

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	:	Chapter 11
	:	
SUNEDISON, INC., et al.,	:	Case No. 16-10992 (SMB)
	:	
Debtors.¹	:	Jointly Administered

**ORDER AUTHORIZING AND APPROVING SALE OF EQUITY INTERESTS IN
IMPERIAL VALLEY SOLAR 3, LLC, IMPERIAL VALLEY SOLAR 4, LLC
AND SUN LAKE SOLAR, LLC AND GRANTING
CERTAIN RELEASES IN CONNECTION THEREWITH**

Upon the motion (the “Motion”)² of the Debtors for entry of an order (this “Order”) pursuant to sections 105(a), 363(b), 363(f), 363(m), 541(a), 1107, and 1108 of title 11 of the United States Code (as amended, the “Bankruptcy Code”), and Rules 2002, 6004, 9006, and 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) (i) authorizing SUNE and First Wind California Holdings, LLC (together, the “Seller Parties”) to sell or transfer their equity interests (such equity interests, collectively, the “Equity Interests”) in (a) Imperial Valley Solar 3, LLC (“IVS3”), (b) Imperial Valley Solar 4, LLC (“IVS4”), and (c) Sun Lake Solar, LLC (“Sun Lake Solar” and, together with IVS3 and IVS4, the “Subsidiaries” and, each of

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtors’ tax identification number are as follows: SunEdison, Inc. (5767); SunEdison DG, LLC (N/A); SUNE Wind Holdings, Inc. (2144); SUNE Hawaii Solar Holdings, LLC (0994); First Wind Solar Portfolio, LLC (5014); First Wind California Holdings, LLC (7697); SunEdison Holdings Corporation (8669); SunEdison Utility Holdings, Inc. (6443); SunEdison International, Inc. (4551); SUNE ML 1, LLC (3132); MEMC Pasadena, Inc. (5238); Solaicx (1969); SunEdison Contracting, LLC (3819); NVT, LLC (5370); NVT Licenses, LLC (5445); Team-Solar, Inc. (7782); SunEdison Canada, LLC (6287); Enflex Corporation (5515); Fotowatio Renewable Ventures, Inc. (1788); Silver Ridge Power Holdings, LLC (5886); SunEdison International, LLC (1567); Sun Edison LLC (1450); SunEdison Products Singapore Pte. Ltd. (7373); SunEdison Residential Services, LLC (5787); PVT Solar, Inc. (3308); SEV Merger Sub Inc. (N/A); Sunflower Renewable Holdings 1, LLC (6273); Blue Sky West Capital, LLC (7962); First Wind Oakfield Portfolio, LLC (3711); First Wind Panhandle Holdings III, LLC (4238); DSP Renewables, LLC (5513); Hancock Renewables Holdings, LLC (N/A). The address of the Debtors’ corporate headquarters is 13736 Riverport Dr., Maryland Heights, Missouri 63043.

² Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion or the PSA, as applicable.

the foregoing individually, a “Subsidiary”) to 93LF 8ME LLC (the “Buyer”) in accordance with that certain Purchase and Sale Agreement, dated as of July 1, 2016 (together with all related agreements, documents or instruments and all exhibits, schedules, and supplements to any of the foregoing, the “PSA”, and the transactions described therein, the “Sale Transaction”), as amended by that certain Amendment No. 1 to the PSA, dated July 13, 2016 [Docket No. 766], by and among the Seller Parties and the Buyer, free and clear of all Liens and Claims (as defined herein), with such Liens attaching to the proceeds with the same validity, extent, and priority as had attached to the Equity Interests immediately prior to the sale or transfer; and (ii) approving the settlement of the JDA Dispute; and the Court having held a hearing on July 14, 2016 (the “Sale Hearing”) to approve the proposed Sale Transaction as set forth in the PSA; and the Court having reviewed and considered (a) the Motion, (b) the First Day Declaration, (c) the Martin Declaration, (d) the Parkhill Declaration, (e) the objections to the Motion, if any, and (f) the arguments of counsel made, and the evidence proffered or adduced at the Sale Hearing; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice need be provided; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, their stakeholders, and other parties in interest; and after due deliberation thereon; and sufficient cause appearing therefor; it is hereby

FOUND AND DETERMINED THAT:³

³ These findings and determinations constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. Where appropriate, findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact.

A. **Jurisdiction and Venue.** This Court has jurisdiction (i) to consider the Motion and (ii) over the property of Debtors, including the Equity Interests to be sold, transferred, and conveyed pursuant to the PSA, under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. **Legal Predicates.** The legal predicates for the relief sought in the Motion are Bankruptcy Code sections 105(a), 363(b), 363(f), 363(m), 541(a), 1107, and 1108, and Bankruptcy Rules 2002, 6004, 9006, and 9019.

C. **Final Order.** This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 7062, and to the extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for delay in the implementation of this Order and expressly directs entry of this Order as set forth herein.

D. **Notice.** As evidenced by the affidavits of service filed with the Court at Docket No. 723, and based on the representations of counsel at the Sale Hearing, (i) proper, timely, adequate, and sufficient notice of the Motion, the Sale Hearing, the PSA, and the Sale Transaction has been provided in accordance with Bankruptcy Code sections 102(1) and 363 and Bankruptcy Rules 2002, 6004, 9006, and 9019 and the case management procedures established in that certain *Order Granting Debtors' Amended Motion for Order Pursuant to Bankruptcy Code Sections 102 and 105, Bankruptcy Rules 1015, 2002, 9007, and 9036, and Local Bankruptcy Rule 2002 Authorizing the Establishment of Certain Notice, Case Management, and Administrative Procedures* [Docket No. 360] (the "Case Management Order"), as amended and

waived by the Court in accordance with the *Order to Show Cause Scheduling Hearing on Shortened Notice For the Debtors' Motion for Order Pursuant to Bankruptcy Code Sections 105(a), 363(b), 363(f), 363(m), 541(a), 1107, and 1108 and Bankruptcy Rules 2002, 6004, 9006, and 9019 Authorizing and Approving Sale of Equity Interests in Imperial Valley Solar 3, LLC, Imperial Valley Solar 4, LLC and Sun Lake Solar, LLC and Granting Certain Releases in Connection Therewith* [Docket No. 688], to each party entitled to such notice, (ii) such notice was good, sufficient, and appropriate under the particular circumstances, and (iii) no other or further notice of the Motion, the Sale Hearing, the PSA, or the Sale Transaction is or shall be required.

E. **Opportunity to Object.** A fair and reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all interested persons and entities, including: (a) all entities known to have expressed an interest in a transaction with respect to all or part of the Equity Interests; (b) counsel to the Buyer; (c) counsel to the administrative agent under the Debtors' prepetition first lien credit agreement; (d) counsel to the Tranche B Lenders (as defined in the debtor-in-possession credit agreement) and the steering committee of the second lien creditors; (e) counsel to the administrative agent under the Debtors' prepetition second lien credit agreement; (f) counsel to the collateral trustee under the Debtors' prepetition second lien credit agreement; (g) counsel to the indenture trustee under each of the Debtors' outstanding bond issuances; (h) the Office of the United States Trustee for the Southern District of New York; (i) the U.S. Attorney for the Southern District of New York; (j) counsel to the DIP Administrative Agent (as defined in the PSA); (k) counsel to the official committee of unsecured creditors; (l) the Internal Revenue Service; (m) the Securities and Exchange Commission; (n) all entities known to have asserted any Lien or Claim in or upon any

of the Equity Interests; (o) any such other party entitled to notice pursuant to Bankruptcy Rule 2002, Rule 9013-1(b) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York, or the Case Management Order.

F. **Sale in Best Interests.** The consideration provided by the Buyer under the PSA constitutes the highest or otherwise best offer for the Equity Interests and provides fair consideration and reasonably equivalent value to the Seller Parties in exchange for the Equity Interests and the assumption of the Assumed Liabilities. The transactions contemplated by the PSA represent the best opportunity to maximize and realize the value of the Equity Interests for the ~~Debtors~~ **Seller Parties'** estates. Consummation of the Sale Transaction at this time is in the best interests of the ~~Debtors~~ **Seller Parties**, their creditors, their estates, their stakeholders, and other parties in interest. [SMB 7/15/16]

G. **Business Justification.** Sound business reasons exist for the Sale Transaction. Entry into the PSA, and the consummation of the transactions contemplated thereby, constitutes each Seller Party's exercise of sound business judgment and such acts are in the best interests of the Debtors, their estates, their stakeholders, and all parties in interest. The terms and conditions of the PSA, including, without limitation, the consideration to be realized by the Seller Parties, are fair and reasonable. The Court finds that the ~~Debtors~~ **Seller Parties** have articulated good and sufficient business reasons justifying the Sale Transaction, including, without limitation, the fact that (i) SUNE conducted an extensive marketing and auction process for a significant portfolio of assets (collectively, the "Project Assets"), including the Subsidiaries, which hold certain interconnection rights with respect to the Project (as defined in the PSA), in the third and fourth quarters of 2015, and SUNE selected an affiliate of the Buyer as the highest or otherwise best bidder for the Subsidiaries at the conclusion of the auction process,

(ii) the Subsidiaries and the Project face substantial risk of irreparable harm if the Sale Transaction is not closed promptly because, among other things, certain land rights, interconnection agreements, co-tenancy rights, and conditional use permits are set to expire imminently in the absence of renewal or extension, as applicable, by the Buyer, (iii) the Seller Parties have continued to market the Project Assets throughout 2016, including the marketing process conducted by the Debtors and their advisors following the Petition Date, and (iv) the Seller Parties are unlikely to find a higher or otherwise better offer for the Equity Interests because the Buyer is uniquely qualified, based on its ownership of the land rights, power purchase agreement, and other assets of the Project (other than the interconnection rights held by the Subsidiaries) and experience with the Project, to address certain significant development challenges affecting the Project, including: (a) the need for the Project to obtain increased transmission capacity and interconnection rights and to acquire the rights to use certain shared facilities, necessitating agreement by various co-tenants, including entities unaffiliated with the Seller Parties, and (b) the ambiguity of the terms (including with respect to quantity and timing) of certain co-tenancy obligations owed to Imperial Valley Solar Holdings, LLC (“IVSP”) in connection with the Project. For these reasons and based on the other evidence of record, the Court finds that (i) the PSA constitutes the highest or otherwise best offer for the Equity Interests under the circumstances, (ii) the PSA and the closing of the Sale Transaction present the best opportunity to realize value for the Equity Interests, and (iii) any other transaction would create a substantial risk of delay and a significant reduction in value. **[SMB 7/15/16]**

H. **JDA Dispute.** 8ME SPV1, an affiliate of the Buyer, and IVSP, an affiliate of the Seller Parties, are parties to a Joint Development Agreement, dated as of September 13, 2010 (as amended, the “JDA”), to co-develop, own and manage utility-scale solar

photovoltaic projects in the Western United States, including the Project. The terms and continued viability of the JDA with respect to the Project are currently subject to dispute between and among 8ME SPV1, IVSP and certain of the Seller Parties (the “JDA Dispute”). In particular, 8ME SPV1 claims (and the Seller Parties and IVSP dispute) that (a) IVSP has defaulted on its obligations under the JDA in that (x) it is no longer able to, and has elected not to, perform its obligations, (y) such inability constitutes a failure of consideration, and (z) 8ME SPV1 has suffered and will suffer financial and reputational harm as a result (including, without limitation, due to IVSP’s failure to remit to 8ME SPV a previously negotiated payment of approximately \$11.5 million) and (b) the JDA is subject to a pending rescission claim by 8ME SPV1.

I. **Condition to Sale Transaction.** Entry of this Order approving the PSA and all the provisions thereof is a condition precedent to the Buyer’s obligation to consummate the Sale Transaction.

J. **Good Faith Purchaser.** The Buyer (i) is a good faith purchaser for value and, as such, is entitled to all of the protections afforded under 11 U.S.C. § 363(m) and any other applicable or similar bankruptcy and non-bankruptcy law, and (ii) has otherwise proceeded in good faith in all respects in connection with this proceeding. Specifically: (a) all payments to be made by the Buyer in connection with the Sale Transaction have been disclosed; (b) the negotiation and execution of the PSA was at arm’s-length and in good faith, and at all times each of the Buyer and the Seller Parties were represented by competent counsel of their choosing; (c) the Buyer did not in any way induce or cause the filing of the Chapter 11 Cases; and (d) the Buyer has not acted in a collusive manner with any person. Neither the Seller Parties nor the Buyer has engaged in any conduct that would cause or permit the PSA or the Sale Transaction to

be avoided or result in the imposition of any costs or damages under 11 U.S.C. § 363(n) and the Buyer will be acting in good faith within the meaning of 11 U.S.C. § 363(m) in closing the transactions contemplated by the PSA.

K. **Free and Clear.** The Seller Parties may sell the Equity Interests free and clear of all Liens and Claims because counsel for the lenders under the DIP Facility (as defined in the PSA) received notice of the Sale Transaction and such lenders have consented to the Sale Transaction on the terms set forth in the PSA and this Order. ~~The transfer of the Equity Interests to the Buyer will be free and clear of all Liens and Claims and will not subject the Buyer or any of the Buyer's assets to any liability for any Liens or Claims whatsoever (including, without limitation, under any theory of equitable law, antitrust, setoff (except with respect to setoffs that were effected prior to the Petition Date), or Successor or Transferee Liability (as defined below)).~~ [SMB 7/15/16]

L. **Prompt Consummation.** The sale of the Equity Interests must be approved and consummated promptly in order to preserve the value of the Equity Interests. ~~The Debtors have demonstrated both (i) good, sufficient, and sound business purposes and justifications and (ii) compelling circumstances for the Sale Transaction pursuant to Bankruptcy Code section 363(b) prior to, and outside of, a plan of reorganization in that, among other things, absent the immediate consummation of the Sale Transaction, the value of the Equity Interests will be harmed.~~ To maximize the value of the Equity Interests, it is essential that the Sale Transaction occur within the timeframe set forth in the PSA. Therefore, time is of the essence in consummating the Sale Transaction, and the Seller Parties and the Buyer intend to close the Sale Transaction as soon as reasonably practicable. [SMB 7/15/16]

M. **No Fraudulent Transfer.** The PSA was not entered into, and neither the Seller Parties nor the Buyer proposes to consummate the Sale Transaction, for the purpose of hindering, delaying, or defrauding the Debtors' present or future creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing.

N. **Consideration.** As demonstrated by the Martin Declaration, the other evidence proffered or adduced at the Sale Hearing, and the arguments of counsel made on the record at the Sale Hearing, the consideration provided by the Buyer for the Equity Interests pursuant to the PSA (i) is fair, full, adequate, and reasonable, (ii) is the highest or otherwise best offer for the Equity Interests, (iii) will provide a greater recovery for the ~~Debtors'~~ **Seller Parties'** creditors than would be provided by any other practical available alternative, and (iv) constitutes reasonably equivalent value, reasonable market value, and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia (including, without limitation, the Uniform Fraudulent Conveyance Act and the Uniform Fraudulent Transfer Act). **[SMB 7/15/16]**

O. **No Successor Liability.** The Buyer is not and shall not be deemed a successor to ~~any of the Debtors or the Debtors' estates~~ **the Seller Parties** as a result of the consummation of the Sale Transaction, except with respect to the businesses conducted by the Subsidiaries. For the avoidance of doubt, nothing in this paragraph is intended to release or otherwise affect (x) any Liens or Claims of any kind or nature against the Subsidiaries, or to affect any person or entity's rights with respect to such Liens or Claims against the Subsidiaries, or (y) any LC Lender Liens and Claims. **[SMB 7/15/16]**

P. **Not a Sub Rosa Plan.** The sale and assignment of the Equity Interests outside of a plan of reorganization pursuant to the PSA neither impermissibly restructures the rights of the ~~Debtors~~ **Seller Parties'** creditors nor impermissibly dictates the terms of a liquidating plan for the ~~Debtors~~ **Seller Parties**. Neither the PSA nor the Sale Transaction contemplated thereby constitute a *sub rosa* chapter 11 plan for which approval has been sought without the protections that a disclosure statement would afford. **[SMB 7/15/16]**

Q. **Legal and Factual Bases.** The legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED THAT:

General Provisions

1. The Motion is GRANTED to the extent set forth herein.
2. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are overruled on the merits and denied with prejudice. All persons and entities given notice of the Motion that failed to timely object thereto are deemed to consent to the relief sought therein.

Approval of the Sale of the Equity Interests

3. The PSA, including any amendments, supplements, and modifications thereto, and all of the terms and conditions therein, including, without limitation, those terms and conditions regarding the creation of the Escrow Account and the post-Closing payment of the Adjustment Amount, is hereby approved.
4. The Seller Parties are hereby authorized and empowered to: (1) execute the PSA, along with any additional instruments or documents that may be necessary to implement the PSA, provided that such additional documents do not materially change its terms;

(2) do all things and take all actions necessary to consummate the Sale Transaction in accordance with the terms and conditions of the PSA and the instruments and agreements contemplated thereby; and (3) take all further actions as may reasonably be requested by the Buyer for the purpose of transferring or reducing to possession the Equity Interests, in each case without further application to, or order of, the Court.

Sale and Transfer of Equity Interests

5. Except as otherwise expressly provided in the PSA and the terms of this Order, pursuant to 11 U.S.C. §§ 363(b) and 363(f), the Equity Interests shall be transferred on the Closing Date (as defined in the PSA) free and clear of all (i) claims (including, without limitation, the DIP Superpriority Claims, the Second Lien Adequate Protection Claims, the Carved-Out Yieldco Administrative Claims, and any other claim arising under or set forth in any DIP Loan Document (each of the foregoing, as defined in the Final DIP Order (as defined below))), Liabilities (as defined in the PSA), interests, rights, and encumbrances, in each case against or otherwise in respect of the Equity Interests prior to the Closing Date, including, without limitation, all restrictions (including, without limitation, any restriction on the use, voting rights, transfer rights, claims for receipt of income, or other exercise of any attributes of ownership), hypothecations, charges, indentures, instruments, options, security interests, conditional sale rights or other title retention agreements, pledges, judgments, demands, rights of first refusal, consent rights, contract rights, rights of recovery, reimbursement rights, contribution claims, indemnity rights, exoneration rights, alter-ego claims, tax claims, regulatory violations by any governmental entity, decrees of any court or foreign or domestic governmental entity, charges of any kind or nature, debts arising in any way in connection with any agreements, acts, or failures to act, obligation claims, demands, guaranties, contractual or other commitment rights

and claims, and all other matters of any kind and nature, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of the ~~Debtors'~~ **Seller Parties'** Chapter 11 Cases (but, for the avoidance of doubt, in each case directly related to the Equity Interests prior to the Closing Date), and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under any theory, law or doctrine of successor liability or related theories, as well as any and all "claims" as that term is defined and used in the Bankruptcy Code, including section 101(5) thereof (all of the foregoing, collectively, "Claims"), and (ii) Liens (as defined in the PSA), including, without limitation, the DIP Liens, the Adequate Protection Liens, and any other liens arising under or set forth in any DIP Loan Document (each of the foregoing, as defined in the DIP Order), on or against the Equity Interests, arising prior to the Closing Date (the "Liens"), with such Liens to attach to the proceeds of the Sale Transaction in the order of their priority, with the same validity, force and effect which they now have as against the Equity Interests. Notwithstanding anything to the contrary in the foregoing sentence or otherwise in this Order, neither "Liens" nor "Claims" shall include (x) any Assumed Liabilities (as defined in the PSA), or (y)(i) any claims, security interests, or liens granted to or for the benefit of the LC Lenders (or authorized to continue in effect) pursuant to section 6.13 of the PSA or under any document or agreement executed and/or delivered to implement the provisions thereof (the "LC Definitive Documentation") or (ii) any claims against the Buyer, the Subsidiaries, or otherwise, if any, arising from any obligations or rights granted to or for the benefit of the LC Lenders under section 6.13 of the PSA or any LC

Definitive Documentation (such liens, claims, and security interests specified in sub-clauses (i) and (ii), collectively, the “LC Lender Liens and Claims”), which LC Lender Liens and Claims shall have the priority, and shall continue in force and effect as and to the extent set forth in the PSA and/or such LC Definitive Documentation, as applicable, and the transfer of the Equity Interests on the Closing Date or otherwise pursuant to this Order shall be subject to the LC Lender Liens and Claims, but solely as and to the extent set forth in the PSA and/or such LC Definitive Documentation. **[SMB 7/15/16]**

6. Following the Closing, the Seller Parties and the Buyer are authorized to file a certified copy of this Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Liens and Claims of any kind or nature whatsoever with respect to the Equity Interests. On the Closing Date, this Order will be construed, and constitute for any and all purposes, a full and complete general assignment, conveyance, and transfer of the Equity Interests transferring good and marketable title in and to such Equity Interests in accordance with the PSA.

7. At Closing, all of the Seller Parties’ legal, equitable, and beneficial right, title and interest in and to, and possession of, the Equity Interests shall be immediately vested in the Buyer pursuant to Bankruptcy Code sections 105(a), 363(b), and 363(f) free and clear of any and all Liens and Claims. Such transfer shall constitute a legal, valid, binding, and effective transfer of such Equity Interests and shall vest the Buyer with good and marketable title to the Equity Interests. All persons or entities, presently, or on or after the Closing, in possession of some or all of the Equity Interests are directed to surrender possession of the Equity Interests directly to the Buyer or its designees on the Closing or at such time thereafter as the Buyer may request.

8. The Buyer is hereby authorized in connection with the consummation of the Sale Transaction to assign, transfer, allocate, or otherwise dispose of any of the Equity Interests to and among its affiliates, designees, assignees, and/or successors (i) in a manner as it, in its sole discretion, deems appropriate and (ii) with all of the rights and protections accorded under this Order and the PSA, and the ~~Debtors~~ **Seller Parties** shall cooperate with and take all actions reasonably requested by the Buyer to effectuate any of the foregoing. **[SMB 7/15/16]**

9. This Order: (a) shall be effective as a determination that, as of the Closing, (i) no Liens or Claims will be capable of being asserted against the Buyer or any of its direct assets (including the Equity Interests), (ii) the Equity Interests shall have been transferred to the Buyer free and clear of all Liens and Claims, and (iii) the conveyances described herein have been effected; and (b) is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the PSA., **provided that nothing herein shall relieve any entity of the obligation to pay filing fees required to be paid under non-bankruptcy law. [SMB 7/15/16]**

10. All persons and entities (and their respective successors and assigns), including, without limitation, all debt security holders, equity security holders, affiliates, governmental, tax, and regulatory authorities, lenders, customers, vendors, employees, trade creditors, litigation claimants, and other creditors holding Liens or Claims of any kind or nature

whatsoever arising under or out of, in connection with, or in any way relating to, the Equity Interests are hereby forever barred, estopped, and permanently enjoined from asserting such Liens or Claims against the Buyer, its successors or assigns, or the Equity Interests. Following the Closing, no holder of any Lien or Claim shall interfere with the Buyer's title to the Equity Interests based on or related to any such Lien or Claim, or based on any action the ~~Debtors~~ **Seller Parties** may take in their Chapter 11 Cases. For the avoidance of doubt, and notwithstanding anything to the contrary herein, nothing in this paragraph is intended (x) to release or otherwise affect any Liens or Claims of any kind or nature against the Subsidiaries, or to affect any person or entity's rights with respect to such Liens or Claims against the Subsidiaries, or (y) to release or otherwise affect any LC Lender Liens or Claims, including against the Subsidiaries or the Buyer (or otherwise), if any, or to affect any person or entity's rights with respect to such LC Lender Liens and Claims, if any, against the Subsidiaries or the Buyer (or otherwise). **[SMB 7/15/16]**

11. Each person or entity that has filed financing statements or other documents or agreements evidencing Liens or Claims on or against the Equity Interests shall use commercially reasonable efforts to deliver to the ~~Debtors~~ **Seller Parties** and the Buyer prior to the Closing of the Sale Transaction in proper form for filing, and executed by the appropriate parties, termination statements, instruments of satisfaction, and releases of all such Liens and Claims on or against the Equity Interests. If any person or entity that has filed financing statements or other documents or agreements evidencing Liens or Claims on or against the Equity Interests shall not have delivered to the ~~Debtors~~ **Seller Parties** prior to the Closing of the Sale Transaction, in proper form for filing, and executed by the appropriate parties, termination statements, instruments of satisfaction, and releases of all such Liens and Claims, then only with

regard to the Equity Interests that are purchased by the Buyer pursuant to the PSA and this Order: (a) the ~~Debtors~~ **Seller Parties** and the Buyer are hereby authorized to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to the Equity Interests; (b) the Buyer is hereby authorized to file, register or otherwise record a certified copy of this Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all Liens and Claims against the Buyer and the Equity Interests; and (c) the Buyer may seek in this Court or any other court to compel appropriate parties to execute termination statements, instruments of satisfaction, and releases of all Liens and Claims (but not, for the avoidance of doubt, any Assumed Liabilities or LC Lender Liens and Claims). This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, or local government agency, department, or office. Notwithstanding the foregoing, the provisions of this Order authorizing the sale and assignment of the Equity Interests free and clear of Liens and Claims shall be self-executing, and neither the ~~Debtors~~ **Seller Parties** nor the Buyer shall be required to execute or file releases, termination statements, assignments, consents, or other instruments to effectuate, consummate, and implement the provisions of this Order. **[SMB 7/15/16]**

12. All persons and entities are hereby forever prohibited and permanently enjoined from taking any action to adversely affect or interfere with the ability of the Seller **Parties** to transfer the Equity Interests in accordance with the PSA and this Order; provided, however, that the foregoing restriction shall not prevent any party from appealing this Order in accordance with applicable law or opposing any appeal of this Order. **[SMB 7/15/16]**

Settlement of the JDA Dispute

13. Settlement of the JDA Dispute is an integral part of the Sale Transaction pursuant to the PSA, is supported by fair and reasonable consideration, and is in the best interests of the Debtors' estates. Therefore, the settlement of the JDA Dispute and the releases set forth in the PSA are hereby approved pursuant to Bankruptcy Rule 9019; provided that in the event that the PSA is terminated or the Sale Transaction with the Buyer is not consummated, the settlement of the JDA Dispute shall be null and void, and nothing in this Order or the PSA shall be deemed to limit the rights of any parties to any JDA Related Agreement (as defined in the PSA) to make any claims or exercise any rights or remedies under or in connection with any of the JDA Related Agreements.

No Successor or Transferee Liability

14. The Buyer is not and shall not be deemed a successor to ~~any of the Debtors or the Debtors' estates~~ **the Seller Parties** as a result of the consummation of the Sale Transaction, except with respect to the businesses conducted by the Subsidiaries. For the avoidance of doubt, nothing in this paragraph is intended to release or otherwise affect (x) any Liens or Claims of any kind or nature against the Subsidiaries, or to affect any person or entity's rights with respect to such Liens or Claims against the Subsidiaries, or (y) any LC Lender Liens and Claims. [SMB 7/15/16]

15. Other than as expressly set forth in the PSA or this Order solely with respect to Assumed Liabilities or any LC Lender Liens and Claims, the Buyer shall not have any responsibility for any liability or other obligation of the ~~Debtors or any of their affiliates~~ **Seller Parties**, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated, including under any law or theory

of successor or vicarious liability, antitrust law, environmental law, foreign, federal, state or local revenue law, or products liability law; provided, however, for the avoidance of doubt, that, unless otherwise explicitly provided for in the PSA, Buyer shall not assume any liability or other obligation of the Subsidiaries, which shall remain liabilities and obligations of the applicable Subsidiary. Without limiting the generality of the foregoing, the Buyer shall not be liable for any (a) liabilities, debts, or obligations on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the ownership of the Equity Interests prior to the Closing, (b) environmental liabilities or obligations arising from conditions first existing prior to Closing (including, without limitation, the presence of hazardous, toxic, polluting, or contaminating substances or wastes), which may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response Compensation and Liability Act (“CERCLA”), or (c) liabilities, debts or obligations arising from conditions first existing or actions occurring prior to the Closing with respect to any labor, employment, or similar law, rule or regulation, including the laws specified in this paragraph 15 (including filing requirements under any such laws, rules or regulations) (all liabilities described in paragraphs 15 and 16 of this Order, “Successor or Transferee Liability”). For the avoidance of doubt, nothing in this paragraph is intended to release or otherwise affect (x) any Liens or Claims of any kind or nature against the Subsidiaries, or to affect any person or entity’s rights with respect to such Liens or Claims against the Subsidiaries, or (y) any LC Lender Liens and Claims. **[SMB 7/15/16]**

16. Except as otherwise expressly provided in this Order or the PSA, nothing shall require the Buyer to: (a) continue or maintain in effect, or assume any liability in respect of any employee, collective bargaining agreement, pension, welfare, fringe benefit or any other benefit plan, trust arrangement or other agreements to which any ~~Debtor~~ **Seller Party** is a party

or have any responsibility therefor including, without limitation, medical, welfare and pension benefits payable after retirement or other termination of employment; or (b) assume any responsibility as a fiduciary, plan sponsor or otherwise, for making any contribution to, or in respect of the funding, investment, or administration of any employee benefit plan, arrangement, or agreement (including but not limited to pension plans) or the termination of any such plan, arrangement, or agreement. **[SMB 7/15/16]**

17. Effective upon the Closing, except with respect to Assumed Liabilities or any LC Lender Liens or Claims, all persons and entities are forever prohibited and enjoined from commencing or continuing in any matter any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral, or other proceeding against the Buyer, or its assets (including the Equity Interests), with respect to any (a) Lien or Claim or (b) Successor or Transferee Liability, including, without limitation, the following actions with respect to clauses (a) and (b): (i) commencing or continuing any action or other proceeding pending or threatened; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order; (iii) creating, perfecting or enforcing any Lien or Claim; (iv) asserting any setoff, right of subrogation, or recoupment of any kind; or (v) commencing or continuing any action, in any manner or place, that does not comply with, or is inconsistent with, the provisions of this Order or other orders of this Court, or the agreements or actions contemplated or taken in respect hereof.

Good Faith

18. The Buyer has acted without collusion, in good faith in undertaking the Sale Transaction contemplated by the PSA. The Sale Transaction may not be avoided, nor may

any costs or damages be imposed, under 11 U.S.C. § 363(n) and the Buyer is entitled to all of the protections afforded by Bankruptcy Code section 363(m).

Other Provisions

19. The terms and provisions of the PSA and this Order shall be binding in all respects upon, and shall inure to the benefit of, the ~~Debtors~~ **Seller Parties** and their respective affiliates and subsidiaries, successors and assigns, their estates, and their creditors, the Buyer, and its affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting Liens or Claims on or against the Equity Interests to be sold to the Buyer pursuant to the PSA, notwithstanding any subsequent appointment of any trustee(s), examiner with expanded powers, or other responsible person or officer under any chapter of the Bankruptcy Code, as to which persons such terms and provisions likewise shall be binding. Nothing contained in any chapter 11 plan confirmed in any of the Debtors' Chapter 11 Cases, any order confirming any such chapter 11 plan, any order approving wind-down or dismissal of any of the Debtors' Chapter 11 Cases or any subsequent chapter 7 cases, or any other order of any type or kind entered in the Debtors' Chapter 11 Cases shall conflict with or derogate from the provisions of the PSA or this Order, and to the extent of any conflict or derogation between this Order or the PSA and such future plan or order, the terms of this Order and the PSA shall control. **[SMB 7/15/16]**

20. The PSA and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by all parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment, or supplement does not have a material adverse effect on the Debtors' estates. To the extent that any such proposed modification, amendment, or

supplement has a material adverse effect on the Debtors' estates, such proposed modification, amendment, or supplement shall be subject to the consent of the Required Tranche A Lenders and Tranche B Required Consenting Parties (each as defined in the DIP Credit Agreement). Notwithstanding anything to the contrary contained in this Order or the PSA, the LC Lenders are intended third-party beneficiaries of, and shall be entitled to the protections set forth in, this Order to the extent expressly applicable to the LC Lenders or the LC Lender Liens and Claims, and any such provisions may not be amended, modified, supplemented, or waived, without the prior written consent of the DIP Administrative Agent and upon notice to the Required Tranche B Lenders. To the extent that any provision of the PSA conflicts with or is, in any way, inconsistent with any provision of this Order, this Order shall govern and control.

21. The Buyer shall not be required to seek or obtain relief from the automatic stay under Bankruptcy Code section 362 to enforce any of its remedies under the PSA or any other sale-related document. The automatic stay imposed by Bankruptcy Code section 362 is modified solely to the extent necessary to implement the preceding sentence, provided however that this Court shall retain exclusive jurisdiction over any and all disputes with respect thereto.

22. The requirements set forth in Bankruptcy Rules 6003(b) and 6004 have been satisfied or otherwise deemed waived.

23. As provided by Bankruptcy Rules 7062 and 9014, the terms and conditions of this Order shall be effective and enforceable immediately upon entry and shall not be subject to the stay provisions contained in Bankruptcy Rule 6004(h). Time is of the essence in closing the sale, and the ~~Debtors~~ **Seller Parties** and the Buyer intend to close the sale as promptly as practicable following entry of this Order. **[SMB 7/15/16]**

24. The provisions of this Order and the PSA are non-severable and mutually dependent. The provisions of this Order shall be self-executing.

25. Notwithstanding anything to the contrary contained herein, any authorization contained herein and proceeds obtained by the Seller Parties pursuant to the Sale Transaction shall be subject to any applicable requirements imposed on the Debtors under the Final Order (I) Authorizing Debtors to (A) Obtain Senior Secured Superpriority Postpetition Financing Pursuant to Bankruptcy Code Sections 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), and 364(e), and (B) Utilize Cash Collateral Pursuant to Bankruptcy Code Section 363, and (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to Bankruptcy Code Sections 361, 362, 363, and 364 [Docket No. 523] (the "Final DIP Order") and the other DIP Loan Documents (as defined therein); provided that, notwithstanding the waterfall provisions set forth in the Intercreditor Annex (as defined in the Final DIP Order), Net Asset Sale Proceeds (as defined in the DIP Credit Agreement (as defined in the Final DIP Order)) obtained by the Seller Parties pursuant to the Sale Transaction shall be allocated to immediately repay amounts currently outstanding in respect of any Tranche A-2 Roll-Up Loans (as defined in the DIP Credit Agreement). For the avoidance of doubt, notwithstanding the transfer of the Equity Interests to the Buyer pursuant to the Sale Transaction, in accordance with the terms of the PSA the Project LCs shall be permitted to remain outstanding for 180 days following consummation of the Sale Transaction as an accommodation to the Buyer and to the Seller Parties and, in addition to, and without in any way limiting, any rights and entitlements provided with respect to such Project LCs pursuant to the PSA, such Project LCs shall continue to be (x) treated as Letters of Credit (as defined in the DIP Credit Agreement) issued (or deemed issued) under the DIP Credit Agreement and (y) entitled to all rights and entitlements attributed to

Letters of Credit under the DIP Credit Agreement (including, without limitation, all rights to reimbursement by the Borrower and the applicable Lenders under, and in accordance with, the DIP Credit Agreement) provided, however, that, for the avoidance of doubt, in no event shall (i) the Buyer or any of its Affiliates be liable for any increased costs, expenses, fees or other amounts payable under the DIP Facility resulting from any act or omission by the Seller **Parties**, any Affiliate thereof or any other Person (other than the Buyer and/or any of its Affiliates) in connection with the DIP Facility (as between Buyer and Seller **Parties**, any such increased costs, expenses, fees or other amounts to be solely for the account of Seller **Parties** and its Affiliates) or (ii) the availability or validity of the Project LCs (after amendment and reissuance thereof in accordance with Section 6.13(a) of the PSA) be in any way reduced or limited in connection with any act or omission by the Seller **Parties** or any of ~~its~~ **their** Affiliates or any other Person (other than the Buyer and/or any of its Affiliates) in connection with the DIP Facility. **[SMB 7/15/16]**

26. The requirements set forth in Local Bankruptcy Rule 9013-1(b) are satisfied by the contents of the Motion.

27. The failure to specifically include any particular provisions of the PSA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the PSA be authorized and approved in its entirety; provided, however, that this Order shall govern if there is any direct conflict, and only to the extent of such conflict, between the PSA (including all ancillary documents executed in connection therewith) and this Order.

28. Nothing in this Order or the PSA releases, nullifies, precludes or enjoins the enforcement of any liability to a governmental unit under police and regulatory statutes or regulations (including but not limited to environmental laws or regulations), and any associated liabilities for penalties, damages, cost recovery, or injunctive relief that any entity would be

subject to as the owner, lessor, lessee, or operator of property that is the subject of the Sale Transaction after the date of entry of this Order. Nothing contained in this Order or in the PSA shall in any way diminish the obligation of any entity, including the Debtors, to comply with environmental laws. Nothing in this Order or the PSA authorizes the transfer to the Buyer of any licenses, permits, registrations, or governmental authorizations and approvals without the Buyer's compliance with all applicable legal requirements under non bankruptcy law governing such transfers.

29. This Court shall retain exclusive jurisdiction to, among other things, interpret, enforce, and implement the terms and provisions of this Order and the PSA, including all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connections therewith in all respects, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale Transaction. This Court retains jurisdiction to compel delivery of the Equity Interests, to protect the Buyer and its assets, including the Equity Interests, against any Claims, Liens, and Successor or Transferee Liability and to enter orders, as appropriate, pursuant to sections 105 or 363 (or other applicable provisions) of the Bankruptcy Code necessary to transfer the Equity Interests to the Buyer.

Dated: New York, New York
July 15, 2016

/s/ Stuart M. Bernstein
HONORABLE STUART M. BERNSTEIN