

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

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<b>In re:</b>	:	<b>Chapter 11</b>
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<b>SUNEDISON, INC., et al.,</b>	:	<b>Case No. 16-10992 (SMB)</b>
	:	
<b>Debtors.<sup>1</sup></b>	:	<b>Jointly Administered</b>
	:	
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**ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS 105(a), 363, 503, AND 507  
AND BANKRUPTCY RULES 2002, 6003, 6004, 9007, AND 9014, (A) AUTHORIZING  
SUNE MN DEVELOPMENT, LLC’S ENTRY INTO THE STALKING HORSE  
AGREEMENT;(B) APPROVING BIDDING PROCEDURES AND STALKING HORSE  
BID PROTECTIONS IN CONNECTION WITH SALE OF EQUITY INTERESTS OF  
SUNE MN DEVELOPMENT, LLC; (C) SCHEDULING AUCTION AND SALE  
HEARING;AND (D) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors-in-  
possession (collectively, the “Debtors”) seeking, among other things, entry of an order:  
(a) authorizing SunE MN Development, LLC, a Delaware company (“Seller”) to enter into, and  
perform its obligations under, that certain Purchase and Sale Agreement, dated as of August 10,

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s 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); Enfle 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); EverStream Holdco Fund I, LLC (9564); Buckthorn Renewables Holdings, LLC (7616); Greenmountain Wind Holdings, LLC (N/A); Rattlesnake Flat Holdings, LLC (N/A); Somerset Wind Holdings, LLC (N/A); SunE Waiawa Holdings, LLC (9757); SunE Minnesota Holdings, LLC (8926); SunE MN Development Holdings, LLC (5388); and SunE MN Development, LLC (8669). The address of the Debtors’ corporate headquarters is 13736 Riverport Dr., Maryland Heights, Missouri 63043.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion, the Bidding Procedures, or Stalking Horse Agreement, as applicable.

2016 (as may be amended or otherwise modified in accordance with the terms thereof and hereof, the “Stalking Horse Agreement”), by and among Seller and SoCore MN Acquisition LLC (the “Stalking Horse Buyer”), (b) establishing bidding procedures (the “Bidding Procedures”) to govern the sale by the Seller of 100% of the outstanding membership interests (collectively, the “Equity Interests”) in those project companies listed on Schedule 1.1 of the Stalking Horse Agreement, and approving certain bid protections in favor of the Stalking Horse Buyer in connection therewith; (c) scheduling an auction to sell the Equity Interests (the “Auction”) and the Sale Hearing; and (d) granting other related relief, as more fully described in the Motion; and it appearing that the relief requested is in the best interests of the Seller’s estate, its creditors, and other parties in interest; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided under the particular circumstances; and it appearing that no other or further notice need be provided; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY FOUND AND CONCLUDED** that:<sup>3</sup>

A. The statutory bases for the relief requested in the Motion are sections 105(a), 363, 503, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) and Rules 2002, 6003, 6004, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

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<sup>3</sup> The findings and conclusions set forth herein 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. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. Notice of the Motion having been given to: (a) the Office of the United States Trustee for the Southern District of New York; (b) counsel to the administrative agent under the Debtors' prepetition first lien credit agreement; (c) counsel to the Tranche B Lenders (as defined in the DIP Credit Agreement) and the steering committee of the second lien creditors (the "Steering Committee"); (d) counsel to the administrative agent under the Debtors' prepetition second lien credit agreement; (e) counsel to the collateral trustee under the Debtors' prepetition second lien credit agreement; (f) counsel to the indenture trustee under each of the Debtors' outstanding bond issuances; (g) the U.S. Attorney for the Southern District of New York; (h) counsel to the administrative agent under the postpetition debtor-in-possession financing facility; (i) counsel to the Committee in these Chapter 11 Cases; (j) counsel to TerraForm Power, Inc. and TerraForm Global, Inc.; (k) the Internal Revenue Service; (l) the Securities and Exchange Commission; (m) any party known or reasonably believed to have asserted a lien, encumbrance, claim or other interest in the Equity Interests; (n) any party known or reasonably believed to have expressed an interest in acquiring the Equity Interests; and (o) any such other party entitled to notice pursuant to Local Bankruptcy Rule 9013-1(b). Good and sufficient notice of the Motion, Bidding Procedures, and the relief sought in the Motion has been given under the circumstances, and no other or further notice is required except as set forth herein and in the Bidding Procedures. A reasonable opportunity to object or be heard regarding the relief provided herein has been afforded to parties in interest.

C. The Seller has articulated good and sufficient reasons for this Court to grant the relief requested in the Motion regarding the sale process, including (i) the Seller's entry into, and performance under, the Stalking Horse Agreement (provided, however, that this Order shall not authorize the consummation of the Transactions set forth in the Stalking Horse Agreement), (ii)

the allowance and payment of the Break Up Fee and the Expense Reimbursement to the Stalking Horse Buyer in accordance with the Stalking Horse Agreement, and (iii) the scheduling of the Bid Deadline, the Auction, and the Sale Hearing with respect to the proposed sale of the Equity Interests free and clear of all Liens, Encumbrances, Claims, and Interests (each as defined in the Stalking Horse Agreement) (other than those expressly permitted by the Stalking Horse Agreement or the Successful Bid of the Successful Bidder, as applicable) (the “Sale”).

D. The Stalking Horse Agreement and its terms were negotiated by the Seller and the Stalking Horse Buyer in good faith and at arms-length. The Stalking Horse Agreement represents the highest or otherwise best offer that the Debtors have received to date to purchase the Equity Interests.

E. Pursuit of the Stalking Horse Buyer as a “stalking-horse” and its Stalking Horse Agreement as a “stalking horse sale agreement” is in the best interests of the Seller and the Seller’s estate and creditors and it reflects a sound exercise of the Seller’s business judgment. The Stalking Horse Agreement will enable the Seller to secure a fair and adequate baseline price for the Equity Interests and, accordingly, will provide a clear benefit to the Seller’s estate, its creditors, and all other parties in interest.

F. The Bidding Procedures are reasonably designed to maximize the value to be achieved for the Equity Interests and the Seller has articulated good and sufficient business reasons for the Court to approve the Bidding Procedures.

G. The Seller has demonstrated that the Break Up Fee and the Expense Reimbursement are (i) reasonable and appropriate conditions of the Stalking Horse Agreement and (ii) actual and necessary costs and expenses of preserving the Seller’s estate, within the meaning of section 503(b) of the Bankruptcy Code, and of substantial benefit to the Seller’s

estate by inducing the Stalking Horse Buyer's bid, which has established a bid standard or minimum for other bidders for the Equity Interests, thereby ensuring that during the Auction, if any, the Seller receives the highest or best bid possible for the Equity Interests.

H. Agreeing to pay the Break Up Fee and the Expense Reimbursement is within the sound business judgment of the Seller and will increase the likelihood that the Seller will receive the greatest possible consideration for the Equity Interests. The Seller has articulated good and sufficient business reasons for the Court to approve the Break Up Fee and the Expense Reimbursement.

I. The Stalking Horse Buyer is not an "insider" or "affiliate" of any of the Debtors, as those terms are defined in section 101 of the Bankruptcy Code, and no common identity of incorporators, directors, or controlling stockholders exists between the Stalking Horse Buyer and the Debtors. The Stalking Horse Buyer and its respective counsel and advisors have acted in "good faith" within the meaning of section 363(m) of the Bankruptcy Code in connection with the Stalking Horse Buyer's negotiation of the Break Up Fee and the Expense Reimbursement and the Bidding Procedures and the Stalking Horse Buyer's negotiation and entry into the Stalking Horse Agreement.

1. The entry of this Order is in the best interests of the Seller, its estate, its creditors, and other parties in interest.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that:

2. The Motion is **GRANTED** as it relates to relief described in this Order, as set forth herein.

3. The Bidding Procedures, in the form attached hereto as Exhibit 1, are hereby approved in their entirety. The Seller is authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures in accordance with their terms.

4. All objections to the relief requested in the Motion that have not been withdrawn, waived, or settled as announced to the Court at the hearing on the Motion or by stipulation filed with the Court, are overruled except as otherwise set forth herein.

5. The Seller is authorized to enter into, and perform its obligations under, the Stalking Horse Agreement (provided, however, that this Order shall not authorize the consummation of the Transactions set forth in the Stalking Horse Agreement) and to conduct an Auction in accordance with the Bidding Procedures.

6. All bidders submitting a Qualified Bid are deemed to have submitted to the exclusive jurisdiction of this Court with respect to all matters related to the Bidding Procedures, the Auction, and the terms and conditions of the sale or transfer of the Equity Interests identified under the Stalking Horse Agreement.

7. If the Stalking Horse Buyer's bid, as reflected in the Stalking Horse Agreement, is the only Qualified Bid in respect of the Equity Interests that is received by the Seller by the Bid Deadline, no Auction will be conducted for the Equity Interests, and the Stalking Horse Buyer will be the Successful Bidder for the Equity Interests.

8. Each Qualified Bidder participating in the Auction shall confirm in writing that (a) it has not engaged in any collusion with respect to the submission of any bid, the bidding or the Auction and (b) its Qualified Bid is a good faith bona fide offer that it intends to consummate if selected as a Successful Bidder. All proceedings at an Auction shall be transcribed.

9. The Break Up Fee and the Expense Reimbursement are approved and shall be payable to the Stalking Horse Buyer in cash in accordance with the terms and conditions of the Stalking Horse Agreement. The Break Up Fee and the Expense Reimbursement (i) shall be paid to the Stalking Horse Buyer prior to any other payments being made out of the proceeds of any Alternate Sale Transaction and (ii) shall be paid to the Stalking Horse Buyer free and clear of all prepetition and postpetition Liens, Liabilities, Claims, and Interests, including, without limitation, all prepetition and postpetition Liens, Liabilities, and Claims of the Prepetition Secured Parties and the DIP Secured Parties (as each such term is defined in the Final DIP Order (as defined below)) under, or otherwise described in, 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”) or the other DIP Loan Documents (as defined in the Final DIP Order), in each case notwithstanding any provision to the contrary in the Final DIP Order, the other DIP Loan Documents, or any other order of this Court. In addition, the obligation of Seller to pay the Break Up Fee and the Expense Reimbursement shall survive the termination of the Stalking Horse Agreement as set forth therein.

10. Promptly following the Seller’s selection of the Successful Bidder, the Seller shall announce the Successful Bidder and shall file with this Court a notice of the Successful Bidder.

11. Notwithstanding section 362 of the Bankruptcy Code, the Stalking Horse Buyer shall be permitted to terminate the Stalking Horse Agreement in accordance with its terms, and the automatic stay is hereby modified.

12. No entity, other than the Stalking Horse Buyer, shall be entitled to any expense reimbursement, break-up fee, “topping,” termination, contribution, or other similar fee or payment in connection with the Sale.

13. The Bid Deadline is **September 16, 2016 at 4:00 p.m. (EST)**. The Auction, if necessary, shall be held on **September 20, 2016 at 10:00 a.m. (EST)**. The Sale Hearing shall be conducted on **September 22, 2016 at 10:00 a.m. (EST)**. The Debtors may seek the entry of an order of this Court at the Sale Hearing approving and authorizing the Sale to the Stalking Horse Buyer or such other Successful Bidder, as applicable, on terms and conditions consistent with the Stalking Horse Agreement or Successful Bid, as applicable. All obligations of the Seller set forth in the Stalking Horse Agreement that are intended to be performed prior to the Sale Hearing and/or entry of the Bankruptcy Sale Order (as defined in the Stalking Horse Agreement) are authorized as set forth herein and are fully enforceable as of the date of entry of this Order. The Sale Hearing may be adjourned from time to time by the Debtors without further notice to any other party in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or a notice filed with the Court; provided that, for the avoidance of doubt, the Stalking Horse Buyer shall retain its rights and remedies to the extent set forth in the Stalking Horse Agreement in the event that the Debtors decide to adjourn the Sale Hearing.

14. Objections, if any, to the sale of the Equity Interests to the Stalking Horse Buyer or such other Successful Bidder, as applicable, must: (a) be in writing and filed with this Court; (b) comply with the Bankruptcy Rules; (c) set forth the name of the objecting party, the nature and amount of any claims or interests held or asserted against the Debtors’ estate or properties, the basis for the objection, and the specific grounds therefor; and (d) be served upon (such as to

be received by) the following parties (collectively, the “Objection Notice Parties”) by the appropriate deadline established in this Order:

- a) counsel for the Debtors, Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, NY 10036, Attn: J. Eric Ivester and 155 N. Wacker Drive, Suite 2700, Chicago, IL 60606, Attn.: James J. Mazza, Jr.;
- b) the Office of the United States Trustee for the Southern District of New York, 201 Varick Street, Suite 1006, New York, NY 10014, Attn: Paul K. Schwartzberg, Esq. (Paul.Schwartzberg@usdoj.gov);
- c) counsel to the Stalking Horse Buyer, Stoel Rives LLP, 33 South Sixth Street, Suite 4200, Minneapolis, MN 55402, Attn: David T. Quinby (david.quinby@stoel.com);
- d) counsel for the DIP Agent and DIP Arrangers, White & Case LLP, 1155 Avenue of the Americas, New York, NY 10036, Attn: Scott Greissman (sgreissman@whitecase.com) and Elizabeth Feld (efeld@whitecase.com), and counsel for the Tranche B Lenders, Akin Gump Strauss Hauer & Feld, LLP, One Bryant Park, New York, NY 10036, Attn: Arik Preis (apreis@akingump.com);
- e) counsel to the official committee of unsecured creditors appointed in the Chapter 11 Cases, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, Attn: Matthew Barr (matt.barr@weil.com) and Jill Frizzley (jill.frizzley@weil.com); and
- f) those parties who have formally filed requests for notice in this Chapter 11 Case pursuant to Bankruptcy Rule 2002.

15. Objections, if any, to the relief requested in the Motion to be considered at the Sale Hearing, must be served upon (such as to be received by) the Objection Notice Parties **on or before 4:00 p.m. (EST) on September 15, 2016.**

16. Notwithstanding anything to the contrary contained herein, any authorization contained herein and any proceeds obtained by the Seller pursuant to the Transactions 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.

17. Notice of the Motion as provided therein shall be deemed good and sufficient notice, and the requirements of Bankruptcy Rule 6004(a) are satisfied by such notice or otherwise deemed waived.

18. Notwithstanding Bankruptcy Rule 6003 or 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

19. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

20. This Order, including the Bidding Procedures attached hereto as Exhibit 1, shall govern if there is any direct conflict, and only to the extent of such conflict, between the Stalking Horse Agreement (including all ancillary documents executed in connection therewith) and this Order.

21. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

22. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: New York, New York

August 19<sup>th</sup>, 2016

/s/ STUART M. BERNSTEIN  
HONORABLE STUART M. BERNSTEIN

**Exhibit 1**

**Bidding Procedures**

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

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

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**BIDDING PROCEDURES**

The bidding procedures set forth below (the “Bidding Procedures”) detail the process by which SunE MN Development, LLC (the “Seller”), in the pending chapter 11 bankruptcy cases in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), Case No. 16-10992 (Jointly Administered), is authorized to conduct a sale of the membership interests in the Project Companies (as defined in the Stalking Horse Agreement) (the “Equity Interests”) by auction (“Auction”) and enter into related transactions (collectively, the “Transactions”) in accordance herewith and with the Bidding Procedures Order (as defined below).

On August 10, 2016, the Seller entered into a Purchase and Sale Agreement between the Seller, as seller, and SoCore MN Acquisition LLC, as buyer (the “Stalking Horse Buyer”), a copy of which was filed with the Bankruptcy Court on August 10, 2016 (the “Stalking Horse Agreement”). Pursuant to the Stalking Horse Agreement, the Stalking Horse Buyer has agreed to, among other things, purchase the Equity Interests upon the terms and subject to the conditions set forth in the Stalking Horse Agreement.

These Bidding Procedures were approved by order of the Bankruptcy Court dated August

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s 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); EverStream Holdco Fund I, LLC (9564); Buckthorn Renewables Holdings, LLC (7616); Greenmountain Wind Holdings, LLC (N/A); Rattlesnake Flat Holdings, LLC (N/A); Somerset Wind Holdings, LLC (N/A); SunE Waiawa Holdings, LLC (9757); SunE Minnesota Holdings, LLC (8926); SunE MN Development Holdings, LLC (5388); and SunE MN Development, LLC (8669). The address of the Debtors’ corporate headquarters is 13736 Riverport Dr., Maryland Heights, Missouri 63043.

18, 2016 (the “Bidding Procedures Order”), pursuant to the motion of the Seller and the other debtors and debtors-in-possession in the Chapter 11 Cases (collectively, the “Debtors”) for (a) an order (i) authorizing the Seller’s entry into the Stalking Horse Agreement; (ii) approving bidding procedures and stalking horse bid protections in connection with the sale of the Equity Interests, (iii) approving the form and manner of notice, (iv) scheduling an auction and sale hearing, and (v) granting related relief; and (b) an order (i) approving the Stalking Horse Agreement and authorizing the Seller to consummate the transactions contemplated therein, (ii) authorizing the sale of the Equity Interests free and clear of liens, claims, encumbrances, and interests, and (iii) granting related relief (the “Motion”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed them in the Motion, the Bidding Procedures Order, or the Stalking Horse Agreement, as applicable.

Any party desiring to obtain a copy of the Motion, the Stalking Horse Agreement, the Bidding Procedures, and/or the Bidding Procedures Order, in addition to any related motions that may be filed, may do so by accessing the website of the Debtors’ claims and noticing agent, Prime Clerk, at <https://cases.primeclerk.com/sunedison>, or the Bankruptcy Court’s internet site <http://www.nysb.uscourts.gov>, for a fee, through an account obtained from the PACER website at <http://pacer.psc.uscourts.gov>. The documents may also be obtained by contacting counsel to the Debtors, Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, NY 10036, Attn: J. Eric Ivester and 155 N. Wacker Drive, Suite 2700, Chicago, IL 60606, Attn: James J. Mazza, Jr. and Jennifer Madden.

The Debtors provide these Bidding Procedures, whereby prospective bidders may qualify for and participate in the Auction, to allow interested parties to compete to make the highest or otherwise best offer for the Equity Interests.

### **Assets to Be Sold**

The Seller seeks to complete a sale of the Equity Interests. All of the Seller’s rights, title and interest in and to the Equity Interests shall be sold free and clear of any and all claims, charges, liens (statutory or otherwise), mortgages, leases, hypothecations, encumbrances, pledges, security interests, options, rights of use, rights of first offer, rights of first refusal, easements, servitudes, restrictive covenants, encroachments, licenses and other restrictions and interests (collectively the “Encumbrances”) with such Encumbrances to attach to the proceeds of the Transactions with the same validity, priority, force, and effect as such Encumbrances had immediately prior to the consummation of the Transactions.

The Stalking Horse Agreement will serve as the “stalking-horse” bid for the Equity Interests (the “Stalking Horse Bid”).

### **Key Dates and Deadlines**

The key dates and deadlines for the Bidding Process (as defined herein) are as follows:

August 18, 2016	Bidding Procedures Hearing – Anticipated Date on which Bankruptcy Court will approve Bidding Procedures.
September 16, 2016 at 4:00 p.m. prevailing Eastern Time	Bid Deadline – Due date for Bidders to submit the documents set forth in subsection 2 below.
September 15, 2016 by 4:00 p.m. prevailing Eastern Time	Proposed Objection Deadline for Sale Motion.
September 20, 2016 at 10:00 a.m. prevailing Eastern Time	Auction to be held at the office of Skadden, Arps, Slate, Meagher & Flom LLP, 4 Times Square, New York, New York 10036, unless otherwise determined by Seller.
September 22, 2016 at 10:00 a.m. prevailing Eastern Time	Proposed Sale Hearing – Anticipated Date on which Bankruptcy Court will approve a form of sale order.

### **Bid Requirements**

#### **1. Access to Diligence; Due Diligence from Interested Parties**

Upon execution of a confidentiality agreement prior to the Bid Deadline, in form and substance satisfactory to the Seller, a qualified party that wishes to conduct due diligence on any of the Equity Interests may be granted access to information related thereto, subject to these Bidding Procedures and the Bidding Procedures Order. For a party to be considered a “qualified party” and provided diligence access, such party must demonstrate, in the Seller’s judgment, that such party has the ability (including, without limitation from a financial and regulatory approval perspective) to close promptly on the Transactions following the Bankruptcy Court’s approval of such party’s Qualified Bid (as defined below). The information to be provided to such qualified parties will be information that the Debtors believe is appropriate in light of the Debtors’ need to protect their trade secrets and confidential research, development, and commercial information. For the avoidance of doubt, the confidentiality agreement with the Debtors to which the Stalking Horse Buyer is a party shall remain in effect and the Stalking Horse Buyer shall not be required to execute a new confidentiality agreement under this Paragraph 1.

Each party expressing an interest in the Equity Interests shall comply with all requests for additional information and due diligence access requested by the Seller or its advisors regarding such party and its ability to consummate its contemplated transaction. Failure by a party to comply with such requests for additional information and due diligence access may be a basis for the Seller to determine that such bidder is not a Qualified Bidder or that a bid made by such Qualified Bidder is not a Qualified Bid.

By submitting a bid, each bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct due diligence on the Debtors prior to making its bid; that it has relied solely upon its own independent due diligence in making its bid; and, excluding the Stalking Horse Buyer (except as provided in the Stalking Horse Agreement), that it did not rely upon any written or oral statement, representations, promises, warranties, or guaranties

whatsoever, whether express, implied, by operation of law, or otherwise, regarding the Seller or any of the Debtors, or the completeness of any information provided in connection therewith.

## 2. Qualified Bids

A written offer by a potential bidder that is delivered so as to be received **by no later than September 16, 2016 at 4:00 p.m. prevailing Eastern Time (the "Bid Deadline")** to (a) the Debtors, 13736 Riverport Dr., Maryland Heights, Missouri 63043, Attn: John S. Dubel; (b) counsel for the Debtors, Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, NY 10036, Attn: J. Eric Ivester and 155 N. Wacker Drive, Suite 2700, Chicago, IL 60606, Attn: James J. Mazza, Jr.; (c) financial advisor and investment banker to the Debtors, Rothschild Inc., 1251 Avenue of the Americas, 33<sup>rd</sup> floor, New York, NY 10020, Attn: Homer Parkhill; (d) counsel for the Official Committee of Unsecured Creditors (the "Committee"), Weil, Gotshal & Manges, LLP, 767 Fifth Avenue, New York, NY 10153, Attn: Matthew Barr and Jill Frizzley; (e) counsel for the DIP Agent and DIP Arrangers, White & Case LLP, 1155 Avenue of the Americas, New York, NY 10036, Attn: Scott Greissman and Elizabeth Feld; and (f) counsel for the Tranche B Lenders, Akin, Gump, Strauss, Hauer & Feld, LLP, One Bryant Park, New York, NY 10036, Attn: Arik Preis (the "Notice Parties") and that complies with all of the following requirements, as determined by the Seller, shall constitute a "Qualified Bid" for the Equity Interests:

- (a) Assets: Each Qualified Bid must state that the bidder offers to purchase all or a portion of the Equity Interests, with a specific indication of which Equity Interests are subject to the bid;
- (b) Purchase Price: Each Qualified Bid must propose a purchase price that is a higher and/or better offer for the Equity Interests (as compared to the offer of the Stalking Horse Buyer), and must identify the consideration, cash or otherwise, to be provided in exchange for the Equity Interests;
- (c) Good Faith Deposit: Each Qualified Bid must be accompanied by a good faith deposit in an amount no less than 10% of the purchase price of any Qualified Bid in the form of a wire transfer to an escrow account to be established by the Seller subject to a customary escrow agreement satisfactory to the Seller and Qualified Bidder, and which shall be credited against the purchase price paid by the bidder if such bidder is the Successful Bidder; provided that, for the avoidance of doubt, the Stalking Horse Buyer shall also be required to submit a cash deposit in connection with the Stalking Horse Agreement;
- (d) Minimum Bid: Each Qualified Bid must be for an amount equal to the sum of:
  - (i) the Purchase Price (as defined in the Stalking Horse Agreement), *plus*
  - (ii) the Break Up Fee (as defined in the Stalking Horse Agreement), in the amount of \$2,100,000, except that in the event the IUP Projects are no longer subject to exclusivity in accordance with Section 3.3.18 of the Stalking Horse Agreement, the Break Up Fee shall be in the amount of

\$1,525,000; *plus*

(iii) the Expense Reimbursement (as defined in the Stalking Horse Agreement) in the amount of \$1,250,000, *plus*

(iv) \$250,000;

provided, however, that any purchase price not paid in cash at the closing may be discounted in the Debtors' reasonable discretion; provided further, however, that a Qualified Bid may be for a lesser amount if only for a portion of the Equity Interests, so long as such Qualified Bid together with other Qualified Bids for non-overlapping portions of the Equity Interests offers a purchase price equal to or greater than the sum set forth in this paragraph;

- (e) Irrevocable (Qualified Bids): Each Qualified Bid must state that it is irrevocable until (a) the conclusion of the Auction to the extent such Qualified Bidder is not the Successful Bidder or the Backup Bidder, or (b) the closing of the Transactions to the extent the bidder is the Successful Bidder or the Backup Bidder; provided that, the Backup Bidder shall not be required to keep its Backup Bid open following the earlier of (i) 60 days following the date of the Sale Hearing or (ii) November 29, 2016;
- (f) Irrevocable (Successful Bid and Backup Bid): Each Qualified Bid must state that in the event the relevant Qualified Bidder is chosen as the Successful Bidder (as defined below) or Backup Bidder (as defined below), it shall remain irrevocable until the Sellers and the Successful Bidder consummate the Transactions, provided that, the Backup Bid shall not remain irrevocable following the earlier of (i) 60 days following the date of the Sale Hearing or (ii) November 29, 2016;
- (g) Contingencies: No Qualified Bid may be conditioned on the obtaining or the sufficiency of financing or any internal or credit committee approval, syndication requirements, or on the outcome or review of due diligence, but may be subject to the accuracy at the closing of specified representations and warranties or the satisfaction at the closing of specified conditions, all of such shall be specifically set forth in the Qualified Bid;
- (h) Regulatory and Third-Party Approvals: Each Qualified Bid shall set forth each regulatory and third-party approval required for the Qualified Bidder to consummate the transaction and provide evidence satisfactory to the Seller that each such approval can be obtained on a timeframe acceptable to the Debtors;
- (i) Corporate Approvals: Each Qualified Bid shall include evidence satisfactory to the Debtors of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery, and closing of the Purchase Agreement (as defined below), financing agreements and any other ancillary documents or agreements;
- (j) Purchase Agreement: Each Qualified Bid shall include a duly authorized and

executed purchase and sale agreement (a “Purchase Agreement”) on substantially the terms of, or on terms that are more favorable to the Seller than those set forth in, the Stalking Horse Agreement, including all exhibits and schedules, signed by an authorized representative of such bidder, all marked to show the required amendments and modifications to the Stalking Horse Agreement and the proposed Bankruptcy Sale Order, which Purchase Agreement shall specify the amount of cash or other consideration offered by the Qualified Bidder for the Equity Interests;

- (k) Due Diligence: Each Qualified Bid shall include an acknowledgement and representation that the bidder has had an opportunity to conduct any and all required due diligence regarding the Equity Interests prior to making its offer;
- (l) Fees: Except for the Stalking Horse Bidder, no Qualified Bid may request any expense reimbursement, break-up fee, “topping,” termination, contribution, or other similar fee or payment;
- (m) Proof of Financial Ability to Perform: Each Qualified Bid shall contain sufficient and adequate financial and other information to demonstrate, to the satisfaction of the Seller, that the relevant Qualified Bidder has the financial wherewithal and ability to consummate the Transactions;
- (n) Disclosure of Identity: Each Qualified Bid shall fully disclose the identity of each entity (and each entity’s shareholders and ultimate controlling entities) that will be bidding for or purchasing the Equity Interests or otherwise participating in connection with such bid or the Auction, and the complete terms of any such participation, along with sufficient evidence that the relevant Qualified Bidder is legally empowered to complete the transactions on the terms contemplated by the parties, which information and evidence is satisfactory to the Seller;
- (o) Consent to Jurisdiction: Each Qualified Bid shall state that the relevant Qualified Bidder consents to the core jurisdiction of the Bankruptcy Court to enter an order or orders, which shall be binding in all respects, in any way related to the Seller and its assets, and has waived any right to a jury trial in connection with any disputes relating to the Seller, the Chapter 11 Cases, the Bidding Procedures, the Stalking Horse Agreement, the Auction, or the construction and enforcement of the Stalking Horse Agreement or any Purchase Agreement related thereto;
- (p) No Collusion: Each Qualified Bid shall confirm that the relevant Qualified Bidder has not engaged in any collusion with respect to the bidding, the Auction or the sale; and
- (q) Other Information: Each Qualified Bid shall contain such other information as the Seller deems appropriate.

By submitting a bid, a bidder (other than the Stalking Horse Buyer) shall be deemed to waive the right to assert or seek payment of any “break-up” fee, expense reimbursement, or other

post-filing claim, including administrative expense claims, and to the extent otherwise applicable, a substantial contribution claim under section 503 of the Bankruptcy Code, with respect to its bid or the marketing or auction process.

Each Potential Bidder who submits Qualified Bid shall be a “Qualified Bidder.” Subject to the terms and conditions set forth herein, the Debtors, in consultation with advisors to (1) the DIP Agent and DIP Arrangers, (2) the Tranche B Lenders, and (3) the Creditors’ Committee, shall make a determination regarding whether a bid is a Qualified Bid and notify all bidders before the Auction whether their bids have been determined to be Qualified Bids. Notwithstanding the foregoing, the Stalking Horse Buyer is deemed a Qualified Bidder and the Stalking Horse Agreement is deemed a Qualified Bid for all purposes in connection with the Bidding Process, the Auction, and the Transactions.

### 3. Modifications of Qualified Bids Prior to Auction

Between the date that the Debtors notify a bidder that it is a Qualified Bidder and the Auction, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the written consent of the Debtors, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase the consideration contemplated by, or otherwise improve the terms of, the Qualified Bid, during the period of time such Qualified Bid remains binding as specified herein; provided that any Qualified Bid, including any bid of the Stalking Horse Buyer, may be improved at the Auction as set forth herein.

### 4. Auction Baseline Bid; No Qualified Bids

On or prior to 10:00 a.m. (prevailing Eastern Time) one (1) business day before the Auction, the Debtors shall provide each Qualified Bidder, the Stalking Horse Buyer, the Committee, and the DIP Lenders notice of the terms of the highest or otherwise best Qualified Bid or Qualified Bids received (such highest or otherwise best Qualified Bid, the “Auction Baseline Bid”).

If the Seller does not receive any Qualified Bids other than the Stalking Horse Bid by the Bid Deadline, the Seller will not hold an Auction and the Stalking Horse Buyer will be named the Successful Bidder (as defined below) for the Equity Interests. The Sellers shall promptly submit the Stalking Horse Bid to the Bankruptcy Court for approval at the Sale Hearing.

### Auction

If the Seller determines that it has received one or more Qualified Bids (in addition to the Stalking Horse Buyer’s bid), the Seller is authorized to conduct an Auction. Other than as expressly set forth herein, the Seller may conduct an Auction in the manner they determine will result in the highest or otherwise best offer for the Equity Interests. If the Auction is held, it shall take place on **September 20, 2016** (the “Auction Date”) at 10:00 a.m. (prevailing Eastern Time) at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, NY 10036, or on such other date or at such other location as shall be timely communicated to all parties entitled to attend the Auction.

## Auction Process

### 1. Auction Procedures

The Auction shall be conducted in accordance with the following procedures:

- a) Participation: Only the Debtors, Qualified Bidder(s), DIP Lenders, and the Committee, along with their respective representatives and advisors, may attend the Auction. The bidding shall commence and proceed as solely determined by the Seller. Only Qualified Bidders will be entitled to make bids at the Auction;
- b) Bidding Increments: Bidding at the Auction will begin with the Auction Baseline Bid and continue in bidding increments (each a "Subsequent Bid") providing a net value to the estate of at least an additional \$200,000 above the prior bid; provided that, in each round of bidding, the Debtor shall account for the Expense Reimbursement and Break Up Fee owed to the Stalking Horse Buyer when determining net value to the estate. After the first round of bidding and between each subsequent round of bidding, the Seller shall announce the bid that it believes, in consultation with advisors to (1) the DIP Agent and DIP Arrangers, (2) the Tranche B Lenders, and (3) the Committee, to be the highest or otherwise better offer (the "Leading Bid");
- c) In-Person Bidding: The Qualified Bidder(s) shall appear in person at the Auction, through a duly authorized representative, or as otherwise agreed by the Seller;
- d) No Collusion: Each Qualified Bidder shall be required to represent that it has not been engaged in any collusion with respect to the bidding or the sale;
- e) Auction Record: The Auction will be transcribed or video recorded to ensure an accurate recording of the bidding at the Auction;
- f) Aggregation of Bids: The Debtors shall have the ability to decide, at any point (upon consultation with advisors to (1) the DIP Agent and DIP Arrangers, (2) the Tranche B Lenders, and (3) the Committee), that bids of more than one Qualified Bidder may be aggregated, joined, disjoined, or otherwise separated;
- g) Assets Sold: The Debtors shall have the ability to decide, at any point, that they are not selling any or all of the Equity Interests, or removing certain assets from the Auction, and only selling others; provided that, for the avoidance of doubt, the Stalking Horse Buyer shall retain its rights and remedies to the extent set forth in the Stalking Horse Agreement in the event that the Seller determines that it is not selling any or all of the Equity Interests; and
- h) Conclusion of Auction: The Auction shall continue until the Debtors determine that a bid is the Successful Bid (as defined below).

### 2. Selection of Successful Bid

The Sellers will review and evaluate each Qualified Bid and determine, after consultation with advisors to (1) the DIP Agent and DIP Arrangers, (2) the Tranche B Lenders, and (3) the Committee, which offer is the highest or otherwise best offer from among the Qualified Bids submitted at the Auction (such bid, the "Successful Bid," and the Qualified Bidder submitting such Successful Bid, the "Successful Bidder"), which shall be subject to Bankruptcy Court approval. In selecting the Successful Bid, the Debtors may consider all factors, including the amount of the purchase price, the form and total amount of consideration being offered, the likelihood of each Qualified Bidder's ability to close a transaction and the timing thereof, the form and substance of the purchase agreement requested by each Qualified Bidder, and the net benefit to the Debtors' estates.

Promptly and no later than one (1) business day following the Sellers' selection of the Successful Bid and the conclusion of the Auction, the Sellers shall announce the Successful Bid, Successful Bidder, and Backup Bid (as defined below) and shall file with the Bankruptcy Court notice of the Successful Bid, Successful Bidder, Backup Bid and the Purchase Agreement(s) relevant thereto.

### 3. Backup Bidder

Notwithstanding anything in the Bidding Procedures to the contrary, if an Auction is conducted, the Qualified Bidder, or Qualified Bidders if such bidders are submitting bids for portions of the Equity Interests, with the next highest or otherwise best bid at the Auction, as determined by the Seller, after consultation with advisors to (1) the DIP Agent and DIP Arrangers, (2) the Tranche B Lenders, and (3) the Committee, will be designated as the backup bidder (the "Backup Bidder"). For the avoidance of doubt, (a) in the event that the Stalking Horse Buyer is not the winning bidder at the Auction and (b) the Stalking Horse Buyer submits the second highest or second best bid at the Auction, the Stalking Horse Buyer shall be the Backup Bidder. Subject to the other terms and conditions of these Bidding Procedures, the Backup Bidder shall be required to keep its bid (the "Backup Bid") open and irrevocable until the date that is the earlier of (a) the closing date of the Transactions with the Successful Bidder, and (b) sixty (60) days after the date of the Sale Hearing; provided, however, if the Stalking Horse Buyer is the Backup Bidder, its Backup Bid shall be on the terms set forth in the Stalking Horse Agreement.

Following the Sale Hearing, if the Successful Bidder fails to consummate an approved Transaction following the Sale Hearing because of a breach or failure to perform on the part of such Successful Bidder, the Backup Bidder will be deemed to be the new Successful Bidder, and the Seller will be authorized, but not required, to consummate a Transaction with the Backup Bidder without further order of the Bankruptcy Court. In such case, the defaulting Successful Bidder's deposit, if any, shall be forfeited to the Debtors and all parties in interest, and the Debtors specifically, reserve the right to seek all available damages from the defaulting Successful Bidder.

### **Status of Stalking Horse Agreement**

Notwithstanding anything in these Bidding Procedures to the contrary, the Stalking Horse Agreement and related transaction documents (as such may be modified in connection with any

Auction held) shall remain in full force and effect until such agreements have terminated in accordance with their respective terms.

Notwithstanding anything in these Bidding Procedures to the contrary, nothing in these Bidding Procedures shall, or shall be deemed to, amend, modify, or waive any term or condition of the Stalking Horse Agreement or limit, alter, or impair the ability of the Stalking Horse Buyer to terminate the Stalking Horse Agreement in accordance with the terms and conditions thereof.

### **Sale Hearing**

The Successful Bid will be subject to approval by the Bankruptcy Court. The Sale Hearing to approve the sale of the Equity Interests to the Successful Bidder is scheduled to take place on **September 22, 2016 at 10:00 a.m. (prevailing Eastern Time)** before the Honorable Stuart M. Bernstein, at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004, or at such times thereafter as counsel may be heard. The Sale Hearing may be adjourned from time to time by the Debtors without further notice to any other party in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or a notice filed with the Bankruptcy Court; provided that, for the avoidance of doubt, the Stalking Horse Buyer shall retain its rights and remedies to the extent set forth in the Stalking Horse Agreement in the event that the Seller and/or the Debtors decide to adjourn the Sale Hearing. Unless otherwise required pursuant to the Seller's fiduciary duties, the Seller shall not consider any bids submitted after the conclusion of the Auction.

### **Return of Good Faith Deposits**

All deposits shall be returned to each bidder not selected by the Seller as the Successful Bidder or the Backup Bidder no later than 5 business days following the conclusion of the Sale Hearing. The Backup Bidder's deposit shall be returned no later than 3 business days following (a) the closing of the Successful Bid with the Successful Bidder or (b) sixty (60) days after the date of the Sale Hearing.

### **Reservation of Rights**

Notwithstanding anything to the contrary in the Stalking Horse Agreement or the Bidding Procedures, the Debtors reserve their rights, as they may determine to be in their best interests and in the exercise of their fiduciary obligations, to: (a) after consultation with advisors to (1) the DIP Agent and DIP Arrangers, (2) the Tranche B Lenders, and (3) the Committee, modify the Bidding Procedures or impose, at or prior to the Auction, different and/or additional terms and conditions on the sale of the Equity Interests, (b) announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction, (c) determine which bidders are Qualified Bidders, (d) determine which bids qualify as Qualified Bids, (e) determine whether to enter into or accept a Qualified Bid (other than the Stalking Horse Agreement), (f) determine which Qualified Bid is the highest or otherwise best proposal and which is the next highest or otherwise best proposal, (g) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the

requirements of the Bankruptcy Code, or (iii) contrary to the best interests of the Seller, (h) waive terms and conditions set forth herein with respect to all potential bidders, and (i) extend the deadlines set forth herein; provided, however, that (i) nothing in these Bidding Procedures shall, or shall be construed to, in any way amend, impair, alter or otherwise modify the terms of the Stalking Horse Agreement (as may be modified by any Subsequent Bid by the Stalking Horse Buyer) or the Stalking Horse Buyer's rights thereunder; and (ii) without the prior written consent of the Stalking Horse Buyer, the Seller shall not modify, or waive compliance (or accept non-compliance) with any of the following (A) subsections (c), (d), (j), or (l) of the requirements of a Qualified Bid specified herein; (B) subsection (b) of the Auction Procedures regarding Subsequent Bids specified herein; (C) ~~the right of the Stalking Horse Buyer to bid up to the full amount of its Expense Reimbursement and Break Up Fee;~~ or (D) this clause (ii) or the immediately preceding clause (i). [SMB: 8/19/16]

### **Consent to Jurisdiction**

The Stalking Horse Buyer, all Qualified Bidders, and all bidders at the Auction shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court to enter an order or orders, which shall be binding in all respects, in any way related to the Debtors or their assets, and have waived any right to a jury trial in connection with any disputes relating to the Debtors, the Chapter 11 Cases, the Bidding Procedures, the Stalking Horse Agreement, the Auction, or the construction and enforcement of the Stalking Horse Agreement or any Bidder Agreement.