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**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

In re INFINIA CORPORATION, and POWERPLAY SOLAR I, LLC, Debtors.	Jointly Administered under Case No. 13-30688 (WTT) Chapter 11
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**LIQUIDATING TRUSTEE’S MOTION PURSUANT TO 11 U.S.C. §§ 105 AND 363
SEEKING AN ORDER APPROVING THE SALE OF CERTAIN ASSETS OF
THE DEBTORS’ ESTATES FREE AND CLEAR OF LIENS,
CLAIMS, INTERESTS AND ENCUMBRANCES [REMNANT ASSETS]**

Gil A. Miller, as the Liquidating Trustee (the “Trustee”) of the consolidated bankruptcy estate (“Estate”) of the above captioned debtors and debtors in possession (the “Debtors”), by his undersigned counsel, moves the Court for entry of an Order pursuant to 11 U.S.C. §§ 105 and 363 authorizing and approving the sale of certain assets of the Estate to Oak Point Partners, Inc. (“Oak Point”) free and clear of liens, claims, interests and encumbrances, and granting the Trustee such other, further and different relief as this Court may deem just and proper. In support of this motion (the “Motion”), the Trustee represents as follows:

Jurisdiction

1. The United States Bankruptcy Court for the District of Utah (the “Court”) has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334.
2. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).
3. This Court is the proper venue for this proceeding in accordance with 28 U.S.C. §§ 1408 and 1409.
4. The statutory predicates for the relief sought herein are 11 U.S.C. §§ 105(a) and 363 and Rule 6004 of the Federal Rules of Bankruptcy Procedure.

Background

5. On September 17, 2013 (the “Petition Date”), the Debtors each filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the Court, hereby commencing the above captioned bankruptcy cases (the “Case”).
6. On April 14, 2014, the Court entered an order confirming the Debtors’ Chapter 11 Plan of Liquidation (the “Plan”).
7. The “Effective Date” of the Plan was May 14, 2014. Pursuant to the Plan, the Trustee became the Liquidating Trustee of the Debtors’ consolidated bankruptcy Estate on the Effective Date.
8. Since his appointment, the Trustee has administered the Estate for the benefit of the Debtors’ creditors in accordance with his power and duties. The Trustee is now in the process of winding down the administration of these cases. To that end, the Trustee is engaged in efforts to ensure that the maximum value of the Estate’s assets is realized, which efforts include pursuing the sale of any remaining assets.

9. The Trustee has determined that there may exist property of the Estate that may be remaining, consisting of known or unknown assets or claims, which have not been previously sold, assigned, or transferred (as more particularly described and defined in the Purchase Agreement, the “Remnant Assets”).

10. Pursuant to the negotiated purchase agreement attached hereto as Exhibit A (the “Purchase Agreement”), the Trustee proposes to sell the Remnant Assets to Oak Point in exchange for a payment of \$4,000 to the Estate (the “Purchase Price”).

11. In accordance with the Purchase Agreement, the Remnant Assets expressly exclude: (a) any and all funds held by the Trustee in the Estate’s bank accounts earmarked for distribution to creditors and/or payment of professional fees; (b) the claims of the Trustee against Richard Shorten and Silvermine Capital Resources, LLC as asserted in Adversary Proceeding No. 15-02183 pending in the Case and any proceeds from settlement of such Adversary Proceeding; and (c) the Purchase Price.

12. While the Trustee is prepared to consummate the sale of the Remnant Assets to Oak Point pursuant to the terms set forth herein, in the event a party other than Oak Point wishes to purchase the Remnant Assets, the Trustee requests that the Court approve the following overbid procedures with respect to the sale of the Remnant Assets: (i) any party wishing to participate in the overbid process must notify the following parties of its intention to do so no later than two (2) calendar days at 5:00 p.m. MDT before the hearing on the Motion in writing, via email at: (a) counsel to the Trustee, Steven C. Strong, at sstrong@cohnekinghorn.com; and (b) Oak Point, Janice A. Alwin, at janice@Oakpointpartners.com; (ii) the initial overbid for the Remnant Assets shall be \$8,000.00; and (iii) in the event a party other than Oak Point is deemed

the winning bidder, such other party shall be required to purchase the Remnant Assets under the same terms and conditions as set forth in the Purchase Agreement (collectively, the “Bidding Procedures”).

13. In the Trustee’s business judgment, the purchase price proposed for the Remnant Assets represents a fair and reasonable sale price for such assets and is the highest and best offer for the sale of the Remnant Assets.

14. The Trustee further submits that the sale of the Remnant Assets, in accordance with the terms of the Purchase Agreement, serves the best interest of the Estate and its creditors. Accordingly, the Trustee respectfully requests that the Court approve the Purchase Agreement.

Basis for the Relief Requested

15. By this Motion, the Trustee seeks an order, pursuant to 11 U.S.C. §§ 105 and 363(b), (f) and (m), authorizing the Trustee to sell the Remnant Assets to Oak Point free and clear of all liens, claims, interests and encumbrances.

16. Section 363(b) of the Bankruptcy Code provides, in pertinent part, that a debtor, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b), (1); see In re Ames Dept. Stores, Inc., 136 B.R. 357, 359 (Bankr. S.D.N.Y. 1992). In addition, § 105(a) of the Bankruptcy Code provides that the Court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

17. The proposed use, sale, or lease of property of the estate may be approved under §363(b) of the Bankruptcy Code if it is supported by sound business justification. See In re Lionel Corp., 722 F.2d 1063, 1070-71 (2d Cir. 1983); In re Ionosphere Clubs, Inc., 184 B.R. 648

(S.D.N.Y. 1995); In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143 (3d Cir. 1986); In re Delaware & Hudson Ry. Co., 124 B.R. 169, 175-76 (D. Del. 1991); In re Martin (Myers v. Martin), 91 F.3d, 395 (3d Cir. 1996). Moreover, pursuant to § 105, the Court has expansive equitable powers to fashion any order or decree which is in the interest of preserving or protecting the value of a debtor's assets. See, e.g., In re Chinichian, 784 F.2d 1440, 1443 (9th Cir. 1986).

18. The Trustee's authority to sell the Remnant Assets is amplified in Bankruptcy Rule 6004(f)(1), which in relevant part states that "[a]ll sales not in the ordinary course of business may be by private sale or by public auction."

19. In Lionel, one of the seminal and most widely followed cases dealing with asset sales, the Second Circuit determined that a sale of assets could be approved if the debtor or trustee could demonstrate an "articulated business justification" for the sale. In re Lionel, 722 F.2d at 1070. The Court further held that the factors to be considered in determining whether a sound business reason exists include the following:

"the proportionate value of the asset to the estate as a whole, the amount of elapsed time since the filing...the effect of the proposed disposition...of the proceeds to be obtained from the disposition vis-à-vis any appraisals of the property, which of the alternatives of use, sale or lease the proposal envisions and, most importantly perhaps, whether the asset is increasing or decreasing in value. This list is not intended to be exclusive, but merely to provide guidance to the bankruptcy judge."

Id. at 1071.

20. If a sound business justification exists, then a presumption attaches that the decision was informed, in good faith and in the honest belief that the action was in the best interests of the estate. In re Integrated Resources, Inc., 147 B.R. 650, 656 (S.D.N.Y. 1992).

21. In addition to requiring sound business reasons to approve a sale pursuant to Section 363(b) of the Bankruptcy Code, many courts have required a showing that the price to be obtained for assets be fair and reasonable; that the sale to the proposed purchaser was negotiated in good faith; and that it does not unfairly benefit insiders, the purchaser, or a certain creditor or class of creditors. See, e.g., In re Channel One Communications, 117 B.R. at 494-97; In re Indus. Valley Refrig. & Air Cond. Supplies, Inc., 77 B.R. 15 (Bankr. E.D. Pa. 1987).

22. Additionally, the Court should approve the Trustee's proposed Bidding Procedures (set forth in paragraph 12 above). Courts have routinely held that when the sale of assets in bankruptcy is done on a competitive bidding basis, as is proposed herein, it is appropriate to require parties submitting competing bids to submit bids that exceed the existing bid by a specified amount. See, e.g., In re Financial News Network Inc., 931 F.2d 217 (2d Cir. 1991). Oak Point has expended, and will continue to expend, considerable time, money, and energy pursuing the purchase of the Remnant Assets as proposed herein, and has engaged in good faith, arm's length negotiations with the Trustee. Thus, the proposed Bidding Procedures are appropriate and should be approved.

23. The Trustee submits that the sale of the Remnant Assets is a prudent exercise of his business judgment under the circumstances and is in the best interest of the Estate and its creditors. The Purchase Price for the sale is reasonable and has been negotiated at arm's length. Indeed, the Trustee is not aware of any future assets or claims that may be liquidated, obtained or otherwise administered for the benefit of the Estate and its creditors. Other than assets excluded from "Remnant Assets" pursuant to the terms of the Purchase Agreement, the only significant remaining asset the Trustee is aware of is a \$25,000 preferential transfer judgment

the Trustee obtained against Apricum GmbH (“Apricum”), a German entity with no apparent assets in the United States. The Trustee has determined in his business judgment that further pursuit of the judgment against Apricum would not be cost-effective for the Estate and would unnecessarily delay a final distribution to creditors and the closing of this Case. Accordingly, the Trustee respectfully requests that the Court grant the Motion.

Waiver of Stay

24. Pursuant to Bankruptcy Rule 6004(h), an order authorizing the sale of property is stayed for fourteen (14) days after the entry of the order unless the Court orders otherwise. The Trustee requests that the Court order that such stay not apply with respect to the sale of the Remnant Assets because, among other reasons, the additional delay would be detrimental to creditors receiving a final distribution.

Notice

25. Notice of this Motion will be given to (a) Oak Point; (b) the Office of the United States Trustee; and (c) all parties listed on the approved limited mailing matrix in the Case. The Trustee submits that such notice is proper and adequate and no further notice is required. The Trustee further requests that this Court determine that such notice is adequate and that other and further notice be waived.

26. No prior application for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Trustee respectfully requests that this Court grant the relief requested in the Motion, together with such other, further and different relief as the Court deems just and proper.

Dated this 27th day of July, 2017

COHNE KINGHORN, P.C.

/s/ Patrick E. Johnson
George Hofmann
Steven C. Strong
Patrick E. Johnson
Attorneys for the Liquidating Trustee

EXHIBIT A

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of July 13, 2017, is by and between GIL A. MILLER as the Liquidating Trustee ("Trustee" or "Seller") of the consolidated bankruptcy estate (the "Estate") of INFINIA CORPORATION and POWERPLAY SOLAR I, LLC (collectively, "Debtors"), and OAK POINT PARTNERS, INC. ("Purchaser").

WITNESSETH:

WHEREAS, on September 17, 2013, the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Utah ("Court"), jointly administered under Case No. 13-30688 (WTT) (the "Case"); and

WHEREAS, on April 14, 2014, the Court entered an order confirming the Debtors' Chapter 11 Plan of Liquidation, pursuant to which a Liquidating Trust consisting of the property of the Estate was created and the Trustee was vested with the power and duty to administer the assets of the Estate; and

WHEREAS, at the time of the execution of this Agreement and continuing into the future, there may be property of the Estate remaining, consisting of known or unknown assets or claims which have not been previously sold, assigned, or transferred (collectively, "Remnant Assets"); and

WHEREAS, Remnant Assets specifically exclude: (a) cash held at the time of this Agreement by Trustee in bank accounts earmarked for distribution to creditors and/or payment of professional fees; (b) the claims of the Trustee against Richard Shorten and Silvermine Capital Resources, LLC as asserted in Adversary Proceeding No. 15-02183 pending in the Case and any proceeds from settlement of such Adversary Proceeding; and (c) the Purchase Price (as hereinafter defined) to be delivered pursuant hereto; and

WHEREAS, Seller has the power and authority to sell and assign all right, title and interest in and to the Remnant Assets to Purchaser, including, but not limited to the proceeds thereof.

NOW THEREFORE, in consideration of the promises and mutual undertakings herein contained, Seller and Purchaser agree as follows:

1. **Purchase Price.** The Purchase Price shall be good funds in the amount of Four Thousand and No/100 Dollars (\$4,000.00) payable within 3 business days of receipt by Purchaser of this executed Agreement and the entry of a non appealable Order of the Court approving this Agreement.
2. **Assignment of Remnant Assets.** Seller hereby irrevocably and unconditionally sells, assigns, transfers and conveys to Purchaser all of the Seller's right, title and interest under, in and to the Remnant Assets, as well as any and all claims and rights related to the Remnant Assets, including, without limitation, all cash, securities, instruments and other property that may be paid or issued in conjunction with the Remnant Assets and all amounts, interest, and costs due under the Remnant Assets.
3. **Authority to Sell.** The sale of the Remnant Assets by the Seller is made pursuant to the authority vested in the Seller.
4. **Payments Received on Remnant Assets.** Seller further agrees that any payments received by Seller on account of any Remnant Assets shall constitute property of the Purchaser to which the Purchaser has an absolute right, and that Seller will promptly deliver such payment to Purchaser at Purchaser's address set forth below. Seller agrees to use reasonable efforts to forward to Purchaser notices received with respect to any Remnant Assets.

5. **Seller's Representations and Warranties.** In consideration of Purchaser's agreements herein and to induce Purchaser to enter into this Agreement, Seller represents and warrants to Purchaser that Seller has full lawful right, title, power and authority to enter into this Agreement and to convey Seller's interest to Purchaser in the Remnant Assets as is set forth in this Agreement.

EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE SELLER SELLS, ASSIGNS, AND TRANSFERS THE REMNANT ASSETS TO THE PURCHASER "AS IS, WHERE IS" WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, WHETHER EXPRESS, IMPLIED OR IMPOSED BY LAW.

6. **Free and Clear Sale.** The sale of Remnant Assets shall be free and clear of any liens, claims, or encumbrances pursuant to 11 U.S.C. § 363(f).

7. **No Assumption of Liabilities.** The parties agree that Purchaser is acquiring only the Remnant Assets and that Purchaser is neither acquiring nor assuming any liabilities of the Seller under this Agreement, except as may otherwise expressly be provided herein.

8. **Documents of Assignment.** From time to time upon request from Purchaser, Seller shall execute and deliver to Purchaser such documents reasonably requested by Purchaser to evidence and effectuate the transfer contemplated by this Agreement in a form reasonably acceptable to the parties hereto. However, Purchaser shall reimburse Seller for its reasonable costs associated with such compliance.

9. **Limited Power of Attorney.** Solely with respect to the Remnant Assets, and to the extent permitted by law, Seller hereby irrevocably appoints Purchaser as its true and lawful attorney and authorizes Purchaser to act in Seller's stead, to demand, sue for, compromise and recover all such amounts as now are, or may hereafter become, due and payable for or on account of the Remnant Assets herein assigned. Seller grants unto Purchaser full authority to do all things necessary to enforce the Remnant Assets and its rights thereunder pursuant to this Agreement.

10. **Entire Agreement.** This Agreement embodies the entire agreement and understanding between Seller and the Purchaser and supersedes any and all prior agreements and understandings with respect to the subject matter hereof. This Agreement may not be amended or in any manner modified unless such amendment or modification is in writing and signed by both parties.

11. **Benefits and Binding Effect.** All provisions contained in this Agreement or any document referred to herein or relating hereto shall inure to the benefit of and shall be binding upon the respective successors and assigns of Seller and the Purchaser.

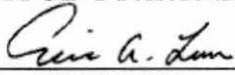
12. **Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Utah, without giving effect to choice of law principles of the State of Utah.

13. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument, and copies or facsimiles of execution signatures shall be equivalent to original signatures.

[remainder intentionally left blank; signature page follows]

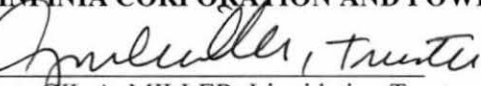
THIS AGREEMENT has been duly executed as of the day and year first above written.

OAK POINT PARTNERS, INC.

By: 
Name: ERIC LINN
Its: President

Address (for regular mail and mail forwarding): PO Box 1033, Northbrook, IL 60065-1033
Address (for overnight delivery): 5215 Old Orchard Road, Suite 965, Skokie, IL 60077
tel (847) 577-1269 fax (847) 655-2746

**LIQUIDATING TRUSTEE OF THE CONSOLIDATED BANKRUPTCY ESTATE
OF INFINIA CORPORATION AND POWERPLAY SOLAR I, LLC**

By: 
Name: GIL A. MILLER, Liquidating Trustee

Address: c/o Rocky Mountain Advisory LLC, 215 South State St., Suite 550, Salt Lake City, UT 84111
tel (801) 428-1602