE MELT SYSTEMS, INC.

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21 **ORDER**

22 **IT IS SO ORDERED.**

23 **Date: 11/14/2012**

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25 KENDALL J. NEWMAN
26 UNITED STATES MAGISTRATE JUDGE

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APPENDIX A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

Bylin Heating Systems, et al. v. Thermal Technologies, Inc.
U.S. District Court – Eastern District of California Case No. 2:11-cv-01402-KJM-KJN

I, _____ declare under penalty of perjury under the laws of the State of California that I have read in its entirety the Protective Order in the above-referenced lawsuit, and agree to adhere to and be bound by its terms. I hereby submit to the jurisdiction of the United States District Court for the Eastern District of California for the purpose of enforcement of the Protective Order.

Date: _____

Signature

Name

Title

Address

City, State, Zip

Telephone Number